



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

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

February 17, 2022
10:00 a.m. Central Time

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

Approval of minutes from December 16, 2021, meeting

Mining Issues

Consent Calendar – Tom Cline

Transfer of Exploration Notice of Intent EXNI-399 from Kelly Anderberg to Victor Utech – Roberta Hudson

Annual update of Post Closure Financial Assurance for Homestake Mining Company, Permits 332 & 456 – Eric Holm

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

Next meeting

Adjourn

Interested persons who wish to participate in the telephone conference call may do so by contacting the Department of Agriculture and Natural Resources at (605) 773-3886 no later than 3:00 p.m. Central Time on Wednesday, February 16, 2022. Interested persons may also participate in person at the Foss Building Lower Level Conference Room, 523 East Capitol Avenue, Pierre, SD. Board meeting attendees are encouraged to follow appropriate social distancing guidelines. If you are not feeling well, please stay home and utilize the live audio or call-in information for the meeting. The board packet is available 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. 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

December 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, Doyle Karpen, Jessica Peterson, and John Scheetz participated remotely. Bob Morris participated in person.

BOARD MEMBERS ABSENT: Daryl Englund and Dennis Landguth.

OTHERS PRESENT: Eric Holm, Tom Cline, and Bret Graves, DANR Minerals and Mining Program; Kyrik Rombough, Rick Boddicker, and Barb Regynski, DANR Air Quality Program, and Kent Woodmansey, Director, Agriculture and Environmental Services.

APPROVAL OF MINUTES FROM OCTOBER 21, 2021 MEETING: Motion by Blumhardt, seconded by Karpen, to approve the minutes from the October 21, 2021, Board of Minerals and Environment meeting. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO REQUEST EPA RECOGNIZE THE NAME OF DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES IN THE STATE IMPLEMENTATION PLAN: Chairman Hagg opened the hearing.

The purpose of the hearing was to request EPA recognize the name of Department of Agriculture and Natural Resources (DANR) in South Dakota's State implementation Plan (SIP).

Kyrik Rombough provided a slide presentation discussing proposed changes to the SIP.

DANR is requesting permission from the Board to submit a package to EPA to update the federal regulations to recognize the new department name as the Department of Agriculture and Natural Resources instead of the Department of Environment and Natural Resources in South Dakota's SIP.

The SIP is a collection of regulations and documents used by South Dakota to implement, maintain, and enforce the federal National Ambient Air Quality Standards and to fulfill certain aspects or requirements under the Clean Air Act. This is done predominately through two different processes; regulations and nonregulatory documents. Examples of the regulations are ARSD 74:36 – Air Pollution Control Program and ARSD 74:37 – Air Pollution Control Program Fees. Examples of the nonregulatory documents are South Dakota’s Infrastructure State Implementation Plan and the second round review for the Regional Haze Program. The Clean Air Act requires that the state review specific topics, analyze and decide whether a regulation is or is not required to be implemented. Even if it is decided that a regulation is not required, the review is still submitted to EPA for approval. In the case where a review determines a regulation is not required, the review becomes a nonregulatory document.

Under the federal Clean Air Act, for the state to have delegation or the authority to implement that program, EPA must approve it and make it part of the code of federal regulations, which makes those rules enforceable by the federal government.

Mr. Rombough stated that when new rules or amendments to rules are proposed, a public notice is issued requesting public comment on the proposal. The proposed rules or amendment are then presented to the Board of Minerals and Environment, and if the board approves the proposal, it would be presented to the Interim Rules Committee. If the Interim Rules Committee approves, the rule would be sent to the Secretary of State and the rule becomes effective 20 days later. Following that, the department submits a package with the rule changes to EPA for approval, then EPA goes through their public participation process.

For the non-regulatory side, or documents, those reviews still need to have some form of public participation process, so DANR issues a public notice requesting comments from the public then presents the recommendations to the Board of Minerals and Environment for approval.

Mr. Rombough stated notice of this hearing was published in eleven South Dakota daily newspapers. No written comments were received on the request for EPA to change the department name in the federal regulations.

In January 2021, Governor Noem signed an Executive Order merging the Department of Environment and Natural Resources and the Department of Agriculture into one single department called the Department of Agriculture and Natural Resources. When the merger became effective on April 19, 2021, the applicable Codified Laws and Administrative Rules were automatically updated to reflect the department’s name change. Mr. Rombough pointed out where each of the automatic updates were made in the Codified Laws and Administrative Rules.

Mr. Rombough requested board approval to request that EPA recognize and update the department’s name in 40 CFR § 52.2170.

In response to a question from Bob Morris, Mr. Rombough stated that the name change in the federal regulations would not expand or diminish the jurisdiction of the Board of Minerals and Environment.

Responding to a question from John Scheetz, Mr. Rombough stated that the department name change does not affect any existing permits.

Chairman Hagg requested public comment. There were no public comments.

Motion by Greenfield, seconded by Morris, to authorize the Department of Agriculture and Natural Resources to request that EPA recognize and update the department's name in 40 CFR § 52.2170. A roll call vote was taken, and the motion carried unanimously.

PUBLIC HEARING TO CONSIDER THE SECOND ROUND REVIEW OF THE STATE IMPLEMENTATION PLAN FOR THE REGIONAL HAZE PROGRAM: Rick Boddicker requested that the public hearing be deferred.

Regional Haze rule states that the opportunity for federal land manager consultation on an implementation plan or on a progress report must be provided no less than 60 days prior to the public hearing or public comment opportunity.

Mr. Boddicker stated that staff discussed the consultation and public notice timetable with EPA in May 2021, and in an email to Mr. Boddicker, EPA referenced the rule. Staff's interpretation was that the 60-day consultation period and the 30-day public comment period could run concurrently.

In their comments regarding the SIP, the National Park Service cited the Clean Air Act, which states that the public notice must include a summary of the conclusions and recommendations of the federal land managers. Mr. Boddicker stated that, according to the Clean Air Act, the department needs to allow the federal land managers a 60-day comment period, those comments then need to be summarized and included in the 30-day public notice. The attorney for the department advised that the department is following the Regional Haze rule correctly, however, regarding the Clean Air Act, the attorney believes it would be best if the department starts over with a new public notice on the SIP which includes the federal land manager comments. Doing so will avoid any technical or procedural issues.

Motion by Scheetz, seconded by Blumhardt, to defer the public hearing indefinitely. A roll call vote was taken, and the motion carried unanimously.

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.

Ms. Regynski discussed each of the categories and the funding amount for each category as shown in the following table.

Category	Eligible Mitigation Action	Current % Range	Allotted Amount
1/6	Class 8 & Class 4-7 Local Freight Trucks	35 to 45%	\$2,843,750 to \$3,656,250
2/10	Class 4-8 Buses/DERA Option	35 to 45%	\$2,843,750 to \$3,656,250
9	Light Duty ZEV Supply Equipment	10 to 15% ¹	\$812,500 to \$1,218,750
Admin.	Administrative Costs	2.5 to 10% ¹	\$203,125 to \$812,500
TOTALS		100%	\$8,125,000

¹ The VW trust limits the maximum amount that may be used in the category to 15%.

Buses – VW Categories 2 and 10

The State Clean Diesel Grant Program provides rebates for replacing old diesel buses, with new cleaner buses. Funds used for this category include DERA funds, VW Category 10 funds, DERA bonus funds, VW Category 2 funds, and VW administration funds. Rebate percentages have been 25, 35, or 45 percent, depending on the fuel type of the replacement bus. A new funding round opened on November 1, 2021, and selections will be made in January 2022. The DERA base amount for this year was approximately \$340,000 and that amount will be matched with VW Category 10 funds. VW funds were first used with the Clean Diesel Grant Program in round 11. Since then, rebates have been provided for 111 clean buses.

Trucks – VW Categories 1 and 6

The VW Truck Rebate Program provides rebates for replacing old diesel trucks with new, cleaner trucks. The program is open to state and local governmental agencies. There are two funding rounds per year with applications due in January and one in June. This was done to help with differences in budget cycles between state and local governments. For rounds one through three, rebate percentages were 25, 35, or 45 percent based on the fuel type, and for rounds four and five, the rebate percentages were increased to 50, 60, or 70 percent. For rounds six and seven, rebate percentages are set at 35, 45, or 55 percent. For 2022, approximately \$1,000,000 of VW funds will be available. During the first five rounds, rebates were provided for 20 clean trucks.

Electric Vehicle Charging Stations – VW Category 9

The maximum allowed for this category 15 percent. The rebate percentage is up to 80 percent per charging station and installation.

There has been one funding round with 25 applications received. Seven of the applications were selected. The goal was to be able to get people across the state with fast chargers. Since that time, five applicants have dropped out and the remaining two have been delayed. Electrify America was a separate part of the Volkswagen settlement in the amount of \$2,000,000,000 for a nationwide program. Electrify America announced that they would be coming to South Dakota earlier than planned and that they would be installing two 150 kilowatt chargers and two 350 kilowatt chargers in Wall. The applicants who applied for the Volkswagen Beneficiary funds

were planning to install 50 kilowatt chargers, so they felt that it would not be a good use of the Volkswagen funds. Some of the applicants stated that they may reapply during the second round with larger charging stations. Another development that may have influenced them was Elon Musk announced that he might open all the Tesla superchargers to be used by all electric vehicles. Another reason was because of the supply chain problems, they are having trouble getting equipment.

The two applicants that did not drop out plan to install fast chargers in Chamberlain and Mitchell. They still have not received the chargers, and since it is now winter, their plans are to install them in the spring.

Round two opened September 13, 2021, and those selections will be made in January 2022. Approximately \$120,000 will now be used for the remaining round one projects, leaving a little over \$1,000,000 of C9 funds for round two.

Administrative Costs – Admin

The percentage range for administrative costs is 2.5 to 10 percent. To date \$188,242 has been requested from the Trust, but the total amount has not been used yet.

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

Chairman Hagg requested that Ms. Regynski provide another update at the end of summer 2022.

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

Tom Cline, DANR Minerals and Mining Program, was present to answer questions from the board. There were no questions.

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

TRANSFER OF DAKOTA GRANITE COMPANY'S LARGE SCALE MINE PERMITS 15 AND 318 AND SMALL SCALE MINE PERMIT 485 TO DAKOTA STONE, INC.: Eric Holm reported that Dakota Stone, Inc. requested transfer of Large Scale Mine Permits 15 and 318 and Small Scale Mine Permit 485 from Dakota Granite Company. The general location of the three permitted operations is approximately six miles east of Milbank, SD. Under SDCL 45-6B-47, any mine permit can be transferred from one operator to another, with the successor operator assuming all reclamation liability.

The complete transfer application forms for each permit were received on September 27, 2021. The \$100 transfer fee for each permit was submitted on July 22, 2021. The \$408,200 and \$69,900 replacement sureties were submitted on October 13, 2021. The applications were considered complete on November 19, 2021.

The department recommendation to transfer the mine permits was prepared on November 22, 2021. The recommendation was published in the Grant County Review on December 1 and 8, 2021. Affidavits of Publication were received on December 13, 2021. No petitions to intervene or comments regarding the transfers were received.

Under SDCL 45-6B-47, the board cannot deny a mine permit transfer unless the operation is not or cannot be brought into compliance with all applicable federal, state, or local laws or the successor operator is in violation of state mining laws or mine permit conditions for any mining operation in the state. The current mine permit and Dakota Stone, Inc. are in compliance with all federal, state, and local laws and regulations. Dakota Stone, Inc. also submitted a Certification of Applicant form and disclosed no violations.

The department recommended that the board approve the transfer of Large Scale Mine Permit 15 and Small Scale Mine Permit 485 to Dakota Stone, Inc. and release Irrevocable Letter of Credit No. 161, Great Western Bank, Milbank, in the amount of \$408,200 and accept Irrevocable Letter of Credit No. A071, Platinum Bank, Oakdale, MN, in the amount of \$408,200. The department also recommended that the board approve the transfer of Large Scale Mine Permit 318 to Dakota Stone, Inc. and release Irrevocable Letter of Credit No. 179, Great Western Bank, Milbank, in the amount of \$69,900 and accept Irrevocable Letter of Credit No. A072, Platinum Bank, Oakdale, MN, in the amount of \$69,900.

In response to a question from Mr. Morris, Mr. Holm stated that the Stengel family sold Dakota Granite Company to Dakota Stone, Inc.

Motion by Karpen, seconded by Scheetz, to approve the transfer of Dakota Granite Company Large Scale Mine Permit 15 and Small Scale Mine Permit 485 to Dakota Stone, Inc. and release Irrevocable Letter of Credit No. 161, Great Western Bank, Milbank, in the amount of \$408,200 and accept Irrevocable Letter of Credit No. A071, Platinum Bank, Oakdale, MN, in the amount of \$408,200, and to approve the transfer of Large Scale Mine Permit 318 to Dakota Stone, Inc. and release Irrevocable Letter of Credit No. 179, Great Western Bank, Milbank, in the amount of \$69,900 and accept Irrevocable Letter of Credit No. A072, Platinum Bank, Oakdale, MN, in the amount of \$69,900. A roll call vote was taken, and the motion carried unanimously.

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

NEXT MEETING: The next meeting is February 17, 2022.

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

Secretary Date Witness Date

Consent Calendar
South Dakota Board of Minerals & Environment

December 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>Release of Liability & Surety:</u>					
Robert Bartscher Mitchell, SD	95-537	537001	\$2,000	Fulton State Bank, Mitchell E1/2 SW1/4 (Lot B) Section 26; T102N-R60W, Davison County	Release liability and \$2,000
Scott Kennedy Philip, SD	20-1069	1069001	\$1,500	First National Bank, Philip S1/2 Section 2; T1S-R19E, Jackson County	Release liability and \$1,500.
<u>Transfer of Liability & Release of Surety:</u>					
Babinski Properties, LLC Sioux Falls, SD	86-327	327001	\$6,500	Western Surety Company NW1/4 Section 9; T101N-R50W, Minnehaha County	Transfer liability and release \$6,500.
Transfer to: Prairie States Trucking Inc. Sioux Falls, SD	21-1103		\$20,000	Hudson Insurance Company	

Consent Calendar
South Dakota Board of Minerals & Environment

December 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>Release of Liability:</u>					
Dawson Construction Howard, SD	83-21	21030	\$20,000 SW1/4 Section 31; T108N-R55W, Miner County	Sun Surety Insurance Company	Release liability.
Lanny Ray Olson Huron, SD	95-549	549010 549011	\$5,500 SW1/4 Section 29; T112N-R62W, Beadle County NE1/4 Section 18; T109N-R62W, Beadle County	Farmers & Merchants Bank, Huron	Release liability.
Pacer Minerals LLC Custer, SD	88-370	370062	\$20,000 SE1/4 SW1/4 Section 34; T3S-R5E, Custer County	Lexon Insurance Company	Release liability.
Milltown Township Parkston, SD	19-1057	1057001	EXEMPT N1/2 Section 28; T99N-R59W, Hutchinson County	NA	Release liability.

South Dakota Board of Minerals & Environment

December 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>Transfer of Large Scale Mine Permits 15 and 385 and Small Scale Mine Permit 485:</u>				
Dakota Granite Company Milbank, SD	15 & 485	\$408,200	Great Western Bank, Milbank	Transfer Permit 15 and 485 to Dakota Stone, Inc. and release Irrevocable Letter of Credit No. 161, Great Western Bank, Milbank, in the amount of \$408,200. Accept Irrevocable Letter of Credit No. A071, Platinum Bank, Oakdale, MN, in the amount of \$408,200.
		Portions of SW1/4 Section 7 & Portions of W3/4 Section 18; T120N-R47W and Portions of NE1/4 Section 13; T120N-R48W, Grant County		
		Portions of SW1/4 Section 7; T120N-R47W and Portions of NE1/4 Section 13; T120N-R48W, Grant County		
Dakota Granite Company Milbank, SD	318	\$69,900	Great Western Bank, Milbank	Transfer Permit 318 to Dakota Stone Inc., and release Irrevocable Letter of Credit No. 179, Great Western Bank, Milbank, in the amount of \$69,900. Accept Irrevocable Letter of Credit No. A072, Platinum Bank, Oakdale, MN, in the amount of \$69,900.
		Portions of NE1/4 Section 17; T120N-R47W, Grant County		
Transfer to:				
Dakota Stone Inc. Milbank, SD		\$408,200	Platinum Bank, Oakdale, MN	
		\$69,900		

Consent Calendar
South Dakota Board of Minerals & Environment

February 17, 2022

<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 & Release of Surety:</u>					
American West Corp. Hill City, SD	95-535		\$20,000	United Fire & Casualty Company	Transfer liability and release \$20,000.
		535006	W1/2 SW1/4 Section 14 & SE1/4 Section 15; T6S-R6E, Custer County		
Transfer to:					
Randall Schroth Buffalo Gap, SD	21-1102		\$500	First Interstate Bank, Hot Springs	
Mc Laughlin & Schulz Inc. Marshall, MN	83-5		\$20,000	Merchants Bonding Company (Mutual)	Transfer liability and release \$20,000.
		5007	NW1/4 NW1/4 SW1/4 of NW1/4, NE1/4 NW1/4, SE1/4 NW1/4 Section 34; T117N-R52W, Codington County		
Transfer to:					
Michael D. Wudel Naples, FL	21-1106		\$20,000	Merchants Bonding Company (Mutual)	

Consent Calendar
South Dakota Board of Minerals & Environment

February 17, 2022

<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>					
Cody Briggs Ft. Pierre, SD	95-542		\$2,000	American Bank & Trust, Pierre	Transfer liability.
		542002	NE1/4 Section 13; T118N-R69W, Faulk County		
Transfer to:					
BJ Kalkman Miranda, SD	20-1063		\$2,500	Dacotah Bank, Faulkton	
Central Specialties Inc. Alexandria, MN	02-733		\$20,000	Ohio Farmers Insurance Company	Transfer liability.
		733001	N1/2 Section 27; T106N-R54W, Lake County		
Transfer to:					
Hodne Farms Inc. Winfred, SD	21-1104		\$10,000	Great Western Bank, Madison	
<u>Release of Liability:</u>					
Teklham Inc. dba Eureka Ready Mix Eureka, SD	03-763		\$5,000	Great Plains Bank, Eureka	Release liability.
		763001	SE1/4 Section 20; T127N-R71W, McPherson County		

Consent Calendar
South Dakota Board of Minerals & Environment

February 17, 2022

<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>
Release of Liability:					
Edmunds County Highway Department Ipswich, SD	83-161		EXEMPT	NA	Release liability.
		161016	N1/2 SW1/4 Section 32; T125N-R72W		

South Dakota Board of Minerals & Environment

February 17, 2022

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Transfer of Exploration Notice of Intent EXNI-399:</u>				
Kelly Anderberg Rapid City, SD	EXNI-399	\$2,500	Black Hills Federal Credit Union, Rapid City	Transfer liability and release CD No. 523799-20, Black Hills Federal Credit Union, Rapid City, in the amount of \$2,500.
			Sections 1 & 12; T5N-R3E and Sections 6 & 7; T5N-R4E, Lawrence County	
Transfer to:				
Victor Utech Pierre, SD		\$2,500	BankWest, Pierre	
<u>Annual Update of Post Closure Financial Assurance:</u>				
Homestake Mining Company Central City, SD	332 & 456	\$59,607,847	Federal Insurance Company	Accept rider to Bond No. 82336310, Federal Insurance Company, increasing the Post Closure Financial Assurance amount to \$61,271,809.