



**Board of Minerals
and Environment**

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

AGENDA
Telephone Conference Call Meeting

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

July 18, 2019
10:00 a.m. Central Time

Live audio of the meeting is available at <http://www.sd.net/mtc>

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

Approval of minutes from May 15, 2019, meeting

Public hearing to consider amendments to ARSD 74:28:21:01; 74:28:21:02;
74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01; 74:28:25:03; 74:28:25:04;
74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:28:03; 74:28:28:04;
74:28:28:05; 74:28:30:01; and 74:28:33:01 – Carrie Jacobson

Mining Issues

- Consent Calendar – Tom Cline

10:15 a.m. Spyglass Cedar Creek, LP's revoked permits and plan proposal – Deputy Attorney
General Rich Williams

Public comment period

Next meeting

Adjourn

Interested parties who wish to participate in the telephone conference call should contact DENR at (605)773-3886 no later than 3:00 p.m. Central Time on Wednesday, July 17, 2019. Interested parties may also participate in person at the Department of Environment and Natural Resources, Joe Foss Building Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, SD. Please access the Joe Foss Building at the front entrance on Capitol Avenue.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources by calling (605) 773-5559 at least 48 hours prior to the meeting if you have a disability for which special arrangements are required.

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 15, 2019
10:00 a.m. CT

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

Chairman Hagg appointed Dennis Landguth as secretary pro tem.

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

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Doyle Karpen, Dennis Landguth, Daryl Englund, and Jessica Peterson. John Scheetz participated via telephone.

BOARD MEMBERS ABSENT: Gregg Greenfield and Bob Morris.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM APRIL 18, 2019, MEETING: Motion by Karpen, seconded by Blumhardt, to approve the minutes from the April 18, 2019, 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 transfers of liability (see attachment).

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

Acceptance of Financial Assurance Increase for Wharf Resources (USA), Inc., Permits 356, 464, and 476: Eric Holm presented an adjustment of the financial assurance amount for Wharf Resources. This financial assurance, also known as the cyanide spill bond, is required under SDCL 45-6B-20.1 and covers costs to the state for responding to and remediating accidental releases of cyanide and other leaching agents at the Wharf mine site. The 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 \$689,300, which is a \$20,100 increase from the 2018 update.

To cover the increase, Wharf Resources submitted a rider to the Aspen American bond that currently serves as financial assurance, increasing the bond amount to \$689,300. Ratings for Aspen American Insurance Company from AM Best, Standard and Poor's, and Moody's are excellent, strong, and upper medium quality, respectively. The AM Best outlook was recently upgraded from under review to stable. The Standard and Poor's and Moody's outlooks remain negative; however, the merger with Apollo Global Management was completed on February 15, 2019, so the outlooks may not change until the end of this year.

The department recommended that the board accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond to \$689,300.

Mr. Scheetz asked if Wharf has pollution prevention insurance in addition to this bond. Matt Zietlow, Wharf Resources, stated that Wharf has a standard property protection policy through their parent company, Coeur Mining, which is typical of any other property ownership; it is not specific to pollution protection.

Motion by Blumhardt, seconded by Karpen, to accept the rider to Bond No. SU27832, Aspen American Insurance Company, increasing the financial assurance bond by \$20,100 to \$689,300 for Wharf Resources (USA), Inc., Permits 356, 464, and 476. A roll call vote was taken, and the motion carried unanimously.

Annual Update of Preliminary List of Special, Exceptional, Critical, or Unique Lands: Mr. Holm reported that under ARSD 74:29:10:19, the board is required to annually hold a hearing to consider any petitions received to nominate lands to the Preliminary List of Special, Exceptional, Critical, or Unique Lands.

In accordance with ARSD 74:29:10:17(4), DENR publishes an annual notice to solicit petitions to add areas to the preliminary list. The notice for 2019 was published on January 24, 2019, in the Capitol Journal, Sioux Falls Argus Leader, Black Hills Pioneer, and Rapid City Journal. Affidavits of publication were received from all newspapers and are on file at the department.

The deadline for submittal of petitions to nominate areas to preliminary list was May 1, 2019, and no nominating petitions were received.

Mr. Holm noted that no board action was required.

Chairman Hagg asked Mr. Holm to explain the process for placing lands on the preliminary list.

Mr. Holm stated that prior to submittal of any large- or small-scale mine permit application, the operator is required to submit a notice of intent to the department to determine whether or not the

lands included in the proposed mining operation constitute special, exceptional, critical, or unique lands. Within 60 days, the department must determine whether the lands described in the notice of intent are eligible for inclusion on the preliminary list of special, exceptional, critical, or unique lands. Any citizen, organization, or agency may nominate lands described in a notice of intent to operate for inclusion on the preliminary list by submitting a nominating petition to the department and to the operator within 60 days following the date of publication of the public notice. If any petitions are received, the board would hold a public hearing to determine whether the nominated lands would be placed on the preliminary list. The board determines whether the lands are finally designated as special, exceptional, critical, or unique when a mining permit application that includes lands on the preliminary list is filed and the board holds a hearing.

REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:28, HAZARDOUS WASTE: Carrie Jacobson, DENR Waste Management program, requested permission to advertise for a public hearing to consider amendments to 74:28, hazardous waste rules.

The department intends to publish the public notice in the eleven daily papers. The public notice will also be mailed to individuals and interested parties on the department's mailing list. The draft rules will be available on the department's website.

Outreach to provide an overview of the proposed rules and to seek input is scheduled via the Digital Dakota Network on June 18, 2019. Interested parties will also be able to contact the department directly to obtain copies and send comments by mail. The public has 45 days to provide written comments on the proposed rules.

The department anticipates the public hearing will be held on July 18; therefore, the public notice will be sent for publishing on or before May 31. A copy of the draft public notice was included in the board packet.

The amendments reflect changes that occurred in the federal hazardous waste regulations from July 1, 2016 through June 30, 2018, as well as final rules published in the Federal Register on November 30, 2018 (Airbags rule) and February 22, 2019 (Pharmaceutical Waste/P075 listing update).

Mr. Scheetz asked when the final rules would be in effect for enforcement purposes. Ms. Jacobson stated that after the public comment period is over and the board makes a decision on the amendments on July 18, 2019, the final rules will be presented to the Interim Rules Committee for approval at their August meeting. After approval by the Interim Rules Committee, the final rules will be submitted to the Secretary of State. Staff anticipates the final rules will become effective in September 2019.

Motion by Englund, seconded by Peterson, to authorize the department to advertise for a public hearing to consider amendments to ARSD 74:28 at the July 18, 2019, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

ORAL MINING REPORTS: The annual large-scale gold mine oral reports were presented to the board by representatives of LAC Minerals, Homestake Mining Company, Wharf Resources, VMC, LLC, and DENR for the Gilt Edge Superfund Site. The mine operators reported on 2018 water treatment, production, and reclamation activities and discussed plans for 2019. The annual oral mining presentations are required by statute.

LAC Minerals and Homestake Mining Company: Mark Tieszen updated the board on reclamation activities and geotechnical surveys performed in 2018. He answered questions from the board regarding water treatment and reclamation.

Wharf Resources: Matt Zietlow updated the board on the re-route of its main haul road to accommodate future mining plans, and he provided an overview of future pad offload schedules. He answered questions from the board regarding current mining activities and reclamation.

VMC, LLC: Don Valentine participated via telephone conference call. He reported that no mining activities occurred at the proposed operation during 2018; however, there is a possibility that VMC, LLC will talk to the Lawrence County Commissioners about reinstating their Conditional Use Permit.

Gilt Edge Superfund Site: Roberta Hudson, Minerals and Mining Program, presented the annual update on remediation and reclamation activities at the Gilt Edge Superfund Site including backfilling and grading work completed on the Sunday and Dakota Maid pits. She also discussed Agnico Eagle's work to define contaminant sources and update facilities at the site.

Ms. Hudson answered questions from the board regarding monitoring water levels, present and future water treatment, and the work Agnico Eagle is doing.

GRIZZLY GULCH TAILINGS DAM: During the March 21, 2019 meeting the board requested information on bonding for the Grizzly Gulch Tailings Dam and on the design and monitoring of the facility.

Mr. Holm discussed the history of how Grizzly Gulch fits into the Homestake permitting and the department and board's authority for bonding.

SDCL 45-6A was the first mine reclamation law enacted in 1971. Underground mining and surface effects from underground mining were not regulated under this law. The Grizzly Gulch Tailings Dam was constructed from 1976 to 1977, and it was not regulated because of the underground mining exemption.

In 1980, the South Dakota Legislature amended SDCL 45-6A to allow the state to permit and regulate underground mining. The South Dakota Conservation Commission, which was the predecessor to the Board of Minerals and Environment, had a question as to whether the amended law applied to any existing underground mines in operation before July 1, 1980. The Attorney General's Office issued a legal opinion stating that the amendment did not apply to underground mines that existed prior to July 1, 1980.

The current law, SDCL 45-6B, was enacted in 1982 and replaced SDCL 45-6A. SDCL 45-6B-9 exempted underground mines and surface effects from undergrounds mines that were in operation prior to July 1, 1980. The exemption was applied to the Homestake underground mine and the surface effects, such as the Grizzly Gulch Tailings Dam, the Homestake Mill, the Ross and Yates shafts, and the Yates waste rock depository. Homestake was interested in resuming surface mining in the Open Cut and in 1982 large-scale mine Permit 332 was issued to Homestake for the resumption of surface mining. Large-scale mine Permit 456 was issued to Homestake in 1992 for an expansion of the Open Cut. The Grizzly Gulch Tailings Dam was not included under these permits due to the exemption under SDCL 45-6B-9.

Mr. Holm showed a map with the location of mine Permits 332 and 456. The Minerals and Mining Program has regulatory authority for areas only within the boundaries of Permits 332 and 456. Mr. Holm pointed out the location of the Homestake mill, which has been reclaimed, the Ross and Yates shafts, the Yates waste rock depository, which has been reclaimed, and the Grizzly Gulch Tailings Dam.

Mr. Holm discussed the following codified laws:

SDCL 45-6B-20 states that the board shall cause an inspection to be made of the proposed mine site. Based upon this inspection, the criteria established in SDCL 45-6B-21, and the submitted reclamation plan, the board shall set the level of the surety necessary to guarantee the costs of reclamation of affected public and private lands. The surety shall be filed or deposited with the board before the issuance of the mining permit in such form as required by the board.

SDCL 45-6B-27 states that the penalty of the surety shall from time to time be increased or reduced by the Board of Minerals and Environment so that the bond covers the cost of reclamation which would accrue to the state, if the state were required to reclaim the affected areas within the permit or in accordance with the number of acres to which the bond is no longer operative because of the operator's withdrawal of acreage or by reason of the operator's performance of his or her obligations subsequent to the issuance of the permit.

SDCL 45-6B-1 states, in part, that for each mining operation requiring a post closure plan, the operator shall begin post closure care immediately following the release of reclamation surety and continue post closure care for thirty years. The board may modify the permit to reduce the length of the post closure care period at any time after reclamation surety release if a reduced period ensures compliance with all applicable performance standards. The board may modify the permit to extend the period beyond thirty years if necessary to ensure compliance with all applicable performance standards or design and operating criteria.

SDCL 34A-10-2.1 states, in part, that any person making application to the Water Management Board or the Board of Minerals and Environment for a permit, a license, or an extension, amendment, or renewal of an existing permit or license, which authorizes activity that could result in a significant risk of pollution, contamination, or degradation of the environment and that is not covered by a performance or damage bond or other financial assurance instrument, may be required, as a condition of the permit, to provide financial assurance guaranteeing the

performance of corrective actions to contain, mitigate, and remediate all pollution, contamination, or degradation which may be caused by the activity.

Mr. Holm explained that staff consulted with Steve Blair, Assistant Attorney General, regarding the board's authority for bonding. Mr. Blair agreed with staff's conclusion that financial assurance for the Grizzly Gulch Tailings Dam cannot be required because the facility is exempt from permitting, reclamation, and bonding requirements in accordance with SDCL 45-6B-9, and under SDCL 45-6B and SDCL 34A-10-2.1, DENR and the board can only require financial assurance for a mine facility covered under a mine permit.

Mr. Holm noted that at the March meeting he indicated to the board that the department may hold funds tied to the Grizzly Gulch Tailings Dam. Mr. Holm clarified that the department does not hold such funds.

Mr. Scheetz stated he understands that initially the dam was not issued a permit because material from underground mining was being sent to that facility exclusively, but with the issuing of Permits 332 and 456, there were tailings from that surface mining activity that went to Grizzly Gulch Dam. He asked if sending tailings from the surface mining operation to Grizzly Gulch Dam connected Grizzly Gulch to the requirements of Permits 332 and 456.

Mr. Holm answered that he did not work at DENR at the time Permit 332 was issued, but activities approved under Permit 456 were considered part of the underground operation. Since the tailings were coming from the underground operation, the dam was not covered under the permit.

Mr. Scheetz stated that quite a bit of the tailings have come from the Open Cut mining operation. He said the two issues are whether a bond is necessary and whether the board can legally require a bond. Mr. Scheetz said he believes that since tailings were brought in from surface mining activity, the dam should have been included in the permit.

Mr. Holm said the board and department have regulatory authority over only the areas within the boundaries of the mine permits.

Mr. Scheetz asked the department to further investigate what regulatory authority the state has over the Grizzly Gulch impoundment based on past disposal of surface tailings mining under Permit 456.

Mr. Tieszen discussed regulatory oversight at the Grizzly Gulch Tailings facility, permitting and construction of the dam, the elevation and water levels of the dam, the tailings dam design, the storm water diversion canal, post closure operations and performance, maintenance, beach reclamation, pore pressure and water level monitoring, bimonthly and monthly tailings impoundment inspections, and expert third party tailings impoundment reviews performed by Matich and Morgenstern. He also showed several photos of the dam and areas around the dam.

Mr. Landguth stated that his concerns regarding the safety factors of the dam were addressed by Mr. Tieszen's presentation.

Mr. Tieszen answered questions from Mr. Englund regarding the upstream drainage and the diversion canal.

Mr. Scheetz stated that even though there is a low probability of failure, there is a high consequence if the dam does fail. He said complete failure of that dam would basically bury the city of Deadwood under tailings. The second issue that needs to be considered is water quality in the dam and how that potentially affects the bond. If the tailings go acid, there could be potential major issues.

Chairman Hagg asked if there are currently any concerns regarding the water quality. Mr. Tieszen stated that there are low levels of ammonia and cyanide in the water, but the concentrations of these parameters are so low that they do not constitute water quality concerns at this time. The water that is being collected at the toe of the facility and from the seepage collection has higher TDS and slightly higher metals. That water is pumped to the supernatant pond to get treatment within the pond before it is sent to the SD Science and Tech Authority. By biological and solar means there is some passive treatment within that facility.

Mr. Scheetz said there are quite a few metals in the dam, and he asked if an evaluation has been done of the fluctuating water table or the probability of those metals consuming the carbonate, and the factors that could potentially change the pH and the whole pond could go acid.

Mr. Tieszen stated that he is unaware of any formal evaluation of the potential for acid generation at Grizzly Gulch. Based on the lack of acid generation associated with other Homestake waste rock, there's no indication Grizzly Gulch will ever generate acid. If it were to go acid or if there would be some other issue, then there are other water treatment techniques that can be used for that.

Chairman Hagg asked if Homestake is submitting annual reports to DENR so it is monitored on an annual basis, at a minimum. Mr. Tieszen stated that Homestake submits a report to DENR on the ground water quality of the wells around the facility, and water quality results from the supernatant pond itself are submitted to Mr. Scheetz at the SD Science and Tech Authority on a monthly basis.

Mr. Scheetz stated that Mr. Tieszen did a good job showing how safe the dam is, but due diligence requires the board to do this review based on the fact that there have been some significant failures in Brazil, and it requires the board to make sure that everyone is doing their job.

Chairman Hagg said Mr. Tieszen's presentation was very informative and well done. He stated that Homestake needs to continue monitoring the water for any activity that would suggest a problem.

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

WELLS: Chairman Hagg asked if anyone in attendance would like to make comments regarding this matter.

Kathy Glines, Harding County Auditor, stated that she and Melissa Breeding, Harding County Treasurer, were attending the meeting to observe.

Rich Williams, Deputy Attorney General, stated that on May 13, 2019, pursuant to the board's direction, the Department of Environment and Natural Resources filed a complaint against Spyglass Cedar Creek, LP, March Kimmel in his capacity as general partner of Spyglass Cedar Creek, and Kevin Sellers in his capacity as general partner of Spyglass Cedar Creek. Mr. Kimmel and Mr. Sellers were included in the complaint because, under Texas law, general partners in a Limited Partnership (LP) are jointly and severally liable for the debts and obligations of the LP.

The complaint lists the violations, many of which were included in the Notice of Violation issued by the Department of Environment and Natural Resources on July 10, 2018, and the Petition to Revoke Drillings Permits and Petition for Forfeiture of Surety issued by the Department of Environment and Natural Resources on July 12, 2018. The complaint asked for injunctive relief in the form of an order requiring Spyglass, March Kimmel, and Kevin Sellers to perform the necessary acts and remediation to come into compliance with the laws and a requirement that Spyglass post a good and sufficient surety in the amount necessary to cover the performance of the related acts and remediation necessary for Spyglass' compliance with SDCL 45-9 and the administrative rules promulgated thereunder. The state also requested that Spyglass, March Kimmel, and Kevin Sellers be held jointly and severally liable for the civil penalties in the entire amount of \$15,494,000. A list of violations is included with the complaint as Exhibit F.

Chairman Hagg asked if the complaint seeks recovery of the \$20,000 Plugging and Performance Bond that Kevin Sellers cashed in October 2015.

Mr. Williams said that is part of the prayer for relief.

Chairman Hagg stated that at the March 21, 2019 meeting the department offered four different options for the proposed initial reclamation plan for the 40 former Spyglass gas wells. He noted that the board had talked about using the Quartz forfeited bond funds.

Chairman Hagg asked how the funds for bond forfeitures, fines, and penalties are separated for state accounting purposes. He said if all the forfeitures, fines, and penalties go to one fund, then money could be used on different projects. He also asked if this is a subject that needs to be addressed by the Legislature or it is something the board and department has authority over without going to the Legislature.

Mr. Williams stated that Quartz was required to provide a \$20,000 statewide Plugging and Performance Bond and an additional \$110,000 surety bond under Chapter 45-9. The initial Findings of Fact and Conclusions of Law from the Board of Minerals and Environment in revoking the bond indicated that it was being done pursuant to Chapter 45. When the board adopted the Findings of Fact and Conclusions of Law regarding Woodford Construction

Company, Inc.'s petition for partial release of the surety, there was a switch citing Chapter 34A-10-2.2 and 34A-10-2.3. Those statutes have a different guidance for how to use the bond. It appears to be more site-specific with regard to the use of that money, whereas Chapter 45-9 really gives no direction on the use of the money.

Mr. Williams stated that without knowing what the board thought regarding how much of the bond was allocated to Chapter 45-9 and how much was allocated to Chapter 34A-10, it is hard to say upon what statute the findings were approved. Under the Mined Land Reclamation Fund, there is another statute, 45-6B-69, that directs the placement of those funds. Both 45-6B-69 and 34A-10 seem to have site-specific focus, but 45-9 does not have site-specific focus. Mr. Williams said in reading the statutes, it is not clear where the money would have to go. There is no real direction in 45-9 or 34A-10 on where the funds go. The Environment and Natural Resources Fee Fund was established in Chapter 1-40-30 for certain funds, but it does not include the surety money.

Mr. Williams said he is not sure there is a whole lot of guidance as to where the forfeited surety funds should go. If the board is not comfortable using it, going to the Legislature may be the next step in seeking clarification. If the board is comfortable, then it can move forward depending on how it is determined whether or not those funds are 45-9 funds or whether they are 34A-10 funds, or whether they fall under some other statute.

Chairman Hagg asked where the forfeited surety bond money is being kept at this time.

Mike Lees, Administrator of the Minerals and Mining Program, stated that part of the problem with this particular issue is that there have never been oil and gas bonds forfeited within the recent past other than the Quartz bond and the Spyglass bond. There are no rules in place specifically outlining where the funds for oil and gas surety forfeitures go. The \$130,000 Quartz bond was "parked" in the Mined Land Reclamation Fund because there is no specific fund set up for oil and gas surety forfeitures.

Chairman Hagg asked where the money collected for a penalty is deposited.

Mr. Williams stated that Chapter 1-40-30 established the Environment and Natural Resources Fee Fund which consists of all fees imposed pursuant to Titles 34A, 45, 46, and 46A, and chapters 1-40, 10-39B, and 34-44 and legislative appropriations, federal grants, gifts, and civil penalties. The fund is maintained administered by the department.

Chairman Hagg asked if that fund has money in it that could be considered. Mr. Williams said he does not know the amount of money available in the Environment and Natural Resources Fee Fund.

Chairman Hagg said the board should establish a plan to seek funding. He questioned whether the board should go to the Legislature.

Mr. Landguth said he is frustrated that this been going for so long. He said it has always been his impression that the forfeited Quartz surety would be used for oil and gas related projects. He

suggested the board find a way to move ahead. Mr. Landguth said he believes the board can let the Legislature know what the board members think should be done.

Chairman Hagg agreed the board should propose a directive to the Legislature letting them know what should be done, but the question is whether the board needs the Legislature's blessing to use the money.

Mr. Karpen stated he believes a bond for a specific site should be designated only for that specific site.

Responding to a question from Chairman Hagg, Mr. Williams reiterated that at the time the permit was issued, the board required Quartz to submit the \$20,000 statewide bond plus \$110,000. This was done under SDCL 45-9.

Mr. Lees stated that when the department requested revocation of the \$130,000 Quartz surety bond, the department's justification was not that the money was needed to address reclamation needs at the Quartz site, because the upper portion of the well was permanently plugged. Nobody could get to the lower portion of the well, and there is no way it can be plugged with \$130,000. Mr. Lees said the department's reasoning at the time was to revoke the bond because it was a Plugging and Performance bond and Quartz failed to perform according to the conditions of their permit.

Mr. Landguth stated that the testimony the board heard from the professionals during the Quartz hearing told the board that the probability of the state having to do anything on that site was very low.

Chairman Hagg asked for comments from the representative of Harding County.

Kathy Glines stated that the county and the school want their delinquent taxes, the landowners want the surface restored, and the mineral owners want the minerals produced. Ms. Glines said she respects what the board is trying to do. Bills were presented to the Legislature in 2019 to try to get money to take care of this well situation, and the bills all died. One of the surface owners presented tremendous testimony on the bill to get \$1,000,000 allocated for this project and it didn't go anywhere. Ms. Glines said Harding County officials are frustrated, and just wanted the board to know that they are paying attention.

Chairman Hagg said he appreciates Harding County representatives coming to the board meeting and offering comments. It is important, especially for the landowners who usually have good luck with the Legislature on many things for their protection, but we also need to be aware that there is a three-part formula. Spyglass was trying to develop the minerals in the state. The landowners have their own leases and they have legal rights under the leases that they need to pursue, and if they are not pursuing those rights, it is hard for the board to say that they will pursue those rights for them because that is not the board's job. The wells need to be plugged, and it is the board's duty to see that they get plugged, and that is what the bond is for.

Chairman Hagg said he believes all the board can do is offer a plan with or without funding.

Mr. Williams stated that the Findings of Fact, Conclusions of Law and Order signed by Hearing Chairman Morris on March 16, 2017, cite Chapter 45-9 regarding forfeiture of the surety.

Mr. Karpen said he is concerned the board makes the right decision because it will be setting a precedent with this decision.

Mr. Blumhardt stated that he is also concerned with the long-term precedence the board will be setting.

Chairman Hagg suggested the board wait to adopt a plan until after Mr. Kimmel and Mr. Sellers answer the complaint filed by the state.

Mr. Englund said he would like to understand more about Chapter 45-9-15 and 34A-10-2.2 and 34A-10-2.3. Mr. Williams again explained these statutes.

Chairman Hagg suggested the board defer the decision on this matter to the July 18, 2019, meeting.

Motion by Englund, seconded by Peterson, to defer board action on this matter until the July 18, 2019, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried with Blumhardt, Englund, Karpen, Peterson, and Hagg voting yes. Landguth and Scheetz voted no.

PUBLIC COMMENT PERIOD: Dr. Liliias Jarding, Rapid City, commented that the board should remember the discomfort it felt over the period of time dealing with its last issue as the board thinks about permitting conditions and bonding for future mining projects.

NEXT MEETING: The next meeting is July 18, 2019, in Pierre.

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

Secretary Date

Witness Date

ATTENDANCE SHEET

BOARD OF MINERALS AND ENVIRONMENT MEETING

Location Matthew Training Center
Pierre, SDDate 5-15-19

NAME (PLEASE PRINT)	ADDRESS	REPRESENTING
<u>Matt Zietlow</u>	<u>Lead, SD</u>	<u>Wharf Resources</u>
<u>Jason Boomer</u>	<u>Denver, CO</u>	<u>AECOM / Homestake</u>
<u>Mark Tieszen</u>	<u>Lead, SD</u>	<u>Homestake / LAC Minerals</u>
<u>Roberta Hudson</u>	<u>Pierre, SD</u>	<u>DENR</u>
<u>Eric Holm</u>	<u>Pierre, SD</u>	<u>DENR</u>
<u>Jeff Butrich</u>	<u>Lead, SD</u>	<u>Barrick</u>
<u>Carne Jacobson</u>	<u>Pierre, SD</u>	<u>DENR</u>
<u>Lilias Jarding</u>	<u>Rapid City, SD</u>	
<u>Bob Mercer</u>	<u>Pierre</u>	<u>Keloland</u>
<u>Wally Blocker</u>	<u>Pierre</u>	<u>DENR</u>
<u>Matt Hicks</u>	<u>Pierre</u>	<u>DENR</u>
<u>Thomas Cline</u>	<u>Pierre SD</u>	<u>DENR - M&M - Co-Agg</u>
<u>Kathy Glines</u>	<u>Buffalo SD</u>	<u>Harding County</u>
<u>Melissa Breeding</u>	<u>Buffalo, SD</u>	<u>Harding County</u>
<u>Timothy Magstadt</u>	<u>Pierre, SD</u>	<u>DENR</u>
<u>Sarah Mac-hoff</u>	<u>Pierre</u>	<u>Forum News Service</u>
<u>AARON TIEMAN</u>	<u>PIERRE, SD</u>	<u>SD DENR - WATER RIGHTS</u>

Consent Calendar
South Dakota Board of Minerals & Environment

May 15, 2019

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfers of Liability:</u>					
McLaughlin & Schulz, Inc. Marshall, MN	83-5		\$20,000	Merchants Bonding Company	Transfer liability.
		5004	N1/2 NE1/4 Section 33; T117N-R52W, Codington County		
Transfer to:					
J & J Earth Works, Inc. Milbank, SD	17-1017		\$20,000	Western Surety Company	
Van Zee Gravel & Construction Platte, SD	83-223		\$8,000	Bank of the West, Platte	Transfer liability.
		223001	SE1/4 SW1/4 Section 31; T101N-R65W, Aurora County		
Transfer to:					
Ringling Gravel & Construction LLC Platte, SD	19-1048		\$3,500	First Dakota National Bank, Chamberlain	

South Dakota Board of Minerals & Environment

May 15, 2019

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</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	\$669,200	Aspen American Insurance Company	Accept rider to Bond No. SU27832, Aspen American Insurance Company, increasing the bond by \$20,100 to the new amount of \$689,300.



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

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523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

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MEMORANDUM

MEMO TO: Members of the Board of Minerals and Environment

FROM: Carrie Jacobson, Waste Management Program/Hazardous Waste Section *CJ*

SUBJECT: Brief explanation of changes to the state hazardous waste rules – Board Hearing
July 18, 2019

DATE: July 8, 2019

On May 15, 2019, the Board of Minerals and Environment granted the department permission to public notice a proposal to update the state's hazardous waste rules. Public notices were published in South Dakota's eleven (11) daily newspapers on May 31, providing interested parties an opportunity to submit comments and to appear before you at the July 18, 2019 hearing. The proposed state rule revisions reflect adoption of federal hazardous waste regulations finalized and codified from July 1, 2016, through June 30, 2019, as well as final rules published on November 30, 2018 (83 FR No. 231, pp. 61562-61563) and February 22, 2019 (84 FR No. 36, pp. 5938-5950). To date, the board has adopted the federal regulations by reference through June 30, 2016.

As you know, the Environmental Protection Agency (EPA) updates rules on a continual basis, codifying those rules once each year. Federal hazardous waste regulations may be updated from as little as none, to four or more each year. To stay in step with federal requirements, the state generally updates its rules about every two years. Once those rules are in place we then prepare program authorization revision documents for EPA approval. This process of updating rules and requesting revised EPA program authorization allows us to conduct our hazardous waste program in lieu of EPA. While EPA still serves as an overseeing entity, the state has the lead role.

This year's proposed changes reflect clarifications and amendments to federal hazardous waste regulations since June 30, 2016. As noted above, this year we are also including two Federal Register notices for rules finalized after the June 30, 2018 codification. Those rules are referred to as the Airbag Rule, and Pharmaceutical Waste/P075 Listing Amendment Rule. Listed below is a brief summary of the proposed rule changes that will be presented at the July public hearing:

- Adoption of the federal Generator Improvement Rule (GIR): This set of rules consolidates and clarifies existing regulations for hazardous waste generators, and provides greater flexibility for hazardous waste generators to manage their waste in a cost-effective and protective manner. One aspect of this update includes renaming

Conditionally Exempt Small Quantity Generators (CESQG) as Very Small Quantity Generators (VSQG).

- Adoption of the Airbags Rule: This set of rules formalizes guidance EPA quickly put together in July 2018 to address the safe management of recalled Takata airbag inflators. In consultation with the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) who regulates explosive devices in commerce, the agencies agreed unstable Takata inflators removed from vehicles should not be reused; as a waste, they are considered an ignitable and reactive hazardous waste regulated by EPA. The final rule published in November 2018 was designed to expedite removal of defective Takata airbag inflators for safe and environmentally sound disposal by exempting the collection of airbag waste as long as certain conditions are met.
- Adoption of the P075 Waste Listing Amendment: Finalized in conjunction with the Pharmaceutical Waste Rule (below), the amendment to the P075 listing criteria allows FDA-approved over-the-counter nicotine replacement products (nicotine gums, lozenges, and patches) to be disposed as a nonhazardous solid waste by pharmacies and healthcare facilities.
- Adoption of the Pharmaceutical Waste Rule: Applicable to healthcare facilities (human and animal), pharmacies, and reverse distributors that generate hazardous waste pharmaceuticals, the rule provides management standards in lieu of the existing hazardous waste generator requirements. In a snapshot, the rule is intended to facilitate compliance among healthcare facilities and improve the management and disposal of hazardous waste pharmaceuticals at healthcare facilities. Some key provisions include reducing confusion involved with hazardous waste determinations for pharmaceutical wastes, including empty containers; eliminates dual regulation of hazardous waste pharmaceuticals that are also Drug Enforcement Administration (DEA) controlled substances; prohibits disposal of hazardous waste pharmaceuticals down the drain; codifies the household waste exemption for pharmaceuticals collected through drug take-back programs while ensuring their proper disposal; and codifies EPA's policy regarding nonprescription pharmaceuticals managed through reverse logistics.
- Incorporates corrections of typographical and internal reference errors made in the federal regulations.

Enclosed is a copy of the proposed rules updated in light of the review performed by the SD Legislative Research Council for form and style. Thank you for your consideration of these rules and please call me at 605-773-3153 if you have any questions.

Enclosure

ADMINISTRATIVE RULES

of

SOUTH DAKOTA

Cite as ARSD _____

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

ARTICLE 74:28
HAZARDOUS WASTE

Published By
South Dakota Legislative Research Council

DRAFT

ARTICLE 74:28

HAZARDOUS WASTE

Chapter

74:28:21	Administration.
74:28:22	Identification and listing.
74:28:23	Standards for generators.
74:28:24	Standards for transporters.
74:28:25	Treatment, storage, and disposal.
74:28:26	Permit requirements.
74:28:27	Management of specific hazardous wastes.
74:28:28	Interim status standards for facilities.
74:28:29	Interim status for existing surface impoundments.
74:28:30	Land disposal restrictions.
74:28:31	Polychlorinated biphenyl, Deleted.
74:28:32	Toxic cleanup day, Executed.
74:28:33	Management of universal hazardous waste.
74:28:34	Special requirements for landfills and surface impoundments.

CHAPTER 74:28:21

ADMINISTRATION

Section

74:28:21:01 Definitions.

74:28:21:02 General standards for a hazardous waste management system.

74:28:21:01. Definitions. Terms used in the federal rules which are adopted by reference in this article have the following meanings. All references in this article to federal regulations are those revised as of ~~July 1, 2016~~ July 1, 2018, unless otherwise specified:

(1) "Administrator," the secretary of the Department of Environment and Natural Resources or a designee, except at:

(a) 40 C.F.R. § 260.10, the definitions of "administrator," "Regional Administrator," and "hazardous waste constituent";

(b) 40 C.F.R. Part 261, Appendix IX;

~~(e) 40 C.F.R. §§ 262.55; 262.56(a); 262.56(b); and Part 262, Appendix;~~

~~(dc)~~ 40 C.F.R. §§ 264.12(a) and 265.12(a);

~~(ed)~~ 40 C.F.R. § 268.40(b);

~~(fe)~~ 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "Regional Administrator," and "state/EPA agreement";

~~(gf)~~ 40 C.F.R. §§ 270.3; 270.5; 270.10(e)(2), (3), and (4); 270.10(f) and (g); 270.11(a)(3); 270.14(b)(20); 270.32(b)(2); and 270.51;

(2) "Director," the secretary of the Department of Environment and Natural Resources or a designee;

(3) "EPA," the state Department of Environment and Natural Resources, except for:

(a) Any references to "EPA identification numbers," "EPA forms," "EPA hazardous waste numbers," "EPA test methods," "EPA publications," "EPA manuals," "EPA guidance," or "EPA Acknowledgment of Consent";

(b) Any reference to EPA in the following regulations:

(i) 40 C.F.R. § 260.10, the definitions of "administrator," "electronic manifest," "electronic manifest system," "EPA region," "federal agency," "person," "Regional Administrator," and "user of the electronic manifest system";

(ii) 40 C.F.R. Part 261, Appendix IX;

(iii) 40 C.F.R. §§ 262.21; and 262.32(b); ~~262.51; 262.53(a); 262.53(e) to 262.53(f), inclusive; and 262.54(g)(1); and Part 262, Appendix;~~

(iv) 40 C.F.R. §§ 264.11 and 265.11;

(v) 40 C.F.R. § 268.1(e)(3), 268.2(j) and 268.40(f);

(vi) 40 C.F.R. §§ 270.1(a)(1); 270.1(b); 270.3; 270.5; 270.10(e)(2); 270.11(a)(3); 270.32(a) and (c); 270.51; 270.72(a)(5); and 270.72(b)(5);

(vii) 40 C.F.R. § 270.2, the definitions of "administrator," "approved program or approved state," "director," "Environmental Protection Agency," "EPA," "final authorization," "permit," "person," "Regional Administrator," and "state/EPA agreement";

(viii) 40 C.F.R. § 273.32(a)(3);

(ix) The second reference to EPA at 40 C.F.R. §§ 264.1082(c)(4)(ii) and 265.1083(c)(4)(ii);

(x) 40 C.F.R. § 260.11(a);

(xi) 40 C.F.R. §§ ~~262.39(a)(5)~~ and 261.41;

(xii) 40 C.F.R. §§ 260.4; 260.5; 264.71(a)(2)(v); 265.71(a)(2)(v); 264.71(j); and 265.71(j);

(4) "EPA hazardous waste number," the number assigned by the secretary to each hazardous waste;

(5) "EPA identification number," the number assigned by the secretary to each generator, transporter, and treatment, storage, or disposal facility;

(6) "Existing hazardous waste management facility" or "existing facility," a facility that was in operation or for which construction commenced on or before November 19, 1980, for HSWA facilities, or before April 8, 1984, for non-HSWA facilities;

(7) "Existing tank system" or "existing component," a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation or for which installation commenced on or before July 14, 1986, for HSWA tanks, as defined in subdivision (9) of this section, or June 7, 1989, for non-HSWA tanks, as defined in subdivision (12) of this section;

(8) "Federal Register," a newspaper of general circulation in the state of South Dakota, except at:

- (a) 40 C.F.R. § 260.11(a) and (b);
- (b) 40 C.F.R. § 270.6(a) and (b);
- (c) 40 C.F.R. § 270.10(e)(2);
- (d) 40 C.F.R. Part 261, Appendix IX;
- (e) 40 C.F.R. Part 266, Appendix IX;

(9) "HSWA tank," a tank owned or operated by a small quantity generator, a new underground tank, or a tank which cannot be entered for inspection;

(10) "New hazardous waste management facility" or "new facility," a facility that began operation, or for which construction commenced, after November 19, 1980, for HSWA facilities, and April 8, 1984, for non-HSWA facilities;

(11) "New tank system" or "new tank component," a tank system or component that will be used for the storage or treatment of hazardous waste for which installation commenced after July 14, 1986, for HSWA tanks, as defined in subdivision (9) of this section, and June 7, 1989, for non-HSWA tanks, as defined in subdivision (12) of this section or, for the purposes of 40 C.F.R. § 264.193(g)(2) ~~(July 1, 2016)~~ (July 1, 2018) and 40 C.F.R. § 265.193(g)(2) ~~(July 1, 2016)~~ (July 1, 2018), for which construction commenced after July 14, 1986, for HSWA tanks and June 7, 1989, for non-HSWA tanks;

(12) "Non-HSWA tank," a tank which is not owned or operated by a small quantity generator and is either an existing underground tank or a tank that can be entered for inspection;

(13) "Region," the state of South Dakota, at these two sections:

(a) 40 C.F.R. § 261.4(e)(3)(iii);

(b) 40 C.F.R. § 262.42(a)(2); ~~and (b):~~

(14) "Resource Conservation and Recovery Act," "RCRA," or any references to any sections of RCRA, SDCL chapter 34A-11, the South Dakota Hazardous Waste Management Act, except at:

(a) 40 C.F.R. § 260.10, the definition of "Act" or "RCRA";

(b) 40 C.F.R. Part 261, Appendix IX;

~~(c) 40 C.F.R. Part 262, Appendix;~~

~~(d)~~ 40 C.F.R. §§ 270.1(a)(2) and 270.51;

~~(e)~~ 40 C.F.R. § 270.2, the definition of "RCRA";

~~(f)~~ 40 C.F.R. §§ 264.4 and 265.4;

~~(g) 40 C.F.R. § 260.5;~~

(15) "Regional Administrator," the secretary of the Department of Environment and Natural Resources or a designee, except at:

(a) 40 C.F.R. § 260.10, the definitions of "administrator," "Regional Administrator," and "hazardous waste constituent";

(b) 40 C.F.R. Part 261, Appendix IX;

~~(c) 40 C.F.R. § 262.12 and Part 262, Appendix;~~

~~(d)~~ 40 C.F.R. § 263.11;

~~(e)~~ 40 C.F.R. §§ 264.12(a) and 265.12(a);

(~~fe~~) 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "Regional Administrator," and "state/EPA agreement";

(~~gf~~) 40 C.F.R. §§ 270.3; 270.5; 270.10(e)(2) and (4); 270.10(f) and (g); 270.11(a)(3); 270.14(b)(20); 270.32(b)(2); and 270.51;

(16) "Secretary," the secretary of the Department of Environment and Natural Resources or a designee;

(17) "State," the state of South Dakota, except at:

(a) 40 C.F.R. § 260.10, the definitions of "person," "state," and "United States";

(b) 40 C.F.R. §§ 264.143(e)(1); 265.143(d)(1); 264.145(e)(1); 265.145(d)(1); 264.147(a)(1)(ii), (b)(1)(ii), (g)(2), and (i)(4); and 265.147(a)(1)(ii), (b)(1)(ii), (g)(2) and (i)(4); and

(c) 40 C.F.R. § 270.2, the definitions of "approved program or approved State," "director," "final authorization," "interim authorization," "person," and "state";

(18) Any reference to 40 C.F.R. § 124.15 should be replaced with § 124.5 at the following locations: §§ 264.1030(c), 264.1050(c), 264.1080(c), and 265.1080(c);

(19) "EPA Environmental Appeals Board," the South Dakota State Circuit Court;

(20) Any reference to "United States," "U.S.," "U.S. Customs Official," "U.S. national procedures," "United Nations," "U.N.," "U.N. classification number," "Organization for Economic Cooperation and Development," "OECD," "Federal Register," "Freedom of Information Act".

"EPA Acknowledgment of Consent," "Environmental Protection Agency," "EPA," and ~~any~~ any other Federal Agencies or Offices within Federal Agencies should be retained at §§ ~~260.2(c) and (d); 261.39(a)(5); 262.10(d);~~ 262.24(a)(3); ~~262.24(g);~~ 262.25; ~~262.53 through 262.58, inclusive;~~ 262.80 to 262.89, inclusive; 263.10(d); 263.20(a)(2); 263.20(a)(4)(iv); ~~263.20(a)(8);~~ 264.12(a)(~~12~~); 264.71(a)(2)(v); 264.71(a)(3); 264.71(d); 264.(f)(4); 264.71(j); 265.12(a)(~~2~~); 265.71(a)(2)(v); 265.71(a)(3); 265.71(d); 265.71(f)(4); 265.71(j); ~~and~~ 266.80(a) Table sections (6) and ~~(7);~~ and 267.71(a)(6).

(21) "AES Filing Compliance Date." means the date that EPA announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

(22) "Electronic Import-Export Reporting Compliance Date." means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

(23) "Recognized Trader." means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

Source: 10 SDR 106, effective April 8, 1984; 11 SDR 44, effective September 30, 1984; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 72, effective November 24, 1987; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9.

74:28:21:02. General standards for a hazardous waste management system. The definitions, except as specified in § 74:28:21:01, references, petitions, variances, and other procedures in 40 C.F.R. §§ ~~260.10~~260.2 (c) to 260.43, inclusive, ~~(July 1, 2016)~~(July 1, 2018), constitute the general hazardous waste management system.

Source: 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44,

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effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective
October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9.

CHAPTER 74:28:22

IDENTIFICATION AND LISTING

Section

74:28:22:01 Identification and listing of hazardous wastes.

74:28:22:01. Identification and listing of hazardous wastes. Solid wastes which are subject to regulation as hazardous wastes are those identified and listed in 40 C.F.R. §§ 261.1 to 261.1089, inclusive, except 40 C.F.R. § 261.4(b)(16) and (17); ~~§§ 261.140 to 261.151, inclusive,~~ ~~and~~ Appendices I, VII, VIII, and IX ~~(July 1, 2016)~~ (July 1, 2018); 83 Fed. Reg. 231, 61562-61563 (November 30, 2018) (to be codified at 40 C.F.R. 261); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 261).

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 16 SDR 203, effective May 27, 1990; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-8.

Law Implemented: SDCL 34A-11-8.

CHAPTER 74:28:23

STANDARDS FOR GENERATORS

Section

74:28:23:01 Standards for generators.

74:28:23:01. Standards for generators. The standards for generators of hazardous waste

are those in 40 C.F.R. §§ ~~262.10~~262.1 to ~~262.89~~262.84, inclusive, except 40 C.F.R. § 262.10(j) and (k) and ~~§ 262.34(j) to (l), inclusive; and §§ 262.200 to 262.216~~262.265, inclusive, and the appendix to 40 C.F.R. Part 262 (July 1, 2016)(July 1, 2018).

Source: 10 SDR 106, effective April 8, 1984; 11 SDR 44, effective September 30, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-16.

CHAPTER 74:28:24**STANDARDS FOR TRANSPORTERS**

Section

74:28:24:01 Standards for transporters.

74:28:24:01. Standards for transporters. The standards for transporters of hazardous waste are those in 40 C.F.R. §§ 263.10 to 263.31, inclusive ~~(July 1, 2016)~~(July 1, 2018).

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-16.

CHAPTER 74:28:25

TREATMENT, STORAGE, AND DISPOSAL

Section

- 74:28:25:01 Standards for hazardous waste treatment, storage, and disposal facilities.
- 74:28:25:03 Assessment of existing tank system's integrity.
- 74:28:25:04 Containment and detection of releases from tanks.
- 74:28:25:05 Definition of new and existing drip pads for certain wood preserving wastes.

74:28:25:01. Standards for hazardous waste treatment, storage, and disposal facilities.

The standards for hazardous waste treatment, storage, and disposal facilities are those in 40 C.F.R.

§§ 264.1 to ~~264.1202~~264.1316, inclusive, except for 40 C.F.R. §§ 264.1(f), 264.1(g)(12), 264.18(c), 264.149, 264.150, 264.191(a) and (c), 264.193(a), 264.301(l), 264.570(a), 264.1030(d), 264.1050(g), and 264.1080(e), (f), and (g); and Appendices I, IV, V, VI, and IX; and §§ 267.1 to 267.1108, inclusive, except § 267.71(d) ~~(July 1, 2016)~~(July 1, 2018).

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26,

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effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

Cross-Reference: Exposure information from landfills and surface impoundments, § 74:28:34:01.

74:28:25:03. Assessment of existing tank system's integrity. For each existing tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 264.193 ~~(July 1, 2016)~~(July 1, 2018), the owner or operator must determine that the tank system is not leaking or is unfit for use.

The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, registered professional engineer licensed to do business in South Dakota, in accordance with 40 C.F.R. § 270.11(d) ~~(July 1, 2016)~~(July 1, 2018), that attests to the tank system's integrity by January 12, 1988, for HSWA tanks and September 14, 1990, for non-HSWA tanks.

Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, for HSWA tanks and subsequent to June 7, 1989, for non-HSWA tanks must conduct this assessment within 12 months after the date that the waste becomes a hazardous waste.

For existing tank systems or existing components, a tank system or component installation is considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within one year.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-12, 34A-11-13, 34A-11-14.

74:28:25:04. Containment and detection of releases from tanks. To prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that

meets the requirements of this chapter must be provided, except as provided in 40 C.F.R.

§ 264.193(f) and (g) ~~(July 1, 2016)~~(July 1, 2018), as follows:

- (1) For all new tank systems or components, before they are put into service;
- (2) For all existing tank systems used to store or treat EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks;
- (3) For those existing tank systems of known and documented age, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks or when the tank system has reached 15 years of age, whichever comes later;
- (4) For those existing tank systems for which the age cannot be documented, within eight years after January 12, 1987, for HSWA tanks and within eight years after September 14, 1989, for non-HSWA tanks; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years after January 12, 1987, for HSWA tanks or within two years after September 14, 1989, for non-HSWA tanks, whichever comes later; and
- (5) For tank systems that store or treat materials that become hazardous waste subsequent to January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks, within the time intervals required in subdivisions (1) to (4), inclusive, of this section, except that the date that a

material becomes a hazardous waste must be used in place of January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-12, 34A-11-13, 34A-11-14.

74:28:25:05. Definition of new and existing drip pads for certain wood preserving wastes. The requirements of 40 C.F.R. Part 264, Subpart W ~~(July 1, 2016)~~(July 1, 2018) apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water runoff to an associated collection system.

For EPA hazardous waste number F032 wastes, existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered into before December 6, 1990, binding financial or other agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, existing drip pads are those constructed before July 7, 1992, and those for which the owner or operator has a design and has entered into before July 7, 1992, binding financial or other agreements for construction. All other drip pads are new drip pads.

For EPA hazardous waste number F032 wastes, the requirement at 40 C.F.R. § 264.573(b)(3) ~~(July 1, 2016)-(July 1, 2018)~~ to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, for which the owner or operator has a design and has entered into before December 24, 1992, binding financial or other agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, the requirement at 40 C.F.R. § 264.573(b)(3) ~~(July 1, 2016)-(July 1, 2018)~~ to install a leak collection system applies only to those drip pads that are constructed after September 29, 1994, for which the owner or operator has a design and has entered into before September 29, 1994, binding financial or other agreements for construction.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-12, 34A-11-13, 34A-11-14.

CHAPTER 74:28:26

PERMIT REQUIREMENTS

74:28:26:01 Requirements to permit a treatment, storage, or disposal facility.

74:28:26:01. Requirements to permit a treatment, storage, or disposal facility. The requirements to permit a treatment, storage, or disposal facility are those in 40 C.F.R. §§ 270.1 to 270.320, inclusive, except §§ 270.1(c)(2)(ix) and 270.14(b)(18); and Appendix I to § 270.42(July 1, 2016)(July 1, 2018); 40 C.F.R. §§ 124.1(b); 124.2(a); 124.3(a); 124.5(a); 124.5(c); 124.6(a), (b), (d), and (e); 124.11; 124.31(b), (c), and (d); 124.32(b) and (c); 124.33(b) to (f); and §§ 124.200 to 124.214, inclusive (all July 1, 2016)(all July 1, 2018); and 40 C.F.R. §§ 144.31(g)(1) to (3), inclusive (July 1, 1992)(July 1, 2018). Any interested person may contest the issuance of a permit by following the procedures in chapter 74:09:01.

The requirements for a preapplication public meeting and notice found in 40 C.F.R. § 124.31 (July 1, 2016)(July 1, 2018) apply to all hazardous waste permit applications seeking initial permits for hazardous waste management units, to hazardous waste permit applications seeking coverage under a standardized permit under § 270 subpart J (July 1, 2016)(July 1, 2018), and to hazardous waste permit applications seeking renewal of permits if the renewal application is proposing a significant change in facility operations. A significant change to a hazardous waste permit is any change that is considered a Class 3 permit modification under 40 C.F.R. § 270 (July 1, 2016)(July 1, 2018). A significant change to a standardized permit is defined at § 124.211(c) (July 1, 2016)(July 1, 2018). The requirements of this paragraph for a preapplication public meeting and notice do not apply to hazardous waste permit applications or permit modifications

that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

The requirements for public notice at the application stage found in 40 C.F.R. § 124.32 ~~(July 1, 2016)~~(July 1, 2018) apply to all hazardous waste permit applications seeking initial permits for hazardous waste management units and to applications seeking renewal of permits for such units under 40 C.F.R. § 270.51 ~~(July 1, 2016)~~(July 1, 2018). The requirements for public notice at the application stage do not apply to hazardous waste units permitted under a standardized permit under 40 C.F.R. § 270 subpart J ~~(July 1, 2016)~~(July 1, 2018), to hazardous waste permit modifications under 40 C.F.R. § 270.42 ~~(July 1, 2016)~~(July 1, 2018), or to applications submitted for the sole purpose of conducting post-closure activities or post-closure and corrective action at a facility.

The requirement for an information repository found in 40 C.F.R. § 124.33 ~~(July 1, 2016)~~(July 1, 2018) applies to all applications seeking a hazardous waste permit for hazardous waste management units.

Source: 10 SDR 106, effective April 8, 1984; 12 SDR 79, effective November 11, 1985; 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 14 SDR 50, effective October 4, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August

HAZARDOUS WASTE 74:28
29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-12, 34A-11-13, 34A-11-14, 34A-11-15.

Cross-Reference: Special requirements for landfills and surface impoundments, § 74:28:34:01.

CHAPTER 74:28:27

MANAGEMENT OF SPECIFIC HAZARDOUS WASTES

Section

74:28:27:01 Requirements for the management of specific hazardous wastes.

74:28:27:01. Requirements for the management of specific hazardous wastes. The requirements for the management of specific hazardous wastes and specific types of hazardous waste management facilities are those in 40 C.F.R. §§ 266.20 to 266.360, inclusive, and Appendices I, II, III, IV, V, VI, VII, VIII, IX, XI, XII, and XIII; 84 Fed. Reg. 36, 5938-5950

(February 22, 2019) (to be codified at 40 C.F.R. 266); and §§ 279.1 to 279.82, inclusive, except 40 C.F.R. § 279.82(b) and (c) (July 1, 2016)(July 1, 2018).

The language in 40 C.F.R. § 279.82(a) "except when such activity takes place in one of the states listed in paragraph (c) of this section" is not incorporated by reference.

Source: 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12.

CHAPTER 74:28:28

INTERIM STATUS STANDARDS FOR FACILITIES

Section

- 74:28:28:01 Interim status standards for treatment, storage, and disposal facilities.
- 74:28:28:03 Assessment of existing tank system's integrity.
- 74:28:28:04 Containment and detection of releases from tanks.
- 74:28:28:05 Definition of new and existing drip pads for certain wood preserving wastes.

74:28:28:01. Interim status standards for treatment, storage, and disposal facilities.

The interim status standards for hazardous waste treatment, storage, and disposal facilities are those in 40 C.F.R. § 144.1(h); §§ 265.1 to ~~265.1202~~265.1316, inclusive, except 40 C.F.R. §§ 265.1(c)(4), 265.1(c)(15), 265.18, 265.149, 265.150, 265.191(a) and (c), 265.193(a), 265.440(a), 265.1030(c), 265.1050(f), and 265.1080(e), (f), and (g); and Appendices I, III, IV, V, and VI ~~(July 1, 2016)~~(July 1, 2018).

Source: 13 SDR 117, effective March 1, 1987; 13 SDR 129, 13 SDR 141, effective July 1, 1987; 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

Cross-Reference: Special requirements for landfills and surface impoundments, § 74:28:34:01.

74:28:28:03. Assessment of existing tank system's integrity. For each tank system that does not have secondary containment meeting the requirements of 40 C.F.R. § 265.193 ~~(July 1, 2016)~~(July 1, 2018), the owner or operator must determine that the tank system is not leaking or is unfit for use.

The owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by an independent, registered professional engineer licensed to do business in South Dakota in accordance with 40 C.F.R. § 270.11(d) ~~(July 1, 2016)~~(July 1, 2018), that attests to the tank system's integrity by January 12, 1988, for HSWA tanks and September 14, 1990, for non-HSWA tanks.

Tank systems that store or treat materials that become hazardous wastes subsequent to July 14, 1986, for HSWA tanks and subsequent to June 7, 1989, for non-HSWA tanks must conduct this assessment within 12 months after the date that the wastes become a hazardous waste.

Source: 24 SDR 11 effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36

SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34-11-10, 34A-11-12, 34A-11-16.

74:28:28:04. Containment and detection of releases from tanks. To prevent the release of hazardous waste or hazardous constituents to the environment, secondary containment that meets the requirements of this chapter must be provided, except as provided in 40 C.F.R. § 265.193(f) and (g) ~~(July 1, 2016)~~(July 1, 2018), as follows:

- (1) For all new tank systems or components, before they are put into service;
- (2) For all existing tank systems used to store or treat EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks;
- (3) For those existing tank systems of known or documented age, within two years after January 12, 1987, for HSWA tanks and two years after September 14, 1989, for non-HSWA tanks or when the tank system has reached 15 years of age, whichever comes later;
- (4) For those existing tank systems for which the age cannot be documented, within eight years after January 12, 1987, for HSWA tanks and within eight years after September 14, 1989, for non-HSWA tanks; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age or within two years after January

12, 1987, for HSWA tanks or within two years after September 14, 1989, for non-HSWA tanks, whichever comes later; and

(5) For tank systems that store or treat materials that become hazardous waste subsequent to January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks, within the time interval required in subdivisions (1) to (4), inclusive, of this section, except that the date that a material becomes hazardous waste must be used in place of January 12, 1987, for HSWA tanks and September 14, 1989, for non-HSWA tanks.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

74:28:28:05. Definition of new and existing drip pads for certain wood preserving wastes. The requirements of 40 C.F.R. Part 265, Subpart W ~~(July 1, 2016)~~(July 1, 2018) apply to owners and operators of facilities that use new or existing drip pads to convey treated wood drippage, precipitation, or surface water runoff to an associated collection system.

For EPA hazardous waste number F032 wastes, existing drip pads are those constructed before December 6, 1990, and those for which the owner or operator has a design and has entered

into binding financial or other agreements for construction prior to December 6, 1990. For EPA hazardous waste numbers F034 and F035 wastes, existing drip pads are those constructed before July 7, 1992, and those for which the owner or operator has a design and has entered into before July 7, 1992, binding financial or other agreements for construction. All other drip pads are new drip pads.

For EPA hazardous waste number F032 wastes, the requirement at 40 C.F.R. § 265.443(b)(3) ~~(July 1, 2016)~~(July 1, 2018) to install a leak collection system applies only to those drip pads that are constructed after December 24, 1992, for which the owner or operator has a design and has entered into before December 24, 1992, binding financial agreements for construction. For EPA hazardous waste numbers F034 and F035 wastes, the requirement at 40 C.F.R. § 265.443(b)(3) ~~(July 1, 2016)~~(July 1, 2018) to install a leak collection system applies only to those drip pads that are constructed after September 29, 1994, for which the owner or operator has a design and has entered into before September 29, 1994, binding financial or other agreements for construction.

Source: 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

CHAPTER 74:28:30**LAND DISPOSAL RESTRICTIONS**

Section

74:28:30:01 Land disposal restrictions.

74:28:30:01. Land disposal restrictions. The requirements for hazardous wastes that are restricted from land disposal are those in 40 C.F.R. §§ 268.1 to 268.4, inclusive; 40 C.F.R. §§ 268.7 to 268.50, inclusive, except 40 C.F.R. §§ 268.10, 268.11, 268.12, 268.13, 268.42(b) and 268.44; and Appendices III, IV, VI, VII, VIII, IX, and XI ~~(July 1, 2016)~~(July 1, 2018).

Source: 16 SDR 44, effective September 14, 1989; 17 SDR 204, effective July 10, 1991; 19 SDR 48, effective October 8, 1992; 20 SDR 56, effective October 24, 1993; 21 SDR 56, effective September 29, 1994; 22 SDR 43, effective October 2, 1995; 23 SDR 64, effective November 5,

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1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24, effective August 29, 2001; 29 SDR 21, effective August 28, 2002; 30 SDR 26, effective September 1, 2003; 31 SDR 23, effective August 29, 2004; 34 SDR 68, effective September 13, 2007; 35 SDR 88, effective October 27, 2008; 36 SDR 44, effective September 28, 2009; 38 SDR 58, effective October 18, 2011; 40 SDR 61, effective October 10, 2013; 44 SDR 43, effective September 12, 2017.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9, 34A-11-10, 34A-11-12, 34A-11-16.

CHAPTER 74:28:33

MANAGEMENT OF UNIVERSAL HAZARDOUS WASTE

Section

74:28:33:01 Management of universal hazardous waste.

74:28:33:01. Management of universal hazardous waste. The standards for management of universal hazardous waste are those in 40 C.F.R. §§ 273.1 to 273.81, inclusive ~~(July 1, 2016)~~(July 1, 2018).

Source: 23 SDR 64, effective November 5, 1996; 24 SDR 11, effective August 5, 1997; 26 SDR 26, effective August 29, 1999; 27 SDR 59, effective December 12, 2000; 28 SDR 24,

~~Revised through September 12, 2017~~

Consent Calendar

South Dakota Board of Minerals & Environment

July 18, 2019

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

Consent Calendar
South Dakota Board of Minerals & Environment

July 18, 2019

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



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

JOE FOSS BUILDING
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July 1, 2019

MEMO TO: Members of the Board of Minerals and Environment

FROM: *JW* Jim Wendte, Administrator, Waste Management Program

SUBJECT: Solid Waste Permit Renewals

Listed below are the solid waste permit actions since our last memo dated December 5, 2018.

Individual Permits Public Noticed and Issued

1. City of Belle Fourche – municipal solid waste landfill (five-year renewal)
2. Town of Langford – restricted use site (five-year renewal)
3. Town of Rosholt – restricted use site (five-year renewal)
4. City of Elk Point – restricted use site (five-year renewal)
5. Town of Northville – restricted use site (five-year renewal)
6. City of Beresford – restricted use site (five-year renewal)
7. Lincoln County – solid waste transfer station (five-year renewal)
8. City of Huron – construction and demolition debris disposal site (five-year renewal)
9. City of Canton – restricted use site (five-year renewal)
10. City of Alcester – restricted use site (five-year renewal)
11. Valley Queen Cheese (Milbank) – land application of wastewater biosolids (five-year renewal)
12. City of Woonsocket – restricted use site (five-year renewal)
13. City of Clark – restricted use site (five-year renewal)
14. City of Willow Lake – restricted use site (five-year renewal)
15. City of Salem – yard waste compost site (five-year renewal)
16. Western Dakota Waste Solutions (Belle Fourche) – waste tire processing facility (five-year renewal)
17. Town of Columbia – restricted use site (five-year renewal)
18. City of Menno – restricted use site (five-year renewal)
19. Dawson Construction (Howard) – restricted use site (five-year renewal)
20. Town of Hayti – restricted use site (five-year renewal)
21. Northwest District (Bison) – municipal solid waste landfill (five-year renewal)
22. City of Hot Springs – restricted use site (five-year renewal)
23. City of Bridgewater – yard waste compost site (two-year initial)
24. City of Springfield – restricted use site (five-year renewal)
25. City of Scotland – restricted use site (two-year initial)
26. City of Lake Norden – restricted use site (five-year renewal)
27. Soukup Construction (Sioux Falls) – construction and demolition debris disposal site (five-year renewal)

General Permit Authorizations Issued

1. City of Newell – restricted use site (five-year renewal)
2. City of Canistota – restricted use site (five-year renewal)
3. Town of Onaka – restricted use site (five-year renewal)
4. Town of Raymond – restricted use site (five-year renewal)
5. Bon Homme County – restricted use site (five-year renewal)
6. City of Groton – restricted use site (five-year renewal)
7. Town of Camp Crook – restricted use site (five-year renewal)
8. City of Kimball – restricted use site (five-year renewal)
9. City of Hosmer – restricted use site (five-year renewal)
10. Town of Java – restricted use site (five-year renewal)
11. City of Murdo – restricted use site (five-year renewal)
12. Rosane Enterprises (Hot Springs) – restricted use site (five-year renewal)