

Board of Minerals and Environment

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

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

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

July 20, 2023

10:00 a.m. Central Time

Call to order and roll call

Approval of minutes from May 18, 2023, meeting

Public hearing to consider amendments to ARSD 74:28, Hazardous Waste – Carrie Jacobson

Mining Issues Consent Calendar – Tom Cline

Acceptance of post closure bond change rider and acceptance of post closure bond for Wharf Resources (USA), Inc., Permits 356, 434, 435, 464, & 476 – Eric Holm

Request for five-year extension of temporary cessation for Dakota Stone Inc., Permit 318 – Eric Holm

Transfer of liability and release of surety for Pete Lien & Sons Inc., Permit 57 – Eric Holm

Renewal of the Memorandum of Understanding with the US Forest Service for mineral operations on Forest Service lands – Roberta Hudson

Continue hearing and consider Chairman Hagg's decision regarding the Findings of Fact, Conclusions of Law and Order in the matter of Wharf Resources (USA), Inc. Large Scale Mine Permit application for Wharf's Boston Expansion

Oral Mining Reports

LAC Minerals (USA), LLC
Homestake Mining Company
Wharf Resources (USA), Inc.
VMC, LLC

Update on Brohm EPA Superfund Site – Roberta Hudson

Election of Officers

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

Next meeting

Adjourn

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. Individuals requiring assistive technology or other services in order to participate in the meeting or materials in an alternate format should contact Brian Walsh, Nondiscrimination Coordinator, by calling (605) 773-5559 or by email at Brian.Walsh@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
Matthew Training Center
523 East Capitol Avenue
Pierre, South Dakota

May 18-19, 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, Doyle Karpen, Bob Morris, John Scheetz and Gary Haag.

BOARD MEMBERS ABSENT: Gregg Greenfield and Jessica Peterson.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM MARCH 16, 2023, MEETING: Motion by Morris, seconded by Karpen, to approve the minutes from the March 16, 2023, 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 AMENDMENTS TO ARSD 74:28, HAZARDOUS WASTE: Carrie Jacobson, DANR Waste Management Program, requested permission to advertise for a public hearing to consider amendments to ARSD 74:28, the hazardous waste rules.

The department intends to publish the public notice in 11 newspapers of general circulation to ensure coverage across the state. The public notice will also be mailed and emailed to individuals and interested parties on the department's mailing list. The draft rules will be available on the department's website, the state of South Dakota's general website, and can be obtained by contacting the Department of Agriculture and Natural Resources by phone or email.

Comments can be submitted in writing and mailed via postal service, email, or electronically. The public will be provided 45 days to comment on the proposed rules.

The department anticipates the public hearing will be held on July 20, 2023; therefore, the public notice will be sent for publishing on or before June 5, 2023. A copy of the draft public notice and draft proposed rules were included in the board packet.

The amendments reflect changes that occurred in the federal hazardous waste regulations from July 1, 2018, through June 30, 2022. The changes will be incorporated by reference in the administrative rules.

Mr. Scheetz asked Ms. Jacobson to summarize some of the major changes that were made between 2018 and now.

Ms. Jacobson stated that the primary change has to do with including aerosol cans and aerosol cans that are not empty as a universal waste. Because they are broadly generated across many different types of hazardous waste generation entities, it is a good way to ensure that those cans are managed safely, and yet not subject to onerous typical hazardous waste regulations.

Motion by Blumhardt, seconded by Karpen, to authorize the department to advertise for a public hearing to consider amendments to ARSD 74:28 at the July 20, 2023, 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 transfers of liability and release of surety, transfer of liability, and release of surety. (See attachment)

Tom Cline, Minerals, Mining, & Superfund Program, presented the consent calendar.

Regarding the transfer of liability from Morris Inc. to Perkins County Highway Department, Mr. Morris asked why the bond is not being released. Mr. Cline answered that Morris Inc. would like to stay in business. The company has 30 to 40 sites across the state. On this specific site, Morris Inc. is transferring the liability to the county. The county will take ownership of the reclamation liability for the footprint left from the stockpile, but meanwhile the pit area that was used to generate that pile has been reclaimed by Morris Inc. The \$20,000 surety bond covers all of Morris Inc.'s sites throughout the state.

Mr. Morris noted that he is not associated with Morris Inc.

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

ANNUAL UPDATE OF PRELIMINARY LIST OF SPECIAL, EXCEPTIONAL, CRITICAL OR UNIQUE LANDS: Eric Holm stated that under ARSD 74:29:10:19, the Board of Minerals and Environment is required to annually hold a hearing to consider any petitions received to nominate lands to the Preliminary List.

Under ARSD 74:29:10:17(4), the Department of Agriculture and Natural Resources publishes an annual notice to solicit petitions to add areas to the preliminary list. The notice was published on February 2, 2023, in the Capital Journal, Sioux Falls Argus Leader, Black Hills Pioneer, and Rapid City Journal. Affidavits of Publication were received from all newspapers.

On January 25, 2023, the South Dakota Department of Tourism, the Department of Game, Fish, and Parks, the Department of Education and Cultural Affairs, and the Archaeological Research Center were also invited to submit nominating petitions.

The deadline for submittal of petitions to nominate areas to the preliminary list was May 1, 2023. No nominating petitions were submitted, so no board action is needed.

ACCEPTANCE OF FINANCIAL ASSURANCE INCREASE FOR WHARF RESOURCES (USA), INC., LARGE SCALE MINE PERMIT 356, 434, 435, 464, AND 476: Mr. Holm presented the board with 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 site. This financial assurance is in addition to Wharf Resources’ \$58.2 million reclamation bond and \$38.4 million post closure bond.

The department adjusted the financial assurance for inflation and calculated a revised amount of \$807,300, which is an increase of \$46,700 from the 2022 update. This year, since the department was able to obtain the Construction Cost Index in the Engineering News Record, staff returned to using the index to calculate the inflationary increase in the bond instead of applying a three percent inflation rate.

To cover the increase, Wharf has submitted a rider to the United States Fire Insurance Company surety bond that currently serves as financial assurance, which increases the amount to \$807,300. United State Fire Insurance Company is licensed in South Dakota and is on the US Department of Treasury list of approved surety companies. Ratings for the company from AM Best, Standard and Poor’s, and Moody’s are excellent, strong, and medium quality respectively. The AM Best and Standard and Poor’s outlooks are stable, while Moody’s outlook is positive.

The department recommended that the board accept the rider to Bond No. 612408650, United States Fire Insurance Company, increasing the financial assurance bond from \$760,600 to \$807,300.

In response to a question from Mr. Scheetz, Mr. Holm stated that the calculation is based on a slow, chronic release of cyanide, which staff determined would be more costly to remediate than an accidental spill of cyanide. Leach ponds and pads are double lined, and they have a leak detection system, which is taken into account when calculating the bond amount.

Motion by Karpen, seconded by Haag, to accept the rider to Bond No. 612408650, United States Fire Insurance Company, increasing the financial assurance amount to \$807,300. A roll call vote was taken, and the motion carried unanimously.

CONTESTED CASE HEARING IN THE MATTER OF WHARF RESOURCES (USA), INC. LARGE SCALE MINE PERMIT APPLICATION FOR WHARF’S BOSTON EXPANSION: A court reporter was present for the hearing and a transcript was prepared. A copy of the transcript may be obtained by contacting Carla Bachand, PO Box 903, Pierre, SD 57501; telephone number 605-224-7611.

Please refer to the transcript for the proceedings of the hearing.

Chairman Rex Hagg, hearing chairman for this matter, opened the hearing at 10:20 a.m. Central Time.

Dwight Gubbrud and Max Main, Bennett, Main, Gubbrud & Willert, Belle Fourche, SD, represented Wharf Resources.

Steve Blair, Assistant Attorney General, Pierre, SD, represented the DANR Minerals, Mining, and Superfund Program.

Intervenor, Carla Marshall, Rapid City, SD, appeared pro se.

The purpose of the hearing was to consider Wharf Resources (USA), Inc.'s application for a permit to mine gold and silver for its proposed Boston Expansion project approximately four miles west of Lead, SD, in Lawrence County.

The proposed expansion involves mining to the south of Wharf Resources' existing open pit gold mining operation. The mine permit will allow Wharf Resources to expand its existing operation by 48.2 acres. Of these, 40.6 acres are located outside of the current mine permit boundary, and 7.6 acres are to be included as new permitted affected acreage within the current mine permit boundary. Topsoil will be stripped and stockpiled for use during concurrent and final reclamation. Waste rock will be used to backfill mine pits. Ore will be processed through cyanide heap leach methods before being treated and offloaded to an approved area at the mine. The proposed expansion will extend the total life of the mine to 2030. Reclamation will be conducted concurrently with the mining operation. The proposed post-mining land use is rangeland/woodland grazing.

DANR recommended conditional approval of the permit application.

Mr. Blair noted that the parties stipulated to Exhibit 1, the DANR administrative file for Wharf Resources, that narrative testimony was admissible, and beginning with public comments, and continuing with Wharf Resources, DANR, and Ms. Marshall presenting their cases.

Mr. Blair stated that the public comments were not a part of the formal hearing.

The following provided public comments in support of the application:

Bob Ewing, Spearfish, SD, chairman of the Lawrence County commission
Tim Comer, Spearfish, SD
Bill London, Terry Peak Ski Area
Kayla Klein, Lead city commission
Ken Harding, Rapid City, SD
Dan Werdel, Rapid City, SD, Butler Machinery
Marc Morgan, Spearfish, SD, Wharf employee

Gerald Aberle, Lead, SD, Dakota Gold Corporation
Beau Riopel, Spearfish, SD, Butler Machinery

During the public comments Mr. Ewing answered questions from Chairman Hagg and Mr. Scheetz. Chairman Hagg stated that since Mr. Ewing is a local official, the questions and answers would be made part of the record.

Opening statements were offered by the parties.

Witnesses administered the oath and testifying on behalf of Wharf Resources:

Ken Nelson, Rapid City, SD, Regional General Manager, Coeur Mining
Matt Zietlow, Spearfish, SD, Environmental Manager, Wharf Mine
Crystal Hocking, Rapid City, SD, Professional Geologist and Professional Engineer, RESPEC

Exhibits offered by Wharf Resources and admitted into the record:

Exhibit 30 – Ken Nelson curriculum vitae
Exhibit 31 – Crystal Hocking curriculum vitae
Exhibit 32 – Matthew Zietlow curriculum vitae
Exhibit 33 – Copy of the draft Surface Water Discharge Permit, Wharf Resources (USA), Inc.
Exhibit 34 – Letters of Support
Exhibit 35 – Wharf Resources Boston Expansion presentation

Witnesses administered the oath and testifying on behalf of the Department of Agriculture and Natural Resources (DANR):

Roberta Hudson, Pierre, SD, Engineering Manager I, DANR Minerals, Mining, and Superfund Program.
Kelli Buscher, Pierre, SD, Administrator of the DANR Water Quality Program
Eric Holm, Pierre, SD, Engineer III, DANR Minerals, Mining and Superfund Program

Exhibits offered by DANR and admitted into the record:

Exhibit 1 – Administrative file, Wharf Resources Boston Expansion permit application
Exhibit 2 – Roberta Hudson curriculum vitae
Exhibit 3 – Large scale mining permit application checklist, Wharf Resources (USA), Inc.
Exhibit 4 – Wharf Resources 2022 annual environmental audit and inspection report.
Exhibit 5 – 2023 Boston expansion area map
Exhibit 6 – DANR Recommendation, Wharf Resources (USA), Inc. large scale mine permit application
Exhibit 8 – Wharf Resources violation history
Exhibit 10 – July 21, 2021, letter from Roberta Hudson to Amy Allen, Wharf Resources Sr. Environmental Compliance Coordinator
Exhibit 11 – November 17, 2021, letter from Roberta Hudson and Matt Hicks to Ken Nelson, Wharf Resources Mine Manager,

Exhibit 12 – DANR presentation, Wharf Resources expansion project large scale mine permit application

Exhibit 13 – Kelli Buscher curriculum vitae

Exhibit 14 – May 15, 2023, letter from Hunter Roberts to Matt Zietlow, Wharf Resources Environmental Manager

Exhibit 15 – Copy of the draft Surface Water Discharge Permit, Wharf Resources (USA), Inc.

Exhibit 16 – DANR presentation for Surface Water Discharge Permit for Wharf Resources

Exhibit 17 – Eric Holm curriculum vitae

Exhibit 18 – DANR 2023 Wharf mine reclamation bond recalculation summary

Exhibit 19 – DANR 2023 Wharf mine reclamation bond calculation, general information and assumptions

Exhibit 21 – DANR 2023 Wharf mine post closure bond calculation summary

Exhibit 22 – DANR 2023 Wharf mine post closure bond calculation general information and assumptions

Exhibit 23 – DANR presentation, Wharf Resources' Boston expansion project large scale mine permit application, bonding calculations

Chairman Hagg noted that Ms. Marshall was not present for the second day of the hearing, but he will let Ms. Marshall know that she is welcome to submit proposed Findings of Fact and Conclusions of Law.

Following witness testimony, cross-examination, and questioning by the parties and the board members, the parties offered closing statements.

Chairman Hagg stated that there will be no final decision today, but he is inclined to recommend to the board granting the permit with the conditions that were discussed during the hearing, specifically with regard to the selenium issue in False Bottom Creek. He asked that the department include in its proposed findings that the board is adopting the schedule regarding mitigation of selenium as a specific finding. The schedule should also be included in the permit conditions. He said that other than the selenium issue in False Bottom Creek, it appears that the permit application complies with SDCL 45-6B-32. Chairman Hagg said SDCL 45-6B-32 provides some obligation for the board to grant the permit. He believes the statute is discretionary on the items the board can consider in order to deny a permit. He expressed concern regarding the selenium issue but stated that the department and Wharf have given the board the assurance that Wharf has agreed to pursue compliance regarding mitigation of the selenium on a schedule that the discretion in the statute allows.

Chairman Hagg then requested that each of the parties submit proposed Findings of Fact, Conclusions of Law, and the Order by June 20, 2023. Mr. Gubbrud presented proposed findings, which do not include the mitigation schedule. Chairman Hagg received the findings and asked Mr. Gubbrud to submit supplemental findings that include the mitigation schedule by the deadline.

Mr. Blair said SDCL 45-6B-30 requires the board to make a final decision on the application within 120 days of the receipt of the application unless a time extension occurs, in which case the

decision shall be made within 30 days following the hearing. One hundred twenty days from receipt of the application is July 8, 2023. Chairman Hagg will make his proposed Findings of Fact, Conclusions of Law and Final Decision by July 8, 2023, then present them to the board at the July 20, 2023, meeting.

Chairman Hagg closed the hearing at 11:52 a.m. Central Time.

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

NEXT MEETING: The next meeting is scheduled for July 20, 2023.

ADJOURN: Motion by Morris, 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

ATTENDANCE SHEET
BOARD OF MINERALS AND ENVIRONMENT
DATE May 18, 2023

<u>NAME (PLEASE PRINT)</u>	<u>ADDRESS</u>	<u>REPRESENTING</u>
Eric Holm	Pierre	DANR
Bob Ewing	Spearfish, SD	Lawrence co commissioner
Max Maini	Belle Fourche	Wharf
Mark Morgan	Spearfish SD	wharf
TONY Auld	Lead, SD	Wharf
Kelli Boscher	Pierre	DANR
Ken Harding	Rapid City	Self
Beau Riopel	Spearfish, SD	Butler Machinery
Matt Sudbeck	Rapid City, SD	Butler Machinery - CAT
Carla R. Marshall	RC, SD	Self
Narsha Dodge	Rapid City	Rapid City Journal
Thomas Cline JR	Pierre SD	DANR - M&M program
Karl Nilsen	RC SD	Wharf
Crystal Hocking	Rapid City	Wharf / RESPEC
Matt Zietlow	Spearfish, SD	Wharf
Jim Wendte	Pierre	DANR
Camie Johnson	Pierre	SD DANR
Garrett Westenderp	Pierre	DANR
Kayla Klein	Lead SD	Self - commissioner of Lead
Ron Everett	Lead SD	Mayor
Timm Comer	Spearfish SD	Self
B. H. London	Lead SD	Terry Peak SK
Gerald Aberte	Lead SD	Dakota Gold Corp
Mike Lees	Pierre SD	DANR

ATTENDANCE SHEET
BOARD OF MINERALS AND ENVIRONMENT

DATE May 18, 2023

NAME (PLEASE PRINT)

ADDRESS

REPRESENTING

Bob Mercer

Pierre

Keloland News

Consent Calendar
South Dakota Board of Minerals & Environment

May 18, 2023

<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>					
Hilde Pipe & Gravel & Gravel Inc. Madison, SD	22-1118		\$5,000	First Interstate Bank, Madison	Transfer liability and release \$5,000.
		1118001	N1/2 NE1/4 Section 27, SE1/4 Section 22, & SW1/4 SW1/4 Section 23; T106N-R52W, Lake County		
Transfer to:					
Woodland Marina II LLC Sioux Falls, SD	23-1122		\$5,000	Plains Commerce Bank, Sioux Falls	
<u>Transfer of Liability:</u>					
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company	Transfer liability.
		2057	SE1/4 Section 35; T16N-R11E, Perkins County		
Transfer to:					
Perkins County Highway Department Bison, SD	83-91		EXEMPT	NA	

Consent Calendar
South Dakota Board of Minerals & Environment

May 18, 2023

May 18, 2023					
<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>Release of Liability:</u>					
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company	Release liability.
		2006	N1/2 Section 29; T9N-R25E, Stanley County		
		2018	Sections 29 & 30; T9N-R24E, Ziebach County		

South Dakota Board of Minerals & Environment

May 18, 2023

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Acceptance of Financial Assurance for Wharf Resources (USA), Inc.:</u>				
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$760,600	United States Fire Insurance Company	Accept rider to Bond No. 612408650, United States Fire Insurance Company, increasing the Financial Assurance amount to \$807,300.
<u>Application for Large Scale Mine Permit:</u>				
Wharf Resources (USA), Inc. Lead, SD	490	Reclamation Bond: \$72,152,900 Post Closure Bond: \$42,685,600 Legal: Portions of Sections 2 & 3; T4N-R2E, Lawrence County		Conditional Approval.

Consent Calendar

South Dakota Board of Minerals & Environment

July 20, 2023

July 20, 2023					
<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>Release of Liability & Surety:</u>					
Teklham Inc. dba Eureka Ready Mix Forbes, ND	03-763		\$2,000	Great Plains Bank, Eureka	Release liability and \$2,000.
		763002	SW1/4 Section 1; T125N-R73W, McPherson County		
<u>Transfer of Liability:</u>					
AP & Sons Construction Inc. Summit, SD	14-972		\$1,500	Peoples State Bank, Summit	Transfer liability.
		972001	SW1/4 Section 28; T112N-R51W, Roberts County		
Transfer to:					
AP & Sons Construction Inc. Summit, SD	23-1125		\$3,500	Old Republic Surety Company	

Consent Calendar

South Dakota Board of Minerals & Environment

July 20, 2023

<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:</u>					
Asphalt Paving & Materials Company Huron, SD	83-159		\$20,000	United Fire & Casualty Company	Transfer liability.
		159028	SE1/4 Section 4; T113N-R65W, Beadle County		
Transfer to:					
Raymond Johnson Sand & Gravel Huron, SD	83-139		\$3,000	First National Bank, Pierre	
<u>Release of Liability:</u>					
Central Specialties, Inc. Alexandria, MN	02-733		\$20,000	Ohio Farmers Insurance Company	Release liability.
		733004	Section 5; T95N-R53W, Clay County		
Morris Inc. Pierre, SD	83-2		\$20,000	United Fire & Casualty Company	Release liability.
		2032	W1/2 Section 23; T2S-R25E, Jackson County		
		2052	N1/2 SW1/4 Section 25; T42N-R33W, Mellette County		

Consent Calendar

South Dakota Board of Minerals & Environment

July 20, 2023

<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>Release of Liability:</u>					
City of Aberdeen Aberdeen, SD	98-638		EXEMPT	NA	Release liability.
		638001	E1/2 NE1/4 Section 6; T124N-R63W, Brown County		
Day County Highway Department Webster, SD	83-34		EXEMPT	NA	Release liability.
		34015	W1/2 SW1/4 & SE1/4 SW1/4 Section 1; T120N-R57W, Day County		
		34026	NW1/4 SE1/4 Section 11; T120N-R57W, Day County		
City of Huron Huron, SD	83-128		EXEMPT	NA	Release liability.
		128002	SW1/4 NE1/4 Section 17; T111N-R61W. Beadle County		
Lyman County Highway Department Kennebec, SD	83-215		EXEMPT	NA	Release liability.
		215001	SW1/4 Section 23; T103N-R76W, Lyman County		

Consent Calendar
South Dakota Board of Minerals & Environment

July 20, 2023

<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>Release of Liability:</u>					
Perkins County Highway Department Bison, SD	83-91		EXEMPT	NA	Release liability.
		91005	SW1/4 NW1/4 Section 20; T21N-R16E, Perkins County		

South Dakota Board of Minerals & Environment

July 20, 2023

<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Acceptance of Change Rider to Post Closure Financial Assurance and Acceptance of Post Closure Financial Assurance for Wharf Resources (USA), Inc.:</u>				
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$16,800,000	United States Fire Insurance Company	Accept rider to Bond No. 612408648, United States Fire Insurance Company, decreasing the Financial Assurance amount to \$7,532,923.
Wharf Resources (USA), Inc. Lead, SD	356, 434, 435, 464, & 476	\$9,267,077	Ascot Surety & Casualty Company	Accept Bond No. SURU2210000161, Ascot Surety & Casualty Company, in the amount of \$9,267,077.
<u>Request for Five-Year Extension of Temporary Cessation:</u>				
Dakota Stone Inc. Milbank, SD	318	\$69,900	Platinum Bank, Oakdale, MN	Approve the five-year extension for Dakota Stone Inc., extending the period of temporary cessation to December 18, 2028.

South Dakota Board of Minerals & Environment

July 20, 2023

July 20, 2023				
<u>Permit Holder</u>	<u>Permit No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DANR Recommendation</u>
<u>Transfer of Liability and Release of Surety:</u>				
Pete Lien & Sons Inc. Rapid City, SD	57	\$204,300	Western Surety Company	Transfer liability and release Bond No. 30097848, Western Surety Company, in the amount of \$204,300.
Portions of Sections 20 & 21; T2N-R7E, Pennington County				
Transfer to:				
Pete Lien & Sons Inc. Rapid City, SD	License 21-1091	\$20,000	Western Surety Company	
<u>Application for Large Scale Mine Permit:</u>				
Wharf Resources (USA), Inc. Lead, SD	490	Reclamation Bond: \$72,152,900		Conditionally approve large scale mine permit 490 and approve the reclamation bond amount of \$72,152,900 and the post closure bond amount of \$42,685,600.
		Post Closure Bond: \$42,685,600		
		Portions of Sections 2 & 3; T4N-R2E, Lawrence County		

Board of Minerals and Environment
Notice of Public Hearing to Amend Rules

A public hearing will be held in the Floyd Matthew Environmental Education and Training Center, 523 East Capitol Avenue, Pierre, South Dakota, on July 20, 2023, at 10:00 a.m. Central Daylight Time, to consider the adoption and amendment of proposed rules, numbered:

§§ 74:28:21:01; 74:28:21:01.01; 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; 75:28:30:01; 74:28:33:01

The effect of the rules will be to update the state's existing hazardous waste rules by incorporating updated codified federal regulations by reference. The state's proposed rules reflect changes made to the federal hazardous waste regulations from July 1, 2018 through June 30, 2022. Once these updates are made, the state's rules will then be substantially the same as the federal hazardous waste regulations. Changes to the rules include the addition of waste aerosol cans to the universal waste regulations; updates to the flash point test method, cross reference corrections, and removal of obsolete information in the ignitability regulation; and conforming reference updates that pertain to imports and exports of waste to and from Canada.

The reason for updating the state's hazardous waste rules is to continue to ensure that companies generating, transporting, treating, storing, or disposing of hazardous waste in South Dakota manage those wastes in a way that is protective of human health and the environment. These proposed rules offer clarified requirements for the state's hazardous waste generators by ensuring a clear, protective system for managing discarded aerosol cans, eases regulatory burdens regarding the management of those materials; updates test methodologies and information regarding the ignitability characteristic; and updates references to certain Canada-specific operational codes and descriptions on import-export documents.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Department of Agriculture and Natural Resources, Waste Management Program, Joe Foss Building, 523 East Capitol Avenue, Pierre, South Dakota 57501-3182. A copy of the draft rules and access to online commenting are also available at: <https://danr.sd.gov/public>. Electronic comments and those sent by mail must reach the Department by July 17, 2023, to be considered.

At the hearing, the board will consider all written and oral comments it receives on the proposed rules. The board may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Department of Agriculture and Natural Resources at 605-773-3153 at least 48 hours before the public hearing to make any necessary arrangements.

Copies of the proposed rules may be obtained without charge by calling Carrie Jacobson at 605-773-3153 or from the following website:

<https://danr.sd.gov/Environment/WasteManagement/HazardousWaste/default.aspx>

Hunter Roberts
Secretary
Department of Agriculture and Natural Resources

Published once at the approximate cost of \$ _____



**DEPARTMENT of AGRICULTURE
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 E CAPITOL AVE
PIERRE SD 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 *Carrie Jacobson*

SUBJECT: Brief explanation of changes to the state hazardous waste rules – Board Hearing
July 20, 2023

DATE: July 6, 2023

On May 18, 2023, 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 20, 2023 hearing. The proposed state rule revisions reflect the incorporation by reference of federal hazardous waste regulations finalized and codified from July 1, 2018, through June 30, 2023. To date, the state's hazardous waste rules essentially incorporate the federal regulations finalized through June 30, 2018.

As you know, the Environmental Protection Agency (EPA) updates rules on a continual basis, codifying those rules once each year. Historically, as few as zero and as many as four federal hazardous waste regulations have typically been finalized on a yearly basis. Since the last rule update, EPA finalized and codified one rule each year (July 2019 – June 2020; July 2020 – June 2021 and July 2021 - June 2022). To stay in step with federal requirements, the state generally updates its rules about every three years. Once those rules are in place for the state, 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, 2018. Below is a brief summary of the proposed rule changes that will be presented at the July public hearing:

- Adding Aerosol Cans as a Universal Waste (ARSD 74:28:33:01 incorporating 40 CFR 273 by reference): Under the existing Universal Waste provisions, the hazardous waste rules provide a conditional exemption for certain hazardous wastes that may be commonly generated by a variety of operations and are generally readily recyclable. The

regulations allow generators of these wastes to not have to include them in their monthly hazardous waste totals as long as they: 1) intend to send the materials to a recycling facility; 2) ensure the wastes are safely stored while they are accumulating; 3) ensure the materials are stored no longer than one year; and 4) maintain some records. Materials currently included in the Universal Waste Rule are: certain waste batteries; hazardous waste pesticides collected as part of a waste pesticide collection and/or recall program; mercury-containing equipment; and spent standard fluorescent bulbs. With this rule update, waste aerosol cans will be included in this category.

- Updating Test Methods Used to Determine the Hazardous Waste Characteristic for Ignitability, a.k.a. Modernizing Ignitable Liquids Determinations (ARSD 74:28:21:02 incorporating 40 CFR 260.11 by reference): This rule finalizes updates to the flash point test methods from the years 1978, 1979 and 1980, to include current ASTM International standards. [Note: Established in 1902, ASTM was the acronym for the “American Society for Testing Materials”. In 1961 it became the “American Society for Testing and Materials”, and in 2001 changed its name to ASTM International.] This rule also finalizes existing guidance in order to define “aqueous” as “50 percent water by weight” which is another criterion in the ignitability characteristic definition. This update also corrects cross references to the U.S. Department of Transportation regulations and removes obsolete information in the ignitability regulation.
- References to Canada’s Import/Export Recovery and Disposal Code Changes (ARSD 74:28:23:01, 74:28:21:01(20) incorporating by reference portions of 40 CFR 262.81, 262.83 and 262.84): This rule makes conforming changes to regulations specifically related to import/export recovery and disposal operations regarding Canada. The changes in the federal rules were made to correspond to changes Canada made in their import/export recovery and disposal documents. EPA retains authority for these provisions but requires states to incorporate them should an entity in the state have wastes sent to or from Canada.

Enclosed is a copy of the proposed rules. Thank you for your consideration of these rules and please call me at 605-773-3186 if you have any questions.

Enclosure

ADMINISTRATIVE RULES

of

SOUTH DAKOTA

Cite as ARSD _____

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

ARTICLE 74:28
HAZARDOUS WASTE

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ARTICLE 74:28

HAZARDOUS WASTE

Chapter

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CHAPTER 74:28:21**ADMINISTRATION**

Section

74:28:21:01 Definitions.

74:28:21:01.01 Incorporation by Reference.

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~~ incorporated by reference in ~~this article~~ § 74:28:21:01.01 have the following meanings. ~~All references in this article to federal regulations are those revised as of July 1, 2018, unless otherwise specified:~~

(1) "Administrator," the secretary of the Department of Agriculture 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. §§ 264.12(a) and 265.12(a);

(d) 40 C.F.R. § 268.40(b);

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

(f) 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 Agriculture and Natural Resources or a designee;

(3) "EPA," the state Department of Agriculture 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," "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);

(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," "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. § 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);
- (b) 40 C.F.R. § 270.6(a);
- (c) 40 C.F.R. § 270.10(e)(2);

(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, 2018)~~ and 40 C.F.R. § 265.193(g)(2) ~~(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. §§ 270.1(a)(2) and 270.51;
- (d) 40 C.F.R. § 270.2, the definition of "RCRA";
- (e) 40 C.F.R. §§ 264.4 and 265.4;
- (f) 40 C.F.R. § 260.5;

(15) "Regional Administrator," the secretary of the Department of Agriculture 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. § 263.11;
- (d) 40 C.F.R. §§ 264.12(a) and 265.12(a);
- (e) 40 C.F.R. § 270.2, the definitions of "administrator," "director," "major facility," "Regional Administrator," and "state/EPA agreement";

(f) 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 Agriculture 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 other Federal Agencies or Offices within Federal Agencies should be retained at §§ 260.2(c) and (d); 260.11(a) to (e), inclusive; 261.39(a)(5); 262.24(a)(3); 262.25; 262.80 to 262.89, inclusive; ~~263.10(d);~~

263.20(a)(2); 263.20(a)(4)(iv); 263.20(c); 263.20(e)(2); 263.20(f)(2); 263.20(g)(4); 264.12(a); 264.71(a)(2)(v); 264.71(a)(3); 264.71(d); 264.71(f)(4); 264.71(j); 264.1300 to 264.1316, inclusive; 265.12(a); 265.71(a)(2)(v); 265.71(a)(3); 265.71(d); 265.71(f)(4); 265.71(j); 265.1300 to 265.1316, inclusive; 267.71(a)(6); and 267.71(d);

(21) "AES Filing Compliance Date," 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," the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving ~~faileities~~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," 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,

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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; 46 SDR 26, effective September 3, 2019; SL 2021, ch 1, §§ 8, 19, effective April 19, 2021.

General Authority: SDCL 34A-11-9.

Law Implemented: SDCL 34A-11-9.

74:28:21:01.01. Incorporation by Reference. For purposes of this article and unless otherwise specified, 40 C.F.R. parts 124; 144; 260 to 268, inclusive; 270; 273; and 279, as amended to July 1, 2022, are incorporated by reference. Sections reserved in 40 C.F.R. parts 124; 144; 260 to 268, inclusive; 270; 273; and 279, as amended to July 1, 2022, are not incorporated by reference in this article.

Source:

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. §§ 260.2(c) to 260.43, inclusive, ~~(July 1, 2018); and 83 Fed. Reg. 231, 61562-61563 (November 30, 2018) (to be codified at 40 C.F.R. 260.10)~~, 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, 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; 46 SDR 26, effective September 3, 2019.

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); and Appendices I, VII, VIII, and IX (~~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; 46 SDR 26, effective September 3, 2019.

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. §§ 262.1 to 262.84, inclusive, except 40 C.F.R. § 262.10(k); and §§ 262.200 to

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262.265, inclusive ~~(July 1, 2018); and 83 Fed. Reg. 231, 61562-61563 (November 30, 2018) (to be~~
~~codified at 40 C.F.R. 262).~~

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; 46 SDR 26, effective September 3, 2019.

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, 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; 46 SDR 26, effective September 3, 2019.

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 264.1316, 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); Appendices I, IV, V, VI, and IX; and §§ 267.1 to 267.1108, inclusive, except § 267.71(d) ~~(July 1, 2018); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 264).~~

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; 46 SDR 26, effective September 3, 2019.

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, 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, 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; 46 SDR 26, effective September 3, 2019.

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, 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; 46 SDR 26, effective September 3, 2019.

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, 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, 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, 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,

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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; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

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

CHAPTER 74:28:26

PERMIT REQUIREMENTS

Section

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, 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, 2018)~~; 40 C.F.R. §§ 144.31(g)(1) to (3), inclusive ~~(July 1, 2018)~~; and ~~84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 270)~~. 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, 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, 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, 2018)~~. A significant change to a standardized permit is defined at § 124.211(c) ~~(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, 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, 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, 2018)~~, to hazardous waste permit modifications under 40 C.F.R. § 270.42 ~~(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, 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 29, 1999;

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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; 46 SDR 26, effective September 3, 2019.

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~~ 266.510, 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~~ 279.82(a), inclusive, **except 40 C.F.R. § 279.82(b) and (c) (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; 46 SDR 26, effective September 3, 2019.

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 265.1316, 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); Appendices I, III, IV, V, and VI ~~(July 1, 2018); and 84 Fed. Reg. 36,5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 265).~~

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; 46 SDR 26, effective September 3, 2019.

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, 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, 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; 46 SDR 26, effective September 3, 2019.

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, 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,

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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; 46 SDR 26, effective September 3, 2019.

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, 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, 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, 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; 46 SDR 26, effective September 3, 2019.

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; Appendices III, IV, VI, VII, VIII, IX, and XI ~~(July 1, 2018); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 268).~~

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, 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; 46 SDR 26, effective September 3, 2019.

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, 2018); and 84 Fed. Reg. 36, 5938-5950 (February 22, 2019) (to be codified at 40 C.F.R. 273).~~

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, effective

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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; 46 SDR 26, effective September 3, 2019.

General Authority: SDCL 34A-11-9.

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

Current Postclosure Surety Bonds

United State Fire Insurance	\$16,800,000
Atlantic Specialty Insurance	\$10,000,000
Arch Insurance	<u>\$11,596,200</u>
Total	\$38,396,200



New Postclosure Surety Bonds

United State Fire Insurance	\$ 7,532,923
Ascot Surety & Casualty	\$ 9,267,077
Atlantic Specialty Insurance	\$10,000,000
Arch Insurance	<u>\$11,596,200</u>
Total	\$38,396,200



Ascot Surety & Casualty Company (US Treasury Certified Company)

	AM Best	S&P	Moody's	Fitch
Financial Strength	A (excellent)	Not rated	Not rated	Not rated
Long Term	A+ (excellent)	Not rated	Not rated	Not rated
Outlook	Stable	Not rated	Not rated	Not rated



Ascot Surety & Casualty Company

Parker, Colorado

NAIC#: 30279 FEIN: 46-0310317 LEI: -

FINANCIAL RESULTS

USD (000's Omitted)

BCAR as of May 25, 2023

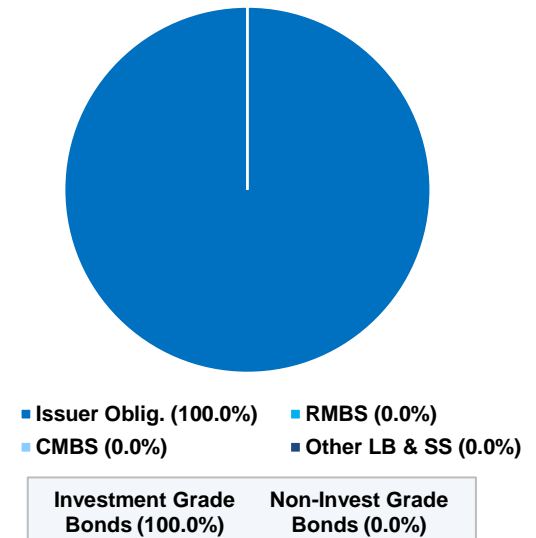
ASSETS	2022	% Change	2021	2020
Bonds	5,127	57.6%	3,253	0
Common & Preferred Stocks	260	642.9%	35	0
Mortgage Loans	0	--	0	0
Real Estate	0	--	0	0
Cash & Short Term Investments	12,727	195.2%	4,311	0
Affiliated Investments	279,896	34.1%	208,709	0
Other	0	--	0	0
Subtotal Cash & Inv. Assets	298,010	37.8%	216,308	0
Premiums Balances	165	2257.1%	7	0
Deposits w/Reinsured Cos	0	--	0	0
Reins Recoverable on Paid Losses	27	(41.3%)	46	0
Curr & Def Fed & Foreign Inc Tax	324	--	0	0
Other Assets	893	2690.6%	32	0
Total Assets	299,095	38.2%	216,393	0
LIABILITIES	2022	% Change	2021	2020
Loss Reserves (excl IBNR)	(1)	0.0%	(1)	0
IBNR Reserves	36	3500.0%	1	0
Loss Adjustment Expense Reserves	12	--	0	0
Unearned Premium Reserves	(749)	--	0	0
Subtotal	(702)	--	0	0
Other Liabilities	3,363	1778.8%	179	0
Total Liabilities	2,661	1386.6%	179	0
POLICYHOLDERS' SURPLUS	2022	% Change	2021	2020
Capital Paid-Up	2,500	0.0%	2,500	0
Surplus Paid-In	311,420	47.3%	211,420	0
Surplus Notes	0	--	0	0
Other Surplus Funds	0	--	0	0
Unassigned Funds	(17,486)	(861.9%)	2,295	0
Policyholders' Surplus (PHS)	296,434	37.1%	216,215	0
PREMIUMS	2022	% Change	2021	2020
Direct Premiums	572	121.7%	258	0
+Assumed Affiliates Premiums	0	--	0	0
+Assumed Non Affiliates Premiums	6	(71.4%)	21	0
Gross Premiums Written	578	107.2%	279	0
-Ceded Affiliates Premiums	0	--	0	0
-Ceded Non Affiliates Premiums	1,216	59.6%	762	0
Net Premiums Written	(638)	(32.1%)	(483)	0
INCOME STATEMENT	2022	% Change	2021	2020
Net Premiums Earned	111	122.9%	(484)	0
-Losses Incurred	35	106.2%	(562)	0
-Loss Expense Incurred	12	111.8%	(102)	0
-Underwriting Expense	1,412	378.6%	295	0
Net Underwriting Gain/Loss	(1,348)	(1072.2%)	(115)	0
+Net Investment Income	123	108.5%	59	0
+Net Realized Cap Gain/(Loss)	0	--	0	0
+Other Income	15	275.0%	4	0
-Dividends to Policyholders	0	--	0	0
-Federal and Foreign Tax	(341)	(1133.3%)	33	0
Net Income	(868)	(921.2%)	(85)	0
PHS ADJUSTMENTS	2022	% Change	2021	2020
Net Income	(868)	(921.2%)	(85)	0
Unrealized Cap Gains (Less CG Tax)	(18,812)	(3390.2%)	(539)	0
Capital Contributions	100,000	(53.8%)	216,537	0
Dividends to Stockholders	0	--	0	0
Other Surplus Changes	(101)	(133.4%)	302	0
Change in Surplus	80,219	(62.9%)	216,215	0
REINSURANCE RECOVERABLE	2022	% Change	2021	2020
Unaff Paid & Unpaid Losses & LAE	213	(13.4%)	246	0
Unaff Unearned Premiums	1,198	2622.7%	44	0
Unaff IBNR	258	0.0%	258	0
Affiliated Reins. Recoverable	0	--	0	0
Total Reinsurance Recoverable	1,670	204.2%	549	0

BCAR	Confidence Level %			
	95.0	99.0	99.5	99.6
Score	69.5	51.3	43.3	41.0

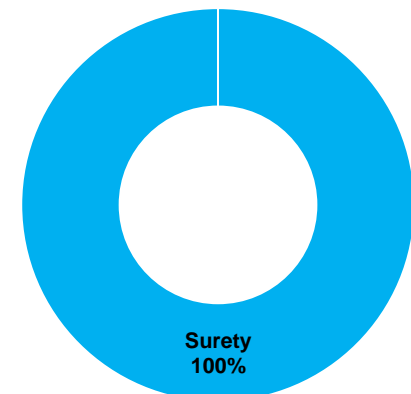
BCAR for Ascot Group Limited

Company is a member of the rating unit

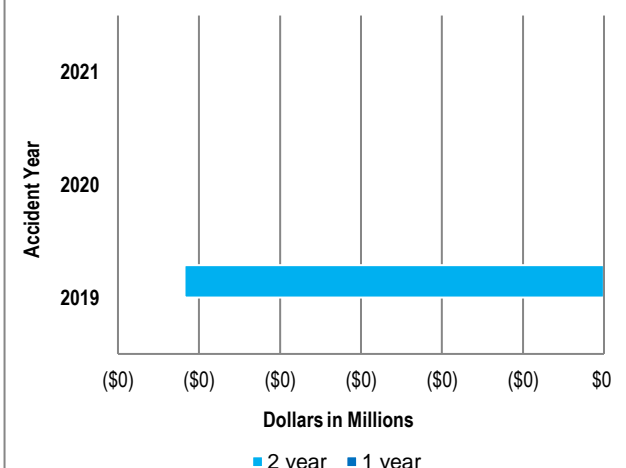
Bonds & Short Term Inv



NPW: USD-0.6 mn



Reserve Development



Source of Data: AM Best (AMB#: 021160)

Ascot Surety & Casualty Company

PROFITABILITY (%)	2022	2021	2020
Pre-tax Operating Return / NPE	(1089.2)	10.7	--
ROAE	(0.3)	(0.1)	--
Dividends / Net Income	0.0	0.0	--
Net Investment Yield	0.0	0.1	--
Pure Loss Ratio	31.5	116.1	--
+Loss Expense Ratio	10.8	21.1	--
+Policyholders' Dividend Ratio	0.0	0.0	--
+Net Commission / NPW	(27.1)	2.5	--
+Other Und Expense / NPW	(194.2)	(63.4)	--
Combined Ratio	(179.0)	76.2	--
Loss Reserve Dev (excl Forex) / NPE (Favorable) / Unfavorable	0.0	129.8	--

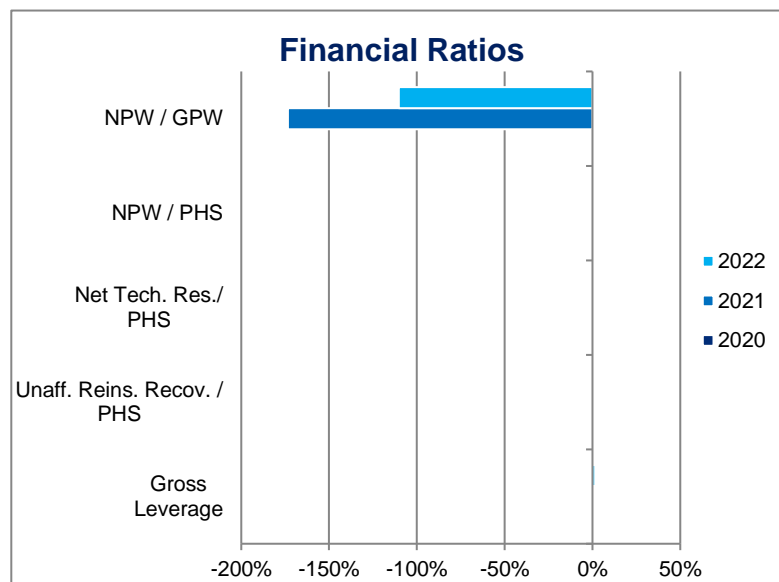
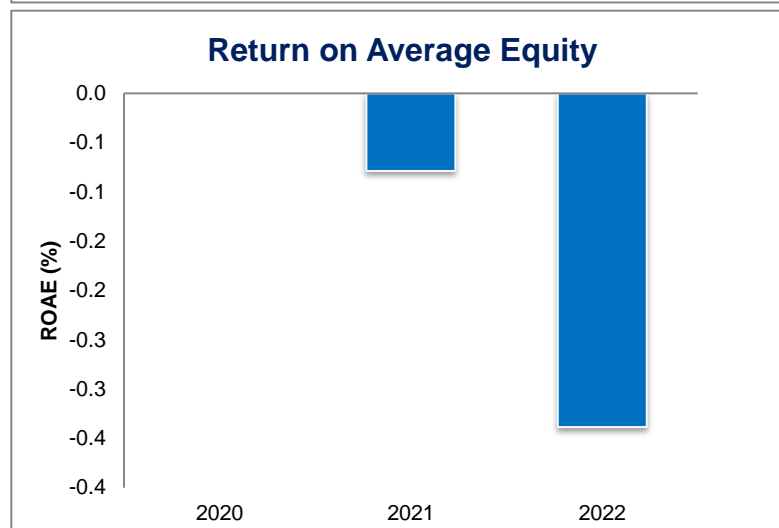
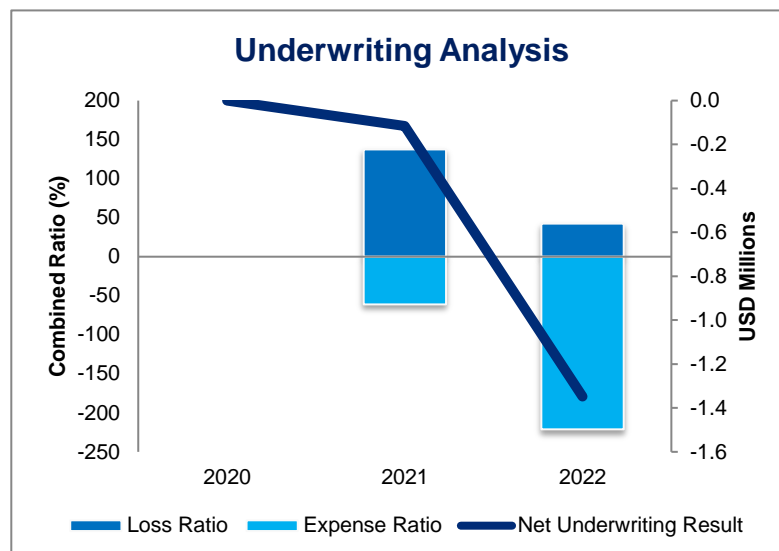
LEVERAGE (X)	2022	2021	2020
RBC	6.0	9.2	--
GPW / PHS	0.0	0.0	--
NPW / PHS	(0.0)	(0.0)	--
Net Tech Res / PHS	(0.0)	(0.0)	--
Other Liabilities / PHS	0.0	0.0	--
Net Leverage	0.0	(0.0)	--
Unaff Reins Recover / PHS	0.0	0.0	--
Unaff Ceded Premiums / PHS	0.0	0.0	--
Gross Leverage	0.0	0.0	--
NPW / GPW (%)	(110.4)	(173.5)	--

OVERALL LIQUIDITY (%)	2022	2021	2020
Liquid Assets / Net Tech Res	(2484.8)	(16519.6)	--
Inv Assets+Fnds Hld/ N Tech Res	(40879.3)	(470234.8)	--
Inv Assets+Fnds Hld/ Net Liabs	11199.2	120842.5	--
Total Assets / Total Liabilities	6946.1	29840.6	--

ASSET COMPOSITION (%)	2022	2021	2020
Non-Inv Assets / Total Assets	0.4	0.0	--
Cash & Short Term / Inv Assets	4.3	2.0	--
Stocks / Invested Assets	0.1	0.0	--
Bonds / Invested Assets	1.7	1.5	--
All Other Invest / Invested Assets	93.9	96.5	--

LOSS RESERVES (%)	2022	2021	2020
Loss Res / NPE	42.3	0.0	--
IBNR Res (w/o LAE) / NPE	32.4	(0.2)	--
IBNR Res (w/o LAE) / Loss Res	76.6	--	--

PERCENTAGE CHANGE	2022	2021	2020
GPW	107.2	--	--
NPW	(31.8)	--	--
NPE	122.9	--	--
Loss & LAE Reserves	--	--	--
Net Liabilities	1386.6	--	--
PHS	37.1	--	--
PHS from retained earnings	(0.4)	--	--



For more information about The Market Information Group visit marsh.com, guycarp.com, or contact your local Marsh or Guy Carpenter representative.

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Ascot Surety & Casualty Company

Net Premium by Line:

(000's Omitted)	% of 2022 NPW	2022	2021	2020	2022 % Chng	2021 % Chng
Fire	0.0%	-	-	-	-	-
Allied Lines *	0.0%	-	-	-	-	-
Farmowners MP	0.0%	-	-	-	-	-
Homeowners MP	0.0%	-	-	-	-	-
Commercial MP *	0.0%	-	-	-	-	-
Mortg Guaranty	0.0%	-	-	-	-	-
Ocean Marine	0.0%	-	-	-	-	-
Inland Marine	0.0%	-	-	-	-	-
Finan Guaranty	0.0%	-	-	-	-	-
Med Prof Liab Occur	0.0%	-	-	-	-	-
Med Prof Liab Claims	0.0%	-	-	-	-	-
Earthquake	0.0%	-	-	-	-	-
Group A&H *	0.0%	-	-	-	-	-
Credit A&H	0.0%	-	-	-	-	-
Other A&H *	0.0%	-	-	-	-	-
Workers' Comp	0.0%	-	-	-	-	-
Oth Liab Occur	0.0%	-	-	-	-	-
Oth Liab Claim	0.0%	-	-	-	-	-
Excess Workers Comp	0.0%	-	-	-	-	-
Prod Liab Occ	0.0%	-	-	-	-	-
Prod Liab Clms	0.0%	-	-	-	-	-
PP Auto Liab *	0.0%	-	-	-	-	-
Comm Auto Liab *	0.0%	-	-	-	-	-
Auto Phys Damg *	0.0%	-	-	-	-	-
Aircraft	0.0%	-	-	-	-	-
Fidelity	0.0%	-	-	-	-	-
Surety	100.0%	(638)	(484)	-	(31.8%)	-
Burglary & Theft	0.0%	-	-	-	-	-
Boiler & Mach	0.0%	-	-	-	-	-
Credit	0.0%	-	-	-	-	-
International	0.0%	-	-	-	-	-
Warranty	0.0%	-	-	-	-	-
Rein-Property	0.0%	-	-	-	-	-
Rein-Liability	0.0%	-	-	-	-	-
Rein-Fin Lines	0.0%	-	-	-	-	-
Agg Write-Ins	0.0%	-	-	-	-	-
Total	100.0%	(638)	(484)	-	(31.8%)	-

Loss Experience:

	% of 2022 NPE	Pure Loss Ratio			negative indicates improvement	
		2022	2021	2020	2022 Pt Chng	2021 Pt Chng
Fire	0.0%	-	-	-	-	-
Allied Lines *	0.0%	-	-	-	-	-
Farmowners MP	0.0%	-	-	-	-	-
Homeowners MP	0.0%	-	-	-	-	-
Commercial MP *	0.0%	-	-	-	-	-
Mortg Guaranty	0.0%	-	-	-	-	-
Ocean Marine	0.0%	-	-	-	-	-
Inland Marine	0.0%	-	-	-	-	-
Finan Guaranty	0.0%	-	-	-	-	-
Med Prof Liab Occur	0.0%	-	-	-	-	-
Med Prof Liab Claims	0.0%	-	-	-	-	-
Earthquake	0.0%	-	-	-	-	-
Group A&H *	0.0%	-	-	-	-	-
Credit A&H	0.0%	-	-	-	-	-
Other A&H *	0.0%	-	-	-	-	-
Workers' Comp	0.0%	-	-	-	-	-
Oth Liab Occur	0.0%	-	-	-	-	-
Oth Liab Claim	0.0%	-	-	-	-	-
Excess Workers Comp	0.0%	-	-	-	-	-
Prod Liab Occ	0.0%	-	-	-	-	-
Prod Liab Clms	0.0%	-	-	-	-	-
PP Auto Liab *	0.0%	-	-	-	-	-
Comm Auto Liab *	0.0%	-	-	-	-	-
Auto Phys Damg *	0.0%	-	-	-	-	-
Aircraft	0.0%	-	-	-	-	-
Fidelity	0.0%	-	-	-	-	-
Surety	100.0%	31.5%	116.1%	-	(84.6)	-
Burglary & Theft	0.0%	-	-	-	-	-
Boiler & Mach	0.0%	-	-	-	-	-
Credit	0.0%	-	-	-	-	-
International	0.0%	-	-	-	-	-
Warranty	0.0%	-	-	-	-	-
Rein-Property	0.0%	-	-	-	-	-
Rein-Liability	0.0%	-	-	-	-	-
Rein-Fin Lines	0.0%	-	-	-	-	-
Agg Write-Ins	0.0%	-	-	-	-	-
All Lines	100.0%	31.5%	116.1%	-	(84.6)	-

Ascot Surety & Casualty Company

By Line Loss Reserve Development

<u>Lines of Business</u>	<u>Prior Yr Loss Reserves</u>	<u>1 Yr Devel</u>	<u>Prior Yr Losses Paid in the Current Yr</u>	<u>Remaining Unpaid Losses for Prior Yrs</u>	<u>% Reduction in Prior Year Loss Reserves</u>	<u>Unpaid Prior year Reserve / Current Year Reserve</u>	<u>1 Yr Development to Current NPE</u>	<u>Development to Prior Yr Res</u>
HO / FO	0	0	0	0	0.0 %	0.0 %		
Priv Pass Auto Liab	0	0	0	0	0.0 %	0.0 %		
Comm Auto Liab	0	0	0	0	0.0 %	0.0 %		
Workers' Comp	0	0	0	0	0.0 %	0.0 %		
CMP	0	0	0	0	0.0 %	0.0 %		
Med Mal Occur	0	0	0	0	0.0 %	0.0 %		
Med Mal CM	0	0	0	0	0.0 %	0.0 %		
Spec'l Liab	0	0	0	0	0.0 %	0.0 %		
Other Liab Occur	0	0	0	0	0.0 %	0.0 %		
Other Liab CM	0	0	0	0	0.0 %	0.0 %		
Int'l	0	0	0	0	0.0 %	0.0 %		
Reins A	0	0	0	0	0.0 %	0.0 %		
Reins B	0	0	0	0	0.0 %	0.0 %		
Reins C	0	0	0	0	0.0 %	0.0 %		
Product Liab Occur	0	0	0	0	0.0 %	0.0 %		
Product Liab CM	0	0	0	0	0.0 %	0.0 %		
Short Tailed Lines	0	0	0	0	0.0 %	0.0 %	0.0 %	
Total	0	0	0	0	0.0 %	0.0 %	0.0 %	

Original Accident Year Incurred Losses and Subsequent Development - All Lines

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>Accident Yr Loss Ratio</u>		
											<u>Original</u>	<u>Developed</u>	<u>Difference</u>
Prior Yrs	12	0	(12)	0	0	0	0	0	0	0			
2013	598	(289)	3	130	(4)	0	0	0	0	0	27.8 %	20.4 %	(7.4)%
2014		280	(203)	(77)	0	0	0	0	0	0	12.8 %	0.0 %	(12.8)%
2015			676	(258)	68	(310)	(11)	0	(51)	0	19.7 %	3.3 %	(16.4)%
2016				442	(232)	(46)	(42)	(6)	0	0	16.6 %	4.4 %	(12.3)%
2017					1,108	143	317	3	(281)	0	84.5 %	98.4 %	13.9 %
2018						322	(264)	(3)	(37)	0	18.3 %	1.0 %	(17.3)%
2019							287	(27)	(259)	0	31.8 %	0.1 %	(31.7)%
2020								0	0	0	0.0 %	0.0 %	0.0 %
2021									0	0	0.0 %	0.0 %	0.0 %
2022										43	38.7 %		

Calendar Year Effect:										
Total Devel	(289)	(212)	(205)	(168)	(213)	0	(33)	(628)	0	
Loss Ratio Points	(13.2)%	(6.2)%	(7.7)%	(12.8)%	(12.1)%	0.0 %	(63.5)%	129.8 %	0.0 %	



DAKOTA GRANITE

48391 150th St. • PO Box 1351 • Milbank, SD 57252
Phone 605-432-5580 • 800-843-3333 • Fax 605-432-6155 • 800-338-5346
dakota@dakgran.com • www.dakotagranite.com

RECEIVED
MAY 26 2023
MINERALS & MINING PROGRAM

May 23, 2023

Chairman of the Board
Department of Agriculture and Natural Resources
523 East Capitol Ave
Pierre SD 57501-3182

Dear Mr. Chairman,

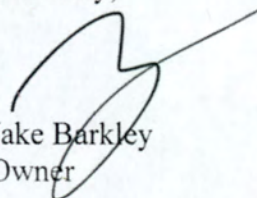
We are writing to request a five year extension to our temporary cessation of quarry operations at our SD quarry as required under FDCL 45-6B-3 (8) ©.

We currently are not marketing the stone and therefore, there is no demand for this granite. Until a demand exists for this granite, we do not have a need to quarry stone. However, all maintenance activities outlined in the temporary cessation application will continue during the five year extension period.

Should you have any further questions regarding this request, please call Jason Redmond at 605-432-5580.

Thank you for your prompt attention to this request.

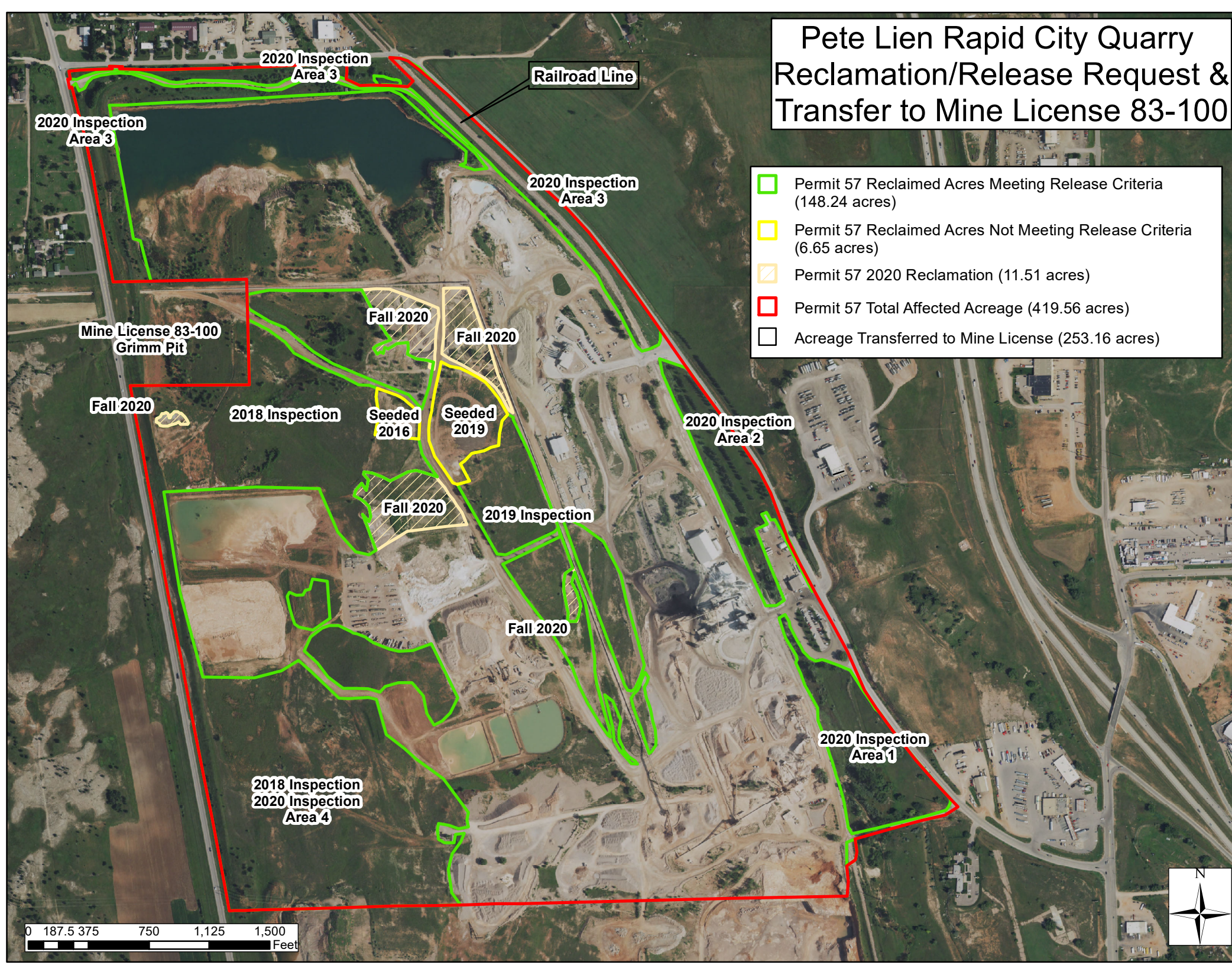
Sincerely,







Jake Barkley
Owner

RUSHMORE • SELECT • SUNSET • WHETSTONE • AMERICAN BOUQUET • AMERICAN ROSE • BELLINGHAM • MORNING ROSE • WISCONSIN RED
BAHAMA BLUE • BLUE PEARL • MEDIUM BLACK • PREMIUM BLACK • MEDIUM BARRE • PARADISO • SILVER CLOUD
CHINA BLACK • CHINA GRAY • CHINA MIST • CHINA PINK • CHINA EVERGREEN

Pete Lien Rapid City Quarry Reclamation/Release Request & Transfer to Mine License 83-100



Pete Lien Permit 57 Proposed Acreage Transfer

-  Permit 57 Reclaimed Acres Released in 2020 (148.24 acres)
-  Permit 57 Reclaimed Acres to be Transferred to Mine License 21-1091 (14.80 acres)
-  Unreclaimed Portions Transferred to Mine License 21-1091 (3.36 acres)
-  Mine License 21-1091 Acreage (431.50 acres)

Mine License 83-100
Grimm Pit

0 185 370 740 1,110 1,480 Feet



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

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

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

I. PURPOSE.

The purpose of this MOU is:

- A. To eliminate duplication of reclamation and financial assurance requirements that apply to reclamation of lands in the National Forest System incident to surface disturbing mineral operations under:
 - 1. The United States Mining laws;
 - 2. U.S. Forest Service involving locatable mineral resources;
 - 3. U.S. Forest Service-authorized operations by private parties involving mineral materials for private use or sale; and
 - 4. Operations involving privately owned minerals underlying lands administered as part of the National Forest System.
- B. To define the procedures to be used by the State to relieve an operator of obligations under South Dakota Codified Law (hereafter “SDCL”) Chapter 45-6 when a mineral operation located on National Forest System Lands is completed by an operator holding a state mining license, and the U.S. Forest Service requires that the operation (or a portion thereof) be left un-reclaimed so that the U.S. Forest Service can access and otherwise use the site for purposes of managing and maintaining U.S. Forest Service Lands.

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

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

II. AUTHORITIES.

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

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

III. AGREEMENT.

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

A. Responsibility.

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

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

B. Financial Assurance.

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

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

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

C. Cooperation.

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

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

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

D. Inspections.

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

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

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

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

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

Principal State Contacts:

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

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Jonathan Manning Gary Haag 1019 N. 5 th Street Custer, SD 57730 Telephone: (605) 673-9314 FAX: (605) 673-9208 Email: jonathan.manning2@usda.gov ghaag@fs.fed.us	Dave Graham 8221 Mt Rushmore Rd Rapid City, SD 57702 Telephone: (605) 716-2119 FAX: (605) 343-7134 Email: dave.d.graham@usda.gov graham@fs.fed.us

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

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

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

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

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

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

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

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

- IX. USE OF U.S. FOREST SERVICE INSIGNIA.** In order for State to use the U.S. Forest Service insignia on any published media, such as a webpage, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- X. MEMBERS OF U.S. CONGRESS.** Pursuant to 41 U.S.C. 22, no United States member of, or United States delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- XI. FREEDOM OF INFORMATION ACT (FOIA).** Public access to agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- XII. TEXT MESSAGING WHILE DRIVING.** In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All recipients and sub recipients are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- XIII. TERMINATION.** Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- XIV. DEBARMENT AND SUSPENSION.** State shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should the State or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- XV. AMENDMENTS.** Amendments to this MOU may be proposed at any time by either agency, and amendments will become effective after written approval by both. Meeting between the agencies will be scheduled periodically to discuss the implementation of and any amendments necessary to the MOU.

XVI. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

XVII. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective for a period of five (5) years from the date of the last signature at which time it will expire.

XVIII. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.

STEVEN M. PIRNER**HUNTER ROBERTS,**
Secretary
South Dakota Department of **Environment**
Agriculture and Natural Res**se**ources

Date

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

Date

MARK E. VAN EVERY**CARL PETRICK****TONI**
STRAUSS, **Acting** Forest Supervisor
U.S. Forest Service, Black Hills National Forest

Date

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

DAVID GRAHAM

Date

Whiting Hagg & Dorsey LLP

ATTORNEYS AT LAW

REXFORD A. HAGG*
JOHN STANTON DORSEY†•

*ALSO LICENSED TO PRACTICE IN OKLAHOMA
† ALSO CERTIFIED CIVIL TRIAL ADVOCATE
•ALSO MEMBER AMERICAN BOARD OF TRIAL ADVOCATES

601 West Boulevard
Rapid City, South Dakota 57701
Mailing Address:
P.O. Box 8008
Rapid City, SD 57709-8008

RECEIVED

JUL 07 2023

**Dept. of Agriculture
& Natural Resources**

CHARLES H. WHITING
(1905-2000)

Telephone 605.348.1125

Fax 605.348.9744

Email firm@amatteroflaw.com

Writer's email address: rex.hagg@amatteroflaw.com

July 3, 2023

Brenda Binegar
Dept. of Agriculture & Nat.Resources
523 E. Capitol Ave.
Pierre, SD 57501

Re: In re Wharf Resources Boston Expansion Large Scale Mine Permit
Application

Dear Ms. Binegar:

Enclosed please find for filing in the above referenced matter the original of Notice of Recommended Decision and Hearing Examiner's Recommended Findings of Fact, Conclusions of Law, and Order. Copies of these documents have also been served upon the parties as indicated in the enclosed Certificates of Service.

Thank you.

Sincerely,


Rexford A. Hagg, Hearing & Board Chair

RAH/kl

Enc.:

cc w/enc.: Steven Blair (via email only)
Dwight Gubbrud (via email only)
Max Main (via email only)
Carla Marshall (via email only)

RECEIVED

JUL 07 2023

Dept. of Agriculture
& Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

WHARF RESOURCES (U.S.A.)
INC. BOSTON EXPANSION
LARGE SCALE MINE PERMIT
APPLICATION

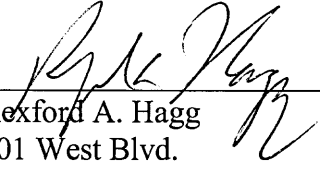
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NOTICE OF
RECOMMENDED
DECISION

Enclosed is my recommended proposed Findings of Fact and Conclusions of Law that will be presented to the Board of Minerals for approval at its July 20, 2023 meeting in Pierre.

Pursuant to SDAR 74:09:01:17 the parties may object in writing to the recommended decision and present oral argument to the Board, on July 20, 2023, prior to the Board rendering its final decision.

Dated this 3rd day of July, 2023.



Rexford A. Hagg
601 West Blvd.
P.O. Box 8008
Rapid City, SD 57701
Hearing & Board Chair
Brd. Minerals & Env.

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

RECEIVED

JUL 07 2023

Dept. of Agriculture
& Natural Resources

WHARF RESOURCES (U.S.A.) INC. BOSTON EXPANSION LARGE SCALE MINE PERMIT APPLICATION))))	HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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A hearing was held before the South Dakota Board of Minerals and Environment ("Board") on May 18-19, 2023, in Pierre, South Dakota, on the application of Wharf Resources (U.S.A.) Inc. ("Wharf") for a large-scale mine permit (the "application").

The following members of the Board were present at the hearing: Chairman Rexford Hagg, Glenn Blumhardt, Gary Haag, Doyle Karpen, Robert Morris, and John Scheetz. Prior to the commencement of the hearing, the Chairman had appointed Rexford Hagg to act as Hearing Chairman.

Assistant Attorney General Steven R. Blair appeared on behalf of the South Dakota Department of Agriculture and Natural Resources ("Department"); Carla Marshall appeared as an intervener; and attorney Dwight A. Gubbrud appeared on behalf of Wharf. Carla Marshall absented herself from that portion of the proceedings held on May 19.

Based upon the application, the Department's recommendation, and the testimony, evidence and arguments presented at the hearing, the Board makes and enters the following:

FINDINGS OF FACT

1. The Department received Wharf's application for a large-scale life of the mine permit for the proposed expansion of Wharf's mining operations (the "Boston Expansion Project") on June 13, 2022.

2. On March 10, 2023, the South Dakota Department of Game, Fish and Parks, the South Dakota State Archeological Research Center, the South Dakota Department of Health, and the Lawrence County Conservation District were notified that their 30-day review period had started. Wharf had previously sent copies of the application to all applicable review agencies.

3. A copy of the application was also filed with the Lawrence County Register of Deeds.

4. In response to Department requests, Wharf submitted additional information to supplement and clarify the application. Additional information was submitted on October 17, November 28, December 2, and December 6, 2022, as well on March 8, March 9, and March 10, 2023.

5. All supplemental and clarifying information was filed in the office of the Lawrence County Register of Deeds and was mailed or delivered to all applicable review agencies.

6. The Department determined the application to be procedurally complete under SDCL 45-6B and ARSD 74:29 on March 10, 2023.

7. The application fee of Fifty Thousand Dollars (\$50,000) has been paid by Wharf to the Department.

8. Wharf published the Notice of Filing of the application in the Black Hills Pioneer on March 17 and March 24, 2023.

9. The Department published the Notice of Filing of the application in the Rapid City Journal on March 16 and March 23, 2023.

10. Inspections were conducted in the Boston Expansion Area on September 20 and 28, 2022. Inspections were attended by representatives of South Dakota Department of Game, Fish, and Parks, South Dakota Archaeological Research Center and the Department.

11. On April 17, 2023, the Department recommended conditional approval of Wharf's application. The recommendation of approval included proposed permit conditions. The proposed conditions were presented at the May 18-19, 2023 hearing before the Board. Amended conditions are attached hereto as Exhibit A. Upon approval of the Board, the amended conditions will be the final conditions for the Large Scale Mine Permit # 490.

12. The Department requested authorization from the Board to approve technical revisions to Wharf's mining operation, as specified in the "Technical Revisions" section of the conditions attached hereto as Exhibit A.

13. On January 25, 2022, the Lawrence County Board of Commissioners, upon the recommendation of the Lawrence County Planning Commission, granted a large-scale extractive industry conditional use permit to Wharf for the Expansion Project.

14. The following entities and individuals submitted written statements or resolutions in support of Wharf's application:

- Lawrence County Commissioners
- South Dakota Community Foundation
- Northern Hills Alliance for Children
- Boys & Girls Clubs of the Black Hills
- Wellspring, d/b/a Wellfully
- United Way of the Black Hills
- Black Hills State University
- Black Hills Energy
- Butler Machinery Company
- Buckley Powder Co. • All Net Connections
- Dale's Tire & Retreading, Inc.
- Lawrence County Citizen – Thomas Golden
- Jacobs Welding & Machining
- Lawrence County Citizen – Dr. Dan Leikvold, former Lead/Deadwood Superintendent
- Klein Visioneering Group
- Rasmussen Mechanical Services
- STERN Co.
- William London, General Mgr. -Terry Peak Ski Area
- South Dakota Mines
- Western Dakota Tech Foundation
- Stone Land Service, LLC
- Elkhorn Ridge
- Ron Everett, Mayor of the City of Lead
- Lotus Up Espresso & Deli
- Sanford Underground Research Facility
- Dakota Gold Corp. – Gerald Aberle, CEO
- Lead-Deadwood School District #40-1

15. The following entities and individuals submitted written statements in opposition of Wharf's application:

- Donna Watson
- Mary Zimmerman
- Nancy Hilding
- Carla Marshall
- Tatyaba Novikova

16. Carla Marshall filed a timely petition contesting the Department's Recommendation on April 26, 2023.

17. The Department gave proper notice of the time, date, and location of the hearing on Wharf's application through publication of its Notice of Hearing in the Black Hills Pioneer and the Rapid City Journal on May 4 and May 11, 2023. A formal Notice of Contested Case Hearing, complying with the requirements of SDCL ch. 1-26, was also filed with the Board on May 3, 2023.

18. Wharf's filed reclamation plan provides for reclaiming all affected lands to the postmining land use of rangeland (woodland grazing).

19. Wharf's filed reclamation plan includes the following:

- a.** Description of the type of reclamation Wharf proposes to achieve, including why rangeland was chosen;
- b.** A soil survey of the affected land, prepared by BKS Environmental Associates, Inc.; The Department determined this contractor was acceptable to complete this survey as per SDCL 45-6B-7(2);
- c.** A vegetative survey of the affected land prepared by BKS Environmental Associates, Inc. The Department determined this contractor was acceptable to complete this survey as per SDCL 45-6B-7(3);
- d.** A preliminary wildlife survey of the affected land, including a description of the dominant species of wildlife inhabiting the area, prepared by ICF International.; This contractor was determined to be acceptable by Stan Michals of the Department of Game, Fish and Parks as per SDCL 45-6B-7(4).
- e.** A statement of any characteristics of the affected land of historic, archaeological, geologic, scientific or recreational significance known to Wharf;
- f.** A description of how the reclamation plan will be implemented to meet all statutory and regulatory requirements;
- g.** A description of how the reclamation plan will rehabilitate the affected land, including natural vegetation, wildlife, water, air and soil;
- h.** A map of all the proposed affected land by all phases of the total scope of the mining operation, including the expected physical appearance of the area of the affected land, and a portrayal of the proposed final land use for each portion of the affected land;
- i.** Baseline water quality and water level of all areas of aquifers potentially affected by the proposed mining operation;
- j.** The location of proposed reservoirs, spent ore disposal sites, dams, dikes and diversion canals;

- k.** Provisions for the stripping, storage, and replacement of overburden and topsoil; and
- l.** Estimated costs of implementing and completing the proposed reclamation.

20. Wharf's reclamation plan was developed by Wharf and the Department, and adjacent landowners were consulted during development of the plan. Wharf owns the surface of all land within the Expansion Project.

21. Wharf's revegetation plan will establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration and will be at least equal in extent of cover to the natural vegetation of the surrounding area.

22. Wharf has submitted acceptable proposed methods and procedures to determine post-reclamation revegetation success.

23. Wharf's reclamation plan, including the revegetation plan, has been approved by the Lawrence County Board of Commissioners.

24. Wharf's reclamation plan adequately addresses reclamation of all process and storage ponds.

25. Wharf's reclamation plan provides that removed topsoil will be segregated from other spoil and preserved by vegetative cover and other means from wind and water erosion and kept free of contamination. The topsoil within the permit area is of sufficient quantity and quality for sustaining vegetation.

26. Wharf's reclamation plan provides for grading and backfilling to be completed to achieve visually and functionally compatible contours with the surrounding area and to enhance public safety and welfare.

27. Wharf's reclamation plan adequately provides for stabilization and protection of all surface areas of affected land to effectively control erosion. Further, the reclamation plan provides for implementation of a noxious weed control plan to control noxious weed infestations.

28. The grading, backfilling, and other topographic reconstruction methods included in Wharf's reclamation plan will achieve contours and configurations that are visually and functionally compatible with the surrounding area.

29. Wharf's reclamation plan provides that treated spent ore removed from the leach pads will be relocated and reclaimed on lands previously disturbed by mining.

30. Wharf's reclamation plan will minimize as much as practicable the disruption from its mining operation and will rehabilitate the affected land to a beneficial use.

31. Reclamation of the affected lands in the Boston Expansion Project is physically and economically feasible.

32. Wharf filed an accurate map of the affected lands, containing all information required by SDCL 45-6B-10.

33. Wharf's method and plan of operations and mining will minimize disturbance to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation.

34. Wharf's filed application includes a socioeconomic impact study, prepared by Dr. Michael K. Madden. This socioeconomic impact study was submitted by Wharf to Lawrence County pursuant to Chapter 20, Article 1, Section 1.6 of the Lawrence County zoning ordinance, and the socioeconomic impact study satisfies the Board's requirements. The socioeconomic impact study addresses cumulative impacts of the Boston Expansion Project considered together with existing operations in the surrounding region. The probable beneficial socioeconomic impacts of the Boston Expansion Project substantially outweigh any probable adverse impacts of the Boston Expansion Project.

35. Wharf's mining operation will not adversely affect the stability of any significant, valuable and permanent man-made structures, including any such structures located within 200 feet of the affected lands.

36. Wharf submitted to the Department a sediment control map showing control locations and type, demonstrating that substantial disposition of sediment in stream or lake beds, landslides, and water pollution can feasibly be prevented.

37. There are no lands designated as special, exceptional, critical, or unique within the Boston Expansion Project area.

38. The Boston Expansion Project area does not include any critical deer winter range. However, one threatened or endangered indigenous wildlife species was identified during the baseline wildlife survey. The northern long-eared bat was recently upgraded from a threatened to an endangered species by the US Fish and Wildlife Service. Five bats, including the northern long-eared bat, were also listed as species of concern under the South Dakota Natural Heritage Program and as a critical resource in the mine permit application. Wharf minimized potential impacts to these bat species by permanently closing mine shafts that could be used as bat hibernaculum. No other critical wildlife resources were identified by the Department of Game, Fish and Parks.

39. Wharf stated during the hearing and within their mine permit application that the mining operation will not adversely affect cold water fish life propagation water.

40. Wharf stated during the hearing and within their mine permit application that the mining operation will not adversely affect riparian zones, mountain meadows, or wetlands. Further, there are no threatened or endangered vegetation species in the Boston Expansion Project area. However, one population of mountain huckleberry plants was found along the western boundary of the expansion area during baseline vegetation surveys. Mountain huckleberry is identified as a rare species under the South Dakota Natural Heritage Program and has been identified as a critical resource in the mine permit application. If the mountain huckleberry plants are disturbed, Wharf will attempt to mitigate impacts by removing the plants and adjacent understory vegetation and transplant it into an area with favorable conditions.

41. Wharf stated during the hearing and within their mine permit application that the mining operation will not adversely affect direct or indirect sources of drinking water.

42. Wharf's filed application includes a visual resource survey. The visual resource survey utilizes computer-generated perspectives from various viewpoints. While visual resources will be slightly impacted during mining operations, such impacts will be of a short duration. Upon completion of reclamation, vegetation will conform to the existing natural vegetation and there will be little or no visual disharmonies in the area.

43. Soil analysis conducted as part of the mine permit application indicate there are no soils within the Boston Expansion Project area with high erosion and low revegetation potential.

44. Wharf presented information within the mine permit application indicating the air quality of areas with minimal ambient airborne particulates and areas near potential receptors, including residences and recreational areas, will not be adversely affected by mining operations in the Boston Expansion Project area.

45. Wharf presented a noise study in the hearing and mine permit application indicating areas near potential receptors, including residences and recreational areas, will not be adversely impacted by noise from mining operations in the Boston Expansion Project area.

46. Wharf presented information indicating the proposed mining operation will not result in the loss or reduction of long-range productivity of aquifer, public and domestic water wells, watershed lands, aquifer recharge areas, or significant agricultural areas.

47. Wharf acknowledged in its application that selenium levels in False Bottom Creek exceed state surface water quality standards. Ex 1

48. Testimony of DANR staff Roberta Hudson and Kelli Buscher were received by the Board, without objection. Both stated that there were current violations of the Clean

Water Act consisting of elevated selenium levels in False Bottom Creek. The Hearing Examiner found their testimony to be credible.

49. Wharf is currently in violation of the federal Clean Water Act and SDCL 45-6B-87 due to elevated levels of selenium in False Bottom Creek.

50. Wharf was aware of the violation since mid to late 2021, and voluntarily agreed to mitigate and treat the selenium concern according a schedule coordinated with the DANR.

51. At the time of the hearing, the Water Quality Program for the Department had prepared draft Surface Water Discharge Permit No. SD0025852 (the “draft SWDP”) to authorize Wharf to discharge mine drainage, treated process wastewater, surfacing ground water, and storm water to Annie Creek, Ross Valley, Cleopatra Creek, False Bottom Creek, and Deadwood Creek from Wharf’s open pit gold mine and from reclaimed historic mine tailings and mine workings located in the Bald Mountain Lead mining district of the Black Hills National Forest. A copy of the draft SWDP was admitted as Exhibit 15. A portion of False Bottom Creek has been recognized as impaired for selenium. To achieve compliance with surface water quality standards within False Bottom Creek, Wharf shall fulfill the following compliance schedule:

- a.** Wharf shall submit the results of its pilot study of treatment alternatives to the Department by August 1, 2023.
- b.** Wharf shall submit plans and specifications for its chosen treatment alternative prepared by a South Dakota-licensed professional engineer to the Department by April 1, 2024.
- c.** Wharf shall complete construction of the selenium treatment system by October 1, 2024.
- d.** Wharf shall comply with the selenium and selenate effluent limits for Compliance Point 010 by January 1, 2025.

The Department is authorized to change or modify the dates of compliance as a technical revision to the Boston Expansion Project mine permit pursuant to ARSD 74:29:03:16. This technical revision authority is outlined as part of the proposed amendment to Condition #10 of the Water Quality Section of the Recommended Conditions included as the attached Exhibit A. Technical revision approval will be contingent upon approval of any required modifications to the compliance schedule completed as part of the draft SWDP or modifications made to Surface Water Discharge Permit No. SD0025852 after department approval and issuance of that permit.

52. To address concerns associated with elevated selenium in False Bottom Creek, the Department has recommended amending the conditions presented to the Board during the May 20, 2023 contested case hearing. The amended conditions recommended for approval by the Board have been included as Exhibit A of this document.

53. Based on the magnitude, type and costs of reclamation activities planned for the affected lands, and the nature, extent and duration of the mining operation, and based on the Department's recommendation, the level of financial assurance necessary to guarantee the costs of reclamation is Seventy-Two Million One Hundred Fifty-Two Thousand Nine Hundred Dollars (\$72,152,900). Since the current reclamation financial assurance is Fifty-Eight Million Two Hundred Forty-Six Thousand One Hundred Dollars (\$58,246,100), Wharf shall post an additional Thirteen Million Nine Hundred Six Thousand Eight Hundred Dollars (\$13,906,800) in reclamation financial assurance within thirty days after board approval of the Boston expansion large scale mine permit application. The reclamation financial assurance will be reevaluated and revised as necessary at the end of 2024.

54. Based on the postclosure care and maintenance requirements, and the length of the postclosure period, and based on the Department's recommendation, the level of financial assurance necessary to guarantee the costs of postclosure care and maintenance over the postclosure care period for the entire Wharf Mine is Forty-Two Million Six Hundred Eighty-Five Thousand Six Hundred Dollars (\$42,685,600). Wharf's current level of postclosure financial assurance is Thirty-Eight Million Three Hundred Ninety-Six Thousand Two Hundred Dollars (\$38,396,200), requiring Wharf to submit Four Million Two Hundred Eighty-Nine Thousand Four Hundred Dollars (\$4,289,400) in additional postclosure financial assurance within thirty days after approval by the Board of the Boston Expansion large scale mine permit application. The postclosure financial assurance will be re-evaluated and revised as necessary at the end of 2024.

55. The form of the financial assurance may be a surety bond for the benefit of the State of South Dakota.

56. The witnesses presented by both Wharf and the Department are credible.

Based on the foregoing Findings of Fact, the Board hereby makes and enters the following:

CONCLUSIONS OF LAW

- 1.** The Board has jurisdiction over the parties to and the subject matter of this proceeding.
- 2.** Wharf's application is complete.
- 3.** All notices of the application and the hearing thereon, and all other notices required by law, were properly and timely given.

4. Wharf's mining operation, reclamation program and the proposed future land uses are not contrary to the laws or regulations of the State of South Dakota or of the United States, except as set forth in Conclusion No. 11, below.

5. Wharf's mining operation will not be in violation of any Lawrence County zoning or subdivision regulations.

6. Wharf's mining operation and reclamation can be carried out in conformance with the requirements of SDCL 45-6B-35.

7. The lands within the Boston Expansion Project area are not unsuitable for a mining operation.

8. The lands that will be affected by Wharf's mining operation do not include any special, exceptional, critical, or unique lands as defined in SDCL 45-6B-33.3.

9. Pursuant to SDCL 45-6B-32 the Board shall grant the permit unless the Board determines in its discretion that Wharf may be in violation of subsections (1) through (8).

10. It is within the Board's authority and power to determine a violation of SDCL 45-6B-32 (1) through (8) in considering whether to grant a permit.

11. Under SDCL 45-6B-32(7), Wharf's mining operation is currently in violation of the laws and regulations of the State of South Dakota or of the United States with regard to elevated selenium levels in False Bottom Creek.

12. Under SDCL 45-6B-32, the Board retains discretionary authority to approve the application despite the violation. The Hearing Chair concludes that concerns associated with this violation are appropriately addressed in the amended conditions attached to Exhibit A. The proposed amended conditions are protective of the environment; based on adherence to these conditions the identified environmental violations shall be mitigated and remediated by Wharf consistent with paragraphs 51 and 52 of the Findings of Fact, and the Department and Board have continued jurisdiction to enforce the conditions.

13. Any Finding of Fact or Conclusion of Law improperly designated is hereby re-designated and incorporated into the appropriate section.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the Department is hereby authorized to approve technical revisions to Wharf's mining operation, as specified in the "Technical Revisions" section of the conditions attached hereto as Exhibit A.

IT IS FURTHER ORDERED that Wharf's reclamation plan is hereby approved.

IT IS FURTHER ORDERED that Wharf shall meet the compliance schedule set forth in Finding of Fact 48 as the same may be modified or amended within the Surface Water Discharge Permit issued by the South Dakota Department of Agriculture and Natural Resources Water Quality Program.

IT IS FURTHER ORDERED that Wharf's application for a large-scale life of the mine permit for the Boston Expansion Project is hereby granted, as conditioned by Exhibit A which is attached hereto.

DATED and signed this 3rd day of July, 2023.

BOARD OF MINERALS AND ENVIRONMENT

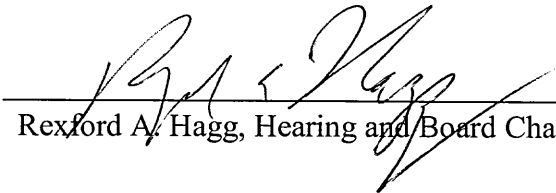
By: 
Rexford A. Hagg, Hearing and Board Chairman

EXHIBIT A
WHARF RESOURCES (U.S.A.) INC.
BOSTON EXPANSION
LARGE SCALE MINE PERMIT CONDITIONS

Technical Revisions

The Board of Minerals and Environment (board), pursuant to ARSD 74:29:03:16, hereby authorizes the Department of Agriculture and Natural resources (department) to approve proposed technical revisions to Wharf Resources' (Wharf) Boston Expansion Project mining permit for the following:

1. Modifying monitoring plans, locations, parameters, and time frames;
2. Modifying compliance limits for chemical parameters as allowed within the mining laws and mine permit, including spent ore off-load criteria;
3. Submitting and modifying plans and specifications for permitted facilities;
4. Modifying or relocating erosion, sedimentation, or drainage control structures other than those defined in the existing site Stormwater Protection Plan;
5. Modifying reclamation seed mixes or rates beyond substituting a variety of species based on seed availability;
6. Modifying freshwater manner of use and source as allowed by water rights permits;
7. Modifying dust control methods;
8. Modifying blasting methods and procedures beyond simple adjustments for safety or efficiency;
9. Adding or modifying ancillary facilities within the permit boundary, including equipment and chemical storage areas, parking lots, office buildings, septic systems, perimeter fencing, utilities (phone lines, natural gas lines, power lines, water lines), crushing areas, sludge ponds, and stockpiles;
10. Modifying pit and rock facility configurations within permitted disturbance limits consistent with geotechnical considerations;
11. Modifying and relocating state, county, and private roads and haulage routes within the permit boundary when not within the active mine pit areas;

12. Modifying topsoil stripping plans and storage areas;
13. Modifying the reclamation plan within the constraints of ARSD 74:29:03:01;
14. Modifying the mine operating plan within the constraints of ARSD 74:29:03:01;
15. Implementing new surface mining techniques or types of equipment;
16. Modifying the gold recovery methodology to improve performance, recovery, or environmental aspects;
17. Modifying action leakage response schedules and leakage response action plans;
18. Providing for or modifying long-term active water treatment;
19. Modifying postclosure plans and monitoring time frames;
20. Modifying handling procedures for potential acid generating rock;
21. Modifying reclamation or vegetation success standards;
22. Modifying spent ore backfilling plans to include the American Eagle, Portland, and Trojan pit areas subject to obtaining necessary Groundwater Discharge Plans;
23. Modifying mine designs and disturbance areas to include contiguous areas of potential ore;
24. Expanding leach pad footprint for better drainage, rinsing, and production;
25. Building additional lined spent ore impoundments for environmental purposes to provide additional water treatment;
26. Adding water storage capacity when it entails building new ponds;
27. Changing, modifying, developing, enhancing, or increasing water treatment technology and water treatment regimes;
28. Modifying pad parameters to enhance leaching or draindown characteristics;
29. Developing and implementing other mineral processing technologies that would improve both economic and environmental aspects;
30. Modifying reporting procedures and parameters as allowed within the mining laws and mine permit;

31. Allowing use of Contingency Pond or other ponds as batch ponds, temporary process, or neutralization ponds;
32. Changing the slope angle for final reclamation of specific sites where visually and functionally compatible or for improved aesthetics;
33. Modifying stocking guidelines and reclamation success standards to reflect climatic conditions;
34. Specifying mine facility type within areas of ancillary disturbance within the permitted affected acreage prior to disturbance within this area; and
35. Placing or modifying slash piles on reclaimed surface areas, or in-pit as part of backfilling efforts.

Technical revisions must comply with ARSD 74:29:03:03 and must be submitted to the department in writing. The department shall approve, disapprove, conditionally approve, or request additional information deemed necessary to approve technical revisions within thirty days of receipt.

General

1. The conditional approval of this permit application incorporates by reference those representations made by Wharf, as to plans, specifications, operations, environmental impacts, and reclamation as contained in the permit application submitted June 13, 2022, with supplemental information submitted on October 17, 2022, November 28, 2022, December 2 and 6, 2022, and March 8 and 9, 2022. The representations contained in these documents are general conditions of this permit unless modified by a future technical revision, amendment, or permit, or modified by other conditions imposed by the board.
2. This permit and all rights under it are expressly conditioned on the truth of representations made by the applicant, Wharf, its officers, and employees in the application and supporting documentation relating to the application. Should any material representation prove to be false, this permit and all rights under it may be canceled by the board.
3. This permit is conditioned upon compliance with all applicable laws and regulations.
4. The conditions of Permit 490 apply to the entire mining operation, including Permit Nos. 356, 434, 435, 464, and 476. These conditions supersede similar conditions in previous mine permits, amendments, and technical revisions. Any conditions in previous mine permits, amendments, and technical revisions that do not conflict with these conditions remain in effect as applicable.
5. The operation shall be conducted in compliance with all Lawrence County Zoning Requirements and Conditional Use Permit conditions.

6. Wharf shall abide by the recommendations proposed at the time of permit approval by the South Dakota Department of Tourism, the South Dakota Department of Game, Fish and Parks, and the South Dakota Department of Health, except as modified or restated in these conditions.
7. All monitoring systems described in the permit application or as modified by the department or the board shall be implemented. Changes to monitoring systems must be approved by the department through technical revisions.
8. Wharf shall, whenever and wherever compatible with the mining operations, retain trees to visually screen the operation and minimize effects to existing wildlife habitat.
9. Wharf shall notify all affected parties of planned utility disruptions at least 48 hours prior to utility relocation. The notifications, either verbal or written, shall state the expected time, date, and length of the disruption.
10. As much as practicable, Wharf shall maintain traffic flow along SD Highway 473 through the permit area for the life of the project.

Other Permits

1. Wharf shall obtain or modify, as necessary, any additional surface water discharge or ground water discharge permits for the project area.
2. These conditions do not change the requirements of other existing permits, including Ground Water Discharge Plans and Surface Water Discharge Permits.
3. Wharf shall obtain a US Corps of Engineers 404 permit, if required, prior to initiating construction or mining activities that affect the waters of the United States.
4. Wharf shall obtain, as necessary, any federal or state permit, if required, prior to taking, possessing, breaking, or destroying any nest or the eggs of the kinds of birds, which the taking or killing at any time or at all times is prohibited.

Acid Rock Drainage Prevention and Management

1. If unanticipated conditions are encountered during the course of mining, such as greater than anticipated sulfide mineralization, that are not adequately manageable as determined by the department under the approved reclamation plan and these conditions, the department or the board reserve the right to reopen and modify the permit and increase the reclamation bond as necessary to mitigate potential adverse conditions.
2. The department may require analysis of rock or ore whenever mining encounters an unanticipated geochemical condition which has the potential to be a source of water pollution, such as greater than anticipated sulfide mineralization. Analysis may consist of

static (acid-base accounting (ABA)), paste pH, and kinetic (humidity cell, weathering cells, or column leach) tests, or other appropriate tests.

Based on the results of the rock analysis, the department may require Wharf to assess potential water quality impacts that may occur as a result of disposing of the rock as pit backfill or in waste rock facilities. In assessing the potential water quality impacts, the department may require Wharf to conduct a pathway and fate analysis of the resulting contaminants. Based on the assessment and the pathway and fate analysis, the department reserves the right to apply additional, sitespecific rock handling conditions. Special rock handling practices may include, but are not necessarily be limited to, isolating acid-producing and/or metalleaching rock or blending with alkaline rock.

3. Unless modified by other conditions in this section, during mining of the Boston Expansion Project, Wharf shall abide by its Acid Rock Management Plan and the conditions of the Technical Revision approved September 30, 2002, regarding the acid rock drainage prevention plan for the Trojan Pit.
4. All Boston Expansion Project ore having an acid neutralization potential to acid generating potential ratio (ANP/AGP ratio) of less than 3:1 shall be amended or blended with limestone or another suitable base amendment in an amount sufficient to attain an ANP/AGP ratio of at least 4:1. Wharf may use other ore with a high neutralization potential and low total sulfur content as base amendments. Wharf shall track amounts and type of base amendment added, calculate the neutralization potential of the amendments, and report this data with the annual water quality report.
5. To the greatest extent possible, Wharf shall design the Flossie and Portland Pit expansions into the Boston area to minimize the amount of acid generating rock exposed in the highwalls. Measures to reduce acid generating rock in the highwalls may include, but are not limited to:
 - a. Expanding pit walls to remove narrow bands of acid generating rock;
 - b. Moving pit walls inward to stay within the oxidized boundary and avoid zones of acid generating rock;
 - c. Removal of small areas of acid generating rock; and
 - d. Creating flat areas in zones of acid generating rock, allowing for cover fills to be installed.
6. If at mine closure, spent ore composed of potentially acid generating rock is to remain and be reclaimed on the leach pad, Wharf shall submit a plan, outlining reclamation alternatives, for this material. The plan shall be submitted for approval to the department prior to mine closure. Based upon the reclamation alternative selected, the department or the board reserves the right to adjust the reclamation bond as necessary.

Water Quality

1. Leachate discharge or surface water runoff from the site shall not cause South Dakota Ground Water Discharge Plan requirements, South Dakota Surface Water Discharge Permit requirements, ground water quality standards, or surface water quality standards, as appropriate, to be violated. There shall not be any unauthorized loss or release of cyanide or any other toxic constituent associated with the gold recovery process to the surface or subsurface environment outside the mine permit boundary.
2. If Wharf's South Dakota Surface Water Discharge Permit is terminated, South Dakota surface water quality standards will apply, as appropriate.
3. If Wharf's South Dakota Ground Water Discharge Plans are terminated, South Dakota ground water quality standards will apply as appropriate.
4. Wharf shall make every effort to maintain process solutions at normal operating levels. Excess solutions shall be properly disposed of, and treated, if necessary, as soon as practicable.
5. Wharf shall effectively manage and treat nitrate in mining impacted waters as long as necessary to meet surface and ground water quality standards or to comply with ground water and surface water discharge permits, as applicable.
6. Wharf shall maintain safe and adequate process solution management and shall prevent the uncontrolled release of process solution in the event of an electrical power outage.
7. Wharf shall submit an updated hydrologic monitoring plan for the closure period. This plan shall be submitted prior to mine closure and is subject to department approval. This plan shall include surface and ground water quality monitoring stations, springs and seeps, and include monitoring parameters, testing methods, quality assurance/quality control, and sampling schedules. This plan will be in effect until the postclosure hydrological monitoring plan is approved.
8. The department reserves the right to modify the hydrologic monitoring plan if monitoring results indicate that a modification is warranted. Modifications may include establishing additional surface and ground water monitoring sites, adding parameters, changing sampling frequency, changing sampling schedules, or modifying Wharf's Ground Water Discharge Plans or Surface Water Discharge Permits.
9. On or prior to March 1 of each year the mine is in operation, Wharf shall submit an annual surface and ground water characterization report beginning the year the mine permit is granted. This report shall include, but not necessarily be limited to, all chemical, discharge, and water level data gathered, and an interpretation of the data. Wharf shall submit all

supporting surface water and ground water sampling and laboratory data sheets as part of this report.

10. Wharf will develop effective treatment technologies to reduce elevated selenium concentrations noted in False Bottom Creek. During the development of plans to remediate the elevated selenium concentrations, Wharf shall provide regular monthly updates to the department. Wharf will follow a compliance schedule to develop and implement plans for any water treatment installed to treat selenium circuit. Plans must be developed by a licensed professional engineer in the State of South Dakota and must be presented to the department for approval prior to installation. Wharf shall follow any additional requirements stipulated as part of the Surface Water Discharge Permit to address selenium issues at the mine. Wharf Shall also follow the following compliance schedule:
 - a. Wharf shall submit the results of its pilot study of treatment alternatives to the department by August 1, 2023.
 - b. Wharf shall submit plans and specifications for its chosen treatment alternative to the department by April 1, 2024. The plans and specifications must be developed by a South Dakota-licensed professional engineer.
 - c. Wharf shall complete construction of the selenium treatment system by October 1, 2024.
 - d. Wharf shall meet required selenium and selenate effluent limits at water sampling location East False Bottom by January 1, 2025.

Wharf may apply for a technical revision to the mine permit to allow for modification of the compliance schedule outlined above. However, approval of any technical revision for this compliance schedule is contingent on Wharf having gained approval to a modification of the same compliance schedule as defined in Surface Water Discharge Permit No. SD0025852 and as allowed under ARSD 74:52:04.

Surface and Ground Water Mitigation Plans

1. If any component of the facility contaminates surface or ground waters to the point that requirements of the Ground Water Discharge Plans, Surface Water Discharge Permit, ground and surface water quality standards, or site specific performance monitoring criteria developed pursuant to Condition No. 1 under “Performance Monitoring” (below) are violated, the department may, in conjunction with an enforcement action, require Wharf to develop and submit a site-specific mitigation plan for the department’s review and approval. The plan shall describe those measures that will be taken to mitigate and prevent surface or ground water contamination. Such measures may include, but are not limited to:
 - a. Installing additional water treatment system facilities;
 - b. Installing capping systems; and
 - c. Treating contaminated ground water or surface water.

Wharf shall include cost estimates for implementing contingency measures. If the department determines that further remedial measures are needed, the department reserves the right to require Wharf to submit for approval plans and specifications and construction quality assurance plans.

Sediment and Erosion Control

1. Erosion and sedimentation controls shall be in place and functional during all phases of clearing, earthwork, construction, mining, and reclamation, and during the postclosure period in the permit area, in accordance with Wharf's General Permit Authorizing Stormwater Discharges Associated with Construction Activities. Wharf shall submit a sediment control map for the permit area, including the Boston Expansion area, showing sediment control locations and type prior to any land disturbance in the permit area. The Best Management Practices/Storm Water Pollution Prevention Plan shall be updated as needed.

Interim sedimentation and erosion controls shall be used on disturbed land during clearing, construction, mining, and reclamation until these areas are stabilized, in accordance with the General Permit.

Wharf shall inspect, clean out, repair, or upgrade sediment controls as necessary to maintain compliance with its Surface Water Discharge Permit and General Permit Authorizing Stormwater Discharges Associated with Construction Activities as applicable.

2. Wharf shall install rock check dams, diversion ditches, or other adequate structures needed to minimize channelization and erosion from surface runoff. Surface water diversions and final reclamation drainage channels must meet the requirements of ARSD 74:29:07:09.

Plans and Specifications – General

1. Detailed plans and specifications of any facilities that are designed to prevent environmental contamination or to treat contaminated material shall be submitted to the department for written approval prior to construction. The department recognizes that the plans and specification in the mine permit application are conceptual. These plans and specifications must be completed to the 100 percent constructible stage. The department will not unreasonably withhold its final approval of the plans and specifications if they reflect the technical parameters specified in the permit. Facilities for which plans and specification are required include, but are not limited to:
 - a. Diversion ditches and culverts;
 - b. Major sedimentation ponds and control structures;
 - c. Future expansion of the leach pads or processing facilities; and

d. Future spent ore impoundments.

Within 30 days of submission, the department shall approve, disapprove, conditionally approve, or request additional information necessary to approve the plans and specifications. If disapproved, the department shall identify those items necessary for approval. If plans and specification are disapproved or a request for additional information is made, the department shall have 30 days after receipt of Wharf's response to approve, conditionally approve, or disapprove the plans and specifications.

2. Conditions placed on plans and specifications approvals by the department shall be considered permit conditions. Conditions placed on plans and specifications will not alter the conceptual design of the facility as permitted. Wharf may request a hearing before the board to contest any conditions placed on plans and specifications approvals.
3. If the department requires, Wharf shall submit to the department as-built drawings (record drawings) complete with technical specifications for facilities required to have plans and specifications submitted. Wharf shall submit the required drawings within 60 days of completion of each component of the facility.

Construction Quality Assurance (CQA)

1. As part of a detailed plans and specifications document, if the department requires, Wharf shall submit a CQA plan for any facilities requiring lining systems. If required, the CQA plan shall be submitted to the department for review and approval.
2. Conditions placed on CQA methods, monitoring, testing, sampling, and documenting, shall be considered permit conditions. Wharf may request a hearing before the board to contest any conditions placed on CQA plan approvals.

Air Quality and Noise

1. Wharf shall effectively control fugitive dust and other air emissions during all phases of clearing, earthwork, construction, mining, and reclamation for the Boston Expansion area. Dust control measures shall include the use of water trucks, dust suppressants, dust filters on equipment, and revegetating disturbed areas as soon as practicable.
2. The department reserves the right to require Wharf to reestablish air quality and ambient air monitoring if site air quality conditions warrant. This may include establishing an upwind and downwind PM10 ambient air quality monitoring network in accordance with the requirements in 40 CFR Part 50 and Part 58.
3. In accordance with ARSD 74:29:07:02(2), affected lands shall be cleared in small sections or increments to reasonably match the needs of mine production and to reduce the amount of dust generated by the operation.

4. Wharf shall notify the department within five working days of written complaints from landowners adjacent to the operation concerning dust, noise, and blasting. Wharf shall submit to the department a copy of any reports or mitigation plans submitted to Lawrence County regarding the complaints. The department, on finding that a complaint is based in fact on potential permit violations, may require Wharf to develop a mitigation plan to correct the potential violation. The completion date for the mitigation plan will be set at the time of the department's request.
5. Upon the department request, Wharf shall provide to the department blast and noise monitoring data.

Wildlife Protection

1. Wharf shall install protective structures and make every effort to contain solutions and chemicals and keep areas harmful to wildlife in a condition where access by wildlife is eliminated. This should include, but is not limited to, major haul roads, process and retention ponds, drainage ways, leach pads and process solution delivery systems, and process buildings.
2. Wharf shall promptly notify the Department of Game, Fish and Parks if species or critical habitat of species listed as threatened or endangered under state or federal statutes or rules are discovered within the permit area.
3. Any tree clearing shall be conducted outside of the migratory bird nesting season to avoid and minimize impacts to migratory bird nesting and roosting bats. The United States Fish and Wildlife Service identifies the 'maximum migratory bird nesting season' as extending from April 1 to July 15 annually, which is when most bird nesting occurs. Should tree clearance be required during the maximum bird nesting season, a bird survey must be conducted by a qualified wildlife biologist to identify any nesting birds in or adjacent to the proposed activity area. If nesting birds or roosting bats are discovered during the survey, Wharf Mine personnel shall contact GFP to determine an optimal buffer area to protect identified nests.

Biological Assessment and Monitoring

1. Wharf shall continue biological monitoring, following Department of Game, Fish, and Parks wildlife monitoring guidelines for large scale gold mines. The annual wildlife monitoring area will include the permitted expansion area and adequate perimeter buffer. Wharf Resources shall work with the South Dakota Department of Game, Fish and Parks to modify the existing Annual Wildlife Monitoring Plan to include study areas examined during the baseline analysis.

Wharf shall continue to follow the requirements established in the Annual Aquatic Biomonitoring Plan. Wharf shall work with the department and the Department of Game,

Fish and Parks to maintain and update the existing Annual Aquatic Biomonitoring Plan, as necessary.

2. If an aquatic resource is impacted by a discharge, release, or spill of toxic solutions, Wharf shall implement a response plan to assess biological damages. The decision to implement this plan will be mutually agreed upon by the department and the Department of Game, Fish, and Parks. This plan shall require Wharf to mobilize, as soon as reasonable, a qualified consultant to complete a quantified assessment of damages to the stream ecosystem. A preliminary report of these findings shall be provided to the state within 15 working days of completion of field data collection and a final report shall be provided to the state within 45 working days of receiving the preliminary report.

Spill Contingency

1. All affected land under Permit Nos. 356, 434, 435, 450, 464, 476, and 490 shall be included under Wharf's Spill Contingency Plan. Within 90 days of permit approval, Wharf shall submit for department approval an updated Spill Contingency Plan covering Permit Nos. 356, 434, 435, 450, 464, 476, and 490.

Reclamation

1. Available topsoil or other material suitable for use as a plant-growing medium shall be stripped and stockpiled for use in reclamation. Topsoil stockpiles shall be clearly labeled and shall be stabilized to prevent wind and water erosion. Berms and/or other sediment and erosion control structures shall be installed on and around topsoil stockpiles to minimize erosional loss of soil resources. Topsoil shall not be used as backfill material.
2. Prior to final closure and bond release, Wharf shall maintain sufficient access to reclaimed areas to allow for any necessary reclamation maintenance. Roads not necessary for future use shall be reclaimed after the successful reclamation of pertinent affected areas.
3. Wharf shall transplant trees and shrubs from the Boston Expansion area to lands undergoing reclamation as shown in Exhibit 30.
4. Wharf shall dispose of mine rock and neutralized spent ore in mined-out areas, to the fullest extent practicable, to maximize the amount of material that is available for grading, backfilling, highwall stabilization, and topographic reconstruction of the open pits following mining.
5. If deemed necessary by the department, Wharf shall conduct a geotechnical stability analysis of exposed highwalls prior to final reclamation. If the highwalls are found to be unstable, additional backfilling or other mitigative techniques may be required to buttress or otherwise stabilize exposed walls.

6. In accord with SDCL 45-6B-42, Wharf shall take precautions to limit access to highwall areas by fencing, posting warning signs, and other suitable means. On completion of mining, highwall areas shall be adequately fenced or otherwise protected to prevent hazards to the public.
7. Pursuant to ARSD 74:29:07:17, all underground mine openings and workings discovered during the mining phase shall be closed or sealed as soon as possible after discovery to avoid additional bat mitigation requirements. If bats are found utilizing the underground workings, Wharf shall submit a mitigation plan to DANR and the Department of Game, Fish, and Parks for approval.
8. Prior to topsoil placement, Wharf shall analyze the topsoil to determine soil nutrient levels and appropriate fertilizer requirements.

Reclamation Surety

1. Pursuant to SDCL 45-6B-21, Wharf shall submit a reclamation bond or surety to cover reclamation costs for Permit Nos. 356, 434, 435, 464, 476, and 490. The estimated cost of carrying out reclamation activities until the end of 2024 at the Wharf Mine, including the Boston Expansion area, is \$72,152,900. The bond will be re-evaluated and revised as necessary at the end of 2024. As of April 17, 2023, Wharf's reclamation bond amount was \$58,246,100. Within 30 days after approval of Permit No. 490, Wharf shall post an additional \$13,906,800 reclamation bond in the form of surety, letter of credit, or cash deposit.

Pursuance to SDCL 45-6B-27, the department and the board reserve the right to adjust the reclamation bond or surety amount for the Boston Expansion Project for inflation, for unanticipated conditions, and for modifications to the permit by technical revision or amendment. The reclamation bond or surety may also be adjusted downwards as reclamation work is completed.

2. Before total reclamation bond and liability release, in addition to reclamation requirements, water quality at the site must meet water quality standards as determined by Wharf's Ground Water Discharge Plans, Surface Water Discharge Permit, and South Dakota surface and ground water standards, as appropriate. If water quality standards are not met at the time of closure, Wharf shall submit to the department either an environmental surety under SDCL 34A-10 or adjust the postclosure bond in an appropriate amount to provide for ground and surface water remediation. The environmental surety or postclosure bond shall be held until such time as the ground and surface water quality standards are met.

Postclosure

1. All affected land under Permit Nos. 356, 434, 435, 450, 464, 476, and 490 shall be included in the postclosure plan.

2. Before the start of the postclosure period, Wharf shall submit an updated postclosure plan, to include an updated hydrologic monitoring plan, to the department for approval. The postclosure plan shall be updated to reflect actual site conditions at the time of mine closure, and shall include, in addition to hydrologic monitoring, air quality monitoring, vegetation monitoring, spent ore treatment, sediment and erosion control systems, and miscellaneous maintenance and care.
3. The postclosure period shall begin at the time of reclamation surety release (mine closure) and shall last for a period not to extend beyond 30 years, unless the board determines that a longer period is necessary for compliance with all applicable performance standards or design and operating criteria.
4. Wharf's liability for the affected mine area shall continue until certification of the completion of the postclosure care plan is approved by the board.
5. Wharf grants to the board or its representative's permission to enter the reclaimed area to monitor reclamation success and to take air, water, and biological samples during the postclosure period. The department shall give Wharf the opportunity to accompany any inspector from the department or other agent of the board during the postclosure period.

Postclosure Financial Assurance

1. In accordance with SDCL 45-6B-91, Wharf shall submit a postclosure financial assurance to cover postclosure care and maintenance costs for Permit Nos. 356, 434, 435, 464, 476, and 490. The postclosure financial assurance will be used to correct postclosure problems in the case that Wharf fails to carry out required postclosure activities. The estimated cost of carrying out postclosure care activities at Wharf's mine site is \$42,685,600. As of April 17, 2023, Wharf's postclosure financial assurance amount was \$38,396,200. Within 30 days after approval of Permit No. 490, Wharf shall post an additional \$4,289,400 postclosure financial assurance in the form of surety, letter of credit, or cash deposit. Issuance of the permit shall be contingent on the department's receipt of the postclosure financial assurance. Postclosure financial assurance of the mining operations shall be submitted before beginning the construction or land disturbance associated with the Boston Expansion.

Postclosure financial assurance shall be calculated for the entire mine operation and the final amount submitted to the department before beginning construction or land disturbance associated with the Expansion. The final amount will be based on cost estimates developed by Wharf. The cost estimates shall be submitted to the department for review and approval prior to submission of the postclosure financial assurance. The department will review and recalculate the required postclosure financial assurance amount and adjust the amount of postclosure financial assurance, as necessary, to reflect anticipated site conditions at the time of mine closure.

2. The postclosure financial assurance shall be held for a period of 50 years after reclamation surety release to ensure that all established reclamation and performance standards are met and that the affected land is stable, is free of hazards, has self-regenerating vegetation, has minimal hydrological impacts, has minimal releases of substances that adversely impact natural resources, and is maintenance-free to the extent practicable. The board may extend the period of the postclosure bond beyond 50 years if necessary. If the board finds that an extension of the postclosure period is necessary, the postclosure financial assurance, or portion necessary to ensure continued compliance, shall be held for the extended period. If the board reduces the length of the postclosure care period, the postclosure financial assurance shall be held until the end of the reduced period. Until the board finds that the site meets all applicable performance standards, the postclosure financial assurance shall include funds to carry out normal monitoring and maintenance work, and funds for contingencies such as long-term nitrate treatment. Funds left at the end of the postclosure period will be released to Wharf.

When Wharf believes it is in full and continuing compliance with applicable performance standards, it may petition the board for release or reduction of the postclosure financial assurance by submitting certification that postclosure care is complete.

3. The type of postclosure financial assurance may be amended upon mutual consent of the department, the board, and Wharf.
4. The department and the board reserve the right to increase or reduce the amount of postclosure financial assurance based on site performance factors including site stability, presence of hazards, revegetation success, hydrologic impacts, the need for long-term surface or ground water treatment, and releases of substances that adversely impact natural resources.

Performance Monitoring

1. Within 90 days of permit approval, Wharf shall submit an update to the Performance Monitoring Plan, which shall include pertinent information on the Boston Expansion area. This plan is to be used as a basis for assessing performance of all components of the reclaimed facility, including the rock facilities, spent ore facilities, processing facilities, crusher areas, pit areas, and ancillary facilities. The plan shall identify proposed performance criteria for vegetation, ground water, surface water, and other applicable components of reclamation, such as air quality, slope stability, disposal of refuse, weed control, and high wall fencing. The plan shall address the methods for determining conformance with the criteria. Performance criteria for vegetation shall be developed in consultation with the local district conservationist and must include measurements for forage production, species composition, coverage, and density.

Based upon site conditions at the time of mine closure, the department, in consultation with Wharf, will reassess the plan to develop a final performance monitoring plan that will set site specific performance criteria and performance monitoring stations for each component

of the reclaimed facility. The final performance criteria shall become enforceable requirements and will be used to determine reclamation surety and liability release.

The performance monitoring plan and performance criteria may be modified by mutual agreement of the department and Wharf.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the NOTICE OF RECOMMENDED DECISION and HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER were submitted via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501
Staff – Brd. Minerals & Env.

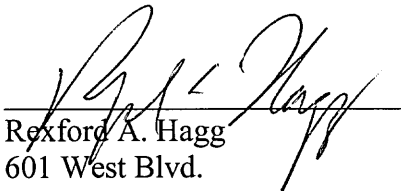
Further, the undersigned certifies that a true and correct copy of the above referenced document(s) was served via email upon the following:

Dwight Gubbrud
Bennett, Main, Gubbrud, & Willert
618 State Street
Belle Fourche, SD 57717
*Counsel – Wharf Resources (USA),
dwight@bellelaw.com*

Steven R. Blair
Assistant Attorney General
Office of the Attorney General
P.O. Box 70
Rapid City, South Dakota 57702
*Counsel - DANR
steven.blair@state.sd.us*

Carla Marshall
P.O. Box 3184
Rapid City, SD 57709
*Intervenor
tipistola@gmail.com*

On this 3rd day of July, 2023.


Rexford A. Hagg
601 West Blvd.
P.O. Box 8008
Rapid City, SD 57701
*Hearing & Board Chair
Brd. Minerals & Env.*

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

P.O. Box 70

Rapid City, South Dakota 57702

Phone (605) 394-2258

Fax (605) 394-5476

<http://atg.sd.gov>

MARTY J. JACKLEY

ATTORNEY GENERAL

RECEIVED

JUN 23 2023

**Dept. of Agriculture
& Natural Resources**

MARK W. BARNETT

CHIEF DEPUTY ATTORNEY GENERAL

June 16, 2023

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

Re: In re Wharf Resources Boston Expansion Large Scale Mine Permit
Application

Dear Ms. Binegar:

Enclosed please find for filing in the above referenced matter the original of DANR's Proposed Findings of Fact, Conclusions of Law, and Order. Copies of this document have also been served upon the parties and Chairman Hagg as indicated in the attached Certificate of Service. If you have any questions, please don't hesitate to contact me

Sincerely,

A handwritten signature in blue ink, appearing to read "SBL", followed by a horizontal line.

Steven R. Blair
Assistant Attorney General

Enclosures

Cc/encl: Charles McGuigan – Deputy Attorney General (via email only)
Roberta Hudson – DANR Minerals, Mining, & Superfund Program (via email only)

RECEIVED

JUN 23 2023

Dept. of Agriculture
& Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

WHARF RESOURCES (U.S.A.)	)	DANR'S PROPOSED
INC. BOSTON EXPANSION	)	FINDINGS OF FACT,
LARGE SCALE MINE PERMIT	)	CONCLUSIONS OF LAW,
APPLICATION	)	AND ORDER

A hearing was held before the South Dakota Board of Minerals and Environment ("Board") on May 18-19, 2023, in Pierre, South Dakota, on the application of Wharf Resources (U.S.A.) Inc. ("Wharf") for a large-scale mine permit (the "application").

The following members of the Board were present at the hearing: Chairman Rexford Hagg, Glenn Blumhardt, Gary Haag, Doyle Karpen, Robert Morris, and John Scheetz. Prior to the commencement of the hearing, the Chairman had appointed Rexford Hagg to act as Hearing Chairman.

Assistant Attorney General Steven R. Blair appeared on behalf of the South Dakota Department of Agriculture and Natural Resources ("Department"); Carla Marshall appeared as an intervener; and attorney Dwight A. Gubbrud appeared on behalf of Wharf. Carla Marshall absented herself from that portion of the proceedings held on May 19.

Based upon the application, the Department's recommendation, and the testimony, evidence and arguments presented at the hearing, the Board makes and enters the following:

FINDINGS OF FACT

1. The Department received Wharf's application for a large-scale life of the mine permit for the proposed expansion of Wharf's mining operations (the "Boston Expansion Project") on June 13, 2022.

2. On March 10, 2023, the South Dakota Department of Game, Fish and Parks, the South Dakota State Archeological Research Center, the South Dakota Department of Health, and the Lawrence County Conservation District were notified that their 30-day review period had started. Wharf had previously sent copies of the application to all applicable review agencies.

3. A copy of the application was also filed with the Lawrence County Register of Deeds.

4. In response to Department requests, Wharf submitted additional information to supplement and clarify the application. Additional information was submitted on October 17, November 28, December 2, and December 6, 2022, as well on March 8, March 9, and March 10, 2023.

5. All supplemental and clarifying information was filed in the office of the Lawrence County Register of Deeds and was mailed or delivered to all applicable review agencies.

6. The Department determined the application to be procedurally complete under SDCL 45-6B and ARSD 74:29 on March 10, 2023.

7. The application fee of Fifty Thousand Dollars (\$50,000) has been paid by Wharf to the Department.

8. Wharf published the Notice of Filing of the application in the Black Hills Pioneer on March 17 and March 24, 2023.

9. The Department published the Notice of Filing of the application in the Rapid City Journal on March 16 and March 23, 2023.

10. Inspections were conducted in the Boston Expansion Area on September 20 and 28, 2022. Inspections were attended by representatives of South Dakota Department of Game, Fish, and Parks, South Dakota Archaeological Research Center and the Department.

11. On April 17, 2023, the Department recommended conditional approval of Wharf's application. The recommendation of approval included proposed permit conditions. The proposed conditions were presented at the May 18-19, 2023 hearing before the Board.

Amended conditions are attached hereto as Exhibit A. Upon approval of the Board, the amended conditions will be the final conditions for the Large Scale Mine Permit # 490.

12. The Department requested authorization from the Board to approve technical revisions to Wharf's mining operation, as specified in the "Technical Revisions" section of the conditions attached hereto as Exhibit A.

13. On January 25, 2022, the Lawrence County Board of Commissioners, upon the recommendation of the Lawrence County Planning Commission, granted a large-scale extractive industry conditional use permit to Wharf for the Expansion Project.

14. The following entities and individuals submitted written statements or resolutions in support of Wharf's application:

- Lawrence County Commissioners
- South Dakota Community Foundation
- Northern Hills Alliance for Children
- Boys & Girls Clubs of the Black Hills
- Wellspring, d/b/a Wellfully
- United Way of the Black Hills
- Black Hills State University
- Black Hills Energy
- Butler Machinery Company
- Buckley Powder Co.
- All Net Connections
- Dale's Tire & Retreading, Inc.
- Lawrence County Citizen – Thomas Golden
- Jacobs Welding & Machining
- Lawrence County Citizen – Dr. Dan Leikvold, former Lead/Deadwood Superintendent
- Klein Visioneering Group
- Rasmussen Mechanical Services
- STERN Co.
- William London, General Mgr. -Terry Peak Ski Area
- South Dakota Mines
- Western Dakota Tech Foundation
- Stone Land Service, LLC
- Elkhorn Ridge
- Ron Everett, Mayor of the City of Lead

- Lotus Up Espresso & Deli
- Sanford Underground Research Facility
- Dakota Gold Corp. – Gerald Aberle, CEO
- Lead-Deadwood School District #40-1

15. The following entities and individuals submitted written statements in opposition of Wharf's application:

- Donna Watson
- Mary Zimmerman
- Nancy Hilding
- Carla Marshall
- Tatyaba Novikova

16. Carla Marshall filed a timely petition contesting the Department's Recommendation on April 26, 2023.

17. The Department gave proper notice of the time, date, and location of the hearing on Wharf's application through publication of its Notice of Hearing in the Black Hills Pioneer and the Rapid City Journal on May 4 and May 11, 2023. A formal Notice of Contested Case Hearing, complying with the requirements of SDCL ch. 1-26, was also filed with the Board on May 3, 2023.

18. Wharf's filed reclamation plan provides for reclaiming all affected lands to the postmining land use of rangeland (woodland grazing).

19. Wharf's filed reclamation plan includes the following:

- a. Description of the type of reclamation Wharf proposes to achieve, including why rangeland was chosen;
- b. A soil survey of the affected land, prepared by BKS Environmental Associates, Inc.; The Department determined this contractor was acceptable to complete this survey as per SDCL 45-6B-7(2);
- c. A vegetative survey of the affected land prepared by BKS Environmental Associates, Inc. The Department determined this contractor was acceptable to complete this survey as per SDCL 45-6B-7(3)
- d. A preliminary wildlife survey of the affected land, including a description of the dominant species of

wildlife inhabiting the area, prepared by ICF International.; This contractor was determined to be acceptable by Stan Michals of the Department of Game, Fish and Parks as per SDCL 45-6B-7(4).

- e. A statement of any characteristics of the affected land of historic, archaeological, geologic, scientific or recreational significance known to Wharf;
- f. A description of how the reclamation plan will be implemented to meet all statutory and regulatory requirements;
- g. A description of how the reclamation plan will rehabilitate the affected land, including natural vegetation, wildlife, water, air and soil;
- h. A map of all the proposed affected land by all phases of the total scope of the mining operation, including the expected physical appearance of the area of the affected land, and a portrayal of the proposed final land use for each portion of the affected land;
- i. Baseline water quality and water level of all areas of aquifers potentially affected by the proposed mining operation;
- j. The location of proposed reservoirs, spent ore disposal sites, dams, dikes and diversion canals;
- k. Provisions for the stripping, storage, and replacement of overburden and topsoil; and
- l. Estimated costs of implementing and completing the proposed reclamation.

20. Wharf's reclamation plan was developed by Wharf and the Department, and adjacent landowners were consulted during development of the plan. Wharf owns the surface of all land within the Expansion Project.

21. Wharf's revegetation plan will establish a diverse, effective, and long-lasting vegetative cover that is capable of self-regeneration and will be at least equal in extent of cover to the natural vegetation of the surrounding area.

22. Wharf has submitted acceptable proposed methods and procedures to determine post-reclamation revegetation success.

23. Wharf's reclamation plan, including the revegetation plan, has been approved by the Lawrence County Board of Commissioners.

24. Wharf's reclamation plan adequately addresses reclamation of all process and storage ponds.

25. Wharf's reclamation plan provides that removed topsoil will be segregated from other spoil and preserved by vegetative cover and other means from wind and water erosion and kept free of contamination. The topsoil within the permit area is of sufficient quantity and quality for sustaining vegetation.

26. Wharf's reclamation plan provides for grading and backfilling to be completed to achieve visually and functionally compatible contours with the surrounding area and to enhance public safety and welfare.

27. Wharf's reclamation plan adequately provides for stabilization and protection of all surface areas of affected land to effectively control erosion. Further, the reclamation plan provides for implementation of a noxious weed control plan to control noxious weed infestations.

28. The grading, backfilling, and other topographic reconstruction methods included in Wharf's reclamation plan will achieve contours and configurations that are visually and functionally compatible with the surrounding area.

29. Wharf's reclamation plan provides that treated spent ore removed from the leach pads will be relocated and reclaimed on lands previously disturbed by mining.

30. Wharf's reclamation plan will minimize as much as practicable the disruption from its mining operation and will rehabilitate the affected land to a beneficial use.

31. Reclamation of the affected lands in the Boston Expansion Project is physically and economically feasible.

32. Wharf filed an accurate map of the affected lands, containing all information required by SDCL 45-6B-10.

33. Wharf's method and plan of operations and mining will minimize disturbance to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation.

34. Wharf's filed application includes a socioeconomic impact study, prepared by Dr. Michael K. Madden. This socioeconomic impact study was submitted by Wharf to Lawrence County pursuant to Chapter 20, Article 1, Section 1.6 of the Lawrence County zoning ordinance, and the socioeconomic impact study satisfies the Board's requirements. The socioeconomic impact study addresses cumulative impacts of the Boston Expansion Project considered together with existing operations in the surrounding region. The probable beneficial socioeconomic impacts of the Boston Expansion Project substantially outweigh any probable adverse impacts of the Boston Expansion Project.

35. Wharf's mining operation will not adversely affect the stability of any significant, valuable and permanent man-made structures, including any such structures located within 200 feet of the affected lands.

36. Wharf submitted to the Department a sediment control map showing control locations and type, demonstrating that substantial disposition of sediment in stream or lake beds, landslides, and water pollution can feasibly be prevented.

37. There are no lands designated as special, exceptional, critical, or unique within the Boston Expansion Project area.

38. The Boston Expansion Project area does not include any critical deer winter range. However, one threatened or endangered indigenous wildlife species was identified during the baseline wildlife survey. The northern long-eared bat was recently upgraded from a threatened to an endangered species by the US Fish and Wildlife Service. Five bats, including the northern long-eared bat, were also listed as species of concern under the South Dakota Natural Heritage Program and as a critical resource in the mine permit application. Wharf minimized potential impacts to these bat species by permanently closing mine shafts that could be used as bat hibernaculum. No other critical wildlife resources were identified by the Department of Game, Fish and Parks.

39. Wharf stated during the hearing and within their mine permit application that the mining operation will not adversely affect cold water fish life propagation water.

40. Wharf stated during the hearing and within their mine permit application that the mining operation will not adversely affect riparian zones, mountain meadows, or wetlands. Further, there are no threatened or endangered vegetation species in the Boston Expansion Project area. However, one population of mountain huckleberry plants was found along the western boundary of the expansion area during baseline vegetation surveys. Mountain huckleberry is identified as a rare species under the South Dakota Natural Heritage Program and has been identified as a critical resource in the mine permit application. If the mountain huckleberry plants are disturbed, Wharf will attempt to mitigate impacts by removing the plants and adjacent understory vegetation and transplant it into an area with favorable conditions.

41. Wharf stated during the hearing and within their mine permit application that the mining operation will not adversely affect direct or indirect sources of drinking water.

42. Wharf's filed application includes a visual resource survey. The visual resource survey utilizes computer-generated perspectives from various viewpoints. While visual resources will be slightly impacted during mining operations, such impacts will be of a short duration. Upon completion of reclamation, vegetation will conform to the existing natural vegetation and there will be little or no visual disharmonies in the area.

43. Soil analysis conducted as part of the mine permit application indicate there are no soils within the Boston Expansion Project area with high erosion and low revegetation potential.

44. Wharf presented information within the mine permit application indicating the air quality of areas with minimal ambient airborne particulates and areas near potential receptors, including residences and recreational areas, will not be adversely affected by mining operations in the Boston Expansion Project area.

45. Wharf presented a noise study in the hearing and mine permit application indicating areas near potential receptors, including residences and recreational areas, will not be adversely impacted by noise from mining operations in the Boston Expansion Project area.

46. Wharf presented information indicating the proposed mining operation will not result in the loss or reduction of long-range productivity of aquifer, public and domestic water wells, watershed lands, aquifer recharge areas, or significant agricultural areas.

47. Wharf is currently in violation of the federal Clean Water Act and SDCL 45-6B-87 due to elevated levels of selenium in False Bottom Creek.

48. At the time of the hearing, the Water Quality Program for the Department had prepared draft Surface Water Discharge Permit No. SD0025852 (the “draft SWDP”) to authorize Wharf to discharge mine drainage, treated process wastewater, surfacing ground water, and stormwater to Annie Creek, Ross Valley, Cleopatra Creek, False Bottom Creek, and Deadwood Creek from Wharf’s open pit gold mine and from reclaimed historic mine tailings and mine workings located in the Bald Mountain Lead mining district of the Black Hills National Forest. A copy of the draft SWDP was admitted as Exhibit 15. A portion of False Bottom Creek has been recognized as impaired for selenium. To achieve compliance with surface water quality standards within False Bottom Creek, Wharf shall fulfill the following compliance schedule:

- a.** Wharf shall submit the results of its pilot study of treatment alternatives to the Department by August 1, 2023.
- b.** Wharf shall submit plans and specifications for its chosen treatment alternative prepared by a South Dakota-licensed professional engineer to the Department by April 1, 2024.
- c.** Wharf shall complete construction of the selenium treatment system by October 1, 2024.
- d.** Wharf shall comply with the selenium and selenate effluent limits for Compliance Point 010 by January 1, 2025.

The Department is authorized to change or modify the dates of compliance as a technical revision to the Boston Expansion Project mine permit pursuant to ARSD 74:29:03:16. This technical revision authority is outlined as part of the proposed amendment to Condition #10 of the Water Quality Section of the Recommended Conditions included as the attached Exhibit A. Technical revision approval will be contingent upon approval of any required modifications to the compliance schedule completed as part

of the draft SWDP or modifications made to Surface Water Discharge Permit No. SD0025852 after department approval and issuance of that permit.

49. To address concerns associated with elevated selenium in False Bottom Creek, the Department has recommended amending the conditions presented to the Board during the May 20, 2023 contested case hearing. The amended conditions recommended for approval by the Board have been included as Exhibit A of this document.

50. Based on the magnitude, type and costs of reclamation activities planned for the affected lands, and the nature, extent and duration of the mining operation, and based on the Department's recommendation, the level of financial assurance necessary to guarantee the costs of reclamation is Seventy-Two Million One Hundred Fifty-Two Thousand Nine Hundred Dollars (\$72,152,900). Since the current reclamation financial assurance is Fifty-Eight Million Two Hundred Forty-Six Thousand One Hundred Dollars (\$58,246,100), Wharf shall post an additional Thirteen Million Nine Hundred Six Thousand Eight Hundred Dollars (\$13,906,800) in reclamation financial assurance within thirty days after board approval of the Boston expansion large scale mine permit application. The reclamation financial assurance will be re-evaluated and revised as necessary at the end of 2024.

51. Based on the postclosure care and maintenance requirements, and the length of the postclosure period, and based on the Department's recommendation, the level of financial assurance necessary to guarantee the costs of postclosure care and maintenance over the postclosure care period for the entire Wharf Mine is Forty-Two Million Six Hundred Eighty-Five Thousand Six Hundred Dollars (\$42,685,600). Wharf's current level of postclosure financial assurance is Thirty-Eight Million Three Hundred Ninety-Six Thousand Two Hundred Dollars (\$38,396,200), requiring Wharf to submit Four Million Two Hundred Eighty-Nine Thousand Four Hundred Dollars (\$4,289,400) in additional postclosure financial assurance within thirty days after approval by the Board of the Boston Expansion large scale mine permit application. The postclosure financial assurance will be re-evaluated and revised as necessary at the end of 2024.

52. The form of the financial assurance may be a surety bond for the benefit of the State of South Dakota.

53. The witnesses presented by both Wharf and the Department are credible.

Based on the foregoing Findings of Fact, the Board hereby makes and enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties to and the subject matter of this proceeding.

2. Wharf's application is complete.

3. All notices of the application and the hearing thereon, and all other notices required by law, were properly and timely given.

4. Wharf's mining operation, reclamation program and the proposed future land uses are not contrary to the laws or regulations of the State of South Dakota or of the United States.

5. Wharf's mining operation will not be in violation of any Lawrence County zoning or subdivision regulations.

6. Wharf's mining operation and reclamation can be carried out in conformance with the requirements of SDCL 45-6B-35.

7. The lands within the Boston Expansion Project area are not unsuitable for a mining operation.

8. The lands that will be affected by Wharf's mining operation do not include any special, exceptional, critical, or unique lands as defined in SDCL 45-6B-33.3.

9. Wharf's mining operation is currently in violation of the laws and regulations of the State of South Dakota or of the United States. Concerns associated with this violation are addressed in the amended conditions attached hereto as Exhibit A. The proposed amended conditions are protective of the environment; based on adherence to these conditions the identified environmental violations will be mitigated and remediated by Wharf.

10. Any Finding of Fact or Conclusion of Law improperly designated is hereby re-designated and incorporated into the appropriate section.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the Department is hereby authorized to approve technical revisions to Wharf's mining operation, as specified in the "Technical Revisions" section of the conditions attached hereto as Exhibit A.

IT IS FURTHER ORDERED that Wharf's reclamation plan is hereby approved.

IT IS FURTHER ORDERED that Wharf shall meet the compliance schedule set forth in Finding of Fact 48 as the same may be modified or amended within the Surface Water Discharge Permit issued by the South Dakota Department of Agriculture and Natural Resources Water Quality Program.

IT IS FURTHER ORDERED that Wharf's application for a large-scale life of the mine permit for the Boston Expansion Project is hereby granted, as conditioned by Exhibit A which is attached hereto.

DATED and signed this _____ day of _____, 2023.

BOARD OF MINERALS AND ENVIRONMENT

By: _____
Rexford A. Hagg, Hearing and Board Chairman

EXHIBIT A
WHARF RESOURCES (U.S.A.) INC.
BOSTON EXPANSION
LARGE SCALE MINE PERMIT CONDITIONS

Technical Revisions

The Board of Minerals and Environment (board), pursuant to ARSD 74:29:03:16, hereby authorizes the Department of Agriculture and Natural resources (department) to approve proposed technical revisions to Wharf Resources' (Wharf) Boston Expansion Project mining permit for the following:

1. Modifying monitoring plans, locations, parameters, and time frames;
2. Modifying compliance limits for chemical parameters as allowed within the mining laws and mine permit, including spent ore off-load criteria;
3. Submitting and modifying plans and specifications for permitted facilities;
4. Modifying or relocating erosion, sedimentation, or drainage control structures other than those defined in the existing site Stormwater Protection Plan;
5. Modifying reclamation seed mixes or rates beyond substituting a variety of species based on seed availability;
6. Modifying freshwater manner of use and source as allowed by water rights permits;
7. Modifying dust control methods;
8. Modifying blasting methods and procedures beyond simple adjustments for safety or efficiency;
9. Adding or modifying ancillary facilities within the permit boundary, including equipment and chemical storage areas, parking lots, office buildings, septic systems, perimeter fencing, utilities (phone lines, natural gas lines, power lines, water lines), crushing areas, sludge ponds, and stockpiles;
10. Modifying pit and rock facility configurations within permitted disturbance limits consistent with geotechnical considerations;

11. Modifying and relocating state, county, and private roads and haulage routes within the permit boundary when not within the active mine pit areas;
12. Modifying topsoil stripping plans and storage areas;
13. Modifying the reclamation plan within the constraints of ARSD 74:29:03:01;
14. Modifying the mine operating plan within the constraints of ARSD 74:29:03:01;
15. Implementing new surface mining techniques or types of equipment;
16. Modifying the gold recovery methodology to improve performance, recovery, or environmental aspects;
17. Modifying action leakage response schedules and leakage response action plans;
18. Providing for or modifying long-term active water treatment;
19. Modifying postclosure plans and monitoring time frames;
20. Modifying handling procedures for potential acid generating rock;
21. Modifying reclamation or vegetation success standards;
22. Modifying spent ore backfilling plans to include the American Eagle, Portland, and Trojan pit areas subject to obtaining necessary Groundwater Discharge Plans;
23. Modifying mine designs and disturbance areas to include contiguous areas of potential ore;
24. Expanding leach pad footprint for better drainage, rinsing, and production;
25. Building additional lined spent ore impoundments for environmental purposes to provide additional water treatment;
26. Adding water storage capacity when it entails building new ponds;
27. Changing, modifying, developing, enhancing, or increasing water treatment technology and water treatment regimes;
28. Modifying pad parameters to enhance leaching or draindown characteristics;

29. Developing and implementing other mineral processing technologies that would improve both economic and environmental aspects;
30. Modifying reporting procedures and parameters as allowed within the mining laws and mine permit;
31. Allowing use of Contingency Pond or other ponds as batch ponds, temporary process, or neutralization ponds;
32. Changing the slope angle for final reclamation of specific sites where visually and functionally compatible or for improved aesthetics;
33. Modifying stocking guidelines and reclamation success standards to reflect climatic conditions;
34. Specifying mine facility type within areas of ancillary disturbance within the permitted affected acreage prior to disturbance within this area; and
35. Placing or modifying slash piles on reclaimed surface areas, or in-pit as part of backfilling efforts.

Technical revisions must comply with ARSD 74:29:03:03 and must be submitted to the department in writing. The department shall approve, disapprove, conditionally approve, or request additional information deemed necessary to approve technical revisions within thirty days of receipt.

General

1. The conditional approval of this permit application incorporates by reference those representations made by Wharf, as to plans, specifications, operations, environmental impacts, and reclamation as contained in the permit application submitted June 13, 2022, with supplemental information submitted on October 17, 2022, November 28, 2022, December 2 and 6, 2022, and March 8 and 9, 2022. The representations contained in these documents are general conditions of this permit unless modified by a future technical revision, amendment, or permit, or modified by other conditions imposed by the board.
2. This permit and all rights under it are expressly conditioned on the truth of representations made by the applicant, Wharf, its officers, and employees in the application and supporting documentation relating to the application. Should any

material representation prove to be false, this permit and all rights under it may be canceled by the board.

3. This permit is conditioned upon compliance with all applicable laws and regulations.
4. The conditions of Permit 490 apply to the entire mining operation, including Permit Nos. 356, 434, 435, 464, and 476. These conditions supersede similar conditions in previous mine permits, amendments, and technical revisions. Any conditions in previous mine permits, amendments, and technical revisions that do not conflict with these conditions remain in effect as applicable.
5. The operation shall be conducted in compliance with all Lawrence County Zoning Requirements and Conditional Use Permit conditions.
6. Wharf shall abide by the recommendations proposed at the time of permit approval by the South Dakota Department of Tourism, the South Dakota Department of Game, Fish and Parks, and the South Dakota Department of Health, except as modified or restated in these conditions.
7. All monitoring systems described in the permit application or as modified by the department or the board shall be implemented. Changes to monitoring systems must be approved by the department through technical revisions.
8. Wharf shall, whenever and wherever compatible with the mining operations, retain trees to visually screen the operation and minimize effects to existing wildlife habitat.
9. Wharf shall notify all affected parties of planned utility disruptions at least 48 hours prior to utility relocation. The notifications, either verbal or written, shall state the expected time, date, and length of the disruption.
10. As much as practicable, Wharf shall maintain traffic flow along SD Highway 473 through the permit area for the life of the project.

Other Permits

1. Wharf shall obtain or modify, as necessary, any additional surface water discharge or ground water discharge permits for the project area.

2. These conditions do not change the requirements of other existing permits, including Ground Water Discharge Plans and Surface Water Discharge Permits.
3. Wharf shall obtain a US Corps of Engineers 404 permit, if required, prior to initiating construction or mining activities that affect the waters of the United States.
4. Wharf shall obtain, as necessary, any federal or state permit, if required, prior to taking, possessing, breaking, or destroying any nest or the eggs of the kinds of birds, which the taking or killing at any time or at all times is prohibited.

Acid Rock Drainage Prevention and Management

1. If unanticipated conditions are encountered during the course of mining, such as greater than anticipated sulfide mineralization, that are not adequately manageable as determined by the department under the approved reclamation plan and these conditions, the department or the board reserve the right to reopen and modify the permit and increase the reclamation bond as necessary to mitigate potential adverse conditions.
2. The department may require analysis of rock or ore whenever mining encounters an unanticipated geochemical condition which has the potential to be a source of water pollution, such as greater than anticipated sulfide mineralization. Analysis may consist of static (acid-base accounting (ABA)), paste pH, and kinetic (humidity cell, weathering cells, or column leach) tests, or other appropriate tests.

Based on the results of the rock analysis, the department may require Wharf to assess potential water quality impacts that may occur as a result of disposing of the rock as pit backfill or in waste rock facilities. In assessing the potential water quality impacts, the department may require Wharf to conduct a pathway and fate analysis of the resulting contaminants. Based on the assessment and the pathway and fate analysis, the department reserves the right to apply additional, site-specific rock handling conditions. Special rock handling practices may include, but are not necessarily be limited to, isolating acid-producing and/or metal-leaching rock or blending with alkaline rock.

3. Unless modified by other conditions in this section, during mining of the Boston Expansion Project, Wharf shall abide by its Acid Rock Management Plan and the conditions of the Technical Revision approved September 30, 2002, regarding the acid rock drainage prevention plan for the Trojan Pit.

4. All Boston Expansion Project ore having an acid neutralization potential to acid generating potential ratio (ANP/AGP ratio) of less than 3:1 shall be amended or blended with limestone or another suitable base amendment in an amount sufficient to attain an ANP/AGP ratio of at least 4:1. Wharf may use other ore with a high neutralization potential and low total sulfur content as base amendments. Wharf shall track amounts and type of base amendment added, calculate the neutralization potential of the amendments, and report this data with the annual water quality report.
5. To the greatest extent possible, Wharf shall design the Flossie and Portland Pit expansions into the Boston area to minimize the amount of acid generating rock exposed in the highwalls. Measures to reduce acid generating rock in the highwalls may include, but are not limited to:
 - a. Expanding pit walls to remove narrow bands of acid generating rock;
 - b. Moving pit walls inward to stay within the oxidized boundary and avoid zones of acid generating rock;
 - c. Removal of small areas of acid generating rock; and
 - d. Creating flat areas in zones of acid generating rock, allowing for cover fills to be installed.
6. If at mine closure, spent ore composed of potentially acid generating rock is to remain and be reclaimed on the leach pad, Wharf shall submit a plan, outlining reclamation alternatives, for this material. The plan shall be submitted for approval to the department prior to mine closure. Based upon the reclamation alternative selected, the department or the board reserves the right to adjust the reclamation bond as necessary.

Water Quality

1. Leachate discharge or surface water runoff from the site shall not cause South Dakota Ground Water Discharge Plan requirements, South Dakota Surface Water Discharge Permit requirements, ground water quality standards, or surface water quality standards, as appropriate, to be violated. There shall not be any unauthorized loss or release of cyanide or any other toxic constituent associated with the gold recovery process to the surface or subsurface environment outside the mine permit boundary.

2. If Wharf's South Dakota Surface Water Discharge Permit is terminated, South Dakota surface water quality standards will apply, as appropriate.
3. If Wharf's South Dakota Ground Water Discharge Plans are terminated, South Dakota ground water quality standards will apply as appropriate.
4. Wharf shall make every effort to maintain process solutions at normal operating levels. Excess solutions shall be properly disposed of, and treated, if necessary, as soon as practicable.
5. Wharf shall effectively manage and treat nitrate in mining impacted waters as long as necessary to meet surface and ground water quality standards or to comply with ground water and surface water discharge permits, as applicable.
6. Wharf shall maintain safe and adequate process solution management and shall prevent the uncontrolled release of process solution in the event of an electrical power outage.
7. Wharf shall submit an updated hydrologic monitoring plan for the closure period. This plan shall be submitted prior to mine closure and is subject to department approval. This plan shall include surface and ground water quality monitoring stations, springs and seeps, and include monitoring parameters, testing methods, quality assurance/quality control, and sampling schedules. This plan will be in effect until the postclosure hydrological monitoring plan is approved.
8. The department reserves the right to modify the hydrologic monitoring plan if monitoring results indicate that a modification is warranted. Modifications may include establishing additional surface and ground water monitoring sites, adding parameters, changing sampling frequency, changing sampling schedules, or modifying Wharf's Ground Water Discharge Plans or Surface Water Discharge Permits.
9. On or prior to March 1 of each year the mine is in operation, Wharf shall submit an annual surface and ground water characterization report beginning the year the mine permit is granted. This report shall include, but not necessarily be limited to, all chemical, discharge, and water level data gathered, and an interpretation of the data. Wharf shall submit all supporting surface water and ground water sampling and laboratory data sheets as part of this report.
10. Wharf will develop effective treatment technologies to reduce elevated selenium concentrations noted in False Bottom Creek. During the development of plans to

remediate the elevated selenium concentrations, Wharf shall provide regular monthly updates to the department. Wharf will follow a compliance schedule to develop and implement plans for any water treatment installed to treat selenium circuit. Plans must be developed by a licensed professional engineer in the State of South Dakota and must be presented to the department for approval prior to installation. Wharf shall follow any additional requirements stipulated as part of the Surface Water Discharge Permit to address selenium issues at the mine. Wharf Shall also follow the following compliance schedule:

- a. Wharf shall submit the results of its pilot study of treatment alternatives to the department by August 1, 2023.
- b. Wharf shall submit plans and specifications for its chosen treatment alternative to the department by April 1, 2024. The plans and specifications must be developed by a South Dakota-licensed professional engineer.
- c. Wharf shall complete construction of the selenium treatment system by October 1, 2024.
- d. Wharf shall meet required selenium and selenate effluent limits at water sampling location East False Bottom by January 1, 2025.

Wharf may apply for a technical revision to the mine permit to allow for modification of the compliance schedule outlined above. However, approval of any technical revision for this compliance schedule is contingent on Wharf having gained approval to a modification of the same compliance schedule as defined in Surface Water Discharge Permit No. SD0025852 and as allowed under ARSD 74:52:04.

Surface and Ground Water Mitigation Plans

1. If any component of the facility contaminates surface or ground waters to the point that requirements of the Ground Water Discharge Plans, Surface Water Discharge Permit, ground and surface water quality standards, or site specific performance monitoring criteria developed pursuant to Condition No. 1 under “Performance Monitoring” (below) are violated, the department may, in conjunction with an enforcement action, require Wharf to develop and submit a site-specific mitigation plan for the department’s review and approval. The plan shall describe those measures that will be taken to mitigate and prevent surface or ground water contamination. Such measures may include, but are not limited to:
 - a. Installing additional water treatment system facilities;
 - b. Installing capping systems; and
 - c. Treating contaminated ground water or surface water.

Wharf shall include cost estimates for implementing contingency measures. If the department determines that further remedial measures are needed, the department reserves the right to require Wharf to submit for approval plans and specifications and construction quality assurance plans.

Sediment and Erosion Control

1. Erosion and sedimentation controls shall be in place and functional during all phases of clearing, earthwork, construction, mining, and reclamation, and during the postclosure period in the permit area, in accordance with Wharf's General Permit Authorizing Stormwater Discharges Associated with Construction Activities. Wharf shall submit a sediment control map for the permit area, including the Boston Expansion area, showing sediment control locations and type prior to any land disturbance in the permit area. The Best Management Practices/Storm Water Pollution Prevention Plan shall be updated as needed.

Interim sedimentation and erosion controls shall be used on disturbed land during clearing, construction, mining, and reclamation until these areas are stabilized, in accordance with the General Permit.

Wharf shall inspect, clean out, repair, or upgrade sediment controls as necessary to maintain compliance with its Surface Water Discharge Permit and General Permit Authorizing Stormwater Discharges Associated with Construction Activities as applicable.

2. Wharf shall install rock check dams, diversion ditches, or other adequate structures needed to minimize channelization and erosion from surface runoff. Surface water diversions and final reclamation drainage channels must meet the requirements of ARSD 74:29:07:09.

Plans and Specifications – General

1. Detailed plans and specifications of any facilities that are designed to prevent environmental contamination or to treat contaminated material shall be submitted to the department for written approval prior to construction. The department recognizes that the plans and specification in the mine permit application are conceptual. These plans and specifications must be completed to the 100 percent constructible stage. The department will not unreasonably withhold its final approval of the plans and specifications if they reflect the technical parameters

specified in the permit. Facilities for which plans and specification are required include, but are not limited to:

- a. Diversion ditches and culverts;
- b. Major sedimentation ponds and control structures;
- c. Future expansion of the leach pads or processing facilities; and
- d. Future spent ore impoundments.

Within 30 days of submission, the department shall approve, disapprove, conditionally approve, or request additional information necessary to approve the plans and specifications. If disapproved, the department shall identify those items necessary for approval. If plans and specification are disapproved or a request for additional information is made, the department shall have 30 days after receipt of Wharf's response to approve, conditionally approve, or disapprove the plans and specifications.

2. Conditions placed on plans and specifications approvals by the department shall be considered permit conditions. Conditions placed on plans and specifications will not alter the conceptual design of the facility as permitted. Wharf may request a hearing before the board to contest any conditions placed on plans and specifications approvals.
3. If the department requires, Wharf shall submit to the department as-built drawings (record drawings) complete with technical specifications for facilities required to have plans and specifications submitted. Wharf shall submit the required drawings within 60 days of completion of each component of the facility.

Construction Quality Assurance (CQA)

1. As part of a detailed plans and specifications document, if the department requires, Wharf shall submit a CQA plan for any facilities requiring lining systems. If required, the CQA plan shall be submitted to the department for review and approval.
2. Conditions placed on CQA methods, monitoring, testing, sampling, and documenting, shall be considered permit conditions. Wharf may request a hearing before the board to contest any conditions placed on CQA plan approvals.

Air Quality and Noise

1. Wharf shall effectively control fugitive dust and other air emissions during all phases of clearing, earthwork, construction, mining, and reclamation for the Boston Expansion area. Dust control measures shall include the use of water trucks, dust suppressants, dust filters on equipment, and revegetating disturbed areas as soon as practicable.
2. The department reserves the right to require Wharf to reestablish air quality and ambient air monitoring if site air quality conditions warrant. This may include establishing an upwind and downwind PM10 ambient air quality monitoring network in accordance with the requirements in 40 CFR Part 50 and Part 58.
3. In accordance with ARSD 74:29:07:02(2), affected lands shall be cleared in small sections or increments to reasonably match the needs of mine production and to reduce the amount of dust generated by the operation.
4. Wharf shall notify the department within five working days of written complaints from landowners adjacent to the operation concerning dust, noise, and blasting. Wharf shall submit to the department a copy of any reports or mitigation plans submitted to Lawrence County regarding the complaints. The department, on finding that a complaint is based in fact on potential permit violations, may require Wharf to develop a mitigation plan to correct the potential violation. The completion date for the mitigation plan will be set at the time of the department's request.
5. Upon the department request, Wharf shall provide to the department blast and noise monitoring data.

Wildlife Protection

1. Wharf shall install protective structures and make every effort to contain solutions and chemicals and keep areas harmful to wildlife in a condition where access by wildlife is eliminated. This should include, but is not limited to, major haul roads, process and retention ponds, drainage ways, leach pads and process solution delivery systems, and process buildings.
2. Wharf shall promptly notify the Department of Game, Fish and Parks if species or critical habitat of species listed as threatened or endangered under state or federal statutes or rules are discovered within the permit area.

3. Any tree clearing shall be conducted outside of the migratory bird nesting season to avoid and minimize impacts to migratory bird nesting and roosting bats. The United States Fish and Wildlife Service identifies the 'maximum migratory bird nesting season' as extending from April 1 to July 15 annually, which is when most bird nesting occurs. Should tree clearance be required during the maximum bird nesting season, a bird survey must be conducted by a qualified wildlife biologist to identify any nesting birds in or adjacent to the proposed activity area. If nesting birds or roosting bats are discovered during the survey, Wharf Mine personnel shall contact GFP to determine an optimal buffer area to protect identified nests.

Biological Assessment and Monitoring

1. Wharf shall continue biological monitoring, following Department of Game, Fish, and Parks wildlife monitoring guidelines for large scale gold mines. The annual wildlife monitoring area will include the permitted expansion area and adequate perimeter buffer. Wharf Resources shall work with the South Dakota Department of Game, Fish and Parks to modify the existing Annual Wildlife Monitoring Plan to include study areas examined during the baseline analysis.

Wharf shall continue to follow the requirements established in the Annual Aquatic Biomonitoring Plan. Wharf shall work with the department and the Department of Game, Fish and Parks to maintain and update the existing Annual Aquatic Biomonitoring Plan, as necessary.

2. If an aquatic resource is impacted by a discharge, release, or spill of toxic solutions, Wharf shall implement a response plan to assess biological damages. The decision to implement this plan will be mutually agreed upon by the department and the Department of Game, Fish, and Parks. This plan shall require Wharf to mobilize, as soon as reasonable, a qualified consultant to complete a quantified assessment of damages to the stream ecosystem. A preliminary report of these findings shall be provided to the state within 15 working days of completion of field data collection and a final report shall be provided to the state within 45 working days of receiving the preliminary report.

Spill Contingency

1. All affected land under Permit Nos. 356, 434, 435, 450, 464, 476, and 490 shall be included under Wharf's Spill Contingency Plan. Within 90 days of permit approval, Wharf shall submit for department approval an updated Spill Contingency Plan covering Permit Nos. 356, 434, 435, 450, 464, 476, and 490.

Reclamation

1. Available topsoil or other material suitable for use as a plant-growing medium shall be stripped and stockpiled for use in reclamation. Topsoil stockpiles shall be clearly labeled and shall be stabilized to prevent wind and water erosion. Berms and/or other sediment and erosion control structures shall be installed on and around topsoil stockpiles to minimize erosional loss of soil resources. Topsoil shall not be used as backfill material.
2. Prior to final closure and bond release, Wharf shall maintain sufficient access to reclaimed areas to allow for any necessary reclamation maintenance. Roads not necessary for future use shall be reclaimed after the successful reclamation of pertinent affected areas.
3. Wharf shall transplant trees and shrubs from the Boston Expansion area to lands undergoing reclamation as shown in Exhibit 30.
4. Wharf shall dispose of mine rock and neutralized spent ore in mined-out areas, to the fullest extent practicable, to maximize the amount of material that is available for grading, backfilling, highwall stabilization, and topographic reconstruction of the open pits following mining.
5. If deemed necessary by the department, Wharf shall conduct a geotechnical stability analysis of exposed highwalls prior to final reclamation. If the highwalls are found to be unstable, additional backfilling or other mitigative techniques may be required to buttress or otherwise stabilize exposed walls.
6. In accord with SDCL 45-6B-42, Wharf shall take precautions to limit access to highwall areas by fencing, posting warning signs, and other suitable means. On completion of mining, highwall areas shall be adequately fenced or otherwise protected to prevent hazards to the public.
7. Pursuant to ARSD 74:29:07:17, all underground mine openings and workings discovered during the mining phase shall be closed or sealed as soon as possible after discovery to avoid additional bat mitigation requirements. If bats are found utilizing the underground workings, Wharf shall submit a mitigation plan to DANR and the Department of Game, Fish, and Parks for approval.
8. Prior to topsoil placement, Wharf shall analyze the topsoil to determine soil nutrient levels and appropriate fertilizer requirements.

Reclamation Surety

1. Pursuant to SDCL 45-6B-21, Wharf shall submit a reclamation bond or surety to cover reclamation costs for Permit Nos. 356, 434, 435, 464, 476, and 490. The estimated cost of carrying out reclamation activities until the end of 2024 at the Wharf Mine, including the Boston Expansion area, is \$72,152,900. The bond will be re-evaluated and revised as necessary at the end of 2024. As of April 17, 2023, Wharf's reclamation bond amount was \$58,246,100. Within 30 days after approval of Permit No. 490, Wharf shall post an additional \$13,906,800 reclamation bond in the form of surety, letter of credit, or cash deposit.

Pursuance to SDCL 45-6B-27, the department and the board reserve the right to adjust the reclamation bond or surety amount for the Boston Expansion Project for inflation, for unanticipated conditions, and for modifications to the permit by technical revision or amendment. The reclamation bond or surety may also be adjusted downwards as reclamation work is completed.

2. Before total reclamation bond and liability release, in addition to reclamation requirements, water quality at the site must meet water quality standards as determined by Wharf's Ground Water Discharge Plans, Surface Water Discharge Permit, and South Dakota surface and ground water standards, as appropriate. If water quality standards are not met at the time of closure, Wharf shall submit to the department either an environmental surety under SDCL 34A-10 or adjust the postclosure bond in an appropriate amount to provide for ground and surface water remediation. The environmental surety or postclosure bond shall be held until such time as the ground and surface water quality standards are met.

Postclosure

1. All affected land under Permit Nos. 356, 434, 435, 450, 464, 476, and 490 shall be included in the postclosure plan.
2. Before the start of the postclosure period, Wharf shall submit an updated postclosure plan, to include an updated hydrologic monitoring plan, to the department for approval. The postclosure plan shall be updated to reflect actual site conditions at the time of mine closure, and shall include, in addition to hydrologic monitoring, air quality monitoring, vegetation monitoring, spent ore treatment, sediment and erosion control systems, and miscellaneous maintenance and care.

3. The postclosure period shall begin at the time of reclamation surety release (mine closure) and shall last for a period not to extend beyond 30 years, unless the board determines that a longer period is necessary for compliance with all applicable performance standards or design and operating criteria.
4. Wharf's liability for the affected mine area shall continue until certification of the completion of the postclosure care plan is approved by the board.
5. Wharf grants to the board or its representative's permission to enter the reclaimed area to monitor reclamation success and to take air, water, and biological samples during the postclosure period. The department shall give Wharf the opportunity to accompany any inspector from the department or other agent of the board during the postclosure period.

Postclosure Financial Assurance

1. In accordance with SDCL 45-6B-91, Wharf shall submit a postclosure financial assurance to cover postclosure care and maintenance costs for Permit Nos. 356, 434, 435, 464, 476, and 490. The postclosure financial assurance will be used to correct postclosure problems in the case that Wharf fails to carry out required postclosure activities. The estimated cost of carrying out postclosure care activities at Wharf's mine site is \$42,685,600. As of April 17, 2023, Wharf's postclosure financial assurance amount was \$38,396,200. Within 30 days after approval of Permit No. 490, Wharf shall post an additional \$4,289,400 postclosure financial assurance in the form of surety, letter of credit, or cash deposit. Issuance of the permit shall be contingent on the department's receipt of the postclosure financial assurance. Postclosure financial assurance of the mining operations shall be submitted before beginning the construction or land disturbance associated with the Boston Expansion.

Postclosure financial assurance shall be calculated for the entire mine operation and the final amount submitted to the department before beginning construction or land disturbance associated with the Expansion. The final amount will be based on cost estimates developed by Wharf. The cost estimates shall be submitted to the department for review and approval prior to submission of the postclosure financial assurance. The department will review and recalculate the required postclosure financial assurance amount and adjust the amount of postclosure financial assurance, as necessary, to reflect anticipated site conditions at the time of mine closure.

2. The postclosure financial assurance shall be held for a period of 50 years after reclamation surety release to ensure that all established reclamation and performance standards are met and that the affected land is stable, is free of hazards, has self-regenerating vegetation, has minimal hydrological impacts, has minimal releases of substances that adversely impact natural resources, and is maintenance-free to the extent practicable. The board may extend the period of the postclosure bond beyond 50 years if necessary. If the board finds that an extension of the postclosure period is necessary, the postclosure financial assurance, or portion necessary to ensure continued compliance, shall be held for the extended period. If the board reduces the length of the postclosure care period, the postclosure financial assurance shall be held until the end of the reduced period. Until the board finds that the site meets all applicable performance standards, the postclosure financial assurance shall include funds to carry out normal monitoring and maintenance work, and funds for contingencies such as long-term nitrate treatment. Funds left at the end of the postclosure period will be released to Wharf.

When Wharf believes it is in full and continuing compliance with applicable performance standards, it may petition the board for release or reduction of the postclosure financial assurance by submitting certification that postclosure care is complete.

3. The type of postclosure financial assurance may be amended upon mutual consent of the department, the board, and Wharf.
4. The department and the board reserve the right to increase or reduce the amount of postclosure financial assurance based on site performance factors including site stability, presence of hazards, revegetation success, hydrologic impacts, the need for long-term surface or ground water treatment, and releases of substances that adversely impact natural resources.

Performance Monitoring

1. Within 90 days of permit approval, Wharf shall submit an update to the Performance Monitoring Plan, which shall include pertinent information on the Boston Expansion area. This plan is to be used as a basis for assessing performance of all components of the reclaimed facility, including the rock facilities, spent ore facilities, processing facilities, crusher areas, pit areas, and ancillary facilities. The plan shall identify proposed performance criteria for vegetation, ground water, surface water, and other applicable components of reclamation, such as air quality, slope stability, disposal of refuse, weed control, and highwall fencing. The plan shall address the methods for determining

conformance with the criteria. Performance criteria for vegetation shall be developed in consultation with the local district conservationist and must include measurements for forage production, species composition, coverage, and density.

Based upon site conditions at the time of mine closure, the department, in consultation with Wharf, will reassess the plan to develop a final performance monitoring plan that will set site specific performance criteria and performance monitoring stations for each component of the reclaimed facility. The final performance criteria shall become enforceable requirements and will be used to determine reclamation surety and liability release.

The performance monitoring plan and performance criteria may be modified by mutual agreement of the department and Wharf.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the DANR's PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER was submitted via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501
Staff – Brd. Minerals & Env.

Further, the undersigned certifies that a true and correct copy of the above referenced document(s) was served via United States Mail, First Class, Postage Prepaid upon the following:

Dwight Gubbrud
Bennett, Main, Gubbrud, & Willert
618 State Street
Belle Fourche, SD 57717
*Counsel – Wharf Resources (USA),
Inc.*

Rexford A. Hagg
601 West Blvd.
P.O. Box 8008
Rapid City, SD 57701
Chair – Brd. Minerals & Env.

Carla Marshall
P.O. Box 3184
Rapid City, SD 57709
Intervenor

On this 16th day of June, 2023.



Steven R. Blair
Assistant Attorney General

RECEIVED

JUN 23 2023

Dept. of Agriculture
& Natural Resources

LAW OFFICES OF
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KELLEN B. WILLERT**
**LICENSED in SOUTH DAKOTA, WYOMING and COLORADO

June 19, 2023

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

**RE: Wharf Resources (U.S.A.) Inc. – Boston Expansion Large Scale
Mine Permit Application; Our File No. 2876.135021.**

Dear Ms. Binegar:

Enclosed please find the original of Wharf's Proposed Findings of Fact, Conclusions of Law, and Order for filing in the above-referenced matter. Copies are being served upon the parties and Chairman Hagg. Should you have any questions, please feel free to contact me.

Sincerely,

BENNETT MAIN GUBBRUD & WILLERT, P.C.



Max Main

(Writer's direct email address: max@bellelaw.com)

MM/ak

Enc.

cc: Client (by email)
Rex Hagg (by email and U.S. mail)
Dwight Gubbrud (by email)
Steven Blair (by email and U.S. mail)
Carla Marshall (by U.S. mail)

JUN 23 2023

Dept. of Agriculture
& Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

WHARF RESOURCES (U.S.A.) INC.) BOSTON EXPANSION LARGE) SCALE MINE PERMIT) APPLICATION)	WHARF’S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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A hearing was held before the South Dakota Board of Minerals and Environment (“Board”) on May 18-19, 2023, in Pierre, South Dakota, on the application of Wharf Resources (U.S.A.) Inc. (“Wharf”) for a large-scale mine permit (the “application”).

The following members of the Board were present at the hearing: Chairman Rexford Hagg, Glenn Blumhardt, Gary Haag, Doyle Karpen, Robert Morris, and John Scheetz. Prior to the commencement of the hearing, the Chairman had appointed Rexford Hagg to act as Hearing Chairman.

Assistant Attorney General Steven R. Blair appeared on behalf of the South Dakota Department of Agriculture and Natural Resources (“Department”); Carla Marshall appeared as an intervener; and attorney Dwight A. Gubbrud appeared on behalf of Wharf. Carla Marshall did not attend the hearing on May 19.

Based upon the application, the Department’s recommendation, and the testimony, evidence and arguments presented at the hearing, the Board makes and enters the following:

FINDINGS OF FACT

1. The Department received Wharf’s application for a large-scale life of the mine permit for the proposed expansion of Wharf’s mining operations (the “Boston Expansion Project”) on June 13, 2022.

2. On March 10, 2023, the South Dakota Department of Game, Fish and Parks, the South Dakota State Archeological Research Center, the South Dakota Department of Health, and the Lawrence County Conservation District were notified that their 30-day review period had started. Wharf had previously sent copies of the application to all applicable review agencies.

3. A copy of the application was also filed with the Lawrence County Register of Deeds.

4. In response to Department requests, Wharf timely submitted additional information to supplement and clarify the application.

5. All supplemental and clarifying information was timely filed in the office of the Lawrence County Register of Deeds, and was timely mailed or delivered to all applicable review agencies.

6. Wharf's application, as supplemented, and clarified, is complete in all respects and contains all required and requested information. The Department determined the application to be procedurally complete under SDCL 45-6B and ARSD 74:29 on March 10, 2023.

7. The application fee of Fifty Thousand Dollars (\$50,000) has been paid by Wharf to the Department.

8. Notice of Filing of the application was published in the Black Hills Pioneer on March 17 and March 24, 2023 and in the Rapid City Journal on March 16 and 23, 2023.

9. On September 20 and 28, 2022, Department personnel inspected the proposed mine site for the Boston Expansion Project. Inspections were attended by representatives of the South Dakota Department of Game, Fish, and Parks, the South Dakota Archeological Research Center, and the Department.

10. On April 17, 2023, the Department recommended conditional approval of Wharf's application. The recommendation of approval included proposed permit conditions. The final permit conditions as approved by the Board are attached hereto as Exhibit A and by this reference incorporated herein.

11. The Department requested authorization from the Board to approve technical revisions to Wharf's mining operation, as specified in the "Technical Revisions" section of the conditions attached hereto as Exhibit A.

12. On January 25, 2022, the Lawrence County Board of Commissioners, upon the recommendation of the Lawrence County Planning Commission, granted a large-scale extractive industry conditional use permit to Wharf for the Boston Expansion Project.

13. The following entities and individuals timely filed written statements or resolutions in support of Wharf's application:

- Lawrence County Commissioners
- South Dakota Community Foundation
- Northern Hills Alliance for Children
- Boys & Girls Clubs of the Black Hills
- Wellspring, d/b/a Wellfully
- United Way of the Black Hills
- Black Hills State University
- Black Hills Energy
- Butler Machinery Company
- Buckley Powder Co.
- All Net Connections
- Dale's Tire & Retreading, Inc.
- Lawrence County Citizen – Thomas Golden
- Jacobs Welding & Machining
- Lawrence County Citizen – Dr. Dan Leikvold, former Lead/Deadwood Superintendent
- Klein Visioneering Group
- Rasmussen Mechanical Services
- STERN Co.
- William London, General Manager of Terry Peak Ski Area
- South Dakota Mines
- Western Dakota Tech Foundation
- Stone Land Service, LLC
- Elkhorn Ridge
- Ron Everett, Mayor of the City of Lead
- Lotus Up Espresso & Deli
- Sanford Underground Research Facility
- Dakota Gold Corp. – Gerald Aberle, CEO
- Lead-Deadwood School District #40-1

14. Carla Marshall timely filed a petition contesting the Department's Recommendation on April 26, 2023.

15. Proper notice of the time, date, and location of the hearing on Wharf's application was timely published in the Black Hills Pioneer and the Rapid City Journal on

May 4 and May 11, 2023.

16. Wharf's filed reclamation plan provides for reclaiming all affected lands to the postmining land use of rangeland (woodland grazing).

17. Wharf's filed reclamation plan includes the following:

- a. A description of the type of reclamation Wharf proposes to achieve, including why rangeland was chosen;
- b. A soil survey of the affected land, prepared by BKS Environmental Associates, Inc., which is a competent soils surveyor;
- c. A vegetative survey of the affected land prepared by BKS Environmental Associates, Inc., which is a competent vegetation surveyor;
- d. A preliminary wildlife survey of the affected land, including a description of the dominant species of wildlife inhabiting the area, prepared by ICF International, which is a competent wildlife surveyor;
- e. A statement of any characteristics of the affected land of historic, archaeological, geologic, scientific or recreational significance known to Wharf;
- f. A description of how the reclamation plan will be implemented to meet all statutory and regulatory requirements;
- g. A description of how the reclamation plan will rehabilitate the affected land, including natural vegetation, wildlife, water, air and soil;
- h. A map of all the proposed affected land by all phases of the total scope of the mining operation, including the expected physical appearance of the area of the affected land, and a portrayal of the proposed final land use for each portion of the affected land;
- i. Baseline water quality and water level of all areas of aquifers potentially affected by the proposed mining operation;

- j. The location of proposed reservoirs, spent ore disposal sites, dams, dikes and diversion canals;
- k. Provisions for the stripping, storage, and replacement of overburden and topsoil; and
- l. Estimated costs of implementing and completing the proposed reclamation.

18. Wharf's reclamation plan was developed by Wharf and the Department, and adjacent landowners were consulted during development of the plan. Wharf owns the surface of all land within the Boston Expansion Project.

19. Wharf's revegetation plan will establish a diverse, effective and long-lasting vegetative cover that is capable of self-regeneration and will be at least equal in extent of cover to the natural vegetation of the surrounding area.

20. Wharf has submitted appropriate proposed methods and procedures to determine post-reclamation revegetation success.

21. Wharf's reclamation plan, including the revegetation plan, has been approved by the Lawrence County Board of Commissioners.

22. Wharf's reclamation plan satisfactorily addresses reclamation of all process and storage ponds.

23. Wharf's reclamation plan satisfactorily provides that removed topsoil will be segregated from other spoil and preserved by vegetative cover and other means from wind and water erosion, and kept free of contamination. The topsoil within the permit area is of sufficient quantity and quality for sustaining vegetation.

24. Wharf's reclamation plan provides for grading and backfilling to be completed to achieve visually and functionally compatible contours with the surrounding area and to enhance public safety and welfare.

25. Wharf's reclamation plan adequately provides for stabilization and protection of all surface areas of affected land to effectively control erosion. Further, the reclamation plan provides for implementation of a noxious weed control plan to control noxious weed infestations.

26. The grading, backfilling, and other topographic reconstruction methods included in Wharf's reclamation plan will achieve contours and configurations that are visually and functionally compatible with the surrounding area.

27. Wharf's reclamation plan provides, to the extent possible, that treated spent ore removed from the leach pads will be relocated and reclaimed on lands previously disturbed by mining.

28. Wharf's reclamation plan will minimize as much as practicable the disruption from its mining operation and will rehabilitate the affected land to a beneficial use.

29. Reclamation of the affected lands in the Boston Expansion Project is physically and economically feasible.

30. Wharf filed an accurate map of the affected lands, containing all information required by SDCL 45-6B-10.

31. Wharf's method and plan of operations and mining will minimize disturbance to the prevailing hydrologic balance of the affected land and of the surrounding area and to the quality and quantity of water in surface and groundwater systems both during and after the mining operation and during reclamation.

32. Wharf's filed application includes a socioeconomic impact study, prepared by Dr. Michael K. Madden. This socioeconomic impact study was submitted by Wharf to Lawrence County pursuant to Chapter 20, Article 1, Section 1.6 of the Lawrence County zoning ordinance, and the socioeconomic impact study satisfies the Board's requirements. The socioeconomic impact study addresses cumulative impacts of the Boston Expansion Project considered together with existing operations in the surrounding region. The probable beneficial socioeconomic impacts of the Boston Expansion Project substantially outweigh any probable adverse impacts of the Boston Expansion Project.

33. Wharf's mining operation will not adversely affect the stability of any significant, valuable and permanent man-made structures, including any such structures located within 200 feet of the affected lands.

34. Wharf is not in violation of any of the provisions of SDCL ch. 45-6B.

35. Wharf has submitted to the Department a sediment control map showing control locations and type, demonstrating that substantial disposition of sediment in

stream or lake beds, landslides, and water pollution can feasibly be prevented.

36. There are no lands designated as special, exceptional, critical, or unique within the Boston Expansion Project area.

37. Wharf's proposed mining operation will not result in the loss or reduction of long-range productivity of aquifer, public and domestic water wells, watershed lands, aquifer recharge areas, or significant agricultural areas.

38. At the time of the hearing, the Water Quality Program for the Department had prepared draft Surface Water Discharge Permit No. SD0025852 (the "draft SWDP") to authorize Wharf to discharge mine drainage, treated process wastewater, surfacing ground water, and stormwater to Annie Creek, Ross Valley, McKinley Gulch, Cleopatra Creek, False Bottom Creek, and Deadwood Creek from Wharf's open pit gold mine and from reclaimed historic mine tailings and mine workings located in the Bald Mountain Lead mining district of the Black Hills National Forest. A copy of the draft SWDP was admitted as Exhibit 15. A portion of False Bottom Creek has been recognized as impaired for selenium. To achieve compliance with surface water quality standards within False Bottom Creek, Wharf shall fulfill the following compliance schedule:

- a. Wharf shall submit the results of its pilot study of treatment alternatives to the Department by August 1, 2023.
- b. Wharf shall submit plans and specifications for its chosen treatment alternative prepared by a South Dakota-licensed professional engineer to the Department by April 1, 2024.
- c. Wharf shall complete construction of the selenium treatment system by October 1, 2024.
- d. Wharf shall comply with the selenium and selenate effluent limits for Compliance Point 010 by January 1, 2025.

The Department is authorized to change or modify the dates of compliance as a technical revision to the Boston Expansion Project mine permit pursuant to ARSD 74:29:03:16. This technical revision authority is outlined as part of Condition No. 10 of the Water Quality Section of the final conditions attached hereto as Exhibit A. Technical revision approval will be contingent upon approval of any required modifications to the compliance schedule completed as part of the draft SWDP or modifications made to Surface Water Discharge Permit No. SD0025852 after Department approval and issuance

of that permit.

39. The Boston Expansion Project area does not include any critical deer winter range, threatened or endangered indigenous wildlife species, or any other critical wildlife resources identified by the Department of Game, Fish and Parks.

40. Wharf's mining operation will not adversely affect cold water fish life propagation water.

41. Wharf's mining operation will not adversely affect riparian zones, mountain meadows, or wetlands. Further, there are no threatened or endangered vegetation species in the Boston Expansion Project area.

42. Wharf's mining operation will not adversely affect direct or indirect sources of drinking water.

43. Wharf's filed application includes a visual resource survey. The visual resource survey utilizes computer-generated perspectives from various viewpoints. While visual resources will be slightly impacted during mining operations, such impacts will be of a short duration. Upon completion of reclamation, vegetation will conform to the existing natural vegetation and there will be little or no visual disharmonies in the area.

44. There are no soils within the Boston Expansion Project area with high erosion and low revegetation potential.

45. The air quality of areas with minimal ambient airborne particulates and areas near potential receptors, including residences and recreational areas, will not be adversely affected by mining operations in the Boston Expansion Project area.

46. Areas near potential receptors, including residences and recreational areas, will not be adversely impacted by noise from mining operations in the Boston Expansion Project area.

47. Based on the magnitude, type and costs of reclamation activities planned for the affected lands, and the nature, extent and duration of the mining operation, and based on the Department's recommendation, the level of financial assurance necessary to guarantee the costs of reclamation for the entire Wharf Mine is Seventy-Two Million One Hundred Fifty-Two Thousand Nine Hundred Dollars (\$72,152,900). Wharf's current level of reclamation financial assurance is Fifty-Eight Million Two Hundred Forty-Six Thousand One Hundred Dollars (\$58,246,100), requiring Wharf to submit Thirteen

Million Nine Hundred Six Thousand Eight Hundred Dollars (\$13,906,800) in additional reclamation financial assurance within thirty (30) days after Board approval of the Boston Expansion large scale mine permit application. Wharf may submit the financial assurance in phases, corresponding to the amount of affected lands disturbed and the extent of such disturbance at any one time during the various stages of the mining operation.

48. Based on the postclosure care and maintenance requirements, and the length of the postclosure period, and based on the Department's recommendation, the level of financial assurance necessary to guarantee the costs of postclosure care and maintenance over the postclosure care period for the entire Wharf Mine is Forty-Two Million Six Hundred Eighty-Five Thousand Six Hundred Dollars (\$42,685,600). Wharf's current level of postclosure financial assurance is Thirty-Eight Million Three Hundred Ninety-Six Thousand Two Hundred Dollars (\$38,396,200), requiring Wharf to submit Four Million Two Hundred Eighty-Nine Thousand Four Hundred Dollars (\$4,289,400) in additional postclosure financial assurance within thirty (30) days after approval by the Board of the Boston Expansion large scale mine permit application. Wharf may submit the postclosure financial assurance in phases, corresponding to the construction or land disturbance associated with each phase of the mining operation.

49. The form of the financial assurance may be a surety bond for the benefit of the State of South Dakota.

50. Wharf's and the Department's witnesses are credible.

Based on the foregoing Findings of Fact, the Board hereby makes and enters the following:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the parties to and the subject matter of this proceeding.

2. Wharf's application is complete.

3. All notices of the application and the hearing thereon, and all other notices required by law, were properly and timely given.

4. Wharf's mining operation, reclamation program and the proposed future land uses are not contrary to the laws or regulations of the State of South Dakota or of the United States.

5. Wharf's mining operation will not be in violation of any Lawrence County zoning or subdivision regulations.

6. Wharf's mining operation and reclamation can be carried out in conformance with the requirements of SDCL 45-6B-35.

7. The lands within the Boston Expansion Project area are not unsuitable for a mining operation.

8. The lands that will be affected by Wharf's mining operation do not include any special, exceptional, critical, or unique lands as defined in SDCL 45-6B-33.3.

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED, that the Department is hereby authorized to approve technical revisions to Wharf's mining operation, as specified in the "Technical Revisions" section of the conditions attached hereto as Exhibit A;

IT IS FURTHER ORDERED, that Wharf's reclamation plan is hereby approved;

IT IS FURTHER ORDERED, that Wharf shall meet the compliance schedule set forth in Finding of Fact 38 as the same may be modified or amended within the Surface Water Discharge Permit issued by the South Dakota Department of Agriculture and Natural Resources Water Quality Program; and

IT IS FURTHER ORDERED, that Wharf's application for a large-scale life of the mine permit for the Boston Expansion Project is hereby granted, as conditioned by Exhibit A attached hereto.

DATED and signed this _____ day of _____, 2023.

**SOUTH DAKOTA BOARD OF MINERALS AND
ENVIRONMENT**

By: _____
Rexford A. Hagg, Hearing and Board Chairman

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Technical Revisions

The Board of Minerals and Environment (board), pursuant to ARSD 74:29:03:16, hereby authorizes the Department of Agriculture and Natural resources (department) to approve proposed technical revisions to Wharf Resources' (Wharf) Boston Expansion Project mining permit for the following:

1. Modifying monitoring plans, locations, parameters, and time frames;
2. Modifying compliance limits for chemical parameters as allowed within the mining laws and mine permit, including spent ore off-load criteria;
3. Submitting and modifying plans and specifications for permitted facilities;
4. Modifying or relocating erosion, sedimentation, or drainage control structures other than those defined in the existing site Stormwater Protection Plan;
5. Modifying reclamation seed mixes or rates beyond substituting a variety of species based on seed availability;
6. Modifying freshwater manner of use and source as allowed by water rights permits;
7. Modifying dust control methods;
8. Modifying blasting methods and procedures beyond simple adjustments for safety or efficiency;
9. Adding or modifying ancillary facilities within the permit boundary, including equipment and chemical storage areas, parking lots, office buildings, septic systems, perimeter fencing, utilities (phone lines, natural gas lines, power lines, water lines), crushing areas, sludge ponds, and stockpiles;
10. Modifying pit and rock facility configurations within permitted disturbance limits consistent with geotechnical considerations;
11. Modifying and relocating state, county, and private roads and haulage routes within the permit boundary when not within the active mine pit areas;

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12. Modifying topsoil stripping plans and storage areas;
13. Modifying the reclamation plan within the constraints of ARSD 74:29:03:01;
14. Modifying the mine operating plan within the constraints of ARSD 74:29:03:01;
15. Implementing new surface mining techniques or types of equipment;
16. Modifying the gold recovery methodology to improve performance, recovery, or environmental aspects;
17. Modifying action leakage response schedules and leakage response action plans;
18. Providing for or modifying long-term active water treatment;
19. Modifying postclosure plans and monitoring time frames;
20. Modifying handling procedures for potential acid generating rock;
21. Modifying reclamation or vegetation success standards;
22. Modifying spent ore backfilling plans to include the American Eagle, Portland, and Trojan pit areas subject to obtaining necessary Groundwater Discharge Plans;
23. Modifying mine designs and disturbance areas to include contiguous areas of potential ore;
24. Expanding leach pad footprint for better drainage, rinsing, and production;
25. Building additional lined spent ore impoundments for environmental purposes to provide additional water treatment;
26. Adding water storage capacity when it entails building new ponds;
27. Changing, modifying, developing, enhancing, or increasing water treatment technology and water treatment regimes;
28. Modifying pad parameters to enhance leaching or draindown characteristics;

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29. Developing and implementing other mineral processing technologies that would improve both economic and environmental aspects;
30. Modifying reporting procedures and parameters as allowed within the mining laws and mine permit;
31. Allowing use of Contingency Pond or other ponds as batch ponds, temporary process, or neutralization ponds;
32. Changing the slope angle for final reclamation of specific sites where visually and functionally compatible or for improved aesthetics;
33. Modifying stocking guidelines and reclamation success standards to reflect climatic conditions;
34. Specifying mine facility type within areas of ancillary disturbance within the permitted affected acreage prior to disturbance within this area; and
35. Placing or modifying slash piles on reclaimed surface areas, or in-pit as part of backfilling efforts.

Technical revisions must comply with ARSD 74:29:03:03 and must be submitted to the department in writing. The department shall approve, disapprove, conditionally approve, or request additional information deemed necessary to approve technical revisions within thirty days of receipt.

General

1. The conditional approval of this permit application incorporates by reference those representations made by Wharf, as to plans, specifications, operations, environmental impacts, and reclamation as contained in the permit application submitted June 13, 2022, with supplemental information submitted on October 17, 2022, November 28, 2022, December 2 and 6, 2022, and March 8 and 9, 2022. The representations contained in these documents are general conditions of this permit unless modified by a future technical revision, amendment, or permit, or modified by other conditions imposed by the board.
2. This permit and all rights under it are expressly conditioned on the truth of representations made by the applicant, Wharf, its officers, and employees in the

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application and supporting documentation relating to the application. Should any material representation prove to be false, this permit and all rights under it may be canceled by the board.

3. This permit is conditioned upon compliance with all applicable laws and regulations.
4. The conditions of Permit 490 apply to the entire mining operation, including Permit Nos. 356, 434, 435, 464, and 476. These conditions supersede similar conditions in previous mine permits, amendments, and technical revisions. Any conditions in previous mine permits, amendments, and technical revisions that do not conflict with these conditions remain in effect as applicable.
5. The operation shall be conducted in compliance with all Lawrence County Zoning Requirements and Conditional Use Permit conditions.
6. Wharf shall abide by the recommendations proposed at the time of permit approval by the South Dakota Department of Tourism, the South Dakota Department of Game, Fish and Parks, and the South Dakota Department of Health, except as modified or restated in these conditions.
7. All monitoring systems described in the permit application or as modified by the department or the board shall be implemented. Changes to monitoring systems must be approved by the department through technical revisions.
8. Wharf shall, whenever and wherever compatible with the mining operations, retain trees to visually screen the operation and minimize effects to existing wildlife habitat.
9. Wharf shall notify all affected parties of planned utility disruptions at least 48 hours prior to utility relocation. The notifications, either verbal or written, shall state the expected time, date, and length of the disruption.
10. As much as practicable, Wharf shall maintain traffic flow along SD Highway 473 through the permit area for the life of the project.

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Other Permits

1. Wharf shall obtain or modify, as necessary, any additional surface water discharge or ground water discharge permits for the project area.
2. These conditions do not change the requirements of other existing permits, including Ground Water Discharge Plans and Surface Water Discharge Permits.
3. Wharf shall obtain a US Corps of Engineers 404 permit, if required, prior to initiating construction or mining activities that affect the waters of the United States.
4. Wharf shall obtain, as necessary, any federal or state permit, if required, prior to taking, possessing, breaking, or destroying any nest or the eggs of the kinds of birds, which the taking or killing at any time or at all times is prohibited.

Acid Rock Drainage Prevention and Management

1. If unanticipated conditions are encountered during the course of mining, such as greater than anticipated sulfide mineralization, that are not adequately manageable as determined by the department under the approved reclamation plan and these conditions, the department or the board reserve the right to reopen and modify the permit and increase the reclamation bond as necessary to mitigate potential adverse conditions.
2. The department may require analysis of rock or ore whenever mining encounters an unanticipated geochemical condition which has the potential to be a source of water pollution, such as greater than anticipated sulfide mineralization. Analysis may consist of static (acid-base accounting (ABA)), paste pH, and kinetic (humidity cell, weathering cells, or column leach) tests, or other appropriate tests.

Based on the results of the rock analysis, the department may require Wharf to assess potential water quality impacts that may occur as a result of disposing of the rock as pit backfill or in waste rock facilities. In assessing the potential water quality impacts, the department may require Wharf to conduct a pathway and fate analysis of the resulting contaminants. Based on the assessment and the pathway and fate analysis, the department reserves the right to apply additional, site-specific rock handling conditions. Special rock handling practices may include, but

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are not necessarily be limited to, isolating acid-producing and/or metal-leaching rock or blending with alkaline rock.

3. Unless modified by other conditions in this section, during mining of the Boston Expansion Project, Wharf shall abide by its Acid Rock Management Plan and the conditions of the Technical Revision approved September 30, 2002, regarding the acid rock drainage prevention plan for the Trojan Pit.
4. All Boston Expansion Project ore having an acid neutralization potential to acid generating potential ratio (ANP/AGP ratio) of less than 3:1 shall be amended or blended with limestone or another suitable base amendment in an amount sufficient to attain an ANP/AGP ratio of at least 4:1. Wharf may use other ore with a high neutralization potential and low total sulfur content as base amendments. Wharf shall track amounts and type of base amendment added, calculate the neutralization potential of the amendments, and report this data with the annual water quality report.
5. To the greatest extent possible, Wharf shall design the Flossie and Portland Pit expansions into the Boston area to minimize the amount of acid generating rock exposed in the highwalls. Measures to reduce acid generating rock in the highwalls may include, but are not limited to:
 - a. Expanding pit walls to remove narrow bands of acid generating rock;
 - b. Moving pit walls inward to stay within the oxidized boundary and avoid zones of acid generating rock;
 - c. Removal of small areas of acid generating rock; and
 - d. Creating flat areas in zones of acid generating rock, allowing for cover fills to be installed.
6. If at mine closure, spent ore composed of potentially acid generating rock is to remain and be reclaimed on the leach pad, Wharf shall submit a plan, outlining reclamation alternatives, for this material. The plan shall be submitted for approval to the department prior to mine closure. Based upon the reclamation alternative selected, the department or the board reserves the right to adjust the reclamation bond as necessary.

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Water Quality

1. Leachate discharge or surface water runoff from the site shall not cause South Dakota Ground Water Discharge Plan requirements, South Dakota Surface Water Discharge Permit requirements, or ground and surface water quality standards, as appropriate, to be violated. There shall not be any unauthorized loss or release of cyanide or any other toxic constituent associated with the gold recovery process to the surface or subsurface environment outside the mine permit boundary.
2. If Wharf's South Dakota Surface Water Discharge Permit is terminated, South Dakota surface water quality standards will apply, as appropriate.
3. If Wharf's South Dakota Ground Water Discharge Plans are terminated, South Dakota ground water quality standards will apply as appropriate.
4. Wharf shall make every effort to maintain process solutions at normal operating levels. Excess solutions shall be properly disposed of, and treated, if necessary, as soon as practicable.
5. Wharf shall effectively manage and treat nitrate in mining impacted waters as long as necessary to meet surface and ground water quality standards or to comply with ground water and surface water discharge permits, as applicable.
6. Wharf shall maintain safe and adequate process solution management and shall prevent the uncontrolled release of process solution in the event of an electrical power outage.
7. Wharf shall submit an updated hydrologic monitoring plan for the closure period. This plan shall be submitted prior to mine closure, and is subject to department approval. This plan shall include surface and ground water quality monitoring stations, springs and seeps, and include monitoring parameters, testing methods, quality assurance/quality control, and sampling schedules. This plan will be in effect until the postclosure hydrological monitoring plan is approved.
8. The department reserves the right to modify the hydrologic monitoring plan if monitoring results indicate that a modification is warranted. Modifications may include establishing additional surface and ground water monitoring sites, adding parameters, changing sampling frequency, changing sampling schedules, or

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modifying Wharf's Ground Water Discharge Plans or Surface Water Discharge Permits.

9. On or prior to March 1 of each year the mine is in operation, Wharf shall submit an annual surface and ground water characterization report beginning the year the mine permit is granted. This report shall include, but not necessarily be limited to, all chemical, discharge, and water level data gathered, and an interpretation of the data. Wharf shall submit all supporting surface water and ground water sampling and laboratory data sheets as part of this report.
10. Wharf will work to develop effective treatment technologies to reduce elevated selenium concentrations noted in False Bottom Creek. During the development of plans to remediate the elevated selenium concentrations, Wharf shall provide regular monthly updates to the department. Final plans for any water treatment installed to treat selenium circuit must be presented to the department prior to installation. Wharf shall follow any additional requirements stipulated as part of the Surface Water Discharge Permit to address selenium issues at the mine.

Surface and Ground Water Mitigation Plans

1. If any component of the facility contaminates surface and ground waters to the point that requirements of the Ground Water Discharge Plans, Surface Water Discharge Permit, ground and surface water quality standards, or site specific performance monitoring criteria developed pursuant to Condition No. 1 under "Performance Monitoring" (below) are violated, the department may, in conjunction with an enforcement action, require Wharf to develop and submit a site-specific mitigation plan for the department's review and approval. The plan shall describe those measures that will be taken to mitigate and prevent surface or ground water contamination. Such measures may include, but are not limited to:
 - a. Installing additional water treatment system facilities;
 - b. Installing capping systems; and
 - c. Treating contaminated ground water or surface water.

Wharf shall include cost estimates for implementing contingency measures. If the department determines that further remedial measures are needed, the department

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reserves the right to require Wharf to submit for approval plans and specifications and construction quality assurance plans.

Sediment and Erosion Control

1. Erosion and sedimentation controls shall be in place and functional during all phases of clearing, earthwork, construction, mining, and reclamation, and during the postclosure period in the permit area, in accordance with Wharf's General Permit Authorizing Storm Water Discharges Associated with Construction Activities. Wharf shall submit a sediment control map for the permit area, including the Boston Expansion area, showing sediment control locations and type prior to any land disturbance in the permit area. The Best Management Practices/Storm Water Pollution Prevention Plan shall be updated as needed.

Interim sedimentation and erosion controls shall be used on disturbed land during clearing, construction, mining, and reclamation until these areas are stabilized, in accordance with the General Permit.

Wharf shall inspect, clean out, repair, or upgrade sediment controls as necessary to maintain compliance with its Surface Water Discharge Permit and General Permit Authorizing Storm Water Discharges Associated with Construction Activities as applicable.

2. Wharf shall install rock check dams, diversion ditches, or other adequate structures needed to minimize channelization and erosion from surface runoff. Surface water diversions and final reclamation drainage channels must meet the requirements of ARSD 74:29:07:09.

Plans and Specifications – General

1. Detailed plans and specifications of any facilities that are designed to prevent environmental contamination or to treat contaminated material shall be submitted to the department for written approval prior to construction. The department recognizes that the plans and specification in the mine permit application are conceptual. These plans and specifications must be completed to the 100 percent constructible stage. The department will not unreasonably withhold its final approval of the plans and specifications if they reflect the technical parameters specified in the permit. Facilities for which plans and specification are required include, but are not limited to:

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- a. Diversion ditches and culverts;
- b. Major sedimentation ponds and control structures;
- c. Future expansion of the leach pads or processing facilities; and
- d. Future spent ore impoundments.

Within 30 days of submission, the department shall approve, disapprove, conditionally approve, or request additional information necessary to approve the plans and specifications. If disapproved, the department shall identify those items necessary for approval. If plans and specification are disapproved or a request for additional information is made, the department shall have 30 days after receipt of Wharf's response to approve, conditionally approve, or disapprove the plans and specifications.

2. Conditions placed on plans and specifications approvals by the department shall be considered permit conditions. Conditions placed on plans and specifications will not alter the conceptual design of the facility as permitted. Wharf may request a hearing before the board to contest any conditions placed on plans and specifications approvals.
3. If the department requires, Wharf shall submit to the department as-built drawings (record drawings) complete with technical specifications for facilities required to have plans and specifications submitted. Wharf shall submit the required drawings within 60 days of completion of each component of the facility.

Construction Quality Assurance (CQA)

1. As part of a detailed plans and specifications document, if the department requires, Wharf shall submit a CQA plan for any facilities requiring lining systems. If required, the CQA plan shall be submitted to the department for review and approval.
2. Conditions placed on CQA methods, monitoring, testing, sampling, and documenting, shall be considered permit conditions. Wharf may request a hearing before the board to contest any conditions placed on CQA plan approvals.

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Air Quality and Noise

1. Wharf shall effectively control fugitive dust and other air emissions during all phases of clearing, earthwork, construction, mining, and reclamation for the Boston Expansion area. Dust control measures shall include the use of water trucks, dust suppressants, dust filters on equipment, and revegetating disturbed areas as soon as practicable.
2. The department reserves the right to require Wharf to reestablish air quality and ambient air monitoring if site air quality conditions warrant. This may include establishing an upwind and downwind PM10 ambient air quality monitoring network in accordance with the requirements in 40 CFR Part 50 and Part 58.
3. In accordance with ARSD 74:29:07:02(2), affected lands shall be cleared in small sections or increments to reasonably match the needs of mine production and to reduce the amount of dust generated by the operation.
4. Wharf shall notify the department within five working days of written complaints from landowners adjacent to the operation concerning dust, noise, and blasting. Wharf shall submit to the department a copy of any reports or mitigation plans submitted to Lawrence County regarding the complaints. The department, on finding that a complaint is based in fact on potential permit violations, may require Wharf to develop a mitigation plan to correct the potential violation. The completion date for the mitigation plan will be set at the time of the department's request.
5. Upon the department request, Wharf shall provide to the department blast and noise monitoring data.

Wildlife Protection

1. Wharf shall install protective structures and make every effort to contain solutions and chemicals and keep areas harmful to wildlife in a condition where access by wildlife is eliminated. This should include, but is not limited to, major haul roads, process and retention ponds, drainage ways, leach pads and process solution delivery systems, and process buildings.

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2. Wharf shall promptly notify the Department of Game, Fish and Parks if species or critical habitat of species listed as threatened or endangered under state or federal statutes or rules are discovered within the permit area.
3. Any tree clearing shall be conducted outside of the migratory bird nesting season to avoid and minimize impacts to migratory bird nesting and roosting bats. The United States Fish and Wildlife Service identifies the 'maximum migratory bird nesting season' as extending from April 1 to July 15 annually, which is when most bird nesting occurs. Should tree clearance be required during the maximum bird nesting season, a bird survey must be conducted by a qualified wildlife biologist to identify any nesting birds in or adjacent to the proposed activity area. If nesting birds or roosting bats are discovered during the survey, Wharf Mine personnel shall contact GFP to determine an optimal buffer area to protect identified nests.

Biological Assessment and Monitoring

1. Wharf shall continue biological monitoring, following Department of Game, Fish, and Parks wildlife monitoring guidelines for large scale gold mines. The annual wildlife monitoring area will include the permitted expansion area and adequate perimeter buffer. Wharf Resources shall work with the South Dakota Department of Game, Fish and Parks to modify the existing Annual Wildlife Monitoring Plan to include study areas examined during the baseline analysis.

Wharf shall continue to follow the requirements established in the Annual Aquatic Biomonitoring Plan. Wharf shall work with the department and the Department of Game, Fish and Parks to maintain and update the existing Annual Aquatic Biomonitoring Plan, as necessary.

2. If an aquatic resource is impacted by a discharge, release, or spill of toxic solutions, Wharf shall implement a response plan to assess biological damages. The decision to implement this plan will be mutually agreed upon by the department and the Department of Game, Fish, and Parks. This plan shall require Wharf to mobilize, as soon as reasonable, a qualified consultant to complete a quantified assessment of damages to the stream ecosystem. A preliminary report of these findings shall be provided to the state within 15 working days of completion of field data collection and a final report shall be provided to the state within 45 working days of receiving the preliminary report.

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Spill Contingency

1. All affected land under Permit Nos. 356, 434, 435, 450, 464, 476, and 490 shall be included under Wharf's Spill Contingency Plan. Within 90 days of permit approval, Wharf shall submit for department approval an updated Spill Contingency Plan covering Permit Nos. 356, 434, 435, 450, 464, 476, and 490.

Reclamation

1. Available topsoil or other material suitable for use as a plant-growing medium shall be stripped and stockpiled for use in reclamation. Topsoil stockpiles shall be clearly labeled and shall be stabilized to prevent wind and water erosion. Berms and/or other sediment and erosion control structures shall be installed on and around topsoil stockpiles to minimize erosional loss of soil resources. Topsoil shall not be used as backfill material.
2. Prior to final closure and bond release, Wharf shall maintain sufficient access to reclaimed areas to allow for any necessary reclamation maintenance. Roads not necessary for future use shall be reclaimed after the successful reclamation of pertinent affected areas.
3. Wharf shall transplant trees and shrubs from the Boston Expansion area to lands undergoing reclamation as shown in Exhibit 30.
4. Wharf shall dispose of mine rock and neutralized spent ore in mined-out areas, to the fullest extent practicable, to maximize the amount of material that is available for grading, backfilling, highwall stabilization, and topographic reconstruction of the open pits following mining.
5. If deemed necessary by the department, Wharf shall conduct a geotechnical stability analysis of exposed highwalls prior to final reclamation. If the highwalls are found to be unstable, additional backfilling or other mitigative techniques may be required to buttress or otherwise stabilize exposed walls.
6. In accord with SDCL 45-6B-42, Wharf shall take precautions to limit access to highwall areas by fencing, posting warning signs, and other suitable means. On completion of mining, highwall areas shall be adequately fenced or otherwise protected to prevent hazards to the public.

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7. Pursuant to ARSD 74:29:07:17, all underground mine openings and workings discovered during the mining phase shall be closed or sealed as soon as possible after discovery to avoid additional bat mitigation requirements. If bats are found utilizing the underground workings, Wharf shall submit a mitigation plan to DANR and the Department of Game, Fish, and Parks for approval.
8. Prior to topsoil placement, Wharf shall analyze the topsoil to determine soil nutrient levels and appropriate fertilizer requirements.

Reclamation Surety

1. Pursuant to SDCL 45-6B-21, Wharf shall submit a reclamation bond or surety to cover reclamation costs for Permit Nos. 356, 434, 435, 464, 476, and 490. The estimated cost of carrying out reclamation activities until the end of 2024 at the Wharf Mine, including the Boston Expansion area, is \$72,152,900. The bond will be re-evaluated and revised as necessary at the end of 2024. As of April 17, 2023, Wharf's reclamation bond amount was \$58,246,100. Within 30 days after approval of Permit No. 490, Wharf shall post an additional \$13,906,800 reclamation bond in the form of a surety bond for the benefit of the state of South Dakota.

Pursuance to SDCL 45-6B-27, the department and the board reserve the right to adjust the reclamation bond or surety amount for the Boston Expansion Project for inflation, for unanticipated conditions, and for modifications to the permit by technical revision or amendment. The reclamation bond or surety may also be adjusted downwards as reclamation work is completed.

2. Before total reclamation bond and liability release, in addition to reclamation requirements, water quality at the site must meet water quality standards as determined by Wharf's Ground Water Discharge Plans, Surface Water Discharge Permit, and South Dakota surface and ground water standards, as appropriate. If water quality standards are not met at the time of closure, Wharf shall submit to the department either an environmental surety under SDCL 34A-10 or adjust the postclosure bond in an appropriate amount to provide for ground and surface water remediation. The environmental surety or postclosure bond shall be held until such time as the ground and surface water quality standards are met.

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Postclosure

1. All affected land under Permit Nos. 356, 434, 435, 450, 464, 476, and 490 shall be included in the postclosure plan.
2. Before the start of the postclosure period, Wharf shall submit an updated postclosure plan, to include an updated hydrologic monitoring plan, to the department for approval. The postclosure plan shall be updated to reflect actual site conditions at the time of mine closure, and shall include, in addition to hydrologic monitoring, air quality monitoring, vegetation monitoring, spent ore treatment, sediment and erosion control systems, and miscellaneous maintenance and care.
3. The postclosure period shall begin at the time of reclamation surety release (mine closure) and shall last for a period not to extend beyond 30 years, unless the board determines that a longer period is necessary for compliance with all applicable performance standards or design and operating criteria.
4. Wharf's liability for the affected mine area shall continue until certification of the completion of the postclosure care plan is approved by the board.
5. Wharf grants to the board or its representative's permission to enter the reclaimed area to monitor reclamation success and to take air, water, and biological samples during the postclosure period. The department shall give Wharf the opportunity to accompany any inspector from the department or other agent of the board during the postclosure period.

Postclosure Financial Assurance

1. In accordance with SDCL 45-6B-91, Wharf shall submit a postclosure financial assurance to cover postclosure care and maintenance costs for Permit Nos. 356, 434, 435, 464, 476, and 490. The postclosure financial assurance will be used to correct postclosure problems in the case that Wharf fails to carry out required postclosure activities. The estimated cost of carrying out postclosure care activities at Wharf's mine site is \$42,685,600. As of April 17, 2023, Wharf's postclosure financial assurance amount was \$38,396,200. Within 30 days after approval of Permit No. 490, Wharf shall post an additional \$4,289,400 postclosure financial assurance in the form of surety, letter of credit, or cash deposit. Issuance of the permit shall be contingent on the department's receipt of the postclosure financial assurance. Postclosure financial assurance of the mining operations shall be

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submitted before beginning the construction or land disturbance associated with the Boston Expansion.

Postclosure financial assurance shall be calculated for the entire mine operation and the final amount submitted to the department before beginning construction or land disturbance associated with the Expansion. The final amount will be based on cost estimates developed by Wharf. The cost estimates shall be submitted to the department for review and approval prior to submission of the postclosure financial assurance. The department will review and recalculate the required postclosure financial assurance amount and adjust the amount of postclosure financial assurance, as necessary, to reflect anticipated site conditions at the time of mine closure.

2. The postclosure financial assurance shall be held for a period of 50 years after reclamation surety release to ensure that all established reclamation and performance standards are met and that the affected land is stable, is free of hazards, has self-regenerating vegetation, has minimal hydrological impacts, has minimal releases of substances that adversely impact natural resources, and is maintenance-free to the extent practicable. The board may extend the period of the postclosure bond beyond 50 years if necessary. If the board finds that an extension of the postclosure period is necessary, the postclosure financial assurance, or portion necessary to ensure continued compliance, shall be held for the extended period. If the board reduces the length of the postclosure care period, the postclosure financial assurance shall be held until the end of the reduced period. Until the board finds that the site meets all applicable performance standards, the postclosure financial assurance shall include funds to carry out normal monitoring and maintenance work, and funds for contingencies such as long-term nitrate treatment. Funds left at the end of the postclosure period will be released to Wharf.

When Wharf believes it is in full and continuing compliance with applicable performance standards, it may petition the board for release or reduction of the postclosure financial assurance by submitting certification that postclosure care is complete.

3. The type of postclosure financial assurance may be amended upon mutual consent of the department, the board, and Wharf.
4. The department and the board reserve the right to increase or reduce the amount of postclosure financial assurance based on site performance factors including site

EXHIBIT A
WHARF RESOURCES (U.S.A.) INC.
BOSTON EXPANSION LARGE SCALE MINE PERMIT CONDITIONS

stability, presence of hazards, revegetation success, hydrologic impacts, the need for long-term surface or ground water treatment, and releases of substances that adversely impact natural resources.

Performance Monitoring

1. Within 90 days of permit approval, Wharf shall submit an update to the Performance Monitoring Plan, which shall include pertinent information on the Boston Expansion area. This plan is to be used as a basis for assessing performance of all components of the reclaimed facility, including the rock facilities, spent ore facilities, processing facilities, crusher areas, pit areas, and ancillary facilities. The plan shall identify proposed performance criteria for vegetation, ground water, surface water, and other applicable components of reclamation, such as air quality, slope stability, disposal of refuse, weed control, and highwall fencing. The plan shall address the methods for determining conformance with the criteria. Performance criteria for vegetation shall be developed in consultation with the local district conservationist and must include measurements for forage production, species composition, coverage, and density.

Based upon site conditions at the time of mine closure, the department, in consultation with Wharf, will reassess the plan to develop a final performance monitoring plan that will set site specific performance criteria and performance monitoring stations for each component of the reclaimed facility. The final performance criteria shall become enforceable requirements and will be used to determine reclamation surety and liability release.

The performance monitoring plan and performance criteria may be modified by mutual agreement of the department and Wharf.

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

WHARF RESOURCES (U.S.A.) INC.)
BOSTON EXPANSION LARGE SCALE)
MINE PERMIT APPLICATION) **CERTIFICATE OF SERVICE**
)

I, Max Main, hereby certify that on the 19th day of June, 2023, I caused a full, true, and complete copy of the foregoing **WHARF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** and this Certificate of Service to be served by depositing the same in the U.S. Mail with first class postage thereon fully prepaid, in envelopes addressed to the following-named persons:

Rexford A. Haag
601 West Blvd.
P.O. Box 8008
Rapid City, SD 57701

Carla Marshall
P.O. Box 3184
Rapid City, SD 57709

Steven R. Blair
Assistant Attorney General
P.O. Box 70
Rapid City, SD 57702

I, Max Main, hereby further certify that on the 19th day of June, 2023, I caused the original **WHARF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** and this Certificate of Service to be submitted for filing by depositing the same in the U.S. Mail with first class postage thereon fully prepaid, in an envelope addressed to the following-named person:

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

Dated this 19th day of June, 2023.

BENNETT MAIN GUBBRUD & WILLERT, P.C.

By: Max Main
MAX MAIN

RECEIVED

LAW OFFICES OF
BENNETT MAIN GUBBRUD & WILLERT, P.C.
A PROFESSIONAL CORPORATION
618 STATE STREET
BELLE FOURCHE, SOUTH DAKOTA 57717
TEL (605) 892-2011
Email: bellelaw@bellelaw.com

JUN 26 2023

**Dept. of Agriculture
& Natural Resources**

MAX MAIN, Associate Emeritus*
DWIGHT A. GUBBRUD*
*LICENSED in SOUTH DAKOTA and WYOMING

Est. 1908

KELLEN B. WILLERT**
**LICENSED in SOUTH DAKOTA, WYOMING and COLORADO

June 22, 2023

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

**RE: Wharf Resources (U.S.A.) Inc. – Boston Expansion Large Scale
Mine Permit Application; Our File No. 2876.135021.**

Dear Ms. Binegar:

Enclosed please find the original of Wharf's Objection to Department's Proposed Finding of Fact 47, and Conclusion of Law 9. Copies are being served upon the parties and Chairman Hagg. Should you have any questions, please feel free to contact me.

Sincerely,

BENNETT MAIN GUBBRUD & WILLERT, P.C.



Max Main

(Writer's direct email address: max@bellelaw.com)

MM/ak

Enc.

cc: Client (by email)
Rex Hagg (by email and U.S. mail)
Dwight Gubbrud (by email)
Steven Blair (by email and U.S. mail)
Carla Marshall (by U.S. mail)

RECEIVED

JUN 26 2023

Dept. of Agriculture
and Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
BOARD OF MINERALS AND ENVIRONMENT

WHARF RESOURCES (U.S.A.) INC.	)	WHARF'S OBJECTION TO
BOSTON EXPANSION LARGE	)	DEPARTMENT'S PROPOSED
SCALE MINE PERMIT	)	FINDING OF FACT 47, AND
APPLICATION	)	CONCLUSION OF LAW 9

Wharf Resources (U.S.A.) Inc. ("Wharf") hereby objects to Finding of Fact 47 and Conclusion of Law 9 proposed by the South Dakota Department of Agriculture and Natural Resources ("Department"). This objection is made on the following grounds and for the following reasons.

The Department's proposed Finding of Fact 47 states: "Wharf is currently in violation of the federal Clean Water Act and SDCL 45-6B-87 due to elevated levels of selenium in False Bottom Creek." The Department's proposed Conclusion of Law 9 states in part: "Wharf's mining operation is currently in violation of the laws and regulations of the State of South Dakota or of the United States. . . ." The statements in the Proposed Finding and Conclusion that Wharf "is currently in violation" of federal or state laws "due to elevated levels of selenium in False Bottom Creek" are wrong. No notice of violation regarding elevated levels of selenium in False Bottom Creek has been issued to Wharf as required by SDCL 45-6B-48. There has been no hearing on any alleged violation, and, as a consequence, there has been no determination or adjudication that a violation has occurred.

Section 48 of South Dakota's Mined Land Reclamation Act is very specific about who can issue a notice of violation, how it is to be issued, and what it must state:

If the **secretary** of agriculture and natural resources has reason to believe that a violation of an order, permit, notice of intent, or rule issued under the authority of this chapter has occurred, written notice shall be given to the operator of the alleged violation. The notice **shall be served personally or by registered mail** upon the alleged violator or the alleged violator's agent for service of process. **The notice shall state the provision**

**alleged to be violated and the facts alleged to constitute the violation
and shall recommend possible corrective action.**

SDCL 45-6B-48 (emphasis added).

The Department may argue that it has written letters to Wharf regarding elevated selenium in False Bottom Creek, but such letters do not rise to the level of a formal notice of violation issued by the Secretary of the Department under SDCL 45-6B-48.

The Department may also argue that the subject of elevated selenium in False Bottom Creek was raised during the May 18-19, 2023 hearing on Wharf's large-scale mine permit application. While the subject of elevated selenium in False Bottom Creek was briefly addressed during the hearing on the large-scale mine permit application, it was not the focus of the hearing, and there was no determination or adjudication as to the cause of the elevated selenium. The subject and focus of the hearing was Wharf's large-scale mine permit application, not elevated selenium levels in False Bottom Creek. No determination or adjudication as to the cause, or any other aspect, of the elevated selenium should be made until a hearing has been held for that purpose.

Based on the foregoing, the Department's Proposed Finding of Fact 47 and Conclusion of Law 9 should not be included in any final findings and conclusions.

DATED this 22nd day of June, 2023.

**BENNETT MAIN GUBBRUD & WILLERT,
P.C.**

Attorneys for Wharf

By: 

MAX MAIN
618 State Street
Belle Fourche, SD 57717
(605) 892-2011
max@bellegalaw.com

CERTIFICATE OF SERVICE

I, Max Main, hereby certify that on the 22nd day of June, 2023, I caused a full, true, and complete copy of the foregoing **WHARF'S OBJECTION TO DEPARTMENT'S PROPOSED FINDING OF FACT 47, AND CONCLUSION OF LAW 9** and this Certificate of Service to be served by depositing the same in the U.S. Mail with first class postage thereon fully prepaid, in envelopes addressed to the following-named persons:

Rexford A. Hagg

601 West Blvd.

P.O. Box 8008

Rapid City, SD 57701

Steven R. Blair

Assistant Attorney General

P.O. Box 70

Rapid City, SD 57702

Carla Marshall

P.O. Box 3184

Rapid City, SD 57709

I, Max Main, hereby further certify that on the 22nd day of June, 2023, I caused the original **WHARF'S OBJECTION TO DEPARTMENT'S PROPOSED FINDING OF FACT 47, AND CONCLUSION OF LAW 9** and this Certificate of Service to be submitted for filing by depositing the same in the U.S. Mail with first class postage thereon fully prepaid, in an envelope addressed to the following-named person:

Brenda Binegar

Dept. of Agriculture & Nat. Resources

523 E. Capitol Ave.

Pierre, SD 57501

Dated this 22nd day of June, 2023

**BENNETT MAIN GUBBRUD & WILLERT,
P.C.**

Attorneys for Wharf

By: _____



MAX MAIN



OFFICE OF ATTORNEY GENERAL

P.O. Box 70
Rapid City, South Dakota 57702
Phone (605) 394-2258
Fax (605) 394-5476
<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

RECEIVED
JUL 05 2023
Dept. of Agriculture
& Natural Resources
MARK W. BARNETT
CHIEF DEPUTY ATTORNEY GENERAL

June 29, 2023

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501

Re: In re Wharf Resources Boston Expansion Large Scale Mine Permit
Application

Dear Ms. Binegar:

Enclosed please find for filing in the above referenced matter the original of DANR's Response to Wharf's Objection Concerning Proposed Findings of Fact and Conclusions of Law & Objection to Wharf's Proposed Finding of Fact. Copies of this document have been served upon the parties and Chairman Hagg as indicated in the attached Certificate of Service. If you have any questions, please don't hesitate to contact me

Sincerely,

A handwritten signature in blue ink, appearing to read "SRL", followed by a horizontal line.

Steven R. Blair
Assistant Attorney General

Enclosures

Cc/encl: Charles McGuigan – Deputy Attorney General (via email only)
Roberta Hudson – DANR Minerals, Mining, & Superfund Program (via email only)

RECEIVED

JUL 05 2023

Dept. of Agriculture
& Natural Resources

STATE OF SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE & NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

WHARF RESOURCES (USA) INC.	)	DANR RESPONSE TO WHARF'S
BOSTON EXPANSION LARGE	)	OBJECTION CONCERNING
SCALE MINE PERMIT	)	PROPOSED FINDINGS OF FACT
APPLICATION	)	AND CONCLUSIONS OF LAW
)	&
	)	OBJECTION TO WHARF'S
	)	PROPOSED FINDING OF FACT
)	

The Minerals, Mining, & Superfund Program of the South Dakota Department of Agriculture & Natural Resources (DANR) hereby files its response to Wharf Resources (USA), Inc's (Wharf) objections to certain Findings of Fact and Conclusions of Law proposed by the DANR. The DANR also files its objections to a Finding of Fact proposed by Wharf.

RESPONSE TO WHARF'S OBJECTIONS

In its proposed Findings of Fact, Conclusions of Law, and Order, the DANR proposed Finding of Fact no. 47, which states:

47. Wharf is currently in violation of the federal Clean Water Act and SDCL 45-6B-87 due to elevated levels of selenium in False Bottom Creek.

The DANR also proposed Conclusion of Law no. 9, which states:

9. Wharf's mining operation is currently in violation of the laws and regulations of the State of South Dakota or of the United States. Concerns associated with this violation are addressed in the amended conditions attached hereto as Exhibit A. The proposed amended conditions are protective of the environment; based on adherence to these conditions the

identified environmental violations will be mitigated and remediated by Wharf.

Finding of Fact no. 47, and Conclusion of Law no. 9. center around the elevated selenium levels in False Bottom Spring. Wharf argues the Board is without authority to enter a finding that Wharf is in violation of state or federal law because no official Notice of Violation was issued by the DANR pursuant to SDCL 45-6B-48, and because there has been no determination of the cause of the elevated selenium. The DANR disagrees with Wharf's contentions.

SDCL 45-6B-73 grants the Board the authority to carry out and administer all provisions of SDCL Ch. 45-6B. Specifically related to the selenium issue at Wharf's mining operation, SDCL 45-6B-87 requires Wharf to maintain compliance with the federal Clean Water Act, as well as other federal environmental regulations. The Board may deny a permit application if "the operator is currently *found* to be in violation of the provisions of this chapter with respect to any mining operation in this state[.]" SDCL 45-6B-32(7) (Emphasis added).

On July 1, 2021, the DANR notified Wharf that data indicated an "increasing trend" in selenium at False Bottom Springs. Exhibit 10 – Letter from the DANR to Wharf Environmental Compliance Coordinator. Subsequently, on November 17, 2021, the DANR notified Wharf that selenium concentrations were in exceedance of the state surface water quality standards. Exhibit 11 – Letter from the DANR to Wharf Mine Manager. Wharf was also notified that this issue may be grounds for denial of Wharf's Boston Expansion application. *Id.* The State's surface water quality standards are found at ARSD § 74:51:01, Appendix B.

Wharf, in submitting its application for the Boston Expansion project, acknowledged that selenium levels in False Bottom Spring exceed state surface water quality standards. Exhibit 1, Wharf Boston Expansion Large-Scale Mine Permit Application, pg. 1. Wharf also acknowledged that False Bottom Spring is on Wharf's property. *Id.*

In response to Wharf's Boston Expansion application, the DANR prepared the Summary Document required by ARSD § 74:29:01:10. Exhibit 1 – Summary Document. The Summary Document was prepared in consultation with Wharf. *Id.*; *See also* ARSD § 74:29:01:10. In the Summary Document it is noted that “Wharf is in violation of the surface water standard for selenium at False Bottom Spring[s].” *Id.*, pg. 5.

At the contested hearing held in this matter, the Board heard testimony from Roberta Hudson, DANR Engineering Manager I for the Minerals, Mining, & Superfund Program. Exhibit 2 – Curriculum Vitae of Roberta Hudson. Ms. Hudson testified that the federal Clean Water Act requires states to develop and implement surface water quality standards. Exhibit 12 – Presentation of Roberta Hudson. Ms. Hudson noted that SDCL 45-6B-87 requires Wharf to maintain compliance with the Clean Water Act. *Id.* Ms. Hudson testified about the surface water quality standard for selenium and testified that Wharf was in violation of that standard in that the selenium observed in False Bottom Spring exceeded that standard. *Id.*

Supplementing Ms. Hudson's testimony, the Board also heard testimony from Kelli Buscher. Ms. Buscher is the Program Administrator for the DANR's Water

Quality Program. Exhibit 13 – Curriculum Vitae of Kelli Buscher. Ms. Buscher testified about the Clean Water Act, its requirement that states establish surface water quality standards, and that Wharf has exceeded the State’s surface water quality standard for selenium at False Bottom Springs. Exhibit 16 – Presentation of Kelli Buscher.

Evidence exists in the record of this matter that supports the DANR’s proposed Finding and Conclusion that Wharf is in violation of the federal Clean Water Act and SDCL 45-6B-87.

Wharf argues that Notice of Violation provisions found starting at SDCL 45-6B-48 are the exclusive mechanism by which a mining operator can be found to be in violation of state law. The Notice of Violation procedure found in SDCL 45-6B-48 through -52 is an important regulatory tool that allows the DANR to put an operator on notice of an alleged violation of “an order, permit, notice of intent, or rule[.]” SDCL 45-6B-48. However, these regulations contain no language indicating that this is the exclusive means by which a violation may be found against an operator. According to Wharf’s argument, an operator could admit during a contested hearing to a violation that was theretofore unknown and the Board would be foreclosed from finding such a violation because no Notice of Violation had been issued and adjudicated pursuant to SDCL 45-6B-48 et seq.

SDCL 45-6B-32(7) authorizes the Board to find that an operator is in violation of SDCL Ch. 45-6B. An administrative entity is authorized to carry out those powers expressly delegated to it by statute and any implied power reasonably

necessary to effectuate its statutory authority. *Application of Kohlman*, 263 N.W.2d 674, 677 (S.D. 1978). SDCL 45-6B-32(7) grants the Board specific or implied power to find an operation is in violation of SDCL Ch. 45-6B without a formal Notice of Violation issued pursuant to SDCL 45-6B-48. The Board is within its authority to find that Wharf is in violation of state or federal law and consider that finding as part of its overall decision on Wharf's Boston Expansion permit application.

Wharf also argues that it is improper for the Board to enter a finding or conclusion on this issue because the elevated selenium in False Bottom Spring was not the focus of the contested hearing held before the Board, and there has been no adjudication as to the cause of the elevated selenium. Wharf is correct that the cause of the elevated selenium has not been determined. Wharf, however, has acknowledged that the elevated selenium is originating from a source on their property. Exhibit 1, Wharf Boston Expansion Large-Scale Mine Permit Application, pg. 1. And, while the selenium issue was not the focus of the hearing held before the Board, it is an area appropriate for the Board to consider pursuant to the authority given to the Board by SDCL 45-6B-32(7).

Based upon the foregoing, the DANR respectfully urges the Board to deny Wharf's objections to Finding of Fact no. 47, and Conclusion of Law no. 9. The DANR respectfully requests that the Board enter its Findings of Fact, Conclusions of Law, and Order consistent with the DANR's proposed findings and conclusions.

OBJECTION TO WHARF'S PROPOSED FINDING OF FACT

The DANR hereby formally objects to Wharf's proposed Finding of Fact no. 34 which states that "Wharf is not in violation of any of the provisions of SDCL Ch. 45-6B." The DANR asserts that such a finding is improper statement of fact based upon the materials, evidence, and testimony contained within the record of this matter as presented to the Board.

Dated this 29th day of June, 2023



Steven R. Blair
Assistant Attorney General
P.O. Box 70
Rapid City, SD 57702
(605) 394-2258
steven.blair@state.sd.us

*Counsel for Department of Agriculture &
Natural Resources – Minerals, Mining, &
Superfund Program*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original DANR's RESPONSE TO WHARF'S OBJECTION CONCERNING PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW & OBJECTION TO WHARF'S PROPOSED FINDING OF FACT was submitted via United States Mail, First Class, Postage Prepaid upon the following to be filed in the above captioned matter:

Brenda Binegar
Dept. of Agriculture & Nat. Resources
523 E. Capitol Ave.
Pierre, SD 57501
Staff – Brd. Minerals & Env.

Further, the undersigned certifies that a true and correct copy of the above referenced document(s) was served via United States Mail, First Class, Postage Prepaid upon the following:

Dwight Gubbrud
Max Main
Bennett, Main, Gubbrud, & Willert
618 State Street
Belle Fourche, SD 57717
*Counsel – Wharf Resources (USA),
Inc.*

Rexford A. Hagg
601 West Blvd.
P.O. Box 8008
Rapid City, SD 57701
Chair – Brd. Minerals & Env.

Carla Marshall
P.O. Box 3184
Rapid City, SD 57709
Intervenor

On this 29th day of June, 2023.



Steven R. Blair
Assistant Attorney General

Binegar, Brenda

From: Carla Rae Marshall <tipistola@gmail.com>
Sent: Thursday, June 29, 2023 3:21 PM
To: Blair, Steven
Cc: Rex Hagg; Binegar, Brenda; Dwight Gubbrud; Max Main; McGuigan, Charles; Hudson, Roberta
Subject: [EXT] Re: Wharf Resources (U.S.A.) Inc. – Boston Expansion Large Scale Mine Permit Application; Our File No. 2876.135021.

Dear Mineral and Mining Board,

Please allow this to be my response on this matter. I don't have time to prepare a statement and get it in the mail but I also object to Wharf's objection to Finding of Fact no 47.

My bases of intervening was on the grounds of toxic spills and possible waterway contamination violations from their mining operation, which has now been proven with the elevated selenium in False Bottom Springs, which was confirmed as a violation of the federal Clean Water Act and under SDCL, therefore I agree with the DANR response.

Thank you.

Carla Marshall.

On Jun 29, 2023, at 1:19 PM, Blair, Steven <Steven.Blair@state.sd.us> wrote:

Chairman Hagg,

Attached please find a copy of DANR's response to Wharf's objections to DANR's proposed Findings and Conclusions. The original has been mailed to Ms. Binegar for filing, and hard copies have also been mailed to you and the parties.

Thank you!

Steve Blair – Assistant Attorney General

From: Rex Hagg <rex.hagg@amatteroflaw.com>
Sent: Thursday, June 22, 2023 3:36 PM
To: Blair, Steven <Steven.Blair@state.sd.us>; Binegar, Brenda <Brenda.Binegar@state.sd.us>
Cc: Dwight Gubbrud <dwight@bellelaw.com>; Max Main <max@bellelaw.com>; tipistola@gmail.com
Subject: [EXT] RE: Wharf Resources (U.S.A.) Inc. – Boston Expansion Large Scale Mine Permit Application; Our File No. 2876.135021.

Mr. Blair, Mr Main has filed an objection to Finding of Fact 47 and Conclusion of Law 9 of the Departments proposed. Please file a response to the objection on or before June 29 if you deem necessary to address the issue raised. Thank you.

Rexford A. Hagg, Esq.
Whiting Hagg & Dorsey, LLP

P.O. Box 8008
601 West Boulevard
Rapid City, SD 57709-8008
Phone: (605) 348-1125
Fax: (605) 348-9744

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From: Ashley Katchmark [<mailto:ashley@bellelaw.com>]
Sent: Thursday, June 22, 2023 2:14 PM
To: brenda.binegar@state.sd.us
Cc: Dwight Gubbrud <dwight@bellelaw.com>; Max Main <max@bellelaw.com>; Rex Hagg <rex.hagg@amatteroflaw.com>; steven.blair@state.sd.us; tipistola@gmail.com
Subject: Wharf Resources (U.S.A.) Inc. – Boston Expansion Large Scale Mine Permit Application; Our File No. 2876.135021.

Good afternoon:

Please see the attached from Max Main.

Sincerely,

Ashley Katchmark, Legal Assistant
BENNETT MAIN GUBBRUD & WILLERT, P.C.
618 State Street
Belle Fourche, SD 57717
605.892.2011 (Phone)
bellelaw@bellelaw.com (General Email)
ashley@bellelaw.com (Direct Email)

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<DANR response Wharf objections FOF and COL.Wharf Boston Expansion Permit Application.service 06 29 2023.pdf>

BARRICK

Richmond Hill Mine

NYSE : GOLD
TSX : ABX

World class mines.
World class people.

Annual Report to the South Dakota Board of Minerals and Environment
July 20, 2023



Reclamation Acreage Overview



▪ Total Released Acres	262.28
▪ Total Remaining Affected Acres	75.09
▪ Un-reclaimed Acres (for water treatment)	72.08
▪ Reclaimed Affected Acres	0
▪ Acreage to be reclaimed in short-term	2.66

2022 Activities

Option Agreement with Dakota Gold



- Barrick entered into an Option Agreement with Dakota Gold Corp. (previously Dakota Territory Resource Corp.) in 2021 to acquire the Homestake and Richmond Hill Properties
- Dakota Gold may exercise the Option on or before March 7, 2026

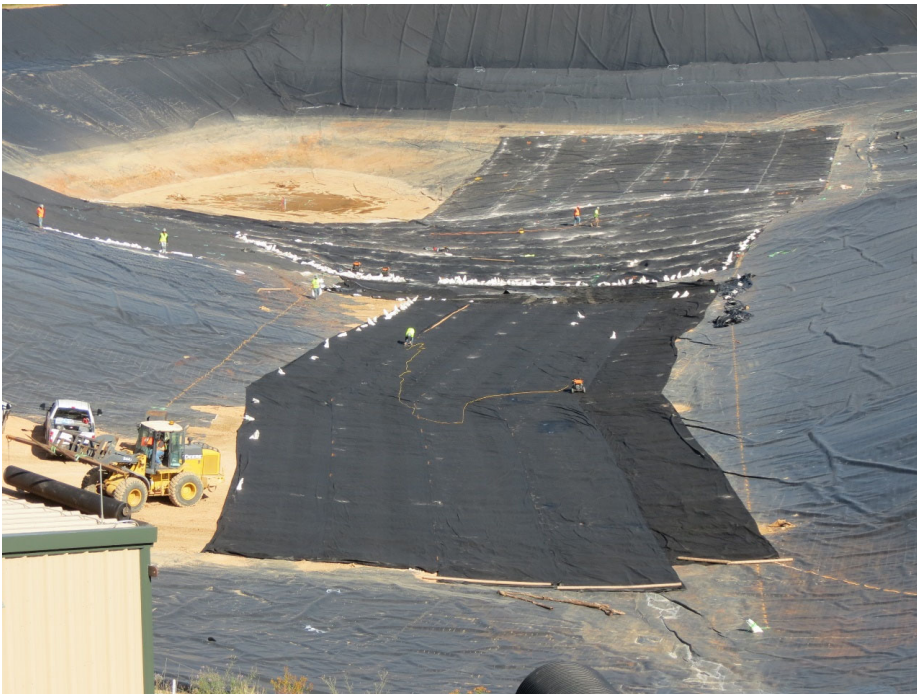
Sludge Removal from Storage Pond

- Sludge was removed from the storage pond in preparation for repairs and installation of new primary liner
- Sludge was deposited in the onsite sludge pond
- Approximately 8,000 yd³ were removed in 2021 and 2022



Storage Pond Liner Repairs

- Damaged liner from 2021 - 2022 winter and liner damaged during sludge removal was repaired or replaced
- Repairs were required for sloped areas on east and west sides and damaged flatter areas in bottom of pond. 199,160 SF of liner replaced



Water Management and Treatment

Water Management and Treatment



Leach Pads and Ponds

- Biological Water Treatment Plant Operations – Se Treatment
- Operated Biological WTP with RO discharging 16.51 million gallons
- Operated Biological WTP independently over winter months during 2022 discharging 2.73 million gallons

Water Management and Treatment



Leach Pads and Ponds

- Approximately 8.8 million gallons of water are currently stored in treatment ponds (*survey date: 06/28/23*)
- Leach pad effluent flows averaged approximately 24.9 gpm in 2022

Leach pad effluent flows in 2022 were modestly higher than 2021 average flows of 17.6 gpm. Precipitation was below average in both 2021 and 2022, resulting in continued lower infiltration rates; (precipitation was 23.57 inches in 2021 and 23.51 inches in 2022)

Water Management and Treatment



Spruce Gulch - Reclaimed Site of Waste Rock Disposal Facility

- Water treatment - pH adjustment with sodium hydroxide as needed
- Nearby South Gulch water is pumped to Spruce Gulch Treatment Pond for treatment

Monitoring Activities

Pit Impoundment and Leach Pad Monitoring



- The 2022 Pit Backfill Monitoring/Capping System Monitoring continues to indicate that the cap is functioning to and better than design expectations
- The leach pad capping system continues to perform well limiting infiltration

Aquatic Biological Monitoring



- Habitat – Habitat characteristics have been similar over the 2006 – 2022 study period, with minor changes occurring during some years with high spring flows. The large substrates, bedrock, and armored stream banks that are typical in the study area tend to be resistant to large, flow-induced changes to stream morphology.
- Fish Populations – Data indicates that mine-related activities upstream from Compliance Points 001, 002, and 003 did not adversely affect the fish community in Cleopatra Creek and the mine-related activities upstream from Compliance Point 004 did not adversely affect the community in Rubicon Gulch in 2022. Assessment of the metrics over time indicate that all sites continue to support a healthy fish community.

Aquatic Biological Monitoring



- Macroinvertebrates – The benthic macroinvertebrate communities in 2022 were healthy at all Cleopatra Creek sites and at the Labrador and Rubicon Gulch sites. Macroinvertebrate metrics at all Cleopatra Creek sites and between Labrador and Rubicon Gulch sites in 2022 were similar to what had been observed in previous years and no site was consistently characterized by lower or higher metrics than the other sites over time.
- Periphyton – No substantial temporal trends or between-site differences occurred in the periphyton community data at the control sites and sites downstream of mine-related activities. The lack of consistent temporal changes suggests that variations in the periphyton community were primarily attributable to natural factors such as flow, sedimentation, and stream size. Assessment of these metrics over time indicate that all sites continue to support high density and diversity of periphyton.

Aquatic Biological Monitoring



Overall, habitat, macroinvertebrate, periphyton, and fish data do not demonstrate a decrease in water quality at sites downstream of the Richmond Hill Mine or indicate significant differences in water quality between sites upstream and downstream of the mine. The data from 2022 and past years do not indicate any apparent affects from mine-related activities on the aquatic biota. Instead, stream size, physical habitat attributes like sedimentation, flow, and natural environmental variability affect population sizes and composition over time in this system.

Sitewide Water Quality Monitoring



- Water Quality at the site is generally stable or improving
- Cleopatra Creek water quality monitoring confirms there are no impacts from the Richmond Hill Mine
- Monitoring is continuing and site-specific performance criteria were developed in consultation with DANR and approved by the Board to ensure continued protection of the environment in postclosure

2023 Richmond Hill Mine Plans



- Install new primary liner over existing liner in storage pond
- Reclaim discharge ponds and original sludge basin
- Replace RO
- Continue Water Treatment
- Continue Monitoring Activities

Thank you

BARRICK

Homestake Mining Company

**NYSE : GOLD
TSX : ABX**

**World class mines.
World class people.**

Annual Report to the South Dakota Board of Minerals and Environment
July 20, 2023



Homestake/Richmond Hill 2022 Employment and Contributions

Yearend employment: 9 FTE's + 2 FT contract employees and 1 part-time employee

2022 Contributions: Approx. \$20,000

Homestake Mine Open Cut Review



Reclamation has been completed at the waste rock facilities.

As of the end of 2022:

- 555 acres released
- 87 remaining affected acres
- Reclamation is complete on all remaining affected acres

2022 Activities

Option Agreement with Dakota Gold



- Barrick entered into an Option Agreement with Dakota Gold Corp. (previously Dakota Territory Resource Corp.) in 2021 to acquire the Homestake and Richmond Hill Properties
- Dakota Gold may exercise the Homestake Option on or before September 7, 2024
- The Richmond Hill Option has been extended for an additional 18 months

TSF Dust Suppression

Gorilla Snot – Soilworks, LLC Product

- Dust Suppressant
- Non-Hazardous & Non-Toxic
- Biodegradable
- Non-Leaching
- UV Resistant



TSF Dust Suppression

Gorilla Snot – Product Application

- Liquid – Spray on surface
- Penetrates surface
- Dries Flexible
- Water Resistant



2022 Monitoring

Water Quality Monitoring

- Monitoring in 2022 continues to show that Surface Water around the Homestake Mine site remains Excellent and meets all Water Quality Standards

Deadwood Creek Monitoring



Aquatic Biological Monitoring – Deadwood Creek

- Habitat – Minor changes over time due to variations in flow and high flow events. The installation of two culverts under Highway 14A in 2019 and 2020 introduced sediment to Deadwood Creek during construction but most accumulated sediment has been flushed downstream at this point.
- Fish Populations – Brook Trout have recovered since 2010 flooding. Successful reproduction and rearing at all sites in 2022. Adult fish were collected at equal or greater numbers than YOY at respective Deadwood Creek sites. Data are similar at sites upstream and downstream of Outfall 013.

Deadwood Creek Monitoring



Aquatic Biological Monitoring – Deadwood Creek

- Macroinvertebrates - comparable between all sites. Similarities between control site and downstream sites, and between sites upstream and downstream of Outfall 013. Some minor stress at all sites in 2022 likely due to periodic low flows, natural Y-T-Y variation and other external factors. Changes are due to factors that affect all four sites and are not due to discharge from Outfall 013. Values downstream of Outfall 013 were more favorable than upstream.
- Periphyton – Like macroinvertebrates, environmental stressors appear to be affecting the periphyton similarly at all sites, including control sites. Data indicates no adverse effects from Outfall 013. Overall, the periphyton communities have been stable from 2004 to 2022.

Deadwood Creek Monitoring



Aquatic Biological Monitoring – Fish tissue sampling

- Fish for tissue analysis were collected from Deadwood Creek in 2022 at all Monitoring Sites
- Fish tissue sample results from this sampling in 2022:
 - Values for 2022 were well below the Genus Mean Chronic Value (GMCV) of 11.6 mg/kg (wb dw) and the conservative EPA whole-body criterion of 8.5 mg/kg (wb dw)
 - Geometric mean values for all sites in 2022 were within the historic ranges
 - Values for downstream sites DC-B and DC-C were lower in 2022 than in 2021 and were below their long-term geometric means

Deadwood Creek Monitoring



Aquatic Biological Monitoring – Deadwood Creek

The Aquatic Biological Monitoring Data Collected from 2004 through 2022 does not indicate any negative mine-related effects on aquatic communities in Deadwood Creek

Deadwood Creek Monitoring



Blacktail Water Treatment Plant – Water Quality

- Blacktail WTP treats water emanating from the toes of Sawpit and East Waste Rock Facilities
- WTP system removes selenium and Total Dissolved Solids (TDS) from water prior to discharging to Deadwood Creek
- Blacktail Water Treatment Plant discharge consistently meets permitted effluent limits and surface water quality standards
- Instream selenium and TDS levels are well below surface water quality standards and have been since the Water Treatment Plant began operation in 2006

Geotechnical Monitoring



- Homestake employs multiple displacement monitoring techniques
 - Survey Monuments and Prisms
 - Robotic Total Station and GPS Methods
 - Piezometers
 - Inclinometers
 - Visual Inspections
 - InSAR Monitoring

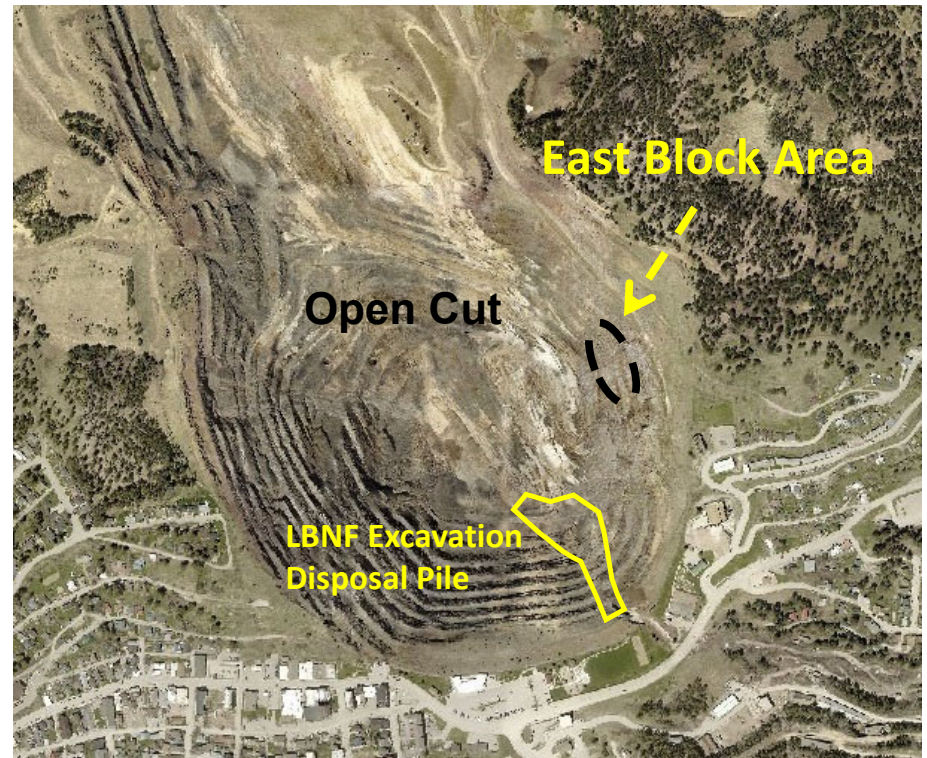
Geotechnical Monitoring



- Prisms and Survey Monuments
 - Baseline and current survey performed in SD State Plane coordinates utilizing robotic total station instruments
 - A new baseline was established with State Plane coordinates in December 2019. New trendline movement rates developed for survey monuments and prisms during the November 2022 Review indicate no significant movement from prior monitoring

Geotechnical Monitoring

- Open Cut - East Block
 - Area failed on June 14, 2019
 - Area contained within pit boundary on Homestake-controlled property
 - Measurements do not indicate a new area of instability or significant upslope enlargement of existing instability
- Open Cut – Remaining Crest
 - No indications of other recent movements that could represent potential for substantial slope failures



Geotechnical Monitoring

- Open Cut - East Block
 - Monitoring prisms atop 2006 Failure
 - Monitoring prisms atop and behind East Block
 - Prisms for 2006 Failure area stable
 - East Block prisms indicate incremental vertical movement as expected
 - Numerous prisms on South Wall. Prisms on either side of pile stable
- Open Cut – LBNF Excavation
 - Disposal of rock started May 2021
 - Pile approximately 560+ feet vertical



Geotechnical Monitoring

- East Waste Rock Facility
 - Survey Monuments
 - A new baseline survey was taken with State Plane coordinates in 12/2019 utilizing GPS
 - New trendline movement rates for survey monuments developed during the November 2022 review indicate no significant movement from prior monitoring.
 - Piezometers
 - No significant buildup of water levels in waste rock facility



Geotechnical Monitoring



- East Waste Rock Facility
 - Inclinometers
 - Inclinometers installed in Blacktail and East Ravine have indicated no significant changes since previous monitoring
 - Inclinometer installed in Gayville in June 2018 has indicated about 0.01 inches/month of shear displacement at 106-108 ft. below ground surface. The rate of shearing remains small and constant with no signs of acceleration.

Geotechnical Monitoring



- East Waste Rock Facility
 - Visual Inspections (Gayville Tension Crack at 5100 Bench)
 - Tension crack at 5100 bench at Gayville is the only surficial change observed. No significant change to crack since it was discovered in 2015
 - Tension crack appears to be associated with topsoil slumping
 - InSAR Monitoring (Interferometric Synthetic Aperture Radar)
 - Data indicates that dump is behaving as expected with no significant issues

2023 Homestake Projects



- Continue Water Treatment Agreement with SDSTA
- Continue Water Treatment
- Homestake Postclosure Bond Update

Thank you



Annual Update

Wharf Resources

Matt Zietlow, Environmental Manager
July 2023



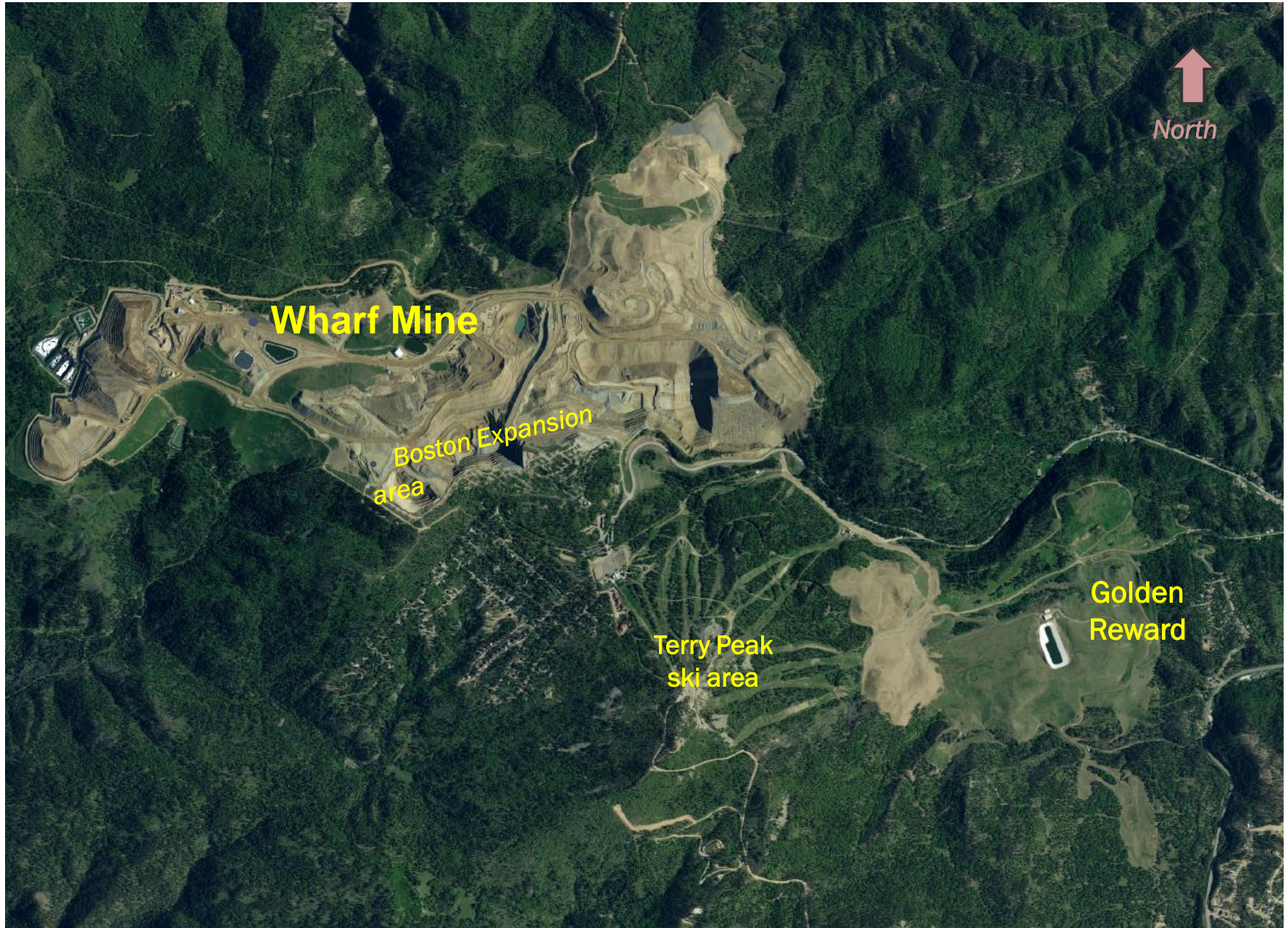
NYSE: CDE

> Wharf Resources, Annual Report

- 2022 Mining Update
- 2022 Production
- 2022 Projects
- Community/Demographics
- 2023 plan



> Site Overview



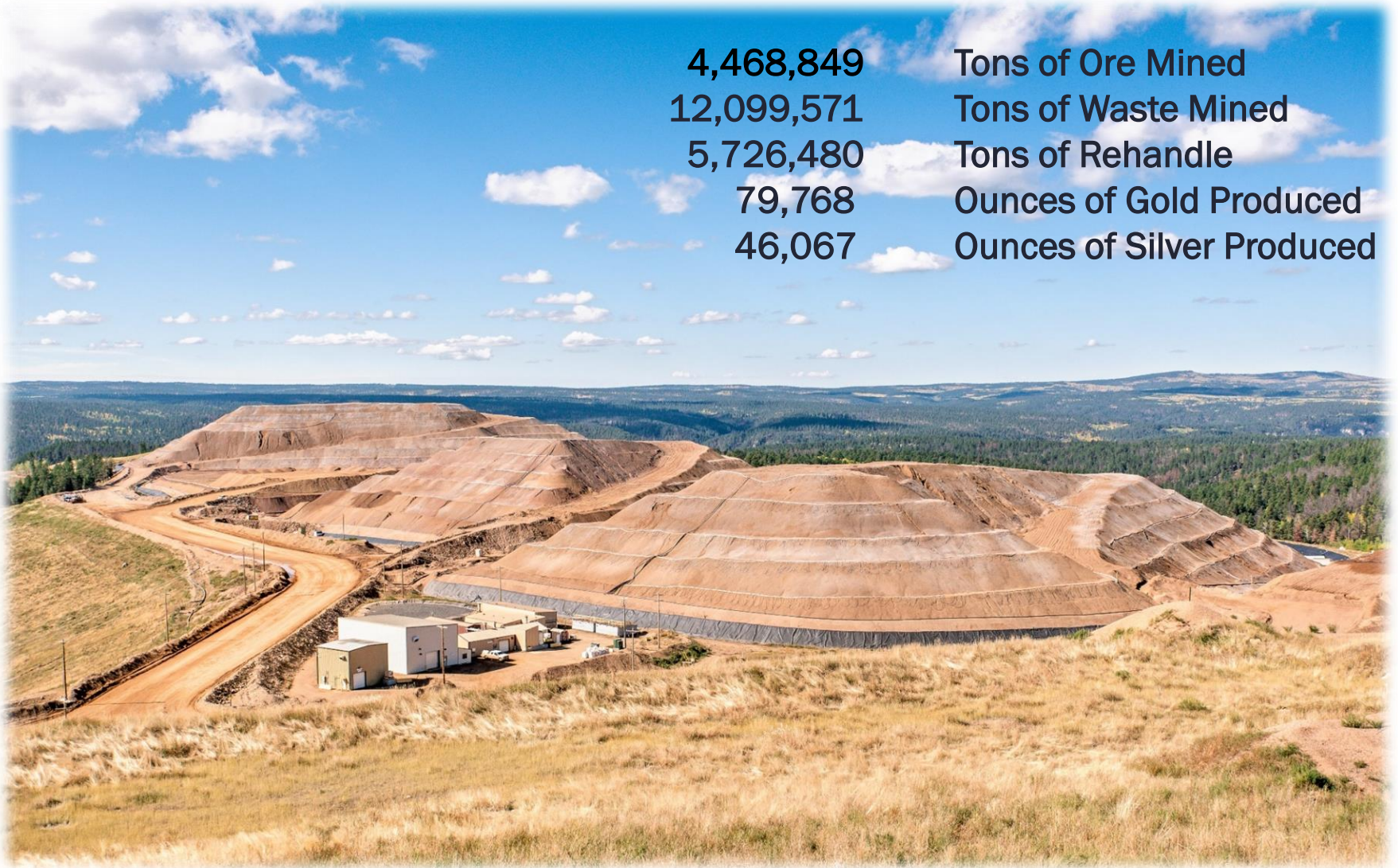
Wharf Mining in 2022

- Portland/Portland Ridge area



> 2022 Production

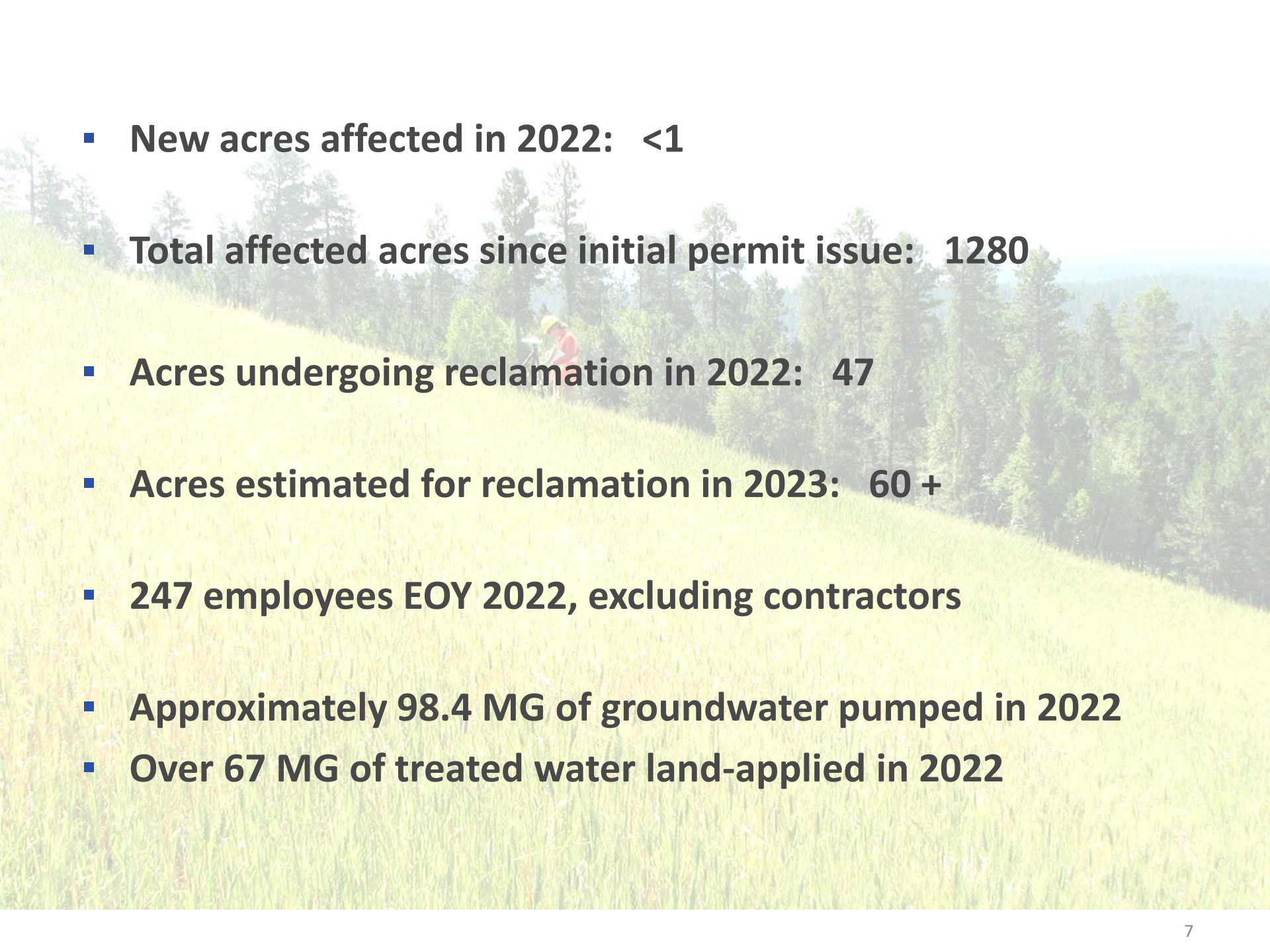
4,468,849	Tons of Ore Mined
12,099,571	Tons of Waste Mined
5,726,480	Tons of Rehandle
79,768	Ounces of Gold Produced
46,067	Ounces of Silver Produced



> Leach Pads Update



- Pads 1 & 4 completed denitrification and were approved for offload during cy 2022
- Pad 5 denitrification prep end of 2022
- Pads 2 & 3 continued normal leach activities during 2022

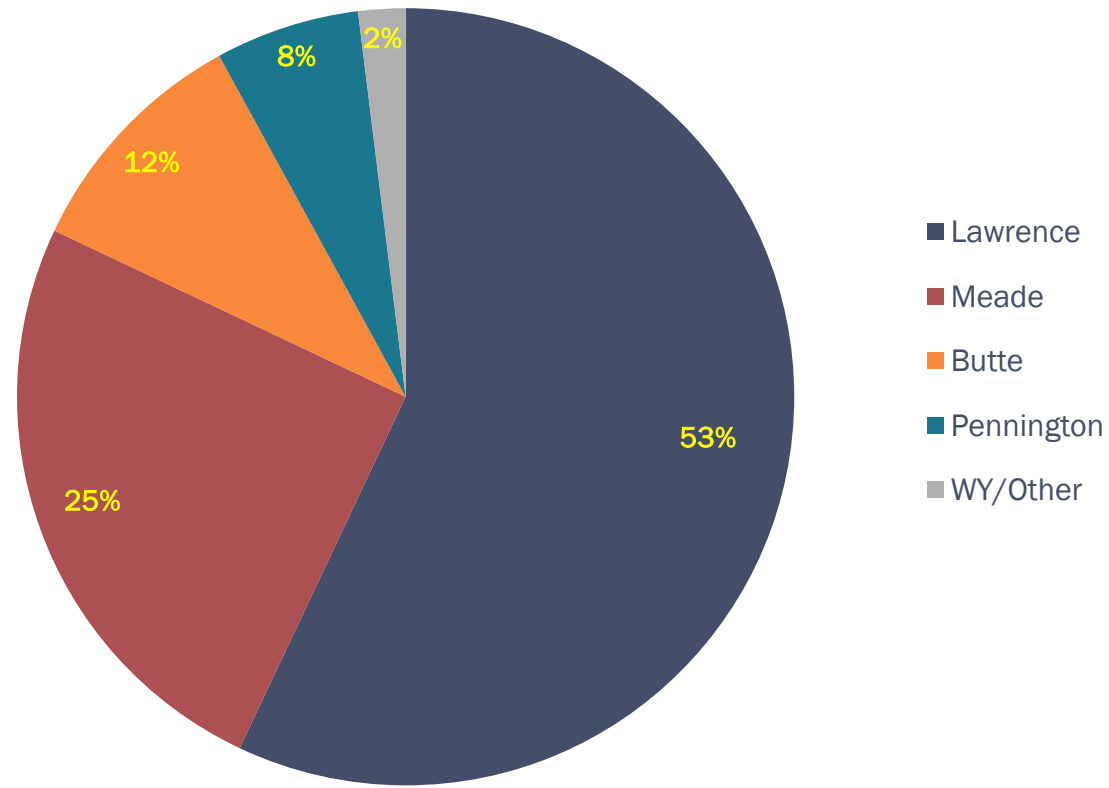
- 
- **New acres affected in 2022: <1**
 - **Total affected acres since initial permit issue: 1280**
 - **Acres undergoing reclamation in 2022: 47**
 - **Acres estimated for reclamation in 2023: 60 +**
 - **247 employees EOY 2022, excluding contractors**
 - **Approximately 98.4 MG of groundwater pumped in 2022**
 - **Over 67 MG of treated water land-applied in 2022**

- Celebrate 40 years of continuous operation at Wharf
- Nearly 50% of Wharf electrical power supplied from renewable resources in partnership with BHP
- Continued backfilling of Green Mountain Pit and sloping Trojan Rock Facility
- Water quality studies & pilot treatment tests for elevated selenium at False Bottom Spring/Bald Mtn tails
- Boston Expansion Conditional Use Permit issued, and Large Scale Mining Permit progress
- Utility relocation for gas, power, and water

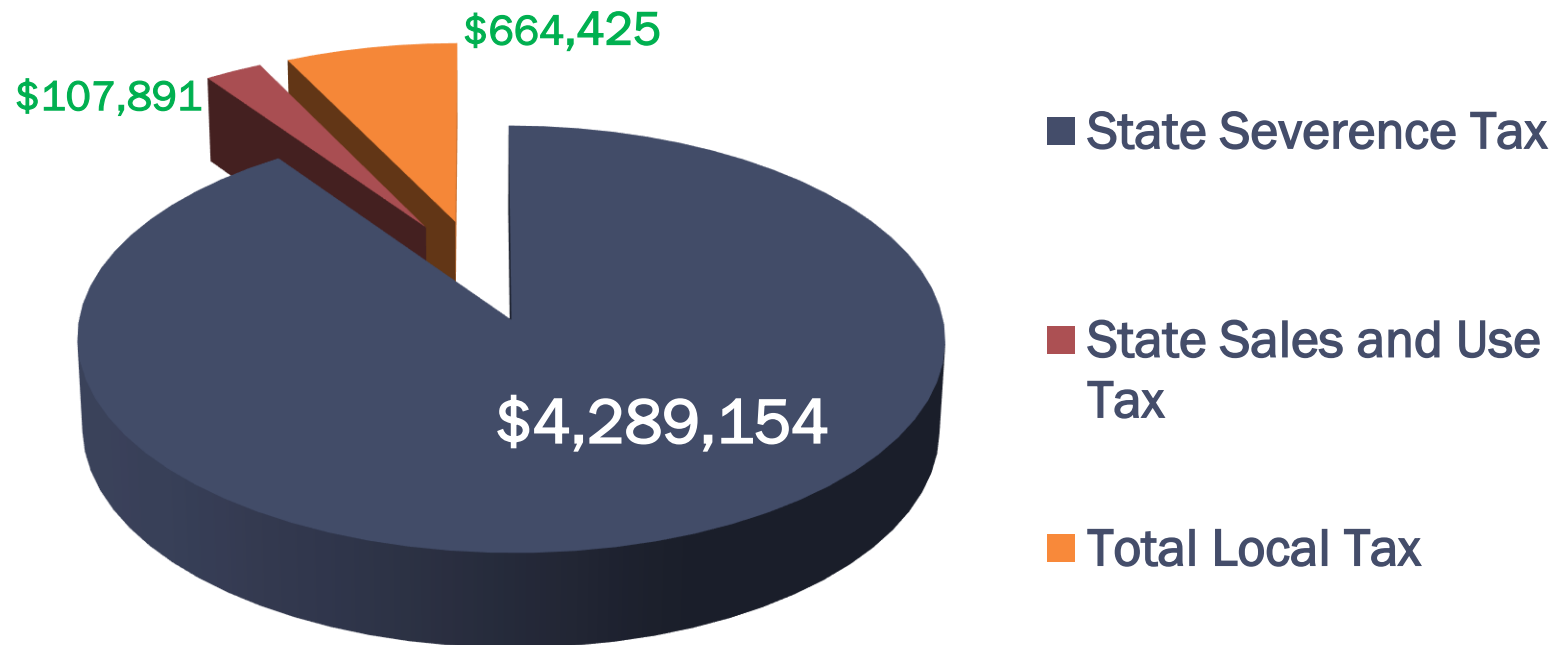
Wharf 2022 payroll was \$29.5 million with benefits

- Approximately \$20.7 million without benefits

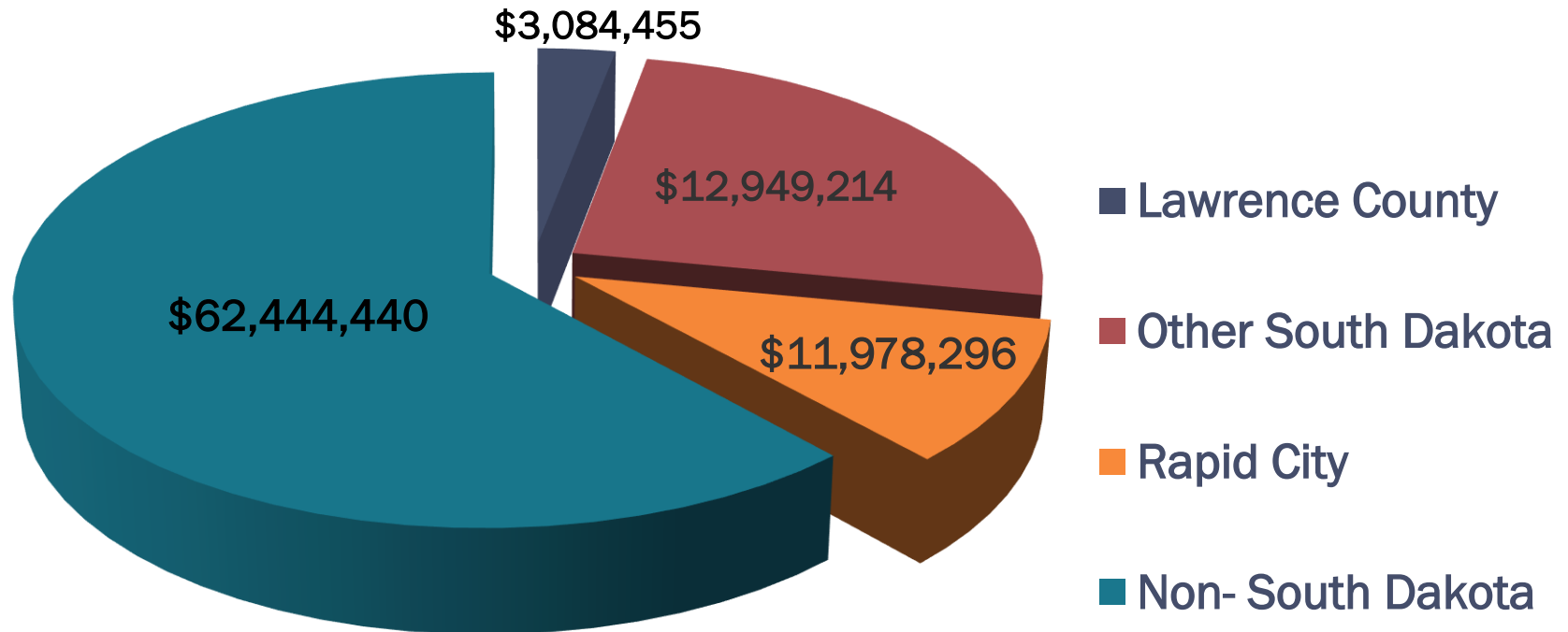
Population by County



Over \$5 million paid in Total Taxes in 2022



2022 Purchases over \$90 million



> Community Involvement

- Wharf donated over \$160,000 to community groups, schools and other charities in 2022
- Over 50 different local entities and school groups received donations from Wharf in 2022, including Lead Boys & Girls Club, the Handley Center, the Lead and Deadwood Chambers, Feeding Deadwood, Wellfully, and United Way
- Surpassed the \$600,000 dollar milestone in donations issued from the Wharf Sustainable Prosperity Fund since inception in 2012
 - Total value of Fund now over \$1.7M
- Local scholarships issued by Wharf in 2022 exceeded \$60 thousand dollars



> 2023 Plans

- Completion of Boston permitting process
- Continue mining the Portland Ridge deposit
- Denitrification and offload of pad 5
- Continue backfill and concurrent reclamation of Green Mountain Pit
- Complete reclamation on lower Trojan Rock Facility
- Complete field pilot studies for selenium treatment at False Bottom Creek/Bald Mountain Tails; proceed with final design
- Completion of new (interim) access road through Wharf Mine
- Trial weed spraying reclaimed areas by remote drone

Summary and benefits to implementing the Boston Expansion

Up to 3 year mine life extension--expanding existing pit

No change to current mining operations or infrastructure

Extension of 250 jobs with \$30M+ annual payroll

48 acres of new disturbance

All disturbance on Wharf-owned land

No new facilities or buildings

Continued economic benefits to local area and state

Continue Wharf's 40 years of responsible operation and community presence



Questions?

Gilt Edge Mine Superfund Site 2023 Annual Update



Agencies Involved



US Environmental Protection Agency (EPA)



US Army Corps of Engineers (USACE)

EPA's site contract manager for the Gilt Edge Superfund Site



SD Department of Agriculture and Natural Resources (DANR)

Remediation Costs

- Currently, EPA pays 90% and the State pays 10% of remediation costs
- Once Superfund cleanup is completed, the State will be responsible for 100% of the water collection, treatment and site maintenance costs

State Gilt Edge Funds

as of 3/31/2023

Forfeited bond plus interest	\$ 8,942,397
Settlement payments*	
plus interest	\$10,769,782
Agnico Lease Payments	\$ 10,518
(Total amount received to date)	
	<hr/>
Total	\$19,722,697

March 2022 total \$19,302,797

*From Potential Responsible Parties (PRP)

Gilt Edge Mine Superfund Site



Operable Unit 1 (Acid Rock Piles and Open Pits)

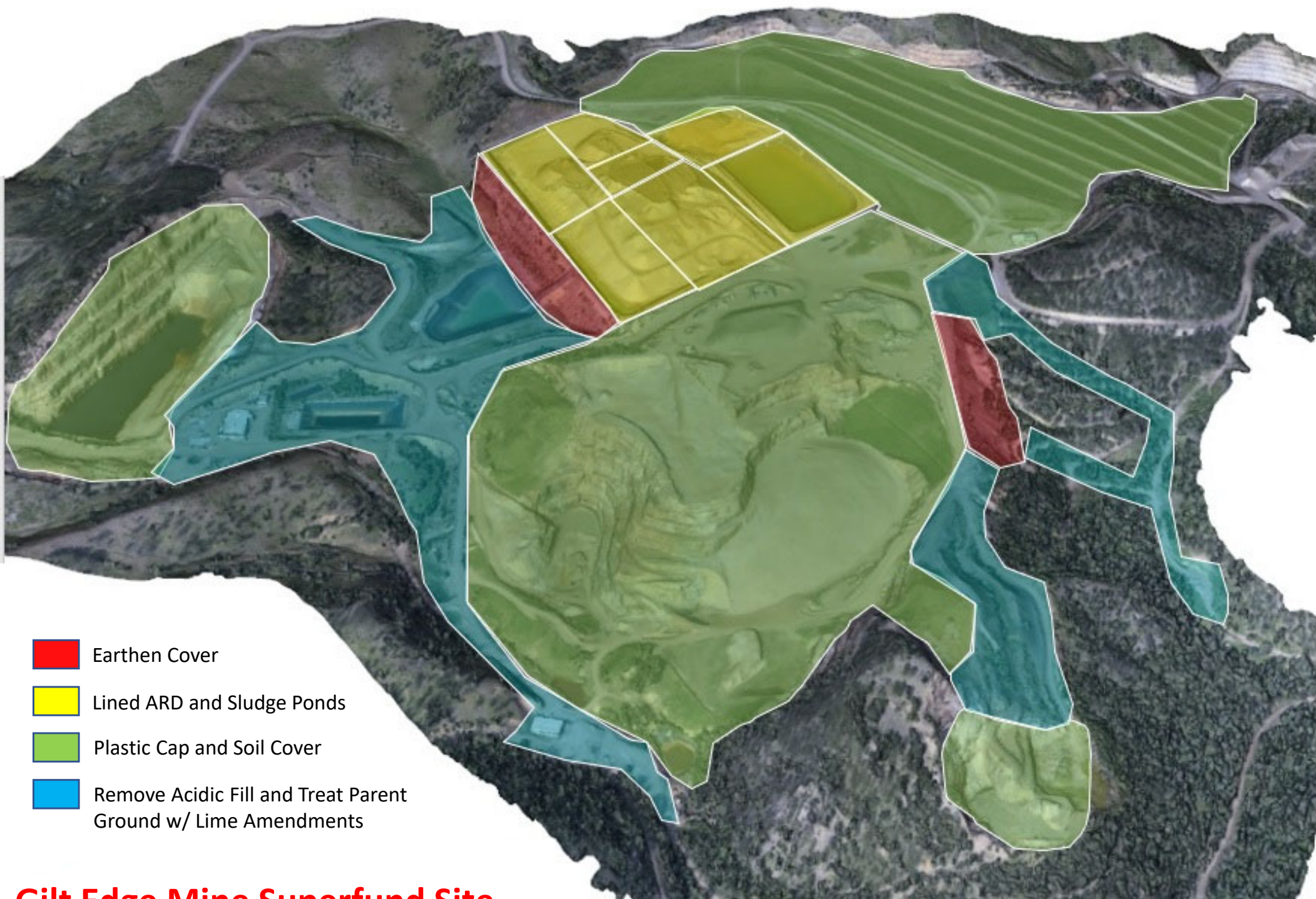
Operable Unit 3 (Ruby Waste Rock Dump)

Operable Unit 2 (Water Treatment)

0 0.25 0.5 1 Miles

A red scale bar is located in the bottom left corner, with markings for 0, 0.25, 0.5, and 1 mile.

The boundaries, site features, and mineral survey parcels depicted on this map are a graphical representation and should not be used for legal purposes.



Gilt Edge Mine Superfund Site
Surface Features of EPA's Final Site Remedy

2022 Activities Summary

- Primary activities consisted of normal site maintenance and water treatment activities

2022 Acid Water Treatment Update – OU2



HydroGeoLogic, Inc. (HGL)

- Site contractor
- HGL has 6 employees on site
 - Manager, Mechanic, 4 Plant Operators

2022 Acid Water Treatment

Volume Treated

66 million gallons

63.9 million gallons in 2021

134 million gallons in 2020

Water in storage
on 1/1/23

25.3 million gallons

24.1 million gallons in 2021

35.1 million gallons in 2020

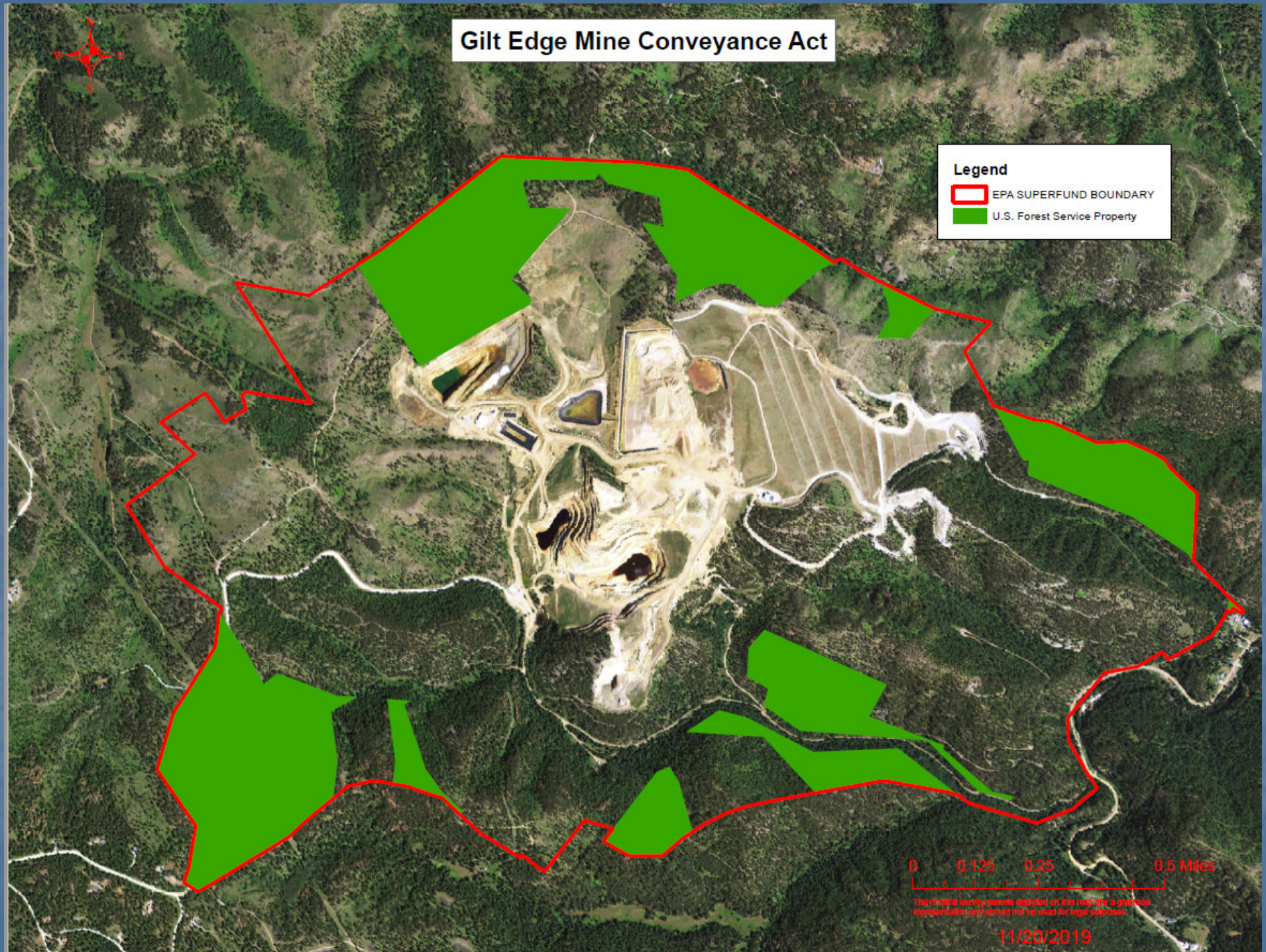
2022 Weather Events

- No major weather events in 2022
- Overall annual precipitation in 2022 was 22.85 inches compared to 25.43 inches in 2021

Gilt Edge Mine Conveyance Act

- Approved in December 2022.
- In February 2023, state submitted a letter requesting purchase of the USFS properties.
- Process has started but no additional updates since April 2023 when last update provided to the BME.

Gilt Edge Mine Conveyance Act



Agnico Eagle USA Limited

- Agnico Eagle USA Limited is a Canadian-based gold producer interested in the potential to redevelop the former Gilt Edge Mine.
- In 2014, Agnico approached EPA and SD DENR to discuss its interest in investigating the potential feasibility to restart mining at the Gilt Edge Mine.
- In pursuing the idea, EPA, SD DENR, and Agnico identified environmental investigations that would be beneficial to ongoing Superfund remedial investigations as well as to Agnico's mining feasibility study.
- In 2018, EPA, SD DENR, and Agnico entered into an administrative order on consent whereby Agnico began to perform environmental studies and core drilling as a CERCLA bona fide prospective purchaser (lessee).
- The focus of the environmental investigations is to provide additional data in determining sources of cadmium in Strawberry Creek through surface and subsurface studies.

Agnico Eagle USA Limited

- The environmental investigations included:
 1. Drilling geologic cores to study the ground water flow paths and cadmium concentrations onsite.
 2. Conducting a study of potential surface sources of cadmium along lower Strawberry Creek.
- The investigations provide information to EPA and the State for developing future cleanup remedies for surface and ground water.
- No mining was allowed under the agreement.

Agnico Eagle USA Limited

- In 2023, EPA, SD DANR, and Agnico entered into an administrative settlement for reuse assessment and payment of response costs by a prospective lessee.
- Agreement summary:
 - Agnico is to pay EPA and SD DANR oversight costs and \$2.5M/yr for on-going Superfund site operations and maintenance
 - Allows Agnico three years to gather data and drill boreholes at the site and a total of four years to decide if remining the site is feasible.

Agnico Eagle USA Limited

- If Agnico decides it's feasible to remine the Superfund Site, they will need to enter into a Consent Decree Agreement with EPA and SD to set the terms and conditions on applying for a mine permit and deferring the Superfund cleanup.
- If Agnico decides it's not feasible to remine the site, the EPA Superfund cleanup would resume at the site.

Questions?

