



Board of Minerals and Environment

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

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

AGENDA

Board of Minerals and Environment
Telephone Conference Call Meeting
523 East Capitol Avenue
Pierre, South Dakota

March 16, 2023
10:00 a.m. Central Time

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

Approval of minutes from January 19, 2023, meeting

Mining Issues

Consent Calendar – Tom Cline

Update on federal legislation to purchase federal property at the Gilt Edge Superfund site– Roberta Hudson

Update on the status of the Powertech (USA), Inc. matter – Charles McGuigan

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

Next meeting – May 18, 2023

Adjourn

Interested parties may attend via telephone or in the DANR Large Conference Room, 523 East Capitol Avenue, Pierre, SD. To participate via telephone please contact DANR at (605) 773-3886 no later than 4:00 p.m. Central Time on Wednesday, March 15, 2023. The board packet is available on the Boards and Commissions Portal at <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Pontious, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Pontious@state.sd.us as soon as possible but no later than two business days prior to the meeting in order to ensure accommodations are available.

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
Telephone Conference Call Meeting
523 East Capitol Avenue
Pierre, South Dakota

January 19, 2023
10:00 a.m. Central Time

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

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

BOARD MEMBERS PRESENT: Rex Hagg, Glenn Blumhardt, Gregg Greenfield, Doyle Karpen, Jessica Peterson, Bob Morris, John Scheetz and Gary Haag.

BOARD MEMBERS ABSENT: None.

OTHERS PRESENT: Mike Lees, Eric Holm, Roberta Hudson, Tom Cline and Bret Graves, DANR Minerals and Mining Program; Kyrik Rombough and Barb Regynski, DANR Air Quality Program.

GARY HAGG ORAL BIOGRAPHY: New board member Gary Haag provided a personal biography.

APPROVAL OF MINUTES FROM OCTOBER 20, 2022, MEETING: Motion by Karpen, seconded by Haag, to approve the minutes from the October 20, 2022, 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 the consent calendar, which is a table listing the department recommendations for release of liability and surety, transfer of liability and release of surety, transfer of liability, and release of liability. (See attachment)

Tom Cline, Minerals and Mining Program, presented the consent calendar. There were no questions from the board members regarding the consent calendar.

Motion by Morris, seconded by Blumhardt, to accept the department recommendations for release of liability and surety, transfer of liability and release of surety, transfer of liability, and release of liability. A roll call vote was taken, and the motion carried unanimously.

ANNUAL UPDATE OF POST CLOSURE FINANCIAL ASSURANCE FOR LAC

MINERALS (USA), LLC: Eric Holm reported that in the post closure conditions for Mine Permit 445, which were approved by the board on January 21, 2016, it states the financial assurance shall be automatically extended for periods of one year. At the time of each annual extension, the face value of the financial assurance shall be adjusted to the bonding schedule set by the board in 2016 and updated in April 2022 as part of the five-year review.

For 2023, the face value of the surety bond that serves as the post closure financial assurance is required to be \$31,596,628. This is an increase from the \$30,838,220 amount that was submitted last year as part of the five-year review of the bond. For the increase, LAC Minerals submitted a rider to Surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, which increases the amount to the new face value. Both surety companies are licensed in South Dakota and are on the US Department of Treasury's list of approved surety companies. Ratings for both companies from AM Best, Standard and Poor's, and Moody's are superior, very strong, and high quality, respectively. Outlooks are stable to positive.

The staff recommendation was that the board accept the rider to Surety Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, to increase the post closure financial assurance amount to \$31,596,628.

In response to questions from Mr. Scheetz, Mr. Holm stated that staff is currently reviewing the Homestake post closure bond, and staff is taking another look at inflation and discount rates. Homestake wanted to have its financial advisor review the rates. After DANR receives that information from Homestake's financial advisor, the information will be sent to the State Investment Council for an opinion. DANR intends to present the board with a report on the rates in the spring or summer of 2023.

Mr. Holm stated that third-party reviews have been done in the past, most recently by the U.S. Bureau of Reclamation. A couple of consulting firms have also reviewed DANR staff calculations, and their suggestions have been incorporated over the years. Staff has also incorporated some suggestions by the environmental community. Mr. Holm said he is always looking at improvements regarding bond calculations.

Motion by Morris, seconded by Karpen, to accept rider to Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the post closure financial assurance amount to \$31,596,628 for the LAC Minerals (USA), LLC. A roll call vote was taken, and the motion carried unanimously.

ANNUAL UPDATE ON SOUTH DAKOTA'S VOLKSWAGEN BENEFICIARY

MITIGATION PLAN: Barb Regynski, DANR Air Quality Program, provided an update on South Dakota's Volkswagen Beneficiary Mitigation Plan.

The Board of Minerals and Environment approved the Volkswagen Beneficiary Mitigation Plan in August 2018. In March 2019, Governor Noem signed a bill giving spending authority for the Volkswagen trust funds. In May 2021, the Board of Minerals and Environment approved revisions to the plan.

At least 80 percent of the funds must be obligated by October 2027.

There are currently three programs that are covered under the plan – a truck replacement program, which is allotted 35 to 45 percent of the budget; a bus replacement plan, which is allotted 35 to 45 percent of the budget; and an electric vehicle charging station plan, which is 10 to 15 percent of the budget. There are also administrative costs, and the total budget is \$8,125,000.

Trucks – VW Categories 1 and 6

The VW Truck Rebate Program provides rebates for replacing old diesel trucks with newer, cleaner trucks. The program is open to state and local governmental agencies.

There are currently two funding rounds per year open for applications in January and June. This was done to help with differences in budget cycles between state and local governments.

For rounds one through three, the rebate percentages were 25 percent. For those three rounds, not many applications were submitted, so staff decided for rounds four and five to increase the rebate percentage to 50 percent. For those two rounds, there were many more applications than expected. For rounds six and seven the rebate percentage was set at 35 percent.

The rebates for rounds eight and nine will also be 35 percent in 2023. Approximately \$1,000,000 in VW funds will be available.

Ms. Regynski stated that for rounds one through seven, awards were made to help replace 45 old diesel trucks

Buses – VW Categories 2 and 10

DANR had already been running the State Clean Diesel Grant Program, which provides rebates for replacing old diesel buses, with newer, cleaner buses, so the VW funds are being used in conjunction with the other funds. Every year DANR received DERA funds from EPA. The VW Category 10 funds can be used as match for the base EPA funds, and in doing that EPA also gives the program bonus funds, which are one half of the base funding the program received. If extra applications are received, the VW Category 2 funds are also used.

The rebate percentages for the Bus Program are dictated by the State Clean Diesel Grant Program, so the percentages cannot be adjusted. The rebate percentages are 25 percent if the engine in new bus meets the current emissions standards or 35 percent if the new engine meets the CARB's Low-NOx standards. Some of the new propane buses did meet those standards, so some applicants received the 35 percent rebate. Forty-five percent rebates have been offered for electric buses, but no applications have been submitted for electric buses.

A new round opened in November 2022, and the agreements are currently being signed. For rounds 10 through 14 awards were made to help replace 146 buses, and in the new round awards will be offered for 24 more buses.

Ms. Regynski stated that under the federal Bipartisan Infrastructure Law (BIL) that was approved in 2022, EPA received funding for a bus rebate program for electric and CARB's Low-NOx. Five South Dakota school districts received funding through EPA for a total of eight buses. EPA is paying 100 percent for the buses.

Electric Vehicle Charging Stations – VW Category 9

The maximum allowed for this category 15 percent of the budget. The rebate percentages are up to 80 percent per charging station and installation. During round one, seven sites were approved, and later five of them withdrew their applications, so chargers will be installed in the remaining two sites, which are Mitchell and Chamberlain.

For round two, additional sites were approved for Vermillion, Huron, Yankton, Aberdeen, Pierre, Brookings, Murdo, and Spearfish.

To date, all of the funds have been obligated, but the rebates have not been paid yet. There have been delays in getting equipment and delays having the concrete work done. At least four of the sites are operational, but signs still need to be installed.

Ms. Regynski discussed a map showing existing electric vehicle charging stations in the state along with the planned VW charging station sites. This map was included with her presentation in the board packet. The Department of Transportation will receive \$29,000,000 in BIL funding over the next five years for electric vehicle charging stations. There is also an additional \$2,500,000,000 available nationwide through the Federal Highway Administration.

Administrative Costs

Through November 2022, \$160,731 has been spent. The maximum allowed for this category is 15 percent.

VW Funding Budget Summary

Ms. Regynski stated that of the \$8,125,000 available, \$5,622,483 has been either spent or obligated, which is 69 percent of the funds. By the end of next year, it is anticipated that 80 percent of the funds will be obligated.

More information on the Volkswagen Beneficiary Mitigation Plan is available at <https://danr.sd.gov/Environment/AirQuality/VolkswagenTrust/VWEVCS.aspx>.

In response to questions from the board, Ms. Regynski stated that in 2027, the trust will see how many beneficiaries have met the 80 percent obligated funds requirement. The ones that have not will have to return the unobligated funds, and everyone else will be able to apply for those returned funds.

PUBLIC COMMENT PERIOD IN ACCORDANCE WITH SDCL 1-25-1: There were no public comments.

NEXT MEETING: Board discussion took place regarding the frequency of board meetings. Suggestions were made regarding the possibility of holding quarterly meetings or every other month meetings.

Chairman Hagg noted that the board will not meet in February. The next meeting is scheduled for March 16, 2023.

Chairman Hagg requested that at the next meeting staff provide the board with an update on the Gilt Edge Superfund Site and the federal legislation regarding of the purchase of the federal property at the site.

Mr. Scheetz requested that at the next meeting the board be updated on the status of the Powertech matter.

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

Secretary, Board of Minerals
and Environment

Date

Witness

Date

Consent Calendar

South Dakota Board of Minerals & Environment

| <i>January 19, 2023</i> | | | | |
|--|--------------------|-----------------|---|--|
| <u>License Holder</u> | <u>License No.</u> | <u>Site No.</u> | <u>Surety Amount</u> | <u>Surety Company or Bank</u> |
| <u>Release of Liability & Surety:</u> | | | | |
| WC Land, LLC Crooks, SD | 18-1044 | 1044001 | \$20,000 | United Fire & Casualty Company SE1/4 Section 18; T109N-R49W, Brookings County |
| | | | | Release liability and \$20,000. |
| Randall Schroth Buffalo Gap, SD | 21-1102 | | \$500 | First interstate Bank, Hot Springs |
| | | 1102001 | W1/2 SW1/4 Section 14 & SE1/4 Section 15; T6S-R6E, Custer County | Release liability and \$500. |
| <u>Transfer of Liability & Release of Surety:</u> | | | | |
| Benjamin P. Oldenkamp Kennebec, SD | 99-684 | 684001 | \$1,000 \$3,000 | First National Bank, Pierre BankWest, Kennebec |
| | | | SW1/4 Section 23; T103N-R76W, Lyman County | Transfer liability and release \$4,000. |
| Transfer to: Tom Hills Kennebec, SD | 22-1116 | | \$1,500 | BankWest, Kennebec |

Consent Calendar

South Dakota Board of Minerals & Environment

| <i>January 19, 2023</i> | | | | |
|--|--------------------|-----------------|--|--|
| <u>License Holder</u> | <u>License No.</u> | <u>Site No.</u> | <u>Surety Amount</u> | <u>Surety Company or Bank</u> |
| <u>Transfer of Liability:</u> | | | | |
| Edmunds County Highway Department Ipswich, SD | 83-161 | | EXEMPT | NA |
| Transfer to: BDM Gravel LLC Roscoe, SD | 20-1071 | 161013 | SE1/4 Section 8; T124N-R72W, Edmunds County | Plains Commerce Bank, Aberdeen |
| Mc Cook County Highway Department Salem, SD | 83-157 | | EXEMPT | NA |
| Transfer to: Hanson County Highway Department Alexandria, SD | 83-227 | 157019 | W1/2 SW1/4 Section 9; T104N-R55W, Mc Cook County | |
| <u>Release of Liability:</u> | | | | |
| Baker Ranch dba Badlands Sand & Gravel Inc. Hermosa, SD | 95-551 | 551003 | N1/2 Section 8; T3S-R7E, Custer County | Black Hills Federal Credit Union, Rapid City |

Consent Calendar

South Dakota Board of Minerals & Environment

| January 19, 2023 | | | | |
|--|--------------------|-----------------|---|-----------------------------------|
| <u>License Holder</u> | <u>License No.</u> | <u>Site No.</u> | <u>Surety Amount</u> | <u>Surety Company or Bank</u> |
| <u>Release of Liability:</u> | | | | |
| Spencer Quarries, Inc. Spencer, SD | 83-36 | | \$20,000 | United Fire & Casualty Company |
| | | 36009 | SE1/4 Section 33; T103N-R60W, Davison County | Release liability. |
| Edmunds County Highway Department Ipswich, SD | 83-161 | | EXEMPT | NA |
| | | 161017 | NE1/4 Section 34; T122N-R73W, Edmunds County | Release liability. |
| Haakon County Highway Department Philip, SD | 83-40 | | EXEMPT | NA |
| | | 40017 | SW1/4 Section 16; T7N-R23E, Haakon County | Release liability. |
| Roberts County Highway Department Sisseton, SD | 83-23 | | EXEMPT | NA |
| | | 23027 | W1/2 SW1/4 Section 5; T122N-R51W, Roberts County | Release liability. |

South Dakota Board of Minerals & Environment

| <i>January 19, 2023</i> | | | |
|--|-------------------|----------------------|--|
| <u>Permit Holder</u> | <u>Permit No.</u> | <u>Surety Amount</u> | <u>Surety Company or Bank</u> |
| <u>Annual Update of Post Closure Financial Assurance:</u> | | | |
| LAC Minerals (USA), LLC Central City, SD | 445 | \$30,838,220 | <p>Fidelity & Deposit Company of Maryland</p> <p>Zurich American Insurance Company</p> <p>Accept rider to Bond No. 09177703, Fidelity & Deposit Company of Maryland and Zurich American Insurance Company, increasing the Post Closure Financial Assurance amount to \$31,596,628.</p> |

Consent Calendar

South Dakota Board of Minerals & Environment

| <i>March 16, 2023</i> | | | | |
|---|--------------------|-----------------|--|---|
| <u>License Holder</u> | <u>License No.</u> | <u>Site No.</u> | <u>Surety Amount</u> | <u>Surety Company or Bank</u> |
| <u>Transfer of Liability & Release of Surety:</u> | | | | |
| Merwyn Larson Minneapolis, MN | 98-655 | | \$2,500 | Dacotah Bank, Clark |
| Transfer to: Clark County Highway Department Clark, SD | 83-150 | 6550001 | NE1/4 Section 31; T117N-R57W, Clark County | Transfer liability and release \$2,500. |
| Reynolds Construction Management Sioux Falls, SD | 22-1107 | | \$20,000 | North American Specialty Insurance Company |
| Transfer to: Hilde Pipe & Gravel Inc. Madison, SD | 22-1118 | 1107001 | N1/2 NE1/4 Section 27, SE1/4 Section 22, & SW1/4 SW1/4 Section 23; T106N-R52W, Lake County | Transfer liability and release \$20,000. |

Consent Calendar

South Dakota Board of Minerals & Environment

| | | | | | <i>March 16, 2023</i> | |
|---|--------------------|-----------------|--|--|--|--|
| <u>License Holder</u> | <u>License No.</u> | <u>Site No.</u> | <u>Surety Amount</u> | <u>Surety Company or Bank</u> | <u>DANR Recommendation</u> | |
| <u>Transfer of Liability & Release of Surety:</u> | | | | | | |
| Sterzinger Construction LLC Ivanhoe, MN | 83-204 | | \$5,000 | Western Casualty & Surety Company | Transfer liability and release \$13,000. | |
| Transfer to: Sterzinger Crushing Inc. Taunton, MN | | 204001 | \$8,000 NW1/4 Section 9; T109N-R47W, Brookings County | Western Surety Company | | |
| | 15-997 | | \$20,000 | First Security Bank, Hendricks, MN | | |
| <u>Transfer of Liability:</u> | | | | | | |
| Friessen Construction Inc. Sioux Falls, SD | 83-129 | | \$20,000 | Ohio Farmers Insurance Company | Transfer liability. | |
| Transfer to: Crusher Investment Company Sioux Falls, SD | | 129008 | NE1/4 SE1/4 Section 17; T101N-R50W, Minnehaha County | | | |
| | 83-24 | | \$20,000 | North American Specialty Insurance Company | | |

Consent Calendar

South Dakota Board of Minerals & Environment

| <i>March 16, 2023</i> | | | | |
|--|--------------------|-----------------|----------------------|---|
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| <u>Release of Liability:</u> | | | | |
| Fisher Sand & Gravel Company Dickinson, ND | 83-54 | 54103 | \$20,000 | Liberty Mutual Insurance Company |
| | | | | SW1/4 NW1/4 Section 17; T21N-R16E, Perkins County |
| | | | | Release liability. |
| Midland Contracting, Inc. Huron, SD | 03-768 | 768011 | \$20,000 | Western Surety |
| | | | | N1/2 Section 10; T115N-R64W, Spink County |
| | | | | Release liability. |
| Cavour Township Huron, SD | 98-668 | 668001 | EXEMPT | NA |
| | | | | SW1/4 Section 9; T112N-R60W, Beadle County |
| | | | | Release liability. |
| Custer County Highway Department Custer, SD | 83-90 | 90013 | EXEMPT | NA |
| | | | | SE1/4 NE1/4 Section 6; T4S-R7E, Custer County |
| | | | | Release liability. |

Consent Calendar

South Dakota Board of Minerals & Environment

| <i>March 16, 2023</i> | | | |
|--|--------------------|--|----------------------------|
| <u>License Holder</u> | <u>License No.</u> | <u>Site No.</u> | <u>DANR Recommendation</u> |
| <u>Release of Liability:</u> | | | |
| Roberts County Highway Department Sisseton, SD | 83-23 | <div> <div>EXEMPT</div> <div>NA</div> </div> <div> <div>23004</div> <div>SW1/4 SE1/4 Section 12; T125N-R50W, Roberts County</div> </div> | Release liability. |



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 57501-3182
danr.sd.gov

March 2, 2023

MEMO TO: Members of the Board of Minerals and Environment

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

SUBJECT: Solid Waste Permit Actions

Listed below are the solid waste permit actions since my last memo dated August 3, 2022.

Individual Permits Public Noticed and Issued

1. City of Wessington Springs – restricted use site (five-year renewal)
2. Dependable Sanitation (Day County) – restricted use site and municipal solid waste transfer station (five-year renewal)
3. Lehr Sanitation (Britton) – municipal solid waste transfer station (five-year renewal)
4. City of Bowdle – restricted use site (five-year renewal)
5. Red River Energy (Rosholt) – ethanol by-product storage and land application (five-year renewal)
6. City of Edgemont – restricted use site (five-year renewal)
7. Cimpl's LLC (Yankton) – paunch manure storage and land application (five-year renewal)
8. Town of Stickney – restricted use site (five-year renewal)
9. Town of Wolsey – restricted use site (five-year renewal)
10. Lincoln Area (Worthing) – municipal solid waste transfer station (two-year initial)
11. City of Mitchell – municipal solid waste landfill (five-year renewal)
12. Town of Goodwin – restricted use site (five-year renewal)
13. City of Parker – restricted use site (five-year renewal)
14. Town of Kennebec – restricted use site (five-year renewal)
15. City of Watertown – municipal solid waste landfill (five-year renewal)

Individual Permit Amendments Public Noticed and Issued

1. City of Spearfish – restricted use site – amendment to allow animal carcass disposal
2. Monument Health (Rapid City) – medical waste treatment – amendment to allow additional treatment unit with different technology

General Permit Five-Year Renewals – Public Noticed and Issued

1. General Permit for Restricted Use Sites
2. General Permit for Construction and Demolition Debris Sites
3. General Permit for the Storage and/or Land Application of Solid Waste
4. General Permit for the Storage and/or Land Application of Dairy Processing By-Products

General Permit Authorizations Issued

1. City of Veblen – restricted use site (five-year renewal)
2. City of Lake Andes – petroleum-contaminated soil treatment facility (five-year renewal)
3. Town of Canova – restricted use site (five-year renewal)
4. Town of Mound City – restricted use site (five-year renewal)
5. City of Clear Lake – restricted use site (five-year renewal)
6. City of Gregory – restricted use site (five-year renewal)
7. City of Pierre – municipal solid waste transfer station (five-year renewal)
8. City of Sisseton – restricted use site (five-year renewal)
9. DairiConcepts (Pollock) – storage and land application of dairy processing by-products (five-year renewal)
10. RCS Construction (Rapid City) – construction and demolition debris disposal site (five-year renewal)
11. Kieffer Sanitation (Rapid City) – municipal solid waste transfer station (five-year renewal)
12. Town of Reliance – restricted use site (five-year renewal)