



**Board of Minerals
and Environment**

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AGENDA

Board of Minerals and Environment
Mineral Palace Hotel and Gaming - Gem Theater Room
604 Main Street
Deadwood, SD

September 18-19, 2019

September 18, 2019, 10:00 a.m. MDT - Gem Theater Room

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

Approval of minutes from August 15, 2019, meeting

Mining Issues

- Consent Calendar – Bret Graves

Spyglass Cedar Creek, LP – Update on litigation and contact with land/mineral owners – Steve Blair and Mike Lees

Discussion on oil and gas bond change recommendations – Mike Lees

Break

Notice is given to individuals with disabilities that the meeting is being held in a physically accessible location. Please notify the Department of Environment and Natural Resources by calling (605) 773-5559 at least 48 hours prior to the meeting if you have a disability for which special arrangements are required.

September 18, 2019, 1:00 p.m. MDT - Tour

The tour is open to the public. To facilitate planning for the tours, if you are considering attending, please contact Roberta Hudson or Eric Holm at (605) 773-4201. Persons interested in attending the tour should meet at 1:00 p.m. MDT on September 18 at the Homestake Office in Central City. Persons interested in attending will need to provide their own transportation for the site tour. Four-wheel drive vehicles are recommended for travel in certain areas. Some parts of the tour may be conducted on foot and may not be readily accessible by persons with disabilities as the terrain may be rugged. Participants will be required to wear safety equipment, which will be provided during the tour. For safety reasons, at the request of the mines, people should wear long pants and closed toe shoes, preferably steel toe shoes, if possible. More instructions and maps showing the locations of the sites will be provided prior to the tour.

1:00 p.m. MDT Meet at Homestake Office in Central City
1:00-1:30 p.m. Travel to Grizzly Gulch Tailings Impoundment
1:30-3:00 p.m. Tour of Grizzly Gulch Tailings Impoundment
3:00-3:30 p.m. Travel to Gilt Edge Mine
3:30 p.m. MDT Tour of Gilt Edge Mine

Recess for the day following the tour of the Gilt Edge Mine

September 19, 2019, 8:30 a.m. MDT - Tour

8:30 a.m. MDT Meet at Wharf Security Office – Tour of Wharf and Golden Reward mines
10:30 a.m. MDT Tour of VMC project area – start at Wharf Security Office

Adjourn following tour of VMC project area

The audio recording for this meeting is available on the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=67>

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

August 15, 2019
10:00 a.m. Central Time

The meeting was streaming live on SD.net, a service of South Dakota Public Broadcasting.

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

Chairman Hagg noted that Secretary Pirner had retired. The board wished Mr. Pirner well and thanked him for his service to the State of South Dakota

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

BOARD MEMBER ABSENT: None.

OTHERS PRESENT: Mike Lees, Eric Holm, Lucy Blocker, and Bret Graves, DENR Minerals and Mining Program; Ashley Brakke, Kyrik Rombough, and Brian Gustafson, DENR Air Quality Program; and Sarah Mearhoff, Forum News Service.

ELECTION OF OFFICERS: Motion by Karpen, seconded by Scheetz, to nominate and elect Rex Hagg as chairman of the board. A roll call vote was taken, and the motion carried with Greenfield, Blumhardt, Landguth, Karpen, Englund, Morris, Scheetz, and Peterson voting aye. Hagg abstained.

Motion by Englund, seconded by Morris, to nominate and elect Glenn Blumhardt as vice chairman of the board. A roll call vote was taken, and the motion carried with Greenfield, Landguth, Karpen, Englund, Morris, Scheetz, Peterson, and Hagg voting aye. Blumhardt abstained.

Motion by Morris, seconded by Blumhardt, to nominate and elect Gregg Greenfield as secretary of the board. A roll call vote was taken, and the motion carried with Blumhardt, Landguth, Karpen, Englund, Morris, Scheetz, Peterson, and Hagg voting aye. Greenfield abstained.

APPROVAL OF MINUTES FROM JULY 18, 2019, MEETING: Mr. Scheetz asked that the following change be made to the first sentence in the last paragraph on page 5:

John Scheetz said he agrees that something needs to be done, but the problem is the legislature ~~not changing the bonding requirements for oil and gas.~~

Motion by Karpen, seconded by Peterson, to approve the minutes from the July 18, 2019, Board of Minerals and Environment meeting, as amended. A roll call vote was taken, and the motion carried unanimously.

MINING ISSUES

Consent Calendar: Prior to the meeting, the board received a table listing the department recommendation for release of surety (see attachment).

Bret Graves was available to answer questions.

Motion by Morris, seconded by Landguth, to accept the department recommendation for release of surety as shown on the consent calendar. A roll call vote was taken, and the motion carried unanimously.

REQUEST PERMISSION TO ADVERTISE FOR A PUBLIC HEARING TO CONSIDER AMENDMENTS TO ARSD 74:36, AIR POLLUTION CONTROL PROGRAM: Ashley Brakke stated that the purpose of the proposed amendments is to ensure the rules are equivalent to the federal regulations. The Air Quality Program proposed the following changes:

1. Update the reference date to the most current version of the federal regulations, which is currently July 1, 2018.
2. Revise the air quality rules that reference the federal national ambient air quality standards. EPA periodically revises the national ambient air quality standards. In a previous hearing, DENR intended to adopt the new revised standards; however, DENR inadvertently cited the old standard and not the new standard.
3. EPA has adopted federal emission guidelines and compliance times for municipal solid waste landfills. The state is required to draft rules that are equivalent to the federal regulations and submit a section 111(d) plan under the Clean Air Act.
4. Minor cleanup of the rules such as typographical errors, etc.

Ms. Brakke requested permission to advertise for a public hearing for the board to consider the proposed amendments to ARSD 74:36, Air Pollution Control Program. The department intends to public notice the proposed rules in late August or early September and bring them to the board for consideration at the October 17, 2019, meeting.

Motion by Morris, seconded by Blumhardt, to authorize the department to advertise for a public hearing to be held on October 17, 2019, to consider proposed amendments to ARSD 74:36. A roll call vote was taken, and the motion carried unanimously.

SPYGLASS CEDAR CREEK – UPDATE ON LITIGATION AND CONTACT WITH LAND/MINERAL OWNERS: Mike Lees stated that no one from the Attorney General's Office was on the conference call.

Chairman Hagg stated that the last he heard, there was nothing new to report at this time, but hopefully, there will be an update at the next meeting. He requested that this matter continue to be placed on future meeting agendas.

Chairman Hagg asked Mr. Lees to update the board on the public notice letter to land/mineral owners.

Mr. Lees noted that Rich Williams, Deputy Attorney General, has announced that he is leaving state employment. The Spyglass lawsuit and other issues pertaining to Spyglass will be assumed by Steve Blair, Assistant Attorney General, who has worked with the department on oil and gas cases in the past.

Regarding the public notice, Mr. Lees stated that staff has drafted a couple of different options for consideration. The process has been slowed down by Secretary Pirner's retirement and by Rich Williams' announcement that he is leaving the Attorney General's Office. Staff plans to contact affected property owners prior to the September board meeting and provide an update at that time.

Chairman Hagg offered to review a draft of the letter to property owners prior to DENR sending out the letters.

Chairman Hagg requested input from the board regarding recommendations for bond changes to the department and the Governor's Office.

Chairman Hagg noted that the 2012 Legislature changed SDCL 45-9-15 to an individual bond of \$10,000 per well drilled for wells at or less than 5,500 feet deep or a \$30,000 blanket bond, and for wells more than 5,500 feet deep an individual bond of \$50,000 per well drilled or a \$100,000 blanket bond. In either case, the board may require additional bond if the circumstances require.

Mr. Lees reported that on July 25, 2019, the department sent a letter to all South Dakota oil and gas operators and the American Petroleum Institute. The letter provided information on proposed legislative changes to state oil & gas bond requirements and requested comments regarding the proposed changes by the end of August. As of August 5, 2019, the department had received only one response from Peter K. Roosevelt, who operates shallow oil wells in Fall River County, and opposes the proposed bond increase.

Mr. Lees discussed the proposed statutory changes which:

- Eliminate tiered bonding by depth;
- Make surety requirements uniform for all wells (shallow and deep) based on original bond increase proposed during the 2013 legislative session:
 - o \$50,000 per well or total estimated plugging/reclamation cost if less, or
 - o \$100,000 statewide blanket bond
- Add a new bond requirement for idle wells (two proposed options conceptually based on Wyoming and Colorado requirements):
 - o \$10/ft. or total estimated plugging/reclamation cost if less than \$10/ft.
 - o \$20,000 per idle well.

Mr. Lees noted that after receiving input from the industry, the department intends to present the final bonding proposal to the board for consideration later in the year.

Bob Morris asked how the department intends to address orphaned wells in the future and future bonds that are insufficient to cover the cost of plugging the well and reclamation.

Chairman Hagg said he would like to see a program developed that would address orphaned wells and insufficient bond amounts. He asked if the department has had any discussions with the Governor's Office regarding legislation that would allow the board to use forfeited bonds to address orphaned wells.

Mr. Lees answered that staff has explored options for a legislative change that cover some of these needs, but nothing has been formally proposed yet. Staff intends to explore proposing a statutory change that would allow the board flexibility to use forfeited oil and gas bonds for oil and gas reclamation activities.

Chairman Hagg said it is important that this subject get addressed.

Mr. Morris noted that SDCL 45-9-1 states that it is in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in South Dakota. He said it is important to realize that the state cannot make it so difficult that development of oil and gas is hindered, yet the state needs to do the right thing to protect the landowners, the public, and the environment.

Chairman Hagg said it appears that the statute gives the board the authority to cure these situations, but that means nothing if there is no financial means to do it.

Doyle Karpen said he supports the idea of an operator being able to request a lower bond amount.

Mr. Lees said the department's intent for the proposed bond changes is if there is a well that would cost \$5,000 to plug, then the bond amount required would be \$5,000, rather than \$50,000.

Mr. Scheetz suggested that the bond amounts be set based on the specific situation of each individual well-site, rather than requiring a blanket bond or a certain dollar amount for all wells.

Chairman Hagg suggested the board, through the department secretary and the Governor's Office, recommend setting a standard for the bond amounts. After that, based on certain criteria established by the legislature, the board could adjust the bond amounts, if the request were made.

Mr. Morris asked staff to provide the board with a history of the of the evolution of the oil and gas permitting process during the last 20-30 years.

Mr. Lees stated that the oil and gas permitting process has always been streamlined. Permitting is handled internally and it is about a two-week process. The administrator of the Minerals and Mining Program signs oil and gas permits. The pre-permitting process is more complex and involves the opportunity for board action on spacing orders, pooling orders, and unitization orders. Once there is field spacing, once an operator has pooled interests in those spacing units, or has

requested other board relief pertaining to protection of correlative rights, there is no public notice. The department reviews the permit application to make sure it complies with all the applicable statutes and rules, then it is approved by the department. Formerly, the Board of Minerals and Environment held a hearing on all oil and gas cases, whether or not they were contested. As a result of the changes made to the law in 2012, the notices are now published and, if the Order is contested, the board holds a contested case hearing. If the Order is not contested, it is approved administratively by the secretary of the department. Mr. Lees said now 95 percent of the cases are approved administratively.

Responding to a question from Mr. Morris, Mr. Lees stated that under SDCL 45-9-15, the board has the authority to require additional bond, if circumstances require it.

In response to comments from Mr. Scheetz, Mr. Lees stated that, other than Spyglass, there haven't been any orphaned wells in the last 50 years. There is no set procedure for addressing the Spyglass situation because there really hasn't been an issue until Spyglass. He stated that there have been a few small operators that left wells here and there, but those were handled because they were on federal property or other circumstances where the well involved the potential for release and the state could plug it using Regulated Substance Response Fund money, but operators abandoning oil and gas wells is not a frequent occurrence.

Chairman Hagg stated that, as he suggested in the June 19, 2019 letter to Senator Maher and the Government Operations and Audit Committee, the legislature should approve a one-time appropriation to deal with this problem.

Mr. Hagg noted that he also sent a letter to George Acton addressing his numerous inquiries concerning the Spyglass issue. In his letter, Mr. Acton stated that the board needs to look at Minerals and Mining and their actions regarding West Short Pines Field and Cady Creek Field before another problem similar to Spyglass, occurs. Chairman Hagg asked Mr. Lees to comment on Mr. Acton's concern regarding the two fields.

Mr. Lees stated that there are only three natural gas fields in South Dakota.

The Jump Off Field is the field that Spyglass spaced and operated. The West Short Pines Field is operated by Clark Blake Production, LLC. Clark Blake purchased the wells from the previous operators of that field, so he operates approximately 50 natural gas wells. Mr. Lees stated that Clark Blake Production LLC voluntarily posted a higher bond amount in light of the Spyglass situation. Mr. Blake posted a per-foot bond that the department believes is adequate to cover bare-bones plugging costs for all 50 wells.

Sands Oil Company operates approximately 20 wells in the Cady Creek Field. All of those wells are shut-in, and Sands Oil Company has been working with the department. The company has been plugging the non-viable wells, and the department has no concerns in terms of a Spyglass-type of situation occurring with Sands Oil Company.

Mr. Morris commended Mr. Lees and DENR for addressing the other two fields.

Consent Calendar
South Dakota Board of Minerals & Environment

August 15, 2019

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Release of Surety:</u>					
Dina Shefner Plankinton, SD	89-32	89568	\$2,500	First National Bank, Pierre, SD	Release \$2,500

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Consent Calendar
South Dakota Board of Minerals & Environment

September 18, 2019

<u>License Holder</u>	<u>License No.</u>	<u>Site No.</u>	<u>Surety Amount</u>	<u>Surety Company or Bank</u>	<u>DENR Recommendation</u>
<u>Releases of Liability & Surety:</u>					
Schenkel Demolition LLC Tyndall, SD	09-867	867001	\$5,000	Security State Bank, Tyndall E1/2 SE1/4 Section 1; T94N-R61W, Bon Homme County	Release liability and \$5,000.
Gary Van Zee Franklin, TN	18-1045	1045001	\$1,500	BankWest, Armour W1/2 Section 12; T100N-R65W, Douglas County	Release liability and \$1,500.
<u>Transfers of Liability:</u>					
Boyden Construction Platte, SD	85-313	313002	\$20,000	Bank of the West, Platte SE1/4 Section 34; T101N-R66W, Aurora County	Transfer liability.
Transfer to:					
Duane Strand Platte, SD	18-1037		\$1,000	First Fidelity Bank, Platte	

Consent Calendar
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<u>Transfers of Liability:</u>					
Jackson County Highway Department Kadoka, SD	83-79		EXEMPT	NA	Transfer liability.
		79043	Section 30; T44N-R33W, Jackson County		
Transfer to:					
Western Construction Inc. Rapid City, SD	09-880		\$20,000	Travelers Casualty & Surety Company of America	
Meade County Highway Department Sturgis, SD	83-113		EXEMPT	NA	Transfer liability.
		113061	NW1/4 Section 21; T13N-R10E, Perkins County		
Transfer to:					
Perkins County Highway Department Bison, SD	83-91		EXEMPT	NA	
<u>Releases of Liability:</u>					
Myrl & Roy's Paving, Inc. Sioux Falls, SD	83-95		\$20,000	Great American Insurance Company	Release liability.
		95025	W1/2 N1/2 Section 30 & SE1/4 SE1/4 SW1/4 Section 19; T102N-R50W, Minnehaha County		

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September 18, 2019

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<u>Releases of Liability:</u>					
Rogers Construction, Inc. Sturgis, SD	15-988	988006	\$20,000 S1/2 Section 1; T3N-R3E, Lawrence County	United Fire & Casualty Company	Release liability.
Dina Shefner Plankinton, SD	89-392	392003	\$3,000 Section 24; T105N-R64W, Aurora County	American Bank & Trust, Alpena	Release liability.
DOT – Aberdeen Region Aberdeen, SD	83-10	10072	EXEMPT SW1/4 Section 26; T116N-R70W, Hand County	NA	Release liability.
Hyde County Highway Department Highmore, SD	83-88	88008 88015	EXEMPT NE1/4 Section 30; T111N-R73W, Hyde County SW1/4 Section 23; T116N-R72W, Hyde County	NA	Release liability.

Consent Calendar
South Dakota Board of Minerals & Environment

September 18, 2019

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<u>Releases of Liability:</u>					
Moody County Highway Department Flandreau, SD	83-182		EXEMPT	NA	Release liability.
		182013	NW1/4 Section 21; T107N-R47W, Moody County		

