

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

August 15, 2013

CALL TO ORDER AND ROLL CALL: The meeting was called to order by Chairman Richard C. Sweetman at 10:20 a.m. Secretary Linda Hilde declared that a quorum was present.

BOARD MEMBERS PRESENT: Richard Sweetman, Lee McCahren, Dennis Landguth, Linda Hilde, Glenn Blumhardt, Rex Hagg, Doyle Karpen, and Bob Morris.

BOARD MEMBERS ABSENT: Pete Bullene.

OTHERS PRESENT: See attached attendance sheet.

APPROVAL OF MINUTES FROM JULY 18, 2013, MEETING: Motion by Blumhardt, seconded by Karpen, to approve the minutes from the July 18, 2013, Board of Minerals and Environment meeting. Motion carried.

MINING ISSUES: Prior to the meeting, the board received a table listing the department recommendations for release of surety, releases of liability and surety, transfers of liability and release of surety, and releases of liability (attached).

Motion by Karpen, seconded by Hagg, to accept the department recommendations for transfers of liability and release of surety, releases of liability and surety, transfer of liability, and releases of liability, as shown on the table. Motion carried.

PUBLIC HEARING TO AMEND HAZARDOUS WASTE RULES: Chairman Sweetman opened the hearing at 10:25 a.m. CDT.

The purpose of the hearing was to consider the adoption and amendment of proposed rules, numbered ARSD 74:28:21:01; 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01; 74:28:25:03; 74:28:25:04; 74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:28:03; 74:28:28:04; 74:28:28:05; 74:28:30:01; 74:28:33:01.

The proposed amendments will update the state's existing hazardous waste rules by incorporating updated federal regulations by reference. These updates reflect changes made to the federal hazardous waste rules from July 1, 2010 through June 30, 2012. Once these updates are made, the state's rules will then be substantially the same as the federal hazardous waste rules. Changes to the rules include establishing procedures for identifying

and managing certain hazardous secondary materials destined for recycling and making technical and typographical corrections to the federal rules.

The reason for adopting the proposed rules is to ensure that companies generating, transporting, treating, storing or disposing of hazardous waste in South Dakota manage those wastes in compliance with the state's hazardous waste rules, ultimately working to protect human health and the environment.

The proposed rules offer manufacturers the opportunity to recycle materials that might otherwise be considered wastes requiring disposal. Updating the rules also enables the state to keep pace with changes made in the federal hazardous waste regulations.

Carrie Jacobson, DENR Waste Management Program, reported that notice of the hearing was published on June 28, 2013, in the Pierre Capital Journal, the Sioux Falls Argus Leader, the Rapid City Journal, and the Watertown Public Opinion. Affidavits of Publication are on file at the Department of Environment and Natural Resources.

The Legislative Research Council (LRC) reviewed and approved the proposed amendments for form, style, and legality. During the hearing, the board members were provided with a copy of the proposed rules with LRC's changes.

No written comments regarding the proposed amendments were received.

DENR received requests for copies of the proposed rules from StateNet, Thompson Reuters, and Dakota Rural Action.

Ms. Jacobson presented a summary of the proposed amendments to the rules:

- Revise the definition of Solid Waste to encourage legitimate recycling of certain hazardous wastes. Some hazardous wastes are amenable to being used as a substitute for a raw product or as a product supplement in some industrial processes. Although the proposed rules establish strict criteria companies must follow to ensure the wastes are not mismanaged, they are not as onerous as the full hazardous waste permitting requirements.
- Remove Saccharin and its salts from the U-series hazardous waste listings. Saccharin and its salts was included as a U202 listed waste in EPA's original hazardous waste rules, finalized in 1980 and adopted by South Dakota in 1984. The hazardous waste listing was based upon testing conducted up to that point, indicating the compound had carcinogenic risk should it be ingested. Research conducted since that time has refuted the earlier conclusion. As a result, EPA is removing the compound from the U-series listing.
- Incorporate technical and typographical corrections to errors made in the federal rules.

Following her presentation, Ms. Jacobson answered questions from the board.

Chairman Sweetman then requested public comments on the proposed amendments. There were no public comments.

Chairman Sweetman requested board action.

Motion by Landguth, seconded by Morris, to adopt amendments to Hazardous Waste Rules, ARSD 74:28:21:01; 74:28:21:02; 74:28:22:01; 74:28:23:01; 74:28:24:01; 74:28:25:01; 74:28:25:03; 74:28:25:04; 74:28:25:05; 74:28:26:01; 74:28:27:01; 74:28:28:01; 74:28:28:03; 74:28:28:04; 74:28:28:05; 74:28:30:01; 74:28:33:01, as presented. Motion carried.

Chairman Sweetman closed the hearing at 10:50 a.m. CDT.

WHARF PRESENTATION ABOUT USING COMPANY NET WORTH TO GUARANTEE FINANCIAL ASSURANCE: Ron Waterland introduced Mike McClelland, Wharf, and Max Main, Wharf's attorney, who discussed the possibility of Wharf using company net worth in place of letters of credit to guarantee financial assurance.

Mr. Main discussed the statutes pertaining to the types of financial assurance required for a mining operation. These include reclamation, cyanide leaching, and post-closure and maintenance.

Mr. McClelland discussed Wharf and Golden Reward's current financial assurance amounts and the savings that could be realized by the company if Goldcorp's (Wharf's parent company) company net worth were used to guarantee financial assurance.

Mr. McClelland also discussed the type of financial assurance posted by Dakota Mining Company (Brohm/Gilt Edge), who filed for bankruptcy and was unable to fulfill its reclamation and post-closure obligations. He noted that Goldcorp's net worth is much higher than that of Dakota Mining Company.

Mr. McClelland, Mr. Main, and Roxanne Giedd, Deputy Attorney General, answered questions from the board.

Discussion took place with some of the board members expressing concern about allowing a change in the form of financial assurance. Some of the board members indicated an interest in looking at proposals from Goldcorp sometime in the future.

As Wharf's presentation was for information purposes only, no action was taken by the board.

OVERVIEW AND PROPOSED SCHEDULE FOR POWERTECH HEARING: Mike Hickey participated via telephone conference call.

Hearing Chairman, Rex Hagg, reported that it appears that the first two days of the hearing (September 23-24) will be needed for public comment and for the parties on the "A" list. Only

two of the parties on the "A" list predicted they will need over 15 minutes. The total time predicted for opening statements is six hours and the total time predicted for testimony by parties on the "A" list is seven hours. Therefore, it appears that the board may begin to hear evidence by Wednesday morning (September 25).

The hearing will be at the Ramkota in Rapid City September 23-25 and the meeting location for September 26 has not yet been finalized.

A prehearing conference will be held on Monday, September 16, in the Bear Butte Room at the Ramkota in Rapid City.

The deadline for filing motions was set for September 9. Hearing Chairman Hagg stated that the motions will be heard at the prehearing conference on September 16.

The second week of the hearing is scheduled for November 11-14 at the Ramkota in Rapid City and the Rapid City Hilton Garden Inn on November 15.

Hearing Chairman Hagg stated that the hearing will begin at 10:00 a.m. Mountain Time on both September 23 and November 11.

OTHER BUSINESS: Motion by Karpen, seconded by Hagg, to appoint Dennis Landguth as hearing chair for any of the upcoming oil and gas cases that are contested and scheduled to be heard on October 17, 2013. Motion carried.

ADJOURN: Motion by Karpen, seconded by McCahren, that the meeting be adjourned. Motion carried.

The meeting was digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886. The recording is also available on the DENR website at <http://denr.sd.gov/boards/schedule.aspx>.


Secretary _____ Date 9-23-13


Witness _____ Date 9/23/13

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<u>License/Permit Holder</u>	<u>License/Permit</u>	<u>Site No.</u>	<u>Surety Amt.</u>	<u>Surety No.</u>	<u>Surety Company/Bank</u>	<u>DENR Recommendation</u>
<u>Transfers of Liability and Releases of Surety:</u>						
Bob L. Anderson Bridgewater, SD	83-196		\$4,500	ILOC #490022158	CorTrust Bank, Freeman	Transfer liability and release \$4,500.
		196016	SW1/4 Section 24; T100N-R55W, Turner County			
Transfer to:						
Doyle Becker Construction, Inc. Marion, SD	10-901		\$2,000	ILOC #131584	Farmers State Bank, Marion	
Morris Construction Company Inc. Rapid City, SD	95-565		\$3,000	375011538739	US Bank, Rapid City	Transfer liability and release \$3,000.
		565001	SW1/4 Section 26; T1S-R8E, Pennington County			
Transfer to:						
Spring Creek Cattle Co., LLC Hermosa, SD	11-915		\$5,000	7660419425	BankWest, Rapid City	
<u>Release of Liability and Surety:</u>						
Robert Scherer Martin, SD	04-797		\$500	89574	First National Bank, Pierre	Release liability and \$500.
		797001	SW1/4 Section 31; T4S-R5E, Custer County			

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<u>Transfer of Liability:</u>						
McCook County Highway Department Salem, SD	83-157		EXEMPT	NA	NA	Transfer liability.
		157003	Section 34; T104N-R54W, McCook County			
Transfer to:						
Matthaei Excavating, Inc. Canistota, SD	04-786		\$1,500 \$1,500	419105 443967	First National Bank, Sioux Falls First National Bank, Sioux Falls	
<u>Releases of Liability:</u>						
Bob Bak Construction Pierre, SD	83-61		\$3,000 \$3,500 \$1,000 \$500 \$500 \$500 \$500 \$500 \$4,000	4981 7410 64334 65266 0621959600 7305 13751 13850 13871	American State Bank, Pierre American State Bank, Pierre First National Bank, Pierre First National Bank, Pierre Wells Fargo Bank, White River American State Bank, Pierre American State Bank, Pierre American State Bank, Pierre American State Bank, Pierre	Release liability.
		61025	S1/2 Section 7; T4S-R17E, Pennington County			
		61026	NW1/4 Section 29; T43N-R38W, Jackson County			

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<u>Releases of Liability:</u>						
Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	HGMW-10-206-0065	Hudson Insurance Company	Release liability.
		164032	W1/2 Section 34; T120N-R52W, Grant County			
		164034	NE1/4 Section 14; T113N-R75W, Sully County			
		164036	NW1/4 Section 9; T124N-R76W, Walworth County			
Clausen Construction, Inc. Watertown, SD	83-15		\$2,500	58059819	Western Surety Company	Release liability.
			\$2,500	7900588314	Nationwide Mutual Insurance Company	
		15004	NE1/4 Section 9; T116N-R52W, Codington County			
Jensen Rock & Sand, Inc. Mobridge, SD	83-112		\$20,000	41-16-48	New Hampshire Insurance Company	Release liability.
		112011	NE1/4 Section 34; T122N-R54W & NW1/4 Section 21; T122N-R53W, Day County			
		112018	Section 28; T122N-R54W, Day County			
Pete Lien & Sons, Inc. Rapid City, SD	83-100		\$20,000	S501000	UMB Bank, Kansas City, MO	Release liability.
		100008	W1/2 NW1/4 Section 4; T1N-R14E, Pennington County			

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<u>Releases of Liability:</u>						
Custer County Highway Department Custer, SD	83-90		EXEMPT	NA	NA	Release liability.
		90016	SW1/4 SW1/4 Section 14; T6S-R6E, Custer County			
Day County Highway Department Webster, SD	83-34		EXEMPT	NA	NA	Release liability.
		34023	SW1/4 Section 26; T121N-R55W, Day County			
		34027	SE1/4 Section 7; T124N-R56W, Day County			
Pennington County Highway Department Rapid City, SD	83-45		EXEMPT	NA	NA	Release liability.
		45017	Section 29, NE1/4 Section 31, & NW1/4 Section 32; T6N-R17E, Pennington County			
		45027	Section 10; T4N-R17E, Pennington County			
		45029	NW1/4 Section 20; T1N-R13E, Pennington County			
		45030	W1/2 NE1/4 NE1/4 Section 32; T5N-R15E, Pennington County			
		45032	NE1/4 Section 21; T5N-R16E, Pennington County			

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<u>Release of Liability:</u>						
Roberts County Highway Department Sisseton, SD	83-23		EXEMPT	NA	NA	Release liability.
		23023	S1/2 SW1/4 SW1/4 Section 3; T126N-R52W, Roberts County			