

**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

CITY OF MADISON PERMIT
APPLICATION TO CONSTRUCT AND
OPERATE A SOLID WASTE RESTRICTED
USE FACILITY

DANR 24-001

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Potter Proposed

From October 27-30, 2025, a contested hearing was held in this permitting matter before the Office of Hearing Examiners (“OHE”), Chief Hearing Officer Catherine Williamson presiding (“Hearing”). Permit applicant City of Madison (“City” or “Applicant”) appeared through counsel David J. Jencks; Department of Agriculture and Natural Resources-Waste Management Program (“DANR” or “Department”) appeared through general counsel Steven R. Blair; Board of Minerals and Environment (“BME” or “Board”) appeared through directors Doyle Karpen and Rhett Miller and counsel David M. McVey; Petitioner Patricia “Pat” Schaefer (“Mrs. Schaefer”) appeared *Pro se*; and Petitioners Karen Potter, Mark Potter, and Donita Potter (“Potters” or collectively, “Petitioners”) appeared through counsel Daniel L. Scott, Jonathan A. Heber, and Michael M. Hickey. Landowner and applicant Wayne Bessman (“Bessman”) did not appear.

On November 18, 2025, parties received Hearing Transcripts (“HT”) and a Master Exhibit List (“Ex.”) and, at Judge Williamson’s direction, filed legal briefs and *proposed* findings of fact, conclusions of law, and decision. Having closely reviewed the substantial record, and pursuant to SDCL Chapters 1-26, 1-26D, 34A-6, ARSD Article 74:27 and other authority, the OHE respectfully issues these proposed Findings of Fact, Conclusions of Law, and separate proposed Decision to the Board *In the Matter of Permit Application of City of Madison, dated August 2, 2023, to Construct and Operate a Restricted Use Storage and Disposal Facility*, DANR 24-001.

FINDINGS OF FACT

City's Initial Application (August 2, 2023)

1. On July 19, 2023, Lindon “Pete” Potter, the late husband of Petitioner Karen Potter, signed for a certified letter delivered to his rural Winfred home from Mayor Roy Lindsay (“Lindsay”), dated July 17, 2023. (*See* Ex. 214 - City Answer to Potter Petition, and specifically, Exhibit 1 at 000031-000032 (“Ex. 1”¹) attached to Ex. 214; *see also* Ex. 100 at 59-60)

2. Lindsay informed Potters that certain land north of the Winfred Cemetery owned by Wayne and Dawn Bessman, and immediately across the road and uphill from Potters’ land, was City’s target for a 73.04-acre landfill it intended to construct and operate on an elevated parcel along the west flank of the East Fork Vermillion River valley. (*Id.*)

3. City informed the Potters that it would file its permit application August 1, 2023, maybe sooner. (*Id.*)

4. Pete shared this news with Karen. (HT at 665:15-19, 646:3-9, 485:11-18)

5. Pete Potter passed away December 11, 2023.²

6. Patricia “Pat” Schaefer, who with her late husband Walter “Walt” Schaefer owned and operated Schaefer Belgium Farms immediately south and west of the Bessman land, received the same July 17, 2023, Lindsay letter that Potters did. (Ex. 1 at 000029-30; Ex. 100 at 57-58)

7. Walt Schaefer passed away March 25, 2023. (HT: 671:11-12)³

¹ For clarity, City represents that Ex. 1 attached to City Answer to Potter Petition (Ex. 214), is City’s “initial Permit Application” submitted to DANR on or about August 2, 2023; Ex. 1 is stamped 000001-000035. Ex. 1 is distinguished from (a) City Exhibit 01 (Bessman Warranty Deed) referenced but not offered at Hearing (HT at 66), and (b) DANR Exhibit 100 (RUS Permit Application); DANR’s Ex. 100 is not stamped or page numbered; Potter counsel submits it is 63-pages. Although both Ex. 1 and Ex. 100 are purported “applications” City submitted to DANR, they are unique.

² <https://www.rustandweilandfuneral.com/obituaries/Pete-Potter?obId=30100493>

³ <https://www.rustandweilandfuneral.com/obituaries/Walter-Schaefer?obId=27576614>

8. On July 24, 2023, one week after Lindsay's letters to Potters and Mrs. Schaefer, Ryan Hegg ("Hegg"), City's Director of Engineering, communicated with Steve Kropp ("Kropp") and Shannon Minerich ("Minerich"), environmental scientists with DANR's Waste Management Program and Surface Water Quality Program, respectively, regarding City's impending permit application. (Ex. 201)

9. Hegg was "getting some of the information second hand from Mayor Roy Lindsay" and so contacted DANR directly, to "make sure I understand a couple of things correctly regarding restricted use sites" and to properly respond to section 1.11 site location inquiries on the initial application as it concerns wetlands, surface water, and 100-year floodplains. (Id. at 2)

10. Kropp addressed Hegg's inquiries: "the siting criteria pertain to the entire permitted boundary of the proposed new site not just an individual disposal cell." (Id. at 1)

11. Kropp affirmed Hegg's assumption that 1.11 questions "would all be answered as far as the entire property is concerned and not just the actual site of the planned restricted use site cell" and therefore, City "would answer yes to those questions" due to floodplains, wetlands, and surface water features being on the 73.04-acre site. (Id. at 1-2) (emphasis added)

13. Kropp also explained that because City's proposed Winfred Site has floodplain, wetland, surface water features, its application would be disqualified from general permit consideration, and instead, would be processed as an individual permit applicant. (Id. at 1)

14. Kropp hypothesized that if a permit were issued, it would necessarily "contain variances in it that acknowledge the presence of these features within the permitted boundary but will prohibit the disturbance of wetlands and not allow solid waste to be disposed of in wetlands or within a floodplain." (Id.)

15. Kropp “cc’d” Nicholas Burke (“Burke”) on the email because Burke was DANR’s lead in processing City’s application; Kropp kindly invited Hegg to contact Burke if City had more questions. (*Id.*)

16. A week later, on or about August 2, 2023, City and Wayne Bessman submitted an “Initial Application to Construct and Operate a Restricted Use Storage and Disposal Facility” on the Bessman-owned 73.04-acres near Winfred, SD. (Ex. 1 at 000001-000035)

17. City further asserts its initial application was “submitted, received, and acknowledged” by DANR on or about August 2, 2023. (Ex. 214 at 1, ¶¶ 1-2)

18. Given the responsibilities, risks, and liabilities linked to the handling and disposal of solid waste, the legislature established “stringent standards” requiring that, before any person may construct and operate a landfill in compliance with SDCL 34A-6-1.1 to 34A-6-1.38, the owner and operator must first declare and agree they understand, accept, and acknowledge responsibility and liability in perpetuity for any detrimental effect caused by solid waste by executing an agreement with the board. (SDCL 34A-6-1.10; *see also* SDCL 34A-6-1.1)

19. ARSD 74:27:09:01 requires the operator and landowner to sign all permit applications, as authorized agents. For a municipal public agency, the authorized agent is the ranking elected official and/or the head of the agency.

20. Mayor Roy Lindsay is City’s ranking elected official and City Administrator Jameson Berreth (“Berreth”) is City’s agency head. (*Id.*)

21. City’s August 2, 2023, initial application was signed by applicant Lindsay and landowner Bessman. (Ex. 1 at 00007; *see also* Ex. 100 at 8; Ex. 263 at 174:5-175:17, 182:17-21; HT at 8)

22. By signing, Lindsay and Bessman admit they “read and understand” all application information. (Ex. 1 at 000007; Ex. 263 at 182:17-22; Ex. 100 at 8)

23. Lindsay and Bessman declared everything was “true and accurate.” (Ex. 100 at 8)

24. Lindsay and Bessman agreed and accepted “perpetual responsibility and liability for the solid waste disposal at this facility.” (Ex. 100 at 8)

25. Potters assert that shortly after City filed its first or initial August 2, 2023 application, City began making revisions and amendments to, and representations about, its original application with DANR, likely driven by City’s recognition it had legal problems with respect to water and wetlands on or adjacent to its proposed landfill site. (Ex. 211 at ¶¶ 16-18)

26. On September 6, 2023, City then filed another partial “Individual Permit Application” for the same Bessman-owned 73.04-acre property. (*Id.* at ¶ 17)

27. DANR-WMP stamped “RECEIVED SEP 11, 2023” on the front page titled “Restricted Use Site Permit Application September 6, 2023. (Ex. 100 at 1)

28. Although Ex. 100 was referred to by City and DANR as City’s “application” throughout Hearing, nothing within the “four corners” of Ex. 100 reflects the Lindsay or Bessman signatures were secured contemporaneous with the September 6, 2023 date. (Ex. 100)

29. Instead, it appears the initial application August 2, 2023, signature page signed by Lindsay and Bessman, along with other documents, was likely photocopied from the August 2, 2023 application, and inserted into the September 6, 2023 packet. (Ex. 1 at 0000007; Ex. 100 at 8)

30. On November 1, 2023, DANR-WMP’s Nick Burke and Jim Wendte (“Wendte”) met with Lindsay, Berreth and other City staff, including Lindsay and Berreth, to address Department concerns over environmental site characteristics, including the presence of or

proximity of the site to surface water, wetlands, 100-year floodplains, Schaefer Lake, and water drainage issues on or related to Bessman's 73.04-acres. (HT at 167:11-15, 209:4-22)

31. Following this meeting, Burke and Wendte traveled with Lindsay to the Winfred Site, and walked a small portion of the site, and took a few photographs. (Ex. 100 at 8)

32. Neither Burke nor Wendte performed any measurements, soil sampling, soil borings, or other environmental due diligence while at the Winfred site. (HT 210:1-5)

33. Burke and Wendte were onsite about "half an hour to 45 minutes." (HT 262:1-5)

34. On December 14, 2023, Lindsay sent Burke a letter relating to wetlands, surface water, flowing waters, drainage waters, and inflow and outflow of waters, and an attached "Preliminary Design" map "to consider 54.43 acres of land and not the original full 73.04 acres." (Ex. 101)

35. Lindsay stated it would not be City's intention "to disturb the wetland area nor the natural flow of the water into and out of" wetland areas. Lindsay instead posed, City would maintain "natural flow of drainage waters onto and off from this property" and "control inflow and outflow of any waters entering the actual restricted use site cells for the preservation of the natural flowing waters through this property." (Ex. 101 at 1; *see also* Ex. 262 at Item 3)

36. Regarding acreage size, the Preliminary Design" map created by City's hired engineers, Civil Design, Inc. ("CDI"), suggested a "Restricted Use Boundary Approximately 54.43 +/-" acres, "not the original full 73.04 acres." (Ex. 101 at 2)

37. A "Proposed Restricted Use Boundary" purports to exclude by redlining "a 200' Buffer Zone from identified Wetlands on or Adjacent to the Property" referenced from the USFWS National Wetlands Inventory. (*Id.*)

38. From a white box label close to the center of the map, five lines/arrows extend away and point to five (5) wetlands, water bodies and/or drainage. (*Id.*; Ex. 254 at 2, 4, 5, 14)

39. These water features appear to have influenced CDI's redlined boundary. (*Id.*; Ex. 254 at 2, 4, 5, 14)

40. Three lines/arrows point west/southwest at (1) a water body immediately on or adjacent to the south/southwest property line, (2) Schaefer Lake straight west, and (3) a smaller water body northeast of and interconnected with Schaefer Lake. (*Id.*; Ex. 254 at 2, 4, 5, 14)

41. Two lines/arrows point northeast/east at (4) a wetland on the east/central edge of Winfred Site, and (5) a wetland and/or shallow springs or groundwater immediately adjacent to/across the road in the southwest quadrant of Karen Potter's property. (*Id.*; Ex. 254 at 2, 4, 5, 14)

42. Burke agreed that if City had not consented to the December 13, 2023, "Buffer Zone" setback, City's permit application would have been rejected. (HT at 211:24-212:12; Ex. 101)

43. On July 25, 2025, Wayne and Dawn Bessman granted City a Warranty Deed on the Winfred Site, pursuant to an alleged oral modification of the unsatisfied April 2023 contingency Contract for Deed. (Ex. 01)

44. Lindsay agreed that City's amendment of its Bessman Contract for Deed, wherein the permit issuance contingency was unsatisfied, also acted to amend City's permit application. (Ex. 01)

City's Application Representations

53. Lindsay, having taken an oath of office as City's ranking elected official to faithfully and impartially discharge the duties of his office (SDCL 3-1-5), and having read,

understood, and acknowledged City's application materials as "true and accurate" by his signature (Ex. 1 at 000007; Ex. 100 at 8), made the following permit application representations. (SDCL 34A-6-1.10; *see also* ARSD 74:27:09:03)

54. At item 1.05, City identifies Madison as the closest municipality to its proposed site. City's statement is false. Howard, located in Miner County - which voted to oppose City's landfill is the closest municipality to the site and, as such, would be expected to respond to emergency and law enforcement considerations, as well as be "on call" for each open burning of waste. (Ex. 100 at 5; HT 105:14-20; Ex. 203).

55. At item 1.11, City represents the Winfred Site is not located in a wetland, which was not true. (Ex. 262; Ex. 254; HT 161)

56. At item 1.11, City represents the Winfred Site is not located within 200' of Surface Water, which was not true. (Ex. 262; Ex. 231; Ex. 254; HT 105:21-106:2)

57. At item 1.11, City represents the Winfred Site is not located within a 100-year floodplain, which was not true. (Ex. 211 at ¶¶5, 15, 20, 21, 22, 24, 25; Ex. 262 at Expert Opinion Items 1, 2; Ex. 214; Ex. 253 at 1-6; Ex. 254 at 2, 4, 5, 8, 9, 10; HT 103-104, 161)

58. At item 1.11, City represents the Winfred Site is not located within 1,000' of human consumption well, which was not true. (Ex. 100; Ex. 254 at 2, 4, 14)

59. At item 1.11, City represents the Winfred Site is not located in an area where primary subsurface material is sand or gravel, which was not true. (HT 125:7-16; Ex. 223)

60. City never performed or engaged qualified professionals to undertake "readily available environmental due diligence . . ." (Ex. 262 at Item 2)

61. The record fails to reflect or establish City testing, sampling, borings, or like investigation or due diligence the presence of sand, gravel, or other permeable subsurface materials

that could facilitate and exacerbate contamination migration through groundwater systems. (Ex. 262 at Items 1, 2, 3; Ex. 100; HT 125:7-16; Record)

62. The record establishes City failed to perform any environmental due diligence in the form of site testing, soil borings, or other industry standard measures which would or could have informed the issue and parties. (Ex. 262 at Items 1, 2, 3; Ex. 100; HT 125:7-16)

63. At item 1.11, City represents the Winfred Site is not located in an area that adversely affects wildlife, recreation, aesthetic values, or threatened or endangered species, which is not true. (Ex. 100; HT 486:1-487:12; 813:1-15; 453:12-454:1; 622:4-623:15)

64. At item 1.15, City represents no domestic wells within ½ mile radius, which is untrue. (Ex. 211; Ex. 214; Ex.254 at 2, 4, 12; HT 627:4-20)

65. Record evidence, including pleadings and witness testimony, establishes Karen's well within ½ mile. (Ex. 211; Ex. 214; Ex.254 at 2, 4, 12; HT 627:4-20)

66. At item 1.16, City represents August 2, 2023: "There are no anticipated run-off or run-on at this site," which is untrue. (Exs. 100, 101; HT 120:23-121:25; HT 348:2-6)

67. At item 1.19, City failed to respond to groundwater depth inquiry and aquifer depth by only noting: "More than 100 ft deep." (Ex. 100 at 6; Ex. 262 at Expert Opinion Items 1, 2, 3)

68. Lindsay testified he did not know the difference between "aquifer" and "groundwater" for purposes of the application requirements. (HT at 120-124; see ARSD 74:27:07:01 (5), (29))

69. Lindsay testified and acknowledged that groundwater and groundwater depth information is not provided in City's application, and further acknowledges City failed to ask for or test for groundwater data. (HT at 122-124)

70. Burke also failed to address groundwater information. (HT at 210:15-25)

71. Burke testified that he did not know that “aquifer” and “groundwater” were defined differently under South Dakota law. (*Id.*)

72. The record establishes that City failed to conduct any subsurface borings, groundwater depth testing, or hydrogeologic testing to determine groundwater conditions beneath the proposed facility. (Ex. 262 at Item 1, 2, 3; Ex. 100; HT 125:7-16)

73. DANR also performed no testing, sampling, borings, measurements or other environmental due diligence at the Winfred Site when they briefly stopped by on November 1, 2023. (HT at 210)

74. Lindsay testified and admitted that it was an “oversight” that City did not perform any borings. (HT 125:11-24)

75. Determination of groundwater depth and subsurface conditions is a fundamental component of landfill siting and environmental risk assessment. (Ex. 262)

76. Bessman offered the City the opportunity to conduct a subsurface investigation. (Ex. 223 at 1)

77. Lindsay acknowledged that Bessman “said we can do soil samples if we need to determine if it is compatible for an RUS.” (*Id.*)

78. City did not perform any soil testing or borings. (Ex. 223)

79. In City’s application, “2.0 Document Submittals Required” lists various items City was to attach that were mandatory prerequisites for a complete application, including county statements, environmental review letters, an aerial overhead photograph, an affidavit of publication, certification of applicant, notices, and other documentation relating to the presence of surface water, wells, wetlands, and 100-year floodplains. (Ex. 100 at 6-7)

80. City's application, including the preceding "required" documents, fails numerous permitting requirements and/or otherwise fails to satisfy South Dakota's evidentiary rules - including the application's "2.0 Document" conditions precedent. (*See, e.g.*, Record; Ex. 100 at 6-7)

81. The Lake County resolution "approving the proposed site" expired September 5, 2025, nearly two months prior to Hearing, pursuant to the 24-month expiration term plainly contained in SDCL 34A-6-103 (Ex. 100 at 10; *see also* DANR's admission at Ex. 117B at Section 1.11), rendering it defunct and legally inoperative.

82. The USFWS environmental review expired after 90-days from its 2023 issuance pursuant to Federal law -- and by then had already changed to alert City that the: "Tri-color bat is now listed as proposed endangered," rendering it defunct and legally inoperative. (50 CFR 402.12(e); Ex. 100 at 25, 28)

DANR's Completeness Review (September 12 - 14, 2023)

73. ARSD 74:27:08:12 mandates written communication between DANR and applicant to document and discuss missing, incomplete, incorrect, inadequate permit application documents, reports, records, items or information. (ARSD 74:27:08:12)

74. ARSD 74:27:08:12 also requires that the secretary notify the applicant in writing whether and when the application is considered complete. (ARSD 74:27:08:12)

75. DANR has a 90-day window to accomplish completeness review, from the date of permit application filing. *Id.*

76. Notwithstanding City's April 2, 2023 initial application, it appears DANR intends to treat or consider City's September 6, 2023 application (received September 11, 2023) an application for permitting review purposes. (Ex. 100)

77. Regardless of which “application” is reviewed, it is noted there are gaps, discrepancies and/or inconsistencies in City’s application file (*e.g.*, mandatory written notifications regarding “completeness” or “technical” review dates and/or satisfaction dates to not appear. (HT 162-238)

78. On July 25, 2023, City and Bessman applied to Lake County for a conditional use permit, an approval resolution, and a zoning verification, as required by Lake County ordinance and SDCL 34A-6-103. (*See, e.g.*, Exs. 245-249)

79. On September 6, 2023, City filed its revised application with DANR. (Ex. 100)

80. Included was a September 5, 2023, Lake County approval resolution; September 5, 2023, Lake County Zoning Notification, both crafted upon DANR-supplied templates. (Ex. 100)

81. City’s application included three environmental review letters, including the two expired species assessment letters GF&P January 30, 2023 and USFWS July 21, 2023. (Ex. 100 at 22-23 and 24-43)

82. The record fails to show that City or DANR took any steps to revisit sources relating to the expired assessments by either GF&P or USFWS. (*Id.*)

83. The third environmental review letter, submitted by Minerich dated January 30, 2023, is probative on issues of State and Federal statutory and regulatory compliance. (Ex. 260; Ex. 100 at 47-48)

84. Minerich clearly articulates the importance of waters of the State -- wetlands, lakes, creeks, tributaries, and other water bodies -- and laws aimed at preventing disturbances, harm, offensive effects, and adverse impacts caused by or associated with runoff, pollutants, indiscriminate fill material, and soil erosion and sediment control. (*Id.*)

85. Minerich instructs Lindsay that, regardless of project size, control measures must be taken, including securing of various permits, prior to engaging in “[a]ny construction activity that disturbs an area of one or more acres of land” must have permit authorization. (*Id.* at 47, ¶ 1)

86. Minerich then identifies in good detail citations and resources relating to the securing of potentially required State and/or Federal permits. (Ex. 260)

87. Minerich’s environmental review letter and hearing testimony is supportive of Petitioners’ positions and concerns. (Ex. 260; Ex. 100 at 47-48)

88. Notably missing from City’s application submission is the “4.0 Signatures” page reflecting signatures contemporaneous with its September 6, 2023 filing, and a sworn and executed Certification of Applicant. (Ex. 100 at 50-51)

89. The records establishes that City photocopied signature pages from its August 2, 2023 initial application, and collated them into its September 6, 2023, revisions. (*Id.*; Ex. 1)

DANR’s Technical Review (September 15, 2023 - February 11, 2024)

89. Under ARSD 74:27:08:13, a technical review must be completed within 90-days after the completeness, unless secretary decides an EIS under SDCL 34A-6-4 is necessary.

90. Burke’s September 14, 2023, completeness ruling triggered the 90-day period and established a December 13, 2023 deadline. (ARSD 74:27:08:13)

91. Based on the record, it appears the technical review deadline was missed by DANR and Burke. (Ex. 100)

92. The only time Burke has been at the site was a brief visit on November 1, 2023, with Jim Wendte, when the two DANR representatives had a meeting in Madison to discuss the water feature concerns on the 73.04-acres. (HT 209)

93. Burke and Wendte performed no testing, soil sampling, borings, measurements, or other environmental due diligence work on or relating to the Winfred Site. (HT: 125)

94. Burke admits he does not know the difference between an “aquifer” and “groundwater” under South Dakota and as it pertains to the work he is doing within DANR-WMP. (HT: 210-211)

95. Burke denied having knowledge or awareness of complaints, concerns, notices, charges, communications, or information of a negative, adverse, or unacceptable nature concerning City’s “many decades” of operating its Junius Site. (HT at 68-69)

96. Burke acknowledges DANR’s technical review relied heavily on the City’s submitted materials and representations regarding environmental conditions at the site. (HT 164-168)

DANR’s Public Notice (February 21, 2023)

105. Following the completion of technical review, DANR was required to public notice secretary’s recommendation on City’s permit application. (SDCL 34A-6-1.14; ARSD 74:27:08:14 through ARSD 74:27:08:19; ARSD 74:09:01:01)

106. DANR alleges public notice was accomplished February 21, 2023, with publication in the *Madison Daily Leader*. (ARSD 74:27:08:12; ARSD 74:27:08:16; Ex. 104, Ex. 106)

107. To document its legal notice efforts, DANR secured two (2) publication affidavits from Shauna Cunningham: (a) one executed March 8, 2024 (Ex. 104), the other (b) March 13, 2024 (Ex. 106), both purportedly evidencing publication of “the secretary’s recommendation on the permit application including explanations and any proposed permit conditions” and “information on intervention procedures”. (ARSD 74:27:08:16; Ex. 104, Ex. 106)

108. What Cunningham executed, however, was an “**AFFIDAVIT OF PUBLICATION**” of a “NOTICE OF PUBLIC HEARING” (emphasis in originals), whereby Cunningham declared she was the Publisher of the *Madison Daily Leader* (or a publisher employee) and that the Public Hearing notice “was printed and published” February 21, 2024. (Ex. 104, Ex. 106)

109. An e-mail string produced by DANR dated February 12-March 14, 2024, re: "Madison Draft Permit and Public Notice" (Ex. 212) contains what appears to be a contact card or address block for Cunningham appended to the bottom of the email page; the information suggests Cunningham is (or was) a “Multi-Media Advertising Consultant” with “*The Capital Journal and R+*” in Pierre - and not the *Madison Daily Leader* Publisher. (Ex. 212 at 2) DANR confirms Cunningham’s association with *The Capital Journal*. (Ex. 212 at 1)

110. Despite both Cunningham affidavits alleging “personal knowledge of all the facts stated in this affidavit” and a “printed copy” of “attachment” to affidavits, the record evidence on public notice fails to identify or present a verified, authenticated, or reliable “true and correct” copy of what exactly was purported to have been published in the *Madison Daily Leader* on February 21, 2024. (Exs. 102-106; Exs. 203, 205, 209, 210, 211 at ¶¶ 19-26, 212, 215)

111. The DANR-offered Exhibit 105 (two-column “notice” document) is not attached to either Cunningham affidavits (Exs. 104, 106); even if Exhibit 105 were sound from a basic reliability and evidentiary standpoint and had been “attached” to Exhibit 104, and further assuming, *arguendo*, it had been published, it clearly does not represent, constitute, or satisfy publication of “the secretary’s recommendation on the permit application including explanations and any proposed permit conditions” as required by ARSD 74:27:08:16.

112. DANR admits failing to satisfy a February 16, 2024, “contested case” publication deadline, and further admits in the same email document the fact that the Cunningham affidavits coming from Hughes County contained the wrong “notice” and incorrect pricing for the mistaken notice(s). (Ex. 212)

113. DANR failed to publish a true and correct copy of the secretary’s recommendation with terms, conditions, and explanations, in its public notice efforts. (Ex. 209)

Petitions

114. Petitioner Schaefer timely filed a Petition dated March 4, 2024. (Schaefer Petition)

115. Petitioner Potters timely filed a Petition dated March 13, 2024. (Potter Petition)

Bessman Transaction

116. Bessman owned the property that City sought to acquire for the facility. (Ex. 223-249)

117. In October 2022, Lindsay initiated conversations with Bessmans to purchase the 73.04-acres “North of the Winfred Cemetery.” (Ex. 223)

118. On October 24, 2022, Lindsay initiated conversation regarding deal terms, including the price, contract for deed structure, interest on unpaid principal, and soil samples if needed to determine RUS compatibility. (Ex. 223)

119. In January 13, 2023, Lindsay communicated to Berreth advising that “we settled” on principal terms, including permit issuance contingency, no permit, contract for dead null and void, and “done deal”. (Ex. 225)

120. On February 22, 2023, Bessmans agreed to terms and conditions. (Ex. 232)

121. On April 18, 2023, the contract for deed (“Bessman Contract”) was executed by Bessmans. (Ex. 237)

122. On July 25, 2023, Lindsay and Bessman make a joint conditional use application to Lake County. (Ex. 245)

123. On August 2, 2023, Lindsay and Bessman make a joint restricted use site application to DANR. (Ex. 1; Ex. 100)

124. On September 5, 2023, City receives Lake County Resolution of Approval pursuant to SDCL 34A-6-103. (Ex. 248)

125. Neither Bessman nor Dawn Bessman testified at the trial.

126. The Bessmans were deposed prior to trial. (Ex. 263; Ex. 264)

127. Bessman Contract contingency tied to DANR's permit issuance; if City not issued a permit by DANR or Board by the final closing date, contract is null and void. (Ex. 237 at ¶ 19)

128. On July 25, 2025, City and Bessmans "closed" on their transaction and City was granted a Warranty Deed from Bessmans that was recorded July 25, 2025. (Ex. 01)

Contested Hearing (October 27-30, 2025)

129. A contested hearing was held in this matter October 27-30, 2025, in Sioux Falls, SD.

130. At the outset of the hearing, DANR and City conceded that the required Lake County approval had expired. (HT 27-28)

131. As applicant, City put its case-in-chief in through one witness, Mayor Roy Lindsay, and two exhibits offered by DANR (Exs. 100 and 101).

132. DANR put its case-in-chief in through two witnesses, Kropp and Burke.

133. Petitioners called fourteen witnesses: Roxie Ebdrup, Jim Wendte, Jason Terwilliger, Karen Potter, Jim Casanova, Marshall Dennert, Mark Potter, Adam Shaw, Donita Potter, Patricia Schaefer, Alex Protsch, Shannon Minerich, Jameson Berreth, and Lee Daigle.

134. DANR called Jim Wendte as a rebuttal witness.

City Application Fails without Permit Review under SDCL 34A-6-1.13

135. DANR formally made new and amended draft permit offers in this contested hearing: (a) on October 27, 2025, minutes before City opened its case in chief, and; (b) on October 30, 2025, minutes before parties rested and made closing arguments. (HT at 27-28; HT at 829:18-832:22; Ex. 117A; Ex. 117B; “Second amended Draft Permit v.2”)

136. By its actions to introduce a new, amended Draft Permit on October 27, 2025, DANR withdrew and/or otherwise abandoned its publicly noticed Draft Permit of February 21, 2024. (HT at 27-28)

137. By its October 30, 2025 introduction of an amended Draft Permit, DANR withdrew and/or otherwise abandoned its newly introduced October 27, 2025 Draft Permit. (HT at 829:18-832:22; Ex. 117A; Ex. 117B; “Second amended Draft Permit v.2”)

City Application Likewise Failed for Lack of Amending Power

138. Under ARSD 74:27:08:19, permit applicants are expressly prohibited from changing or amending permit applications after the publication of the notice containing the secretary’s recommendation, including all terms, conditions, explanations, etc., on the permit application. (ARSD 74:27:08:19)

139. City cannot amend its permit application.

City’s Application Defaulted with Expired Requirements

140. As set forth DANR’s own permit application form, and as required as part of every applicant’s permitting process, City is required to have a valid and properly adopted county resolution approving and supporting the facility as part of the application submission to DANR. (Ex. 100 at item 2.01; Ex. 10; SDCL 34A-6-103)

141. The county resolution is a condition precedent and must be part of the application to DANR, and it shall have legal effect prior to the issuance of a permit. (SDCL 34A-6-103)

142. SDCL § 34A-6-103 provides a 24-month window time or limitation period by which the applicant must move its application to and through approval before said window closes.

143. City obtained the required approval resolution from Lake County on September 5, 2023. (Ex. 100 at p. 10 - Resolution 2023-15)

144. The approval lapsed on September 5, 2025. (Ex. 100 at p. 10 - Resolution 2023-15)

145. Prior to the County approval resolution lapsing, City took no action to extend or renew the approval with Lake County. (HT 27-28)

146. City's approval resolution expired, and its application entered a default state more than 7 weeks prior to the start of the contested hearing. (*See id.*; *see also* HT at 27:2-28:24.)

Public Notice Failures Require Dismissal of City's Application

147. Under ARSD 74:27:08:16, the secretary of DANR is required to publish a notice of the secretary's recommendation on the permit application in an official newspaper in the county where the site is to be located with specific, detailed information regarding the permit recommendation so that the public can be adequately put on notice.

148. DANR failed to publish all the required disclosures under ARSD 74:27:08:16.

149. DANR failed to publish the Secretary's actual draft, tentative recommendation to City. The regulation does not require, mandate, or contemplate a paraphrased, editorialized or shaded version of the Secretary's draft, tentative recommendations.

Contested Hearing: Scheduling and Timing Requirements

150. Under ARSD 74:27:08:18, “[t]he board shall schedule a hearing on the permit application upon receipt of a petition complying with the requirements of chapter 74:09:01.”

151. Mrs. Schaefer and the Potters served and filed Petitions on March 4, 2024, and March 13, 2024, respectively, contesting the secretary’s recommendation to grant the permit with conditions. (Petitions)

152. The hearing period expired May 12, 2024, sixty days from when the Potters filed their Petition on March 13, 2024.

153. DANR mailed an untimely notice on June 17, 2024.

154. The Board did not issue an Order setting the hearing within sixty days of the last filed Petition.

City Failed to Comply with §§ 34A-6-1.1 to 34A-6-1.38 Requirements

155. City’s application was incomplete and inaccurate. (Ex. 100)

156. As conceded by DANR, City did not accurately set forth the existence of wetlands, 100-year floodplains, and surface waters in its application. (*DANR Proposed FOF No. 12, 14, 16, 27*)

157. City did not adhere to the policy set forth in SDCL § 34A-6-1.2 regarding solid waste management to reduce reliance upon land disposal of solid waste.

158. Berreth testified that he could not recall if he ever knew about this policy. (HT 751:17-18)

159. City cannot operate the restricted use site without being in violation of ARSD 74:27:11:03, which states that “[f]acilities shall not be located within the boundaries of a 100-year floodplain.”

160. DANR conceded at the hearing that the permit that it recommended by publication allows for facilities to be located within the 100-year floodplain.

161. City would not be compliant with “all applicable state, federal, and local laws and ordinances” if it was issued a permit because it does not have active and valid authorization from the County. (DANR Post-Hearing Brief, Attachment A at p.3 (conceding that County authorization has expired).

162. City constructed and altered a site without a permit in violation of SDCL § 34A-6-1.4.

163. City engaged in trenching, tilling, separating the land, using heavy equipment, and planting thousands of trees at the proposed site as part of its construction of the same. (HT 775:11-777:20)

164. City did not locate soil borings as required by regulations promulgated under SDCL § 34A-6-1.6. (ARSD 74:27:12:04)

165. Lindsay acknowledged that the Bessmans authorized City to take soil samples as early as 2022. (Ex. 223)

166. Burke on behalf of DANR testified that no soil samples or borings were taken at the site. (HT 329: 4-15)

Winfred Site Is Not In the Public Interest

167. City failed to introduce sufficient evidence at the hearing that the landfill is in the public interest.

168. City called one witness at the hearing: Mayor Roy Lindsay. (HT at 39-67)

169. Lindsay is not an engineer, he is not an environmental scientist, he does not have an education in solid waste, he does not manage the day-to-day operations of the restricted use site, and he does not directly manage the financial affairs of the restricted use site. (HT at 39-67)

170. City did not call Gary Gonyo, who is the supervisor of the restricted use site. (HT at 46:21-24).

171. Gonyo oversees managing the restricted use site and would have first-hand knowledge and information regarding the operation and any supposed alleged need for the same. (HT at 46:21-24)

172. City did not call Roxie Ebdrup (“Ebdrup”),⁴ who Lindsay said, “has always been a part of the operation of the restricted use site and all the paperwork that goes with it.” (HT at 72:12-14)

173. Ebdrup would have knowledge regarding the finances and administration of the restricted use site and who assisted with completing the application. (HT at 73:4-24)

174. City did not call Berreth,⁵ who was a central witness working directly and closely with Lindsay regarding the new restricted use site. (HT at 35:11-37:21).

175. Berreth was out of state for a conference during the contested hearing and had to be subpoenaed to compel his attendance later in the hearing. (HT at 35:11-37:21)

176. City also did not call its own engineers, including Hegg, any of the third-party engineers at Civil Design, Inc. who prepared the site plan, or any expert witness regarding the need or viability of the restricted use site. (HT at 39-67)

⁴ Petitioners called Roxie Ebdrup adversely later at the hearing.

⁵ Petitioners called Jameson Berreth adversely later in the hearing.

177. City also did not call either of the Bessmans, who owned the restricted use site and were familiar with the land, the drainage, the topography, the performance of the land, and, importantly, who signed the application to DANR. (HT at 39-67)

178. City did not call a single individual from the public regarding a supposed desire to have the landfill constructed.

179. Lindsay testified that contractors and citizens allegedly ask about the restricted use site, but City did not ensure that any such witness testify at the hearing and introduce competent, reliable, and non-hearsay testimony regarding any desire for the restricted use site. (HT at 39-67)

180. DANR called its own staff representatives Nicholas Burke and Steve Kropp, who were each involved in reviewing the application from City.

181. Neither Burke nor Kropp opined regarding any public interest of the facility. (HT at 154-353; *see also* DANR's Witness List)

182. Petitioners elicited testimony and introduced evidence rebutting any alleged public interest with operating a facility at the proposed site.

183. Petitioners retained experts Lee Daigle and Mark Torresani out of Cornerstone Environmental Group, LLC, who produced a report regarding the viability of the site. (Ex. 262)

184. Daigle testified at the hearing. (HT at 783-828)

185. Daigle opined that the original proposed facility did not include any buffer around the obvious wetlands that were identified. (Ex. 262; HT 802:7-15)

186. DANR attempted to remedy the issue by submitted a CAD drawing that included red-lined boundaries for a reduced lot of 54.43 acres resulting in a 200' setback from the wetlands. (Ex. 262)

187. The actual extent of the wetland needs to be identified through a Wetland Delineation process prior to permitting, design, and development of a proposed solid waste management facility. (*Id.*; HT 811:20-812:7)

188. Given the significant presence of wetlands on and near the proposed site, Daigle recommended that professional field work be performed, which did not happen. (Ex. 262)

189. Daigle noted that the 100-year floodplains were not updated from publicly available sources. (*Id.*)

190. DANR agreed with the presence of wetlands and 100-year floodplains and has attempted to remedy the failure by City and DANR to note the existence of such floodplains throughout the proposed site. (HT 833:5-834:6)

191. Daigle opined that geotechnical and hydrogeologic investigation should have been performed on the site and region to understand the potential impacts to the groundwater from the facility's operation. (Ex. 262 at p.2)

192. There was no site-specific model to understand the velocity and direction that potential contamination and groundwater is flowing, the evaluation of potential impacts is unknown and represents a tremendous risk. (*Id.*)

193. Daigle noted that "City's past history of operational performance indicates that prohibited wastes and other findings of non-compliance at City's Junius RUS is concerning, exacerbating the potential for contamination of groundwater and the surrounding environment." (*Id.*)

194. Daigle's professional opinion was "that past indicators of non-compliance and operational deficiencies must be taken into consideration and made part of any future permitting application process by the same operator." (*Id.*)

195. Daigle further noted that “a complete and professional design, including individual phases of construction, should have been developed.” *Id.* He pointed out that there is no discussion of stormwater management, including stormwater flow paths, time of concentrations, and holding volumes. (*Id.*)

196. Evidence showed that the proposed site is not in the public interest because it lacked proper due diligence and investigation. (*Id.*)

197. Neither DANR nor City performed any borings to determine the existence and depth of groundwater. (HT 210:1-13)

198. Burke and Wendte visited the proposed site one time on November 1, 2023, but did not perform any soil borings and took no measurements. (HT 209: 7-16; 211:17-23)

199. Burke testified that he could not recall how long he was at the property but estimated it was less than an hour. (HT 262:1-7)

200. Kropp, who testified that a visual inspection is an important part of the review process, never visited the property at any point, including as of the time of the hearing. (HT 329:1-331:5)

201. Kropp testified at the hearing that DANR’s own Exhibit 109, which was a FEMA National Flood Hazard Map, showed the existence of 100-year floodplains that were present on the proposed site. (HT 335:3-24)

202. Kropp testified that the presence of bodies of water and impact on drainage may be relevant to public interest depending on how it is defined. (HT 336:17-25)

203. Kropp stated in an e-mail: “So yeah, they really need to stay away from any wetland area.” (Ex. 260 at p.1)

204. The Board has promulgated a regulation that states that “[f]acilities shall not be located within the boundaries of a 100-year floodplain.” (ARSD 74:27:11:03)

205. Kropp acknowledged the concern that “[i]f the upper 10 ft of the subsurface is sand, they can’t dispose of any materials that contain petroleum (like asphaltic concrete or shingles).” (Ex. 260 at p. 2)

206. Asphaltic concrete and shingles are exactly the kind of construction materials that would be disposed of at the proposed site. (Ex. 100-101)

207. Evidence showed that the proposed site is not in the public interest due to the presence of wetlands water flow, surface waters, 100-year floodplains, water springs, and overall water drainage.

208. Petitioners Karen Potter, Mark Potter, Donita Potter, and Patricia Schaefer testified about the abundance of water at the proposed site and the surrounding area, their experiences with flooding, especially during wet years, the groundwater in the area, the springs, and water flow in all directions rather than just to the south and west.

209. Donita testified that the water “goes both ways” and that while “[i]t probably does go to Schaefer Lake, . . . a whole does go the other way too.” (HT 668:2-10)

210. Mark testified at length about the headwaters for the Little Vermillion (HT 534:1-17), the negative impact on drainage (HT 539:555:6), and the washouts on the unpaved roads, especially with heavy trucks and equipment (HT 601:16-21).

211. Mark testified that “everybody believes all the water runs west, which is very correct and true with most of it, but there’s still water that runs this way as you can see here and here,” which Mark was referencing water drainage shown going north in Slide 9 of Exhibit 254. (HT 542:22-543:25).

212. Mark Potter also referenced Schaefer Lake and how the water drains to the north and east toward the small body of water to the northeast of Schaefer Lake. (HT 545: 7-17).

213. Mark Potter also testified about the spring water that is in the area, including Mr. Wettlaufer's area immediately north of the proposed site. (HT 542:14-21).

214. Describing this land, Mark testified with reference to Slide 9 of Exhibit 254: "This is about a 30-foot drop right here from this side, Mr. Wettlaufer's to our side. There's a culvert right here. This affects – we have – from north to south right here, we have 320 acres of grazeable useable land. This, all this what you see, everything you see here coming out of these trees, and this here Mr. Wettlaufer fails to farm pretty much every year. This stays wet. Our cattle down here, 30-foot drop, the culvert is 30 – Mr. Casanova could probably testify – 20 to 30 feet deep right here. The culvert comes out of – out of this. All year long it runs." (HT 543: 11-25).

215. Jim Casanova ("Casanova") testified about his experience with the shallow water table. (HT 484: 2-8)

216. Casanova stated, "I just don't know how you can put a landfill where you've got a water table that shallow in the wet years." (HT 484: 2-8)

217. Jason Terwilliger ("Terwilliger"), who is a farmer near the proposed site, testified about his personal observations of the water drainage based upon his observations over decades. (HT 421:9-17)

218. Terwilliger testified that some water drains to the west and then ends up in the Little Vermillion. (HT 421:9-17)

219. Terwilliger testified that his drainage concern was heightened because people are known to just dump their stuff off at the road and then leave. (HT 423:4-8)

220. Miner County objected to the proposed site, which should be given significant weight in this proceeding.

221. The Miner County Chair Commissioner Alex Protsch (“Protsch”) testified about his concerns for location of the proposed site. (HT: 697-712).

222. Protsch e-mailed Burke, Kropp, and Ron Duvall, and expressed Miner County’s concerns that “this property is within a 100-year floodplain and adjacent to the neighbors underground well” and that Miner County opposes the proposed site. (Ex. 203)

223. Burke responded sharply, stating that City is under no obligation to notify Miner County, despite the property being located at the boundary line between Lake County and Miner County. (*Id.*)

224. A few months later on March 11, 2024, Protsch invited Burke “to please examine/inspect the proposed site.” (Ex. 259)

225. Evidence showed that the proposed site is not in the public interest due to adversely affecting wildlife and recreation.

226. Casanova testified about the adverse impact to hunting, including waterfowl. (HT 486:1-487:12)

227. Daigle echoed Casanova’s remarks that the area is “world-renowned” for hunting and sporting, which is a resource not only to the City but also the State. (HT 813:1-15)

228. Karen testified about the concerns for loss of habitat, including the geese that travel to the land on the flyway. (HT 453:12-454:1)

229. Evidence showed that the proposed site is not in the public interest because it impacts the health and safety of the State.

230. Polluting the waters of the State will have an impact on the health and safety on not only the local community and neighboring landowners, but also those affected downstream in the State and region.

231. One need not look any further than all of the health issues involved with PFAS. (HT 659:7-25) (Donita Potter: “Knowing the City’s history, I’m concerned about them taking products that they shouldn’t. I’m really concerned about the PFAS that you read so much about, the forever chemicals that will never disintegrate.”)

232. Mrs. Schaefer testified about the negative impact of the proposed site on her renowned cattle and Belgian draft horses by polluting the grounds to which they graze and drink water. (HT 670-687)

233. Mrs. Schaefer testified “of course my major, major concern is water and water contamination, because this is where they’re accessing water coming down that hill.” (HT 677:17-23)

234. Karen testified about the health impacts on their bred heifers. (HT 454:2-14)

235. Evidence showed the lack of appropriate road infrastructure for the proposed site.

236. Mrs. Schaefer, Mark, Donita, and Casanova testified regarding the poor condition of the road infrastructure. (HT: 679:22-682:12 Patricia Schefer: “Another concern of course is the road that goes along . . . it’s a gravel road.”); HT 475:12-23 (Casanova: “In the wet years, it’s awfully spongy. . . . that’s one of the worst County roads in Lake County for keeping up. It’s soft.”); HT 601:116-22 (Mark Potter: “the road gets washed out there on real bad years, which we’ve had over the last however long I’ve been alive, but it’s several times.”); HT 541:1-12 (Mark Potter: “That’s why we have problems with the whole road because it can’t be maintained.”); HT 636:10-23 (Donita Potter: “It’s ridgy. It’s not a very good road to travel on.”)

237. Berreth acknowledged that the unpaved roads was a disadvantage. (HT: 746:11-17)

238. Evidence showed that proposed site is not in the public interest due to negative impact on the aesthetic value of the area.

239. The drone videos and the photographs showcase the aesthetic beauty of the region. (Ex. 253; Ex. 254)

240. Video 4 of Exhibit 253 flies over the proposed site and toward Schaefer Lake providing a perfect example of the innate aesthetic quality of the land that will be tarnished by the placement of a landfill. (Ex. 253, Video 4)

241. Karen testified: “If you stand on this side of the property and look west, you couldn’t get a more gorgeous view and to be out there living.” (HT 427: 1-9; *see also* Ex. 254 at p. 4 (referenced picture))

242. Donita testified about the negative impact on the aesthetic value of the area. (HT 660:4-661:16)

243. Aesthetic value is a required consideration in the application to DANR. (Ex. 100 at p. 5) (“1.11 Is the site located: . . . In an area that adversely affects wildlife, recreation, aesthetic value of an area, or any threatened or endangered species.”)

244. Mrs. Schaefer testified about aesthetics of the beautiful Prairie Pothole Region. (HT 670-687)

245. Evidence showed that the proposed site is not in the public interest because of the non-transparent manner in which it provided information to the general public and its own Commissioners about the efforts and reason for locating a new proposed site. (Exs. 223-244)

246. Former City Commissioner Shaw (“Shaw”), who voted at the City Commission meeting against the proposed site, testified at the hearing regarding his objection to the proposed site. (HT 593:18-594:3, 596: 1-23J)

247. Shaw testified that City lacked transparency in the process and that he was against the location of the proposed site. (HT 593:18-594:3, 596: 1-23).

248. Former mayor Marshall Dennert (“Dennert”) testified that the current administration “could be a little more transparent in what they’re wanting to do,” which echoed the concerns also voiced by Commission Adam Shaw and others as part of the process for applying for the proposed permit. (HT 509: 8-20; Ex. 236)

249. Evidence showed that there was no need or reason to relocate from the Junius site.

250. The Junius site was the location of the previous restricted use site for decades and, as Berreth testified, there was still capacity for many more years.

251. Ebdrup and Berreth both testified that the Junius site was profitable even though there was no requirement that the restricted use site be profitable. (HT 374:12-20; 755:17-19).

252. Lindsay and Berreth misrepresented the financial situation to the public and the City Commission and withheld the actual financial numbers of the site and, in so doing, then recommend that there was a need to relocate the site to the Bessman property. (Exs. 222-244)

253. Berreth testified that there were two supposed reasons for relocating the restricted use site, location and money, and he conceded that the new site was a disadvantage regarding location and conceded that the Junius site was profitable where it was. (HT 746:1-17; 755:17-19)

254. Berreth conceded that it was “not an advantage” to have water and wetlands located on the property. (HT 778:21-779:2)

255. Creating a *new* landfill is the last possible option in the stated goals of the State of South Dakota in protecting the health, safety, and welfare of the citizens of the State. (SDCL § 34A-6-1.2)

256. Berreth acknowledged: “It’s possible there is other land out there that would work. There is a lot of land.” (HT 758:22-23).

257. Berreth, who was instrumental in the process for moving this proposal forward, testified that he could not recall if he was aware of the policy under SDCL 34A-6-1.2. (HT 751:17-19)

Does City’s Application Withstand SDCL 34A-6-1.13 Bad Conduct Scrutiny

258. DANR concedes that City misrepresented material facts in its application by incorrectly answering questions concerning the site’s proximity to surface waters, floodplains, and wetlands. (Ex. 100 at p.5; HT at 161)

259. DANR observed that City misrepresented that the proposed site was not in a wetland. (*DANR Proposed FOF No. 12*)

260. There are immediately adjacent wetlands near both the western and eastern portions of the proposed site and within the original proposed permit boundary. (HT at 166, 290-91; Exs 107 & 108)

261. DANR also observed that City also misrepresented that the site is not located within 200 feet of surface water. (*DANR Proposed FOF No. 14*; Ex. 100 at p.5; HT at 161)

262. DANR observed that City misrepresented that the proposed site is not within a 100-year floodplain. (*DANR Proposed FOF No. 16*; Ex. 100 at p. 5; HT at 161; 166-67; 294-98; Exs. 107, 109, 110)

263. Floodplain zones exist on the east, west, and south-west of the proposed site and extends through the central area of the property that DANR recommended be permitted. (HT at 335; Exs. 109-110)

264. City misrepresented in the application by marking “no” concerning the siting criteria related to the existence of floodplains, wetlands, and proximity to surface water. (*DANR Proposed FOF No. 27*, Ex. 100 at p.5; HT at 161).

265. Evidence showed that the permit should also be denied because City has violated the environmental laws of South Dakota, including environmental laws as it relates solid waste and this specific application for a restricted use site.

266. To start, Petitioners introduced four (4) inspection reports from DANR that, collectively, reflect disturbing patterns of violations of the environmental laws of South Dakota by City.

267. The Junius Site Inspection Reports prepared, analyzed, and authored by DANR professionals for years 2024 (Ex. 256), 2022 (Ex. 255), 2019 (Ex. A), and 1997 (Ex. B) reveal deeply concerning trend lines in terms of type of violations, frequency and repetitiveness of violations, quantity of violations, and overall plummeting assessments of City’s overall operations conduct, behavior, and utter disregard for the environmental laws of the state.

268. Daigle testified that “when DANR does an inspection, typically these are not a surprise, shock inspection.” (HT at 803:22-24)

269. The 2022 inspection report found that “very little soil cover was observed” in contravention to Section 3.06 of the Individual Permit.” (Ex. 255 at p. 3)

270. The 2024 inspection report found that “very little cover soil was observed on the burial area” in contravention of the permit. (Ex. 256 at p.8)

271. Daigle testified that in the 2024 inspection report there was trash and garbage and material that is not qualified for Type I in the burial area. (*Id.* at 804:4-8)

272. Wendte testified that he spoke with Ms. Ebdrup and expressed disappointment in the soil cover and that it would not shine a very bright light on Madison's ability to operate a compliant site. (HT 403:4-23)

273. In 2019, DANR observed two remnants of burn piles that were smoldering at the time of inspection, which consisted of brick, metal ducting, a stove top, plywood, particleboard, painted wood, tar paper, electrical wires, which are materials that are not permitted to be open burned. (Ex. A)

274. In 1997, DANR (formerly DENR) found that "unacceptable waste materials were being accepted and berm to control drainage from the composting area had not been constructed[.]" (Ex. B)

275. City does not have a good track record in its operation of restricted use sites.

276. Before and during the contested hearing October 27-30, 2025, evidence was received into the record pertaining to the operations, management and compliance history of City's restricted use facility referred to as the "Junius Site," located several miles west of City near rural Junius, SD. (Ex. 100 at 3; Ex. 211 at p. 1-2)

277. Junius Site evidence includes testimony given at the contested hearing by Mark Potter, Karen Potter, Alex Protsch, Jason Terwilliger, Jim Casanova, Marshall Dennert, Roy Lindsay, Jameson Berreth, Nick Burke.

278. Junius Site evidence includes sworn witness testimony taken in discovery depositions from Wayne Bessman (Ex. 263) and Dawn Bessman (Ex. 264), Winfred Site

landowners who avoided appearing at the contested hearing despite efforts for their voluntary or subpoenaed appearance by Potters' legal counsel.

279. Evidence showed there was not a need for a new site.

280. Additionally, City has violated environmental and solid waste laws with its unauthorized construction of the proposed site that is at issue in this proceeding.

281. SDCL § 34A-6-1.4 provides that “[n]o person may construct, alter, or operate a solid waste disposal site without a permit.

282. City does not yet have a permit to construct and operate the proposed site.

283. Nevertheless, City has already engaged in trenching, tilling, separating the land, using heavy equipment, and planting thousands of trees at the proposed site as part of its construction of the same. (HT 775:11-777:20)

284. While the planting of trees and creating a shelter belt may perhaps be perceived as harmless, the specific issue is the pattern of disregard for the laws and regulations of the State of South Dakota.

285. City is required to wait until it receives the permit before it engages in *any* construction of the proposed site. (SDCL § 34A-6-1.4)

Applicant Demonstrates Disqualifying Character and Competency

286. City has allowed unauthorized materials, unauthorized burning, and have issues with generally following the conditions of the permits imposed upon them.

287. Mark testified that “over my time back in the day, you could drive in [to the Junius site] and put whatever you wanted to there” because “[t]here was nobody around.” (HT 556:4-7)

288. Mark testified that you could drive by the site and “there might be 40 mattresses laying out in the field” or that the trees were “plump full of garbage, Sunshine grocery bags.” (HT 556:11-20)

289. Mark testified that the grocery bags looked “like cotton balls” in the trees. (HT 556:21-22)

290. Mrs. Schaefer testified that at the Junius site, “plastic blows everywhere.” (HT 683:10-14)

291. Mrs. Schaefer observed the “pieces of wood, whether it be your rafters or the wood that’s going in the side or the siding or the shingles or the whatever is wrapped in plastic” and “that’s blowing all over because, with the wind, it’s – it’s absolutely – you can’t imagine how strong the wind blows out there when we’ve got the 25-, 30-, 40-mile-an-hour wind.” (HT 683:15-25).

292. City lacks the character to reliably carry out the obligations imposed by §§ 34A-6-1.1 to 34A-6-1.38.

293. City has demonstrated that it is dishonest and lacks transparency with its own citizens, commissioners, and representatives as it relates to this proposed site and, as such, has shown that it cannot be trusted to reliably carry out the obligations in operating a solid waste site.

294. First, City was dishonest to the public, to the commissioners, and to the general public with respect to the solid waste operations at the previous Junius site.

295. For many years and since at least 2012, City leased approximately 80 acres from Klein Land and Cattle II, LLC for the use and operation of a “restricted use site” located at 23241 446th Avenue, Junius, South Dakota, or approximately two miles west and a ½ mile north of

Junius, which was used to accept various types of solid waste. (HT 734:10-735:3; *see* Ex. 222 (Klein Lease)).

296. City entered into a subsequent ten-year lease agreement on or about May 1, 2017, with a lease term ending on the earlier of either September 30, 2027, or upon the filling and closure of the existing open waste cell. (Ex. 222).

297. City generated significant annual revenue from the operation of the Junius RUS that far exceeded the annual lease payment of \$25,000 and its own costs, thus demonstrating that the restricted use site was profitable for City. (Ex. 250)

298. Ebdrup testified that she created a spreadsheet that showed the income and costs for the Junius site. (HT 370:5-10)

299. In the spreadsheet, it showed that the net profit from 2017 through 2022 during the most recent version of the Klein Lease was \$29,689.31, \$17,583.66, \$46,331.44, \$42,780.83, \$51,794.48, and \$105,224.10. (Ex. 250)

300. Not all public services operate at a profit for a municipality nor are they required to, yet this restricted use site did operate at a significant profit over the course of the Klein Lease. (HT 781:23-782:9)

301. Despite the profitability of the Junius RUS and the environmental consideration of continuing to use an existing space for a landfill, Lindsay and Berreth began looking to relocate from the Junius site.

302. On January 13, 2023, Berreth created a memorandum for a City Commission meeting that acknowledged that “[t]he existing cell is three acres with approximately 15 acres still available at the site if the City secured a new lease.” (Ex. 226)

303. Berreth acknowledged that City had customarily been able to secure a new lease for the Junius site.

304. The January 13, 2023 memorandum stated that “[a]lternatively, the City could explore options to state a RUS at a new location” and that “[t]his may be advantageous depending on location and price.” (*Id.*)

305. Berreth testified that two factors to consider for a new site would be the location, including closer to City as well as paved roads, and price. (HT 736:19-737:4)

306. Despite cost being the “primary factor”, Berreth testified that City never offered a new lease price to the Kleins nor did it ultimately solicit a new lease price from the Kleins either to continue leasing after the expiration of the Klein Lease. (HT: 739:18-22; HT: 745:12-13)

307. Berreth testified that they could have offered \$30,000 and remained profitable, but that they did not. (HT 758:7-17).

308. At the City Commission meeting on January 17, 2023, City Commissioner Shaw made a motion requesting financial information and analysis regarding the Junius site to consider the cost of staying versus creating a new site at a location even further West and away from the community. (Ex. 227)

309. Berreth testified that he could not recall providing the financial information to the City Commission for consideration. (HT 744:23-745:2)

310. Berreth also acknowledged that the Winfred site was “for miles, maybe five” miles further away than the Junius site, and that the Junius site had paved roads whereas the Winfred site did not. (HT 745:24-746:17).

311. Berreth acknowledged that was a disadvantage. (HT 746:16-17).

312. For the two factors that Berreth found to be the most important—price and location—the Junius site was profitable and could have still been profitable even with a price increase in rent, and was also closer and had better infrastructure for the kinds of trucks and equipment that is often used to dump the construction debris at the landfill. (*Id.*)

313. On January 13, 2023, Lindsay sent an e-mail to Berreth and the City Attorney that he spoke with Bessman and “settled on \$7500/acre (\$547,800 lowest he said he would go) for 73.04 acres.” (Ex. 223)

314. Lindsay and Berreth had already made their minds up with moving to a new site despite representing to the City Commission that it would be considering the costs of staying at Junius. (Ex. 227).

315. On the morning of January 18, 2023, at 8:33AM, which was the day after the City Commission meeting, City’s Attorney prepared and e-mailed Lindsay and Berreth a draft Contract for Deed at 8:33AM the next morning on January 18, 2023. (Ex. 228)

316. On January 26, 2023, Lindsay e-mailed City Attorney and requested Bessmans’ signatures to the Contract for Deed. (Exs. 229, 230)

317. In April 2023, Petitioner Schaefer, a neighboring landowner to the Subject Parcel, discovered that City and Bessman may be discussing a transfer of property for a new restricted use site, which caused Ms. Schaefer to reach out to City Commissioner Jeremiah Corbin to learn if that were true. (Ex. 235)

318. On the very next day April 18, 2023, Wayne and Dawn Bessman signed the Contract for Deed. (Ex. 237).

319. On April 19, 2023, Shaw e-mailed Berreth, City Attorney, and City Commissioner Corbin to express concern about transparency of City. (Exs. 236, 238).

320. On or about July 7, 2023, Berreth prepared a written memorandum to be included in the public board packet for the July 10, 2023 City Commission meeting. (Ex. 242).

321. The memorandum did not advise that a Contract for Deed had been prepared and already signed by the Bessmans. (*Id.*)

322. The memorandum also failed to include any meaningful cost analysis for staying the Junius RUS. *See id.* Included with the memorandum was a modified and manipulated version of the Contract for Deed that removed certain dates to conceal from the public that this was already a done deal. (*Id.*; Ex. 243)

323. In an e-mail dated July 6, 2023, Berreth e-mailed City Attorney and expressed concern about letting the public know that it was already a “done deal.” (Ex. 240)

324. Berreth testified that he deleted sensitive dates and withheld information from the City Commissioners and the public. (HT: 765:7-10; Exs. 242, 243)

325. The City Commission held a public meeting on July 10, 2023, wherein landowners such as Potters and Schaefer voiced their disapproval for the new restricted use site and the lack of transparency by City. (<https://www.youtube.com/watch?v=gnzzOUrkiJw&t=2984s>)

326. Not a single citizen, contractor, or member of the public attended to speak in favor of relocating the restricted use site. (*Id.*)

327. Lindsay publicly revealed at the meeting his years-long land search and environmental diligence process, allegedly throughout most of Lake County, emphasizing that not even the City Commissioners knew about his actions. (*Id.*)

328. Shaw stated he “was blind sided by this,” “[he] had no idea what was going on,” he still had “concerns to this day,” and he felt like “our hands are a little bit tied.” (*Id.*)

329. Shaw testified and reviewed the sanitized contract for deed that withheld the signatures from the Bessmans. (HT 596:1-14)

330. Shaw testified that this went “back to lack of transparency” and that it reads that Berreth was intentionally trying to mislead the public. (HT 596:1-14)

331. Dennert testified regarding his concerns regarding the transparency of this administration and how it has approached the proposal for this new site. (HT 502-514)

332. City has shown that it is willing to withhold information, deceive, and otherwise lack the expected candor with its own citizens.

333. City should not be entrusted with the significant responsibility of operating a new site, especially under the circumstances that led it to proposed that site to DANR.

334. City has also lacked the character and integrity with DANR.

335. City also applied for and received a grant for \$109,560, which represented twenty percent of the cost of the full approximately 70 acres of the Bessman land. (HT: 766:21-767:3)

336. When City revised its application to approximately 54 acres, it did not seek to refund any of the grant award due to overpayment. (HT 767:21-768:9; Ex. 239)

337. Berreth feigned ignorance about remembering whether City even received a grant of \$109,560—a significant amount of money for the project—and was not sure if City had ever attempted to notify the State and seek a reimbursement of the overpayment. (*Id.*)

338. Berreth apparently could not remember any of this at the contested case proceeding despite being deposed only months earlier regarding the exact same issues, including the grant money. (HT 773:3-24).

CONCLUSIONS OF LAW

Jurisdiction; Standard of Statutory and Regulatory Review; Burden of Proof

1. This contested case proceeding involves City of Madison's permit application to construct and operate a restricted use storage and disposal facility ("facility" or "landfill") north of Winfred, South Dakota ("Winfred Site"). (Ex. 211; Ex. 100; SDCL 34A-6-1.3 (5), (7))

2. If permitted, City could bury or burn up to 4,999 tons of "restricted use" solid waste each year at its facility for "many decades." (*Id.*; ARSD 74:27:07:01 (74); Ex. 226; Ex. 1 at 000002)

3. The Schaefers and the Potters, two citizen landowner families adjacent to and impacted by the proposed facility timely and properly petitioned against City's proposal. (Ex. 208; Ex. 211)

4. Contested proceedings commenced under the state's statutory and regulatory solid waste permitting review framework. (SDCL 34A-6, ARSD 74:27, SDCL 34A-6-1.13)

5. An applicant must sequentially address and satisfy a series of legal requirements based in consideration of the protection of public health and environmental effects of the facility; nature, origin, characteristics, quantity of waste; potential groundwater and surface water contamination; open burning and air quality; soils; geology; wetlands; public roadways; public sentiment; property values; other health, environmental, economic, aesthetic impacts. (SDCL 34A-6-1.6, 34A-6-1.8; ARSD 74:27:08, 74:27:09)

6. Specific rules set regulatory standards contemplated by SDCL 34A-6-1.6, for facility location; construction; operations; maintenance; compliance; groundwater monitoring; leachate control and treatment; and as necessary to implement state policies and goals, namely,

“[t]he protection of the health, safety, and welfare of the citizens of this state and the protection of the environment require the safe and sanitary disposal of solid waste.” (SDCL 34A-6-1.2)

7. In contested proceedings, the Board of Minerals and Environment may consider issuing a permit, after public notice and public hearing, where an applicant satisfies its burden of proof, by a preponderance of evidence, that its proposed facility will meet all applicable federal, state, and local statutes, rules, regulations, and ordinances, including the requirements of SDCL 34A-6-1.1 through 34A-6-1.38, *and* is in the public interest. (SDCL 34A-6-1.13; ARSD 74:09:01:16)

8. If a party or person other than applicant is required to show or demonstrate a fact, the fact must be established by the same preponderance of evidence standard. (ARSD 74:09:01:16)

9. SDCL 34A-6-1.13 further provides, in part, that a permit may be denied if the Board finds the applicant, or other person conducting or managing applicant’s affairs or of the proposed premises (whose actions and conduct are imputed to applicant) has:

- (1) Has misrepresented a material fact in applying for a permit;
- (2) Has been convicted of a felony or other crime involving moral turpitude;
- (3) Has violated environmental laws of any state or United States;
- (4) Has had any permit revoked under environmental laws of any state or United States;
or
- (5) Has otherwise demonstrated a lack of character or competency to reliably carry out the obligations imposed by SDCL 34A-6-1.1 to 34A-6-1.38.

10. A permit is either issued or denied. (*Id.*)

11. However, a permit may be issued *only* where applicant satisfies all statutory and regulatory proof requirements *and* establishes its proposed landfill advances the public interest. (*Id.*)

12. Absent such proof by an applicant, a permit application must be denied. (*Id.*)

City's Application: Affirmative Failure of Proof (SDCL 34A-6-1.13)

13. City has failed to meet its affirmative burden to demonstrate its August 2, 2023, initial permit application to construct and operate a restricted use storage and disposal facility at the proposed Winfred Site complies with all applicable federal, state, and local laws, rules, regulations, standards, and ordinances, including SDCL 34A-6 and ARSD 74:27.

14. City has failed to demonstrate that its proposed Winfred Site facility will meet the requirements of SDCL 34A-6-1.1 to 34A-6-1.38.

15. City also failed to demonstrate that its proposed Winfred Site facility is in the public interest.

16. City's failures of proof are reflected in both its application and application-related submissions *and* its contested hearing case in chief.

17. City's failures of proof also extend to both evidence it put into the record *and* entire categories of required evidence it failed to consider, let alone offer into the record.

18. The record evidence developed in this proceeding, as reflected in the Findings, establishes City's violation of: SDCL 34A-6-1.2 (state policy-protection of public health; solid waste management hierarchy); SDCL 34A-6-1.4 (construction without permits); SDCL 34A-6-1.8 (missing operations plan; leachate and methane plans; emergency response and remedial action plan); SDCL 34A-6-1.10 (truth and accuracy; execution of agreements); SDCL 34A-6-1.13 (noncompliance with 34A-6-1.1 to 34A-6-1.38, and no affirmative public interest evidence;

indisputable misrepresentations of material fact; numerous violations of environmental laws; conduct and character); SDCL 34A-6-1.20 (documented 2024, 2022, 2019, 1997 inspection violations); SDCL 34A-6-31 (intentional false statements or representations); SDCL 34A-6-41 (local ordinance, resolution, standard violations and disregard); SDCL 34A-6-66 (waste tire burning in burn pits that had been smoldering for more than 2 weeks); SDCL 34A-01 (air pollution control violations relating to burning tires); SDCL 34A-6-103 (expiration of county resolution of support); ARSD 74:27:09:01 (missing signatures on September 6, 2023 application); ARSD 74:27:09:02 (missing and uncertified design and construction plans; City's engineer fails to submit signed, verified, and required plans; City engineer withdraws from proceedings and refuses to produce subpoenaed records and otherwise respond); ARSD 74:27:09:03 (missing information on environmental violations, also reflecting lack of candor; expired local approval resolution and local planning and zoning certification; missing design and construction plans, including methods, assumptions, data, calculations, technical design detail regarding grade, elevations, slopes, contours/all requested by Petitioners from CDI, but ignored by CDI and City; see Potter Motion in Limine on file); missing groundwater elevations, depths and shallowest occurrences (City fails all groundwater requirements; City believes "aquifer" and "groundwater" are synonyms, subsurface drainage, subsurface soil contents including presence of sand or gravel, soil tests, soil borings; missing leachate collection and removal; missing progressive development of phasing or build-out plans; operational methods to ensure safe, efficient and progressive filling of cells, trenches, or lifts; missing waste handling areas; missing water drainage, flow, run-on and run-off information; missing surface water, wetlands, water bodies, floodplains information; missing dust, litter, open burn, disease vector special operating procedures information); ARSD 74:27:09:06 (missing information); ARSD 74:27:08:01 (construction without valid permits); ARSD

74:27:08:04 (noncompliance with applicable state, federal, and local laws and ordinances - of threshold import is City, County, and DANR's failure to recognize and apply Lake County's Article I, Section 103 Variance standard, which is more restrictive and imposes higher standards than state's variance construct); ARSD 74:27:08:13 (technical review violations, as reflected most obviously in the continuing and ongoing violations illuminated through discovery and at hearing); ARSD 74:27:08:14 (untimely review and secretary's recommendation, missing 90-day deadline); ARSD 74:27:08:15 (incomplete and missing conditions); ARSD 74:27:11:02 (violation wildlife - GF&P and USFWS defective, expired reports, recreation - no testimony or documentary evidence offered by either City or DANR, aesthetic value - only affirmative evidence from Petitioners, species, and location standards); ARSD 74:27:11:03 (violation floodplain standards); ARSD 74:27:11:04 (violation air quality standard); ARSD 74:27:11:06 (violation surface water standards); ARSD 74:27:11:07 (violation wetlands standard); ARSD 74:27:11:09 (violation variance standard); ARSD 74:27:12:01 and 74:27:12:04 (violation soil testing requirements); ARSD 74:27:12 (violation design and construction requirements); SDCL 34A-9 (violation environmental review); SDCL 34A-6-1.4 and ARSD 74:27:08:01 (unauthorized construction without required permits); ARSD 74:05:10:04 (violation of multiple terms and conditions of SWMP grant agreement); SDCL 34A-01 (violations of air pollution control/Clean Air Act); Junius Site/RUS Permit 18-18/Now Closed (despite repeated representations to the contrary, City's history of noncompliance and violations South Dakota environmental laws deserves attention; **2024 Inspection Report** "disappointing in soil cover and unauthorized wastes" - painted, stained wood, plastics, putrescible wastes and household garbage; "no guarantee"; wind-blown litter; **2022 Inspection Report**; poor soil cover - "soil cover is rarely applied"; **2019 Inspection Report** - open burning of unauthorized waste, including furniture, painted woodbricks, metal ducting,

plywood, stove top, tar paper, C&D waste - “violations of solid waste permit and state air quality rules”; unauthorized wastes in both burn and bury piles; burn piles “still smoldering” at time of inspection, with debris ignited two weeks prior; bury area contained waste tires, filled black trash bags of putrescible waste, loose insulation, litter control and soil cover violations; overall “facility is operating in an **unacceptable** compliance manner”. **1997 Inspection Report** - “unacceptable waste handling” of special waste, industrial waste; failure to construct drainage berm; violations of environmental laws and permit terms and conditions over period of years); SDCL 1-25 (violation of Open Meeting laws); SDCL 1-27 (violations of Open Records laws); SDCL 3-1-5 (violations of oaths of office); SDCL 1-26-26 (violations of conflicts of interest codes).

19. City also affirmatively failed to call and examine a single witness, or introduce and offer a single exhibit, over the course of the four-day contested hearing, with respect to public interest. This failure is an independent basis to deny City’s permit application.

20. For these reasons, City’s permit application should be rejected, and its permit denied.

Independent Statutory Basis for Denial (SDCL 34A-6-1.13)

21. City has failed to conduct itself in its permit application actions, conduct, and representations in a manner the State and its citizens expect and the law requires.

22. City has made disqualifying misrepresentations of material fact, violated environmental laws, and otherwise demonstrated a lack of character or competency to reliably carry out the important obligations demanded of the State and its citizens.

23. The record supports findings that City misrepresented material facts in its application and application-related proceedings, and in the contested hearing proceedings, with each misrepresentation constituting an independent basis for denial under SDCL 34A-6-1.13.

24. The record supports findings that City has otherwise demonstrated through its actions and inactions a lack of character or competency to reliably carry out statutory obligations -- each demonstration constituting independent bases for denial under SDCL 34A-6-1.13.

25. For these reasons, City's permit application must be rejected, and its permit denied.

Expired County Approval and Verification (SDCL 34A-6-103)

26. SDCL 34A-6-103 requires City to secure a valid county approval resolution and a verification of zoning compliance as mandatory prerequisite in its state application.

27. City lacked valid, unexpired county approval and verification at the opening and close of the contested case hearing official record.

28. This defect provides an additional independent basis requiring denial.

Prohibition on Post-Notice Amendments (ARSD 74:27:08:19)

23. Under South Dakota law, once public notice on the secretary's recommendations relating to a permit application has been accomplished, changes or amendments to the application are expressly prohibited. *See* ARSD 74:27:08:19.

24. DANR's end-of-hearing "rebuttal" testimony on site conditions that were known and brought to DANR's attention 2 years prior to the hearing for years terms or conditions offered at the very conclusion of the multi-day contested hearing in this matter, on City's defaulted application must be declined, and City's permit application should be denied.

25. To be determined future facts and related unknown corresponding terms and conditions is improper, unlawful, and contrary to basic notions of Constitutional due process.

26. DANR's proposed amendments to the application, secretary's draft recommendations and draft permit are expressly barred by ARSD 74:27:08:19.

27. DANR's abandonment and withdrawal of its public noticed secretary's recommendation and notice on application effectively ends the proceeding.

28. Any findings of fact that should be considered conclusions of law shall be treated as conclusions of law, and vice versa.

Dated this April 20, 2026.

/s/ Jonathan A. Heber

Jonathan A. Heber
Cutler Law Firm, LLP
140 N. Phillips Avenue, 4th Floor
Sioux Falls, SD 57101-1400
Telephone: (605) 335-4950
jonathanh@cutlerlawfirm.com

Daniel L. Scott, Esq.; SD License 2347
1740 Summit Avenue
Saint Paul, MN 55105
Telephone: (651) 343-8541
daniellorenscott@gmail.com

Michael M. Hickey
Bangs McCullen Law Firm
5048 E. 57th Street, Suite B
Sioux Falls, SD 57108
mhickey@bangsmccullen.com
*Attorneys for Petitioners Mark Potter, Donita
Potter, and Karen Potter*

CERTIFICATE OF SERVICE

I, Jonathan A. Heber, do hereby certify that on this April 20, 2026, the foregoing was submitted via electronic mail upon the following to be filed in the above-captioned matter:

Catherine Williamson
Chief Hearing Examiner
Office of Hearing Examiners
523 East Capitol Avenue
Pierre, SD 57501-5070

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

Further, the undersigned certifies that a true and correct copy of the above referenced document was served via electronic mail upon the following:

Steven R. Blair
Deputy Attorney General
PO Box 70
Rapid City, SD 57702
Attorneys for DANR – Waste Management Program

David McVey
1302 E. Hwy. 14, Suite 1
Pierre, SD 57501-8501
Attorney for Board of Minerals and Environment

David J. Jencks
Jencks Law, P.C.
121 North Egan
P.O. Box 442
Madison, SD 57042
Attorneys for City of Madison

Patricia Schaefer
23234 441 A. Avenue
Winfred, SD 57076
Petitioner

/s/ Jonathan A. Heber
Attorney for Petitioners Karen Potter, Mark Potter,
and Donita Potter