STATE OF SOUTH DAKOTA

SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

BOARD OF MINERALS AND ENVIRONMENT

IN THE MATTER OF THE PERMIT RENEWAL APPLICATOIN OF THE CITY OF RAPID CITY, SOUTH DAKOTA FOR THE CITY OF RAPID CITY LANDFILL	PETITIONER'S JOINT OBJECTION TO CITY OF RAPID CITY'S MOTION FOR PROTECTION ORDER AND RESPONSE TO JOHNSON'S JOINT MOTION TO COMPEL DISCOVERY AND PETITIONER'S REQUEST FOR IMMMEDIATE PRE-HEARING CONFERENCE

COME NOW, Petitioner's, Ross Johnson and Fern Johnson, as individual pro ses, hereby submits Petitioners Joint Objection to City of Rapid City's Motion for Protection Order and Response to Johnson's Joint Motion to Compel Discovery and Petitioners Motion to Compel Discovery and, Moves the Board for an immediate Pre-Hearing conference, pursuant to ARSD 74:09:01:10.

Factual Background

Petitioners filed their Joint Motion to Compel Discovery against the City of Rapid City on October 19, 2026. On October 30, 2026, Petitioners received the City's Motion for Protective Order and Response to the Motion to Compel. Petitioners hereby incorporate by reference their Motion to Compel Discovery and attached Exhibits A through H previously filed with the Board of Minerals ("Board").

In reply to the City's Response, Petitioners state that they are not bound by any scheduling timeline allegedly agreed to by their discharged prior counsel. First, there is no documentary evidence establishing that prior counsel stipulated to City's alleged timelines during

their prior counsels' representation. Second, Petitioners never provided written or oral consent to any timelines subsequently issued by the Board as alleged by City. The assertions by City Counsel Carla Cushman and Mr. McVey (Boards counsel) that Petitioners consented to the schedule are entirely unsupported by the record. Neither Petitioners' prior counsel nor, Petitioners themselves, consented or agreed to the dates set forth in the Board's August 10, 2026 Scheduling Order. Consequently, the Board Chair was misled regarding Petitioners' consent to the scheduling timeline stated within the August 10, 2026 Order.

I. Defendants City of Rapid City Landfill ("City") and Department of Agriculture and Natural Resources ("DANR") Discovery Objections Mask Their Inability to Provide a Lawful and Factual Basis for the 106-acre Expansion and Type I Permit Upgrade As A Valid Permit.

The persistent discovery objections and motions for protective orders raised by the City and the Department of Agriculture and Natural Resources (DANR) extend far beyond routine procedural disputes. Rather, these boilerplate objections mask a fundamental inability to provide a factual or legal basis supporting the validity of the facility's permitting since 2008.

The existing administrative record reveals that DANR has consistently acted ultra vires exceeding its statutory authority and jurisdiction by treating two major physical expansions and facility upgrades as mere administrative renewals. Under South Dakota law, administrative agencies possess only the authority expressly granted by their enabling statutes and regulations. Because the underlying record confirms that the Defendants, together, willfully violated unambiguous regulatory and statutory mandates, they cannot utilize generic discovery barriers to shield their unauthorized municipal and administrative actions from scrutiny. Accordingly, the Board should look past these boilerplate objections and compel production.

II. The Illegal 106-Acre Expansion and Facility Upgrade by "Renewal" Violated Mandatory and Statutory Pre-Requisites From the Onset Since 2008.

Under South Dakota law, environmental permitting requirements are strictly construed to safeguard public safety and preserve local autonomy. Matter of 1990 Renewal Application of SDDS, Inc., 507 N.W.2d 702 (S.D. 1993). (The long line of cases involving Matter of SDDS). [1] The record establishes, via the City's own judicial admission that in 2006, the City sought to expand its 345-acre landfill boundary by adding an unpermitted, adjoining 106-acre parcel by simply adding a comma (,) between two separate and distinct legal descriptions. Simultaneously, the City sought to upgrade its annual tonnage waste capacity threshold from a Type IIA facility to a Type I landfill—both modifications without complying with proper amendment process.

By executing both actions through a standard renewal application rather than the mandatory permit amendment process, the DANR and the City facially violated state solid waste management statutes, administrative rules, and the City's own 02-12 permit conditions. See SDCL ch. 34A-6; ARSD 74:27. This procedural bypass effectively subverted three mandatory statutory safeguards:

1. Lack of Local Approval: The City failed to seek or obtain the required local use-on-review, conditional use approvals, and County official resolutions for "first authorization" of the 106-acre site, a direct violation of SDCL §§ 34A-6-1.15, 34A-6-103, and 34A-6-103.1, as well as ARSD 74:27:08 and 74:27:09:03.

2. Deprivation of Due Process and Notice: Processing the 2006 106-acre land expansion as a renewal rather than an amendment resulted in legally deficient public

[1] SDDS IV (November 3, 1993): The South Dakota Supreme Court, Henderson, J., held that (1) SDDS I revoked SDDS's permit and (2) renewal of the permit was void ab initio.

notices. Consequently, adjacent landowners, the public, and relevant government environmental entities were deprived of the mandatory statutory notifications required for a significant footprint expansion into unpermitted land areas.

3. Absence of Technical Review: In bypassing the formal amendment process, the City avoided the rigorous, independent technical and environmental reviews legally required under ARSD 74:27 and 74:52; and SDCL 34A-2 and 34A-6.

The City formally admitted it never submitted an amendment application to add the 106-acre expansion site, and the DANR admitted it never processed one. Under settled South Dakota law, an administrative agency possesses only the authority expressly granted by the Legislature. Matter of SDDS, Inc., 472 N.W.2d 502 (S.D. 1991). Consequently, the DANR and the Board lack jurisdiction to waive statutory mandates by using a standard renewal process to absorb an unpermitted 106-acre tract, upgrade a facility category threshold, and the bypassing of mandatory legislative approval.

Furthermore, the DANR has knowingly exceeded its authority by allowing the facility to operate as a large-scale facility exceeding its annual tonnage threshold for five consecutive years while maintaining a Type I classification. The Board additionally erred by permitting post-publication design modifications to wood waste and tire processing operations—increasing the annual tonnage intake further. Because these actions constitute major modifications rather than minor administrative changes, they require a formal amendment process subject to full technical review, public notice and public participation opportunity.

III. Violation of County Approval and First Authorization Mandates.

Under SDCL § 34A-6-103 congruent with ARSD 74:27, any application for a new permit or "first authorization" to "operate" within a "boundary" shall include a resolution by the governing body of the county/municipality approving the proposed facility's 106-acres operations and/or activities. SDCL § 34A-6-103 & ARSD 74:27. Therefore, under these laws and regulations, it is required, as a matter of law, that any application for a first authorization within a designated boundary must include an official resolution from the local governing body (county and municipality) before the DANR is allowed to approve and issue any permit for the applying facility. SDCL 34A-2; 34A-6-103; -103.1; ARSD 74:27 et al.

SUMMARY OF FACTS

1. **Unpermitted Tract:** The subject 106-acre tract has no prior authorization or valid permit for solid waste operations and/or activities within the expanded permitted boundary City sought to include.
2. **Evasion of Local Approval and Ultra Vires Actions:** In 2008, 2014, 2021, and the current cycle, the City processed the expansion via standard permit renewals instead of obtaining the mandatory local county resolution and municipal conditional use-on-review. SDCL 34A-6-103; -103.1; ARSD 74:27:09:05; :03. DANR lacks the statutory authority to issue or renew permits for the unapproved expansion without prior local governing body endorsements. ARSD 74:27:09:03. The City's bypass of local approval requirements, aided by DANR's unauthorized permit issuance, violates SDCL § 34A-6-103 and ARSD 74:27.

IV. The Landfill Operates in Violation of SDCL 34A-6-53 Functioning as an Unapproved Large-Scale Waste Facility.

The City and the DANR's improper permitting over the past eighteen (18) years have resulted in continuous statutory and regulatory violations. For more than five consecutive years, the landfill has operated as a large-scale solid waste facility by accepting annual waste tonnage well in excess of the 200,000-ton limit prescribed for Type I facilities. Under SDCL 34A-6-54, any facility disposing of more than 200,000 tons of solid waste annually is legally defined as a large-scale solid waste facility. SDCL 34A-6-53 explicitly prohibits the siting, construction, or *operation* of a large-scale solid waste facility without express legislative approval.

The official annual tonnage reports submitted by the City to the DANR conclusively demonstrate that the facility's solid waste intake has substantially exceeded the limitations of its Type I category permit (Permit 20 01) for over five years. Pursuant to SDCL 34A-6-55, DANR and the Board has a mandatory, non-discretionary duty to order any large-scale facility operating without legislative approval to cease operations. Rather than enforcing this mandate, DANR has ignored these overt exceedances and continually renewed the facility's permits through the current 25-XX cycle. This ongoing renewal constitutes ultra vires action taken without jurisdictional or statutory authority.

V. Unlawful Post-Application Administrative Changes to Operational and Design Functions.

Following the publication of the DANR's draft permit, the City fundamentally has sought and the DANR has approved City's altering the design, capacity, and environmental footprint of its solid waste facility by outsourcing wood waste and tire operations to unpermitted third parties to operate within the City's permitted boundary. Under ARSD 74:27:09:05, such substantial operational modifications explicitly require a formal permit amendment, subject to the advance submission timelines, public notice periods, mandatory public meetings prescribed by ARSD

74:27:08, and design changes under ARSD 74:27:09. Contrary to statutory mandates, DANR improperly categorized these systemic operational overhauls as mere administrative changes. Administrative adjustments are strictly limited by law to clerical corrections, such as typographical errors, contact information updates, or increased monitoring frequencies. In bypassing the mandatory amendment process, both the City and DANR violate the baseline regulatory and environmental design criteria mandated by SDCL 34A-2, 34A-6, ARSD 74:27, and ARSD 74:52, and the regulatory mandate that an application changes cannot be modified after publication of the DANR's recommended draft permit has been published. ARSD 74:27:08:19.

While minor corrections below the physical or operational thresholds of ARSD 74:27 are permissible as non-notifiable administrative adjustments, significant changes within the permitted landfill boundary—specifically operational, design, and volume increases regarding wood waste and tire shredding processes contracted with third-party commercial entities. These significant changes require a formal modification amendment. Processing these major alterations as administrative changes to introduce unpermitted commercial entities bypasses the mandatory public notice and due process requirements. This practice violates solid waste management rules, and the DANR, once more, lacking the statutory or regulatory authority to approve and execute it.

CONCLUSION

The City's successive permitting of the 106-acre expansion is void ab initio. Matter of SDDS, Inc., supra. By short-circuiting the statutory permitting process for expanding a landfill footprint, all subsequent administrative actions are invalidated. Consequently, every successive

renewal issued by the DANR incorporating the 106-acre expansion (Permits 14-19, 20-01, and the current 25-XX) is similarly void. Id.

The Board and DANR possess strictly circumscribed quasi-judicial authority. An administrative agency's power is entirely derivative of its enabling legislation; it cannot, by an expansion of existing permitted boundary lines bypass statutes, regulations enacted into law by the legislature. Ewing v. Prudential Ins. Co. of Am., 273 N.W.2d 111, 114 (S.D. 1978); Citibank, N.A. v. S.D. Dep't of Revenue, 2015 S.D. 67, ¶ 17, 868 N.W.2d 381, 389.

Accordingly, the Board cannot unilaterally expand landfill permit boundaries, bypass localized zoning and statutory criteria, increase waste acceptance limits, or authorize large-scale operations absent explicit legislative enactment. Hence, administrative actions taken without compliance and explicit factual findings must be rejected, the contested renewals must be vacated. Lincoln County v. Johnson, 257 N.W.2d 453, 457 (S.D. 1977); SDCL 34-6-1.4.

Petitioner respectfully requests that the Board Chair schedule an immediate pre-hearing conference to resolve critical discovery disputes arising from the evasive objections of Respondents City and the DANR. Since 2006, City's permitting actions have systematically bypassed governing statutory and regulatory mandates. A conference is necessary because Defendants refuse to disclose the factual and legal bases for key administrative actions. Specifically, Respondents have failed to identify the evidence or legal authority supporting their decisions to:

1. Include a 106-acre expansion site solely through the permit renewal processes in 2008, 2014, 2021, and the current cycle when the clear mandate of the law mandates the amendment process is unequivocally required;

2. Upgrade the City's 02-12 Type IIA permit to a Type I permit with increased waste capacity in 2008, once more, without the appropriate amendment application;
3. Permit the City to operate as a large-scale facility under said Type I classification for five (5) consecutive years without enactment of official legislative approval; and,
4. Modify the facility's operational and design footprint to allow unpermitted third parties to conduct wood waste and tire shredding operations within permitted boundaries after the Secretary's completeness and technical review, and subsequent to the published recommendation of the City's 2025 draft permit.

Petitioners respectfully submit that Defendants are improperly withholding the core administrative record and the underlying justifications for their decisions, directly violating Petitioners' due process rights. The City's objection and motion for a protective order constitute an improper attempt to suppress mandatory elements of the administrative record.

While the DANR objects to discovery by asserting its actions are clear from the face of the records provided, and the City flatly refuses to provide any responses; the information Petitioners seek is essential to determining whether the DANR and the City complied with its mandatory legal obligations and statutory requisites since 2008.

Due to these ongoing discovery disputes, the depositions of DANR representatives Mr. Roberts and Mr. Kropp have been previously postponed to the upcoming November 6, 2026. In the event the Board does not immediately convene a prehearing conference, Petitioners alternatively request an extension of the scheduling order to postpone these depositions until after the Board resolves the pending discovery motions and objections.

Consequently, Petitioners respectfully request that the Board immediately schedule a hearing conference and enter an order:

1. Denying the City's and the DANR's discovery objections and motion for a protective order;
2. Compelling the City and the DANR to answer all inquiries regarding statutory and regulatory compliance surrounding the City's 08-29; 14-19; 20-01 and 25-XX permits; and
3. Establishing strict parameters for upcoming depositions to ensure DANR witnesses answer questions regarding such compliance.

Respectfully submitted this 2nd day of September, 2026.

/s/ Ross Johnson
Ross Johnson, Joint Petitioner, pro se
Rj300mag@gmail.com
605-963-9000

/s/ Fern Johnson
Fern Johnson, Joint Petitioner, pro se
stantonyj@aol.com
605-545-0264

1450 Sammis Trail
Rapid City, South Dakota 57702

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of November, 2026, a true and correct copy was served by electronic email and by USPS mail to the below named:

Brenda Binegar
Department of Agriculture & Natural Resources
523 E. Capitol Ave.
Pierre, SD 57501
Brenda.binegar@state.sd.us
Staff: Board of Mineral & Env.

David McVey
Assistant Attorney General
Office of Attorney General
1302 S.D. Highway 1889, Suite 1
Pierre, SD 57501
david.mcvey@state.sd.us
Counsel, Board of Minerals & Env.

Robert Morris
704 7th Avenue, Suite 2
P.O. Box 370
Belle Fourche, SD 57717
bobmorris@westriverlaw.com
Chair, Board of Minerals Resources

Steve R. Blair
221 Mall Drive, Suite 201
P.O. Box 6221
Rapid City, SD 57709
Steven.blair@state.sd.us
Counsel, Dept. Ag & Natural

Carla Cushman, City Atty Office
300 6th Street
Rapid City, SD 57701
Carla.cushman@rcgov.org

Robert Galbraith, Nooney & Solay
326 Founders Park
Rapid City, SD 57701
robert@nooneysolay.com

Dated this 2nd day of November, 2026

/s/ Ross Johnson

Ross Johnson, pro se

/s/ Fern Johnson

Fern Johnson, pro se