



Board of Minerals and Environment

523 East Capitol Avenue
Pierre, South Dakota 57501-3182
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Live audio of the meeting is available at <http://www.sd.net>

AGENDA

Telephone Conference Call Meeting

Board of Minerals and Environment
Large Conference Room
523 East Capitol, Pierre, SD

October 21, 2021
10:00 a.m. Central Time

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

Approval of minutes from September 16, 2021, meeting

Update on request for a hearing on second round of the Regional Haze Program –
Rick Boddicker

Mining Issues

Consent Calendar – Tom Cline

Transfer of Small Scale Mine Permit 404 from Roy Schiefer to Roy Schiefer
and Fred Johnson – Eric Holm

Release of Liability and Surety for Sandman Products, LLC, Exploration
Notice of Intent, EXNI-410 - Roberta Hudson

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

Next meeting

Adjourn

Interested parties who wish to participate in the telephone conference call may do so by contacting Brenda Binegar at (605) 773-3886 no later than 4:00 p.m. Central Time on Wednesday, October 20, 2021. Interested parties may also participate in person at the Department of Agriculture and Natural Resources Large Conference Room, 523 East Capitol Avenue, Pierre, SD. If you are not feeling well, please stay home and utilize the livestream or call-in information for the meeting. Those attending in person are encouraged to follow appropriate social distancing guidelines.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Department of Agriculture 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
Telephone Conference Call Meeting
523 East Capitol Avenue
Pierre, South Dakota

September 16, 2021
10:00 a.m. Central Time

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

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

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

BOARD MEMBER ABSENT: Jessica Peterson.

OTHERS PRESENT: Mike Lees, Eric Holm, Roberta Hudson, Tom Cline, Bret Graves, and Lucy Blocker, DANR Minerals and Mining Program; Kyrik Rombough, Rick Boddicker, and Anthony Lueck, DANR Air Quality Program.

APPROVAL OF MINUTES FROM AUGUST 19, 2021 MEETING: Motion by Landguth, seconded by Morris, to approve the minutes from the August 19, 2021, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO CONSIDER THE SECOND ROUND REVIEW OF THE STATE IMPLEMENTATION PLAN FOR THE REGIONAL HAZE PROGRAM: Rick Boddicker requested permission to advertise for a public hearing to consider amendments to the Regional Haze Program State Implementation Plan. The Department of Agriculture and Natural Resources (DANR) is required, by rule, to provide EPA and the federal land managers a 60-day comment period. DANR submitted the plan to those federal agencies early in the week of September 13. Staff proposed holding the hearing at the November 18, 2021, Board of Minerals and Environment meeting.

Chairman Hagg asked if the Regional Haze Program includes the smoke, especially on the west side of the state, caused by the wildfires.

Mr. Boddicker stated that the Regional Haze rule was originally developed to put controls on larger power plants, and they are now looking at smaller facilities, but the smoke from the fires

certainly has an impact on the visibility and has had some impacts on the rule over the last few years. He noted that this will be addressed in the staff's presentation at the public hearing.

Motion by Blumhardt, seconded by Karpen, to authorize DANR to advertise for a public hearing to consider amendments to the Regional Haze Program State Implementation Plan. A roll call vote was taken, and the motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO ASK EPA TO REVISE THE DEPARTMENT'S NAME IN THE FEDERAL AIR QUALITY

REGULATIONS: Kyrik Rombough requested permission to advertise for a public hearing to consider the DANR's recommendation to submit a request to EPA to change the department's name to Department of Agriculture and Natural Resources in the federal air quality regulations. Mr. Rombough stated that staff proposed holding the public hearing at the November 18, 2021, board meeting.

Mr. Rombough reported that in January 2021 Governor Noem issued an Executive Order merging the Department of Agriculture and the Department of Environment and Natural Resources in to one department. This merger became effective in April 2021. As part of that process, the South Dakota statutes and administrative rules were updated to include the new department name. EPA has informed DANR that they cannot change the federal regulations unless South Dakota submits a package to them after the Board of Minerals and Environment holds a public hearing to consider changing the department name in the federal rules.

Mr. Scheetz asked if this changes the name in the federal air quality regulations only, or does it change the department name in all federal regulations. Mr. Rombough answered that this is only for the air quality regulations. EPA's process to approve the name change for the air quality regulations requires a public hearing. The other programs have a different process to follow.

Motion by Greenfield, seconded by Landguth, to authorize DANR to advertise for a public hearing to consider DANR's recommendation to submit a request to EPA to change the department's name to Department of Agriculture and Natural Resources in the federal air quality regulations. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES CONSENT CALENDAR: Prior to the meeting, the board received a table listing the department recommendations for transfer of liability and release of surety, transfer of liability, and releases of liability. (See attachment)

Chairman Hagg asked if all the releases on the consent calendar are projects that have been completed.

Responding to questions from Chairman Hagg and Mr. Scheetz, Tom Cline stated that these are releases of liability. Staff has inspected these sites and determined that the reclamation requirements were met.

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

RELEASE OF LIABILITY AND SURETY FOR VMC LLC, EXPLORATION NOTICE OF

INTENT, EXNI-419: Roberta Hudson reported that VMC LLC was issued EXNI-419 in December 2012 to drill up to 100 holes and to conduct trenching work in exploration for gold through an area located approximately one mile north and northwest of the Wharf Mine and six miles west of Lead, SD. Throughout the course of operation, a total of 16 holes were drilled and nine trenches were dug. Reclamation of the site began in 2018.

VMC filed for release of liability in November 2020.

The department conducted a final inspection on June 23, 2021 and determined the site had been successfully reclaimed.

Staff recommended release of liability and release of Irrevocable Letter of Credit No. 255, First Interstate Bank, Spearfish, in the amount of \$20,000.

Mr. Morris stated that in 2017 or 2018, VMC was fined for violating the Exploration Notice of Intent by drilling a hole that was more than 100 feet deep. He asked if staff is satisfied that from that point there were no issues concerning the Exploration Notice of Intent.

Ms. Hudson answered that after the Notice of Violation was issued, VMC moved straight to reclamation, and no further exploration activity was conducted. She stated that VMC completed all requirements of the Notice of Violation.

In response to a question from Chairman Hagg, Ms. Hudson stated that once the liability and the Letter of Credit is released, VMC's Notice of Intent will be closed.

Motion by Landguth, seconded by Karpen, to approve release of liability and release of Irrevocable Letter of Credit No. 255, First Interstate Bank, Spearfish, SD in the amount of \$20,000 for VMC, LLC. A roll call vote was taken, and the motion carried unanimously.

EXCHANGE OF SURETY FOR WHARF RESOURCES (USA) INC., PERMITS 450,356, 434,

435, 464, AND 476: Eric Holm reported that Wharf Resources (USA) Inc. has requested that the board approve the exchange of Aspen American bonds for United States Fire Insurance bonds. Mr. Holm noted that Matt Zietlow of Wharf was available to answer questions.

On July 16, 2020, Amynta Group announced it acquired the surety operations of Aspen Insurance. Amynta also announced it would be the managing general underwriter of large commercial surety bonds for Crum & Forster, a Fairfax Financial Holdings Ltd. company. Information on the surety acquisition and Fairfax Financial Holdings and its subsidiaries, including Crum & Forster, was included in the board packet.

On September 3, 2021, Wharf submitted new bonds from United States Fire Insurance, one of Crum and Forster's admitted companies, to replace the Aspen American bonds. Mr. Holm noted that the Board of Minerals and Environment previously approved a \$10,866,800 surety bond from United States Fire Insurance Company in December 2020 to serve as a portion of the reclamation bond.

The department reviewed the ratings for United States Fire Insurance Company which, as of September 15, 2021, are:

AM Best – Financial strength A, long-term a (excellent, stable outlook)

S&P – Financial strength and long-term A- (strong, positive outlook)

Moody's – Long-term Baa1 (medium grade, positive outlook)

United States Fire Insurance is a certified company listed on the US Department of Treasury Circular.

Mr. Scheetz asked why there are four different bonds. Mr. Holm stated that there is one postclosure bond for Permit 450, one postclosure bond for Permits 356, 434, 435, 464, and 476, the cyanide spill bond for Permits 356, 434, 435, 464, and 476, and a portion of the reclamation bond for Permits 356, 434, 435, 464, and 476.

Mr. Hagg asked if there are concerns over the current exposure and losses from the hurricane and storm activity in the south and the northeast as potentially affecting any company more than others. He said in the explanation given from Fairfax Financial Holdings Ltd. Company, they referenced that there had been catastrophes last year with Covid and other things that affected them significantly at that time. Mr. Hagg asked if there is any knowledge of how substantial exposure would affect these ratings

Mr. Holm said no representatives from United States Fire Insurance Company or their broker were participating in today's meeting. The information that was included in the board packet was from Standard and Poor's, and they are putting a positive outlook on the company, which indicates they may be upgrading their financial rating.

For Permit 450, Postclosure Financial Assurance (Golden Reward Postclosure Bond), DANR recommended the board approve the exchange of Aspen American Insurance Company Bond No. SU53944 for United States Fire Insurance Company Bond No. 612408649 in the amount of \$1,767,077.

Motion by Englund, seconded by Morris, to approve the exchange of Aspen American Insurance Company Bond No. SU53944 for United States Fire Insurance Company Bond No. 612408649 in the amount of \$1,767,077. A roll call vote was taken, and the motion carried unanimously.

For Permits 356, 434, 435, 464, and 476, Postclosure Financial Assurance, DANR recommended the board approve the exchange of Aspen American Insurance Company Bond No. SU53942 for United States Fire Insurance Company Bond No. 612408648 in the amount of \$26,800,000. This is a portion of the \$38,396,200 post closure bond.

Motion by Landguth, seconded by Blumhardt, to approve the exchange of Aspen American Insurance Company Bond No. SU53942 for United States Fire Insurance Company Bond No. 612408648 in the amount of \$26,800,000. A roll call vote was taken, and the motion carried unanimously.

For Permits 356, 434, 435, 464, and 476, Financial Assurance (Cyanide Spill Bond), DANR recommended the board approve the exchange of Aspen American Insurance Company, Bond No. SU27832 for United States Fire Insurance Company Bond No. 612408650 in the amount of \$731,300.

Motion by Blumhardt, seconded by Karpen, to approve the exchange of Aspen American Insurance Company, Bond No. SU27832 for United States Fire Insurance Company Bond No. 612408650 in the amount of \$731,300. A roll call vote was taken, and the motion carried unanimously.

For Permits 356, 434, 435, 464, and 476, Reclamation Bond, DANR recommended the board approve the exchange of Aspen American Insurance Company, Bond No. SU27833 for United States Fire Insurance Company Bond No. 612408651 in the amount of \$8,000,000. This is a portion of the \$58,251,700 reclamation bond.

Motion by Landguth, seconded by Karpen, to approve the exchange of Aspen American Insurance Company, Bond No. SU27833 for United States Fire Insurance Company Bond No. 612408651 in the amount of \$8,000,000. A roll call vote was taken, and the motion carried unanimously.

UPDATE ON SPYGLASS CEDAR CREEK, LP: At the August 2021 board meeting Chairman Hagg requested that at the September board meeting the Attorney General's Office report on the status of the motion to amend the complaint and Spyglass' failure to respond.

Steve Blair, assistant Attorney General, reported that the litigation against Spyglass remains pending. The original lawsuit was filed against Spyglass and two individuals who were considered to be partners or general managers of the company. After receipt of certain information, it was determined that the complaint needed to be amended.

At this time, the complaint is pending against Spyglass Cedar Creek, LP and Xanthus Capital Limited Liability Company, who is considered the general partner of Spyglass. Earlier this year, the state moved to amend the complaint to bring it up to date on what had happened regarding the legislation that was passed that allowed DANR to engage in remediation activities and plugging of wells, and to clean up some of the out-of-date factual information that was in the complaint. The motion was filed and served on the addresses the Attorney General's Office had for the defendants. Unfortunately, the defendant's counsel, at the time they filed an answer, withdrew from representation and there is no named individual in the court file to communicate with.

Consent Calendar
South Dakota Board of Minerals & Environment

September 16, 2021

<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 and Release of Surety:</u>					
Larry G. Hansen Hayti, SD	10-909		\$1,000	Reliabank Dakota, Hayti	Transfer liability and release \$1,000.
		909001	SW1/4 Section 21; T114N-R53W, Hamlin County		
Transfer to:					
Basin Construction & Drain Tile, LLC Hayti, SD	14-978		\$20,000	Merchants Bonding Company	
<u>Transfer of Liability:</u>					
Lloyd Priebe & Sons Construction Chamberlain, SD	83-143		\$20,000	Merchants Bonding Company	Transfer liability.
		143016	NW1/4 & N1/2 SW1/4 Section 14; T105N-R68W, Brule County		
Transfer to:					
Brian Havlik Kimball, SD	20-1084		\$1,000	Farmers & Merchants State Bank, White Lake	
			\$5,000	First Dakota National Bank, Kimball	

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<u>Release of Liability:</u>					
Atteberry Construction Inc. Colome, SD	97-617		\$20,000	First Fidelity Bank, Colome	Release liability.
		617006	SE1/4 Section 33; T101N-R73W, Lyman County		
		617008	NE1/4 Section 2; T98N-R78W, Tripp County		
B & B Contracting Inc. Aberdeen, SD	01-716		\$20,000	North American Specialty Insurance Company	Release liability.
		716003	E1/2 Section 7; T120N-R65W, Spink County		
Brownlee Construction Inc. Watertown, SD	89-393		\$20,000	United Fire & Casualty Company	Release liability.
		393028	Section 26; T110N-R56W, Kingsbury County		
Matthaei Excavating Inc. Canistota, SD	04-786		\$5,026	First National Bank, Sioux Falls	Release liability.
		786001	SE1/4 Section 1; T102N-R54W, McCook County		

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<u>Release of Liability:</u>					
Midland Contracting Inc. Huron, SD	03-768		\$20,000	Western Surety	Release liability.
		768012	NW1/4 Section 19; T115N-R64W, Spink County		
Rechnagel Construction Inc. Hurley, SD	83-135		\$20,000	United Fire & Casualty Company	Release liability.
		135028	NE1/4 & NW1/4 Section 15; T99N-R53W, Turner County		
Clark County Highway Department Clark, SD	83-150		EXEMPT	NA	Release liability.
		150014	N1/2 Section 10; T118N-R58W, Clark County		

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September 16, 2021

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Release of Liability and Surety for VMC LLC:</u>				
VMC LLC Steamboat Springs, CO	EXNI-419	\$20,000	First Interstate Bank, Spearfish	Release liability and Irrevocable Letter of Credit No. 255, First Interstate Bank, Spearfish, in the amount of \$20,000.
		Portions of Sections 28, 29, 30, 31, & 32; T5N-R2E; Lawrence County		
<u>Exchange of Surety for Wharf Resources (USA) Inc. – Permit 450 Post Closure Financial Assurance:</u>				
Wharf Resources (USA) Inc. Lead, SD	450	\$1,767,077	Aspen American Insurance Company	Exchange Aspen American Insurance Company, Bond No. SU53944, for United States Fire Insurance Company, Bond No. 612408649, in the amount of \$1,767,077.
<u>Exchange of Surety for Wharf Resources (USA) Inc. – Permits 356, 434, 435, 464, & 476 Post Closure Financial Assurance:</u>				
Wharf Resources (USA) Inc. Lead, SD	356, 434, 435, 464, & 476	\$26,800,000	Aspen American Insurance Company	Exchange Aspen American Insurance Company, Bond No. SU53942, for United States Fire Insurance Company, Bond No. 612408648, in the amount of \$26,800,000.

South Dakota Board of Minerals & Environment

September 16, 2021

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Exchange of Surety for Wharf Resources (USA) Inc. – Permits 356, 434, 435, 464, & 476 Financial Assurance:</u>				
Wharf Resources (USA) Inc. Lead, SD	356, 434, 435, 464, & 476	\$731,300	Aspen American Insurance Company	Exchange Aspen American Insurance Company, Bond No. SU27832, for United States Fire Insurance Company, Bond No. 612408650, in the amount of \$731,300.
<u>Exchange of Surety for Wharf Resources (USA) Inc. – Permits 356, 434, 435, 464, & 476 Reclamation Bond:</u>				
Wharf Resources (USA) Inc. Lead, SD	356, 434, 435, 464, & 476	\$8,000,000	Aspen American Insurance Company	Exchange Aspen American Insurance Company, Bond No. SU27833, for United States Fire Insurance Company, Bond No. 612408651, in the amount of \$8,000,000.

Consent Calendar
South Dakota Board of Minerals & Environment

October 21, 2021

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<u>Release of Liability and Surety:</u>					
Stanlee Johnson Plankinton, SD	11-923	923001	\$500	Farmers & Merchants State Bank, Plankinton NE1/4 Section 24; T104N-R63W, Aurora County	Release liability and \$500.
Harold Kinyon Plankinton, SD	87-352	352009	\$2,500	United Fire & Casualty Company SE1/4 Section 30; T104N-R62W, Davison County	Release liability and \$2,500.
Sacrison Paving, Inc. Whitewood, SD	17-1023	1023001	\$2,000	United Fire & Casualty Company S1/2 NW1/4 & SW1/4 Section 29, E1/2 & NW1/4 SE1/4 & SE1/4 NE1/4 Section 30; T7N-R2E, Lawrence County	Release liability and \$2,000.
<u>Release of Liability:</u>					
B & B Equipment, Inc. Pierre, SD	95-546	546002	\$6,590	American State Bank, Pierre First National Bank, Pierre N1/2 Section 18; T110N-R77W, Hughes County	Release liability.

Consent Calendar
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<u>Release of Liability:</u>					
Dawson Construction, Inc. Howard, SD	83-21		\$20,000	Sun Surety Insurance Company	Release liability.
		21005	E1/2 Section 25; T106N-R57W, Miner County		
		21014	N1/2 Section 34; T106N-R54W, Lake County		
Fisher Sand & Gravel Company Dickinson, ND	83-54		\$20,000	Liberty Mutual Insurance Company	Release liability.
		54133	Section 3; T8N-R5E, Butte County		
Mehlhoff Construction Tripp, SD	83-218		\$4,000	The Farmers & Merchants State Bank, Scotland	Release liability.
		218015	NE1/4 Section 2; T97N-R58W, Hutchinson County		
Mc Pherson County Highway Department Leola, SD	83-41		EXEMPT	NA	Release liability.
		41002	SW1/4 Section 36; T126N-R71W, Mc Pherson County		

South Dakota Board of Minerals & Environment

October 21, 2021

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Release of Liability and Surety for Exploration Notice of Intent EXNI-410:</u>				
Sandman Products, LLC Freeman, SD	EXNI-410	\$5,100	CorTrust Bank, Freeman	Release liability and Irrevocable Letter of Credit No. 490021932, CorTrust Bank, Freeman, in the amount of \$5,100.
		N1/2 Section 33; T4S-R4E, Custer		
<u>Transfer of Small Scale Mine Permit 404:</u>				
Roy Schiefer Rochford, SD	404	\$2,500	Western Surety Company	Transfer Permit 404. Transfer Bond No. 58058341 to Roy Schiefer and Fred Johnson and accept the rider changing the name on Bond No. 58058341 to Roy Schiefer and Fred Johnson.
		N1/2 NW1/4 NW1/4 Section 28; T2N-R4E, Pennington County		
Transfer to:				
Roy Schiefer and Fred Johnson Rochford, SD				