

Minutes of the  
Board of Minerals and Environment  
Telephone Conference Call Meeting

DENR Large Conference Room  
523 East Capitol Avenue  
Pierre, South Dakota

September 18, 2014  
10:00 a.m. CDT

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

BOARD MEMBERS PARTICIPATING: Rex Hagg, Glenn Blumhardt, Linda Hilde, Doyle Karpen, Bob Morris, Gregg Greenfield, and Daryl Englund.

BOARD MEMBER ABSENT: Pete Bullene and Dennis Landguth.

OTHERS PRESENT: Bob Townsend, Mike Lees, Mike Cepak, Eric Holm, and Bret Graves, DENR Minerals and Mining Program; Vonni Kallemeyn and Jim Wendte, DENR Waste Management Program; and Bob Mercer, reporter.

APPROVAL OF MINUTES FROM AUGUST 21, 2014, MEETING: Chairman Hagg requested that the following changes be added as paragraph 3 on page 5:

Chairman Hagg requested that the record reflect that the information provided at the meeting was an update concerning the status of the federal proceedings only, and the Board did not discuss substantive matters concerning the Powertech application hearing process.

Motion by Karpen, seconded by Hilde, to add the paragraph to page 5 of the minutes. A roll call vote was taken, and the motion carried unanimously.

Mr. Morris requested that the following change be made on in paragraph 11 on page 3:

Substitute motion by Morris, seconded by Hilde, to transfer Small Scale Mine Permit No. 415 from Pamela A. Frink to Robert Griggas, release CD No. 0026602190, US Bank of Rapid City, South Dakota in the amount of \$500, ~~and accept replacement Irrevocable Letter of Credit No. 23, Summit Credit Union, Madison, WI, in the amount of \$500,~~ contingent upon Griggas submitting the \$500 financial assurance being in the form of cash or a Certificate of Deposit.

Motion by Morris, seconded by Greenfield, to amend paragraph 11 on page 3 as shown above. A roll call vote was taken, and the motion carried unanimously.

Motion by Greenfield, seconded by Hilde, to approve the minutes of the August 21, 2014, Board of Minerals and Environment meeting, as amended. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

Acceptance of Financial Assurance for Wharf Resources: Eric Holm presented 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' \$35,700,000 reclamation bond and \$30,800,000 post-closure bond.

The department adjusted the financial assurance for inflation and calculated a revised amount of \$597,800, which is an increase of \$17,100 from the 2013 calculation. The department used the Construction Cost Index to calculate the inflationary increase in the bond.

To cover the increase, Wharf is proposing to amend the irrevocable letter of credit that currently serves as financial assurance by increasing the amount to \$597,800.

The department recommended the board accept the amendment to Irrevocable Letter of Credit No. S18572/334184, Scotiabank, Ontario, Canada, increasing the financial assurance amount by \$17,100 to the new amount of \$597,800.

Mr. Morris asked if the bonds are cross-lateralized? For example, if the financial assurance for cyanide spills isn't sufficient, can the other bonds or the other financial assurance be accessed?

Mr. Holm answered that under the reclamation and post closure bonds, there are sections that cover water treatment and well mitigation and anything else that the department would need to do. If the bonds were forfeited, they would be put into one pot so the department could do the work, and if needed, this bond would cover impacts from any chronic cyanide releases.

Mr. Blumhardt said the Irrevocable Letter of Credit originates in The Bank of Nova Scotia in Canada, but are they still handled out of the bank in New York?

Mr. Holm said when he worked on the amendments, he verified with The Bank of Nova Scotia that the original Letter of Credit states that the funds can be collected at the New York branch of the bank.

Motion by Morris, seconded by Karpen, to accept the amendment to Irrevocable Letter of Credit No. S18572/334184, Scotiabank, Ontario, Canada, increasing the financial assurance amount by \$17,100 to the new amount of \$597,800 for Wharf Resources (USA) Inc., Lead, SD, Mine Permit Nos. 356, 464, and 476. A roll call vote was taken, and the motion carried unanimously.

Acceptance of Reclamation Bond Increase for Wharf Resources: Mr. Holm reported that under the conditions for Large Scale Mine Permit No.476, Wharf is required under Condition No. 2, Reclamation Surety, to submit the bond or surety for subsequent phases of the expansion project approved by the board in January 2012. Wharf is now entering Phases 2 and 3 of the expansion with the commencement of mining at the Golden Reward Mine and an associated haul road.

The department has recalculated the reclamation bond for Wharf Resources to cover approximately 62 acres of disturbance from the new phases of the expansion project. The revised reclamation bond amount is \$35,786,000, which is an increase of \$1,393,000 over the current reclamation bond of \$34,993,000. To cover the increase, Wharf submitted an amendment to existing letter of credit S18572/191556, which increases the amount of the reclamation bond to \$35,786,000.

The department recommended the board accept the amendment to Irrevocable Letter of Credit No. S18572/191556 increasing the reclamation bond by \$1,393,000 to the new amount of \$35,786,000.

Mr. Morris asked if this bond is required under SDCL 45-6B-91?

Mr. Holm answered that this is not the post-closure bond; it is the reclamation bond.

Mr. Morris asked Mr. Holm to provide the statutory reference.

Mr. Holm stated that it was SDCL 45-6B-20 and 45-6B-21.

Motion by Morris, seconded by Englund, to accept the amendment to Irrevocable Letter of Credit No. S18572/191556 increasing the reclamation bond by \$1,393,000 to the new amount of \$35,786,000 for Wharf Resources (USA) Inc., Lead, SD, Mine Permit Nos. 356, 464, and 476. A roll call vote was taken, and the motion carried unanimously.

Mr. Blumhardt suggested that the new board members tour Wharf Resources individually or that the board hold a meeting in the Hills so all of the board members can tour the mine site.

Exchange of Surety and Reduction of Surety for Exploration Notice of Intent, EXNI-422: Mr. Holm stated that Goldstake Explorations, Inc. was issued EXNI-422 in July 2013 to excavate up to 250 test pits and drill up to 30 holes for gold approximately 5.5 miles west of Vale, South Dakota. In 2013, Goldstake drilled, plugged, and reclaimed 27 drill holes and excavated and backfilled 16 test pits.

Goldstake has completed exploration operations under the permit and requested a reduction in its \$20,000 reclamation bond.

On May 29, 2014, the department inspected the area and determined some of the backfilled test pits needed regrading and recontouring, and some of the disturbed areas needed to be reseeded. The department determined the reclamation bond could be reduced to \$2,500 to cover the remaining grading and seeding costs under the permit.

Goldstake submitted a Certificate of Deposit in the amount of \$2,500 to replace the current \$20,000 Certificate of Deposit which serves as the reclamation bond.

Staff recommended the reduction of Goldstake Exploration's reclamation bond to \$2,500 and exchange of CD No. 23163259 for CD No. 23163342, Pioneer Bank and Trust, Spearfish, in the amount of \$2,500.

In response to a question from Mr. Blumhardt, Mr. Holm stated that Goldstake conducted exploration activities in the Whitewood tailings area.

Motion by Morris, seconded by Karpen, to reduce Goldstake Exploration's reclamation bond to \$2,500 and exchange of CD No. 23163259 for CD No. 23163342, Pioneer Bank and Trust, Spearfish, in the amount of \$2,500. A roll call vote was taken, and the motion carried unanimously.

Mr. Morris stated that at the August 21, 2014, meeting the board had a discussion on the Griggas matter. There was discussion regarding a memorandum that was going to be prepared that would provide an explanation as to the CD, bond, Irrevocable Letter of Credit, and how those mechanisms work, including which one is more secure. Mr. Morris asked if that document has been completed?

Mr. Holm answered that the staff will provide a presentation discussion this information at a future meeting.

Chairman Hagg requested an update on the status of the Griggas matter.

Mr. Holm answered that the department returned the Letter of Credit to Mr. Griggas' Credit Union and is still waiting for him to submit a replacement for the Letter of Credit. Mr. Holm stated that he has not been successful in contacting Mr. Griggas.

Mr. Holm said the department will let the board know when the replacement CD is submitted.

Prior to the meeting, the board received the table listing the department recommendations for transfers of liability and releases of liability (see attachment).

Motion by Morris, seconded by Blumhardt, to accept the department recommendations for transfer of liability and releases of liability, as shown on the attached table. A roll call vote was taken, and the motion carried unanimously.

STROMSETH CONSTRUCTION CONSTRUCTION AND DEBRIS SOLID WASTE PERMIT – RELEASE OF FINANCIAL ASSURANCE: Jim Wendte provided background information regarding Stromseth Construction's solid waste permit.

In August 2004, the Department of Environment and Natural Resources public noticed a recommendation to deny the reissuance of Mr. Stromseth's permit renewal. The reason for recommending denial was a chronic history of permit violations and noncompliance associated with the operation of Mr. Stromseth's construction and demolition debris pit. Mr. Stromseth was accepting and burning unauthorized waste and had accumulated a very large stockpile of asphalt-

containing waste and materials within a gravel pit, which is a violation of the administrative rules.

Mr. Stromseth petitioned the Board of Minerals and Environment for a contested case hearing.

In January 2005, the board held a contested case hearing regarding the department's recommendation to deny Mr. Stromseth's permit. The result of that hearing was an agreement between the board, the department, Mr. Stromseth, and his attorney to renew the permit with a number of stipulations.

One of the stipulations was a requirement that Mr. Stromseth pay a \$7,000 civil penalty for past violations. Another stipulation was that Mr. Stromseth be required to clean up all of the unauthorized waste in the construction and demolition pit as well as two other properties where he had dumped unauthorized waste. Mr. Stromseth was allowed four years to clean up the large asphalt stockpile and properly dispose of or recycle it. Mr. Stromseth was also required to submit \$30,000 in financial assurance.

In March 2005, the permit was reissued and the department secured the \$30,000 in financial assurance from Mr. Stromseth.

In April 2009, the department received a letter from Mr. Stromseth's attorney requesting that the board release the \$30,000 in financial assurance and stating that the stockpile of asphalt had been removed, the other unauthorized waste had been removed, and Mr. Stromseth had been in compliance with his permit for several years.

In July 2009, the board released \$20,000 of the financial assurance. Mr. Wendte noted that the board retained \$10,000 of the financial assurance as an incentive for Mr. Stromseth to continue to comply with the permit.

Mr. Wendte stated that the permit issued by the board in the spring of 2005 was due to expire in the spring of 2010. At that time, Stromseth Construction indicated that they did not want to renew the permit and they wanted to close the site. In the spring of 2010 the department issued a one-year permit outlining all of the closure activities that needed to occur during the one-year period.

In January 2011, it became apparent that Stromseth Construction was not going to be able to satisfy all of the closure requirements outlined in the permit. Stromseth Construction did not want to renew the permit. At that time the department received a letter from Mr. Stromseth outlining all of the things he would do to get the site closed in a timely fashion. The department accepted that letter in lieu of requiring Mr. Stromseth to renew the permit again.

Mr. Stromseth did not accomplish closure of the site within the timeframe that was agreed to.

In the late summer of 2013 the department determined that Stromseth Construction was fully compliant with all of the requirements for closing the site. Because the department was satisfied

that Stromseth had properly closed the site, the department intended to request that the board release the remaining \$10,000 in financial assurance in October 2013.

In late September of 2013 the department discovered that Stromseth Construction was demolishing an apartment building complex in Watertown and illegally disposing of the debris in a gravel pit, so the request for the board to release the financial assurance was removed from the board meeting agenda.

In March 2014 the department initiated and Secretary Pirner executed an enforcement action and a Notice of Violation with penalties against Stromseth Construction. Stromseth Construction paid an \$8,750 penalty and was required to clean up all of the illegally disposed of waste. Part of the settlement agreement involved Stromseth Construction documenting to the department how they would comply with solid waste requirements in the future. Stromseth Construction provided documentation regarding how they had trained their employees and other things to prevent future violations. The department conducted a number of follow-up inspections at the gravel pit and other areas since that time to make sure Stromseth Construction is compliant.

Mr. Wendte stated that the department is now satisfied that Stromseth Construction has complied with everything in the enforcement action. The department is not aware of any solid waste violations or compliance problems of any kind.

Mr. Wendte noted that the permit has been expired for a number of years, so there is no mechanism to retain and hold the financial assurance. He requested that the board release the \$10,000 Certificate of Deposit held as financial assurance for the solid waste permit issued to Stromseth Construction.

Mr. Wendte stated that the department recognized that it will have to continually keep track of Stromseth Construction in the future. Even though Stromseth Construction longer holds a permit, the company's past illegal activities justify the department monitoring the company's future activities.

Mr. Wendte answered questions from the board regarding enforcement of permit violations and financial assurance.

Motion by Morris, seconded by Englund, to release the \$10,000 financial assurance of Stromseth Construction. A roll call vote was taken, and the motion carried unanimously.

NEXT MEETING: The next board meeting is November 20, 2014, via telephone conference call.

The board discussed touring the mine sites in groups of two or three, or possibly holding a future meeting in the Hills to tour mine sites.

ADJOURNMENT: Motion by Morris, seconded by Englund, that the meeting be adjourned. Motion carried.

Board of Minerals and Environment  
September 18, 2014, Meeting Minutes

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>.

Approved this 20<sup>th</sup> day of November, 2014.

Linda Hilde 11-24-2014  
Secretary Date

~~\_\_\_\_\_~~ Dennis Hilde 11-24-2014  
Witness Date

## *South Dakota Board of Minerals & Environment*

*September 18, 2014*

License or Permit Holder	License or Permit Number	Site Number or Legal	Surety Amount	Surety Number	Surety Company or Bank	DENR Recommendation
<b>Mine Permits:</b>						
<b><u>Acceptance of Financial Assurance Increase:</u></b>						
Wharf Resources (USA), Inc. Lead, SD	356, 464, & 476		\$580,700	ILOC S18572/334184	The Bank of Nova Scotia, Ontario, Canada	Accept amendment to ILOC S18572/334184 increasing the financial assurance amount by \$17,100 to the new amount of \$597,800.
<b><u>Acceptance of Reclamation Bond Increase:</u></b>						
Wharf Resources (USA), Inc. Lead, SD	356, 464, & 476		\$34,393,000	ILOC S18572/191556	The Bank of Nova Scotia, Ontario, Canada	Accept amendment to ILOC S18572/191556 increasing the reclamation bond by \$1,393,000 to the new amount of \$35,786,000.
<b>Exploration Permits:</b>						
<b><u>Exchange of Surety and Reduction of Surety for Exploration Notice of Intent, EXNI-422:</u></b>						
Goldstake Explorations (SD), Inc. Spearfish, SD	EXNI-422		\$20,000	23163259	Pioneer Bank & Trust, Spearfish	Reduce surety to \$2,500 and exchange CD No. 23163259 for CD No. 23163342, Pioneer Bank & Trust, Spearfish, in the amount of \$2,500.

## South Dakota Board of Minerals & Environment

*September 18, 2014*

License or Permit Holder	License or Permit Number	Site Number or Legal	Surety Amount	Surety Number	Surety Company or Bank	DENR Recommendation
<b>Mine Licenses:</b>						
<b><u>Transfer of Liability:</u></b>						
Hasche Construction, Inc. Lake Preston, SD	85-292		\$1,125	16353	Citizens State Bank, Arlington	Transfer liability.
		<b>292004</b>	SE1/4 Section 3; T110N-R56W, Kingsbury County			
Transfer to:						
HT Albrecht & Sons, Inc. DeSmet, SD	14-971		\$3,000	80025116	American Bank & Trust, DeSmet	
<b><u>Releases of Liability:</u></b>						
Beilke Construction, Inc. Wetonka, SD	83-221		\$20,000	RC-0008	Sun Surety Company	Release liability.
		<b>221020</b>	NE1/4 Section 10; T119N-R66W, Faulk County			
Bowes Construction, Inc. Brookings, SD	83-164		\$20,000	HGMW-10-206- 0065	Hudson Insurance Company	Release liability.
		<b>164022</b>	SW1/4 NW1/4 Section 17; T108N-R50W, Moody County			

## South Dakota Board of Minerals & Environment

*September 18, 2014*

License or Permit Holder	License or Permit Number	Site Number or Legal	Surety Amount	Surety Number	Surety Company or Bank	DENR Recommendation
<b><u>Releases of Liability:</u></b>						
Schladweiler Construction Mitchell, SD	83-167		\$2,500	103982	Fulton State Bank, Mitchell	Release liability.
			\$1,500	104097	Fulton State Bank, Mitchell	
			\$1,000	103814	Fulton State Bank, Mitchell	
			\$500	103809	Fulton State Bank, Mitchell	
			\$500	102880	Fulton State Bank, Mitchell	
		<b>167033</b>	NW1/4 Section 19; T105N-R68W, Brule County			
Brule County Highway Department Kimball, SD	83-48		EXEMPT	NA	NA	Release liability.
			<b>48003</b>	NW1/4 Section 2; T102N-R72W & SW1/4 Section 35; T103N-R72W, Brule County		
Corson County Highway Department McIntosh, SD	83-239		EXEMPT	NA	NA	Release liability.
			<b>239006</b>	SW1/4 Section 19; T22N-R27E, Corson County		
Edmunds County Highway Department Ipswich, SD	83-161		EXEMPT	NA	NA	Release liability.
			<b>161001</b>	W1/2 Section 31; T122N-R66W, Edmunds County		

## *South Dakota Board of Minerals & Environment*

*September 18, 2014*

License or Permit Holder	License or Permit Number	Site Number or Legal	Surety Amount	Surety Number	Surety Company or Bank	DENR Recommendation
<b><u>Releases of Liability:</u></b>						
Hutchinson County Highway Department Olivet, SD	83-133		EXEMPT	NA	NA	Release liability.
		<b>133018</b>	SW1/4 SW1/4 Section 3; T99N-R59W, Hutchinson County			
Kingsbury County Highway Department DeSmet, SD	83-117		EXEMPT	NA	NA	Release liability.
		<b>117004</b>	SE1/4 Section 3; T110N-R56W, Kingsbury County			
Walworth County Highway Department Selby, SD	83-7		EXEMPT	NA	NA	Release liability.
		<b>7029</b>	SW1/4 Section 6; T121N-R73W, Edmunds County			