STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS
Pierre, South Dakota

CITY OF MADISON PERMIT APPLICATION TO CONSTRUCT AND OPERATE A SOLID WASTE RESTRICTED USE FACILITY	**DANR 24-001** **PROPOSED DECISION FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

A contested case hearing was held before the Office of Hearing Examiners (OHE), Chief Hearing Examiner Catherine Williamson presiding, from October 27–30, 2025, concerning the City of Madison's application for a permit to construct and operate a restricted use solid waste facility ("RUS") north of Winfred, South Dakota. The City of Madison ("City" or "Applicant") appeared through counsel, David Jencks; the South Dakota Department of Agriculture & Natural Resources, Waste Management Program ("DANR" or "Department") appeared through counsel, Steven Blair; Petitioner Patricia "Pat" Schaefer appeared pro se; and Petitioners Karen Potter, Mark Potter, and Donita Potter appeared through counsel Dan Scott, Jon Heber, and Mike Hickey. All Petitioners are collectively referred to as "Petitioners".

Witnesses presenting testimony at the proceedings were: Roy J. Lindsay, Jr; Nicholas Burke, Steven Kropp, PE; Roxie Ebdrup; James Wendte, PE; Jason Terwilliger; Karen Potter; Jim Casanova; Marshall Dennert; Mark Potter; Adam Shaw; Donita Potter; Patricia Schaefer; Alex Protsch; Shannon Minerich; Jameson Berreth; Cody Lee Daigle, PE; and James Wendte, PE.

Two members of the Board of Minerals and Environment, Doyle Karpen and Rhett Miller, were present during the hearing. The Board attorney, David M. McVey, was also present at the hearing. The Board was given the opportunity to ask questions. This case was transferred from the Board of Minerals and Environment to the Office of Hearing Examiners upon request of the Petitioners.

The City submitted an initial Restricted Use Site Permit Application to DANR on or about September 11, 2023, with supplemental filings, thereafter, seeking authorization to construct and operate a restricted use solid waste facility on property formerly owned by Wayne and Dawn Bessman. DANR conducted the statutory completeness and technical review of the City's application pursuant to ARSD 74:27:08:12 and 74:27:08:13, ultimately recommending approval of the permit with variances and conditions included in a draft permit.

Petitioners timely filed petitions for a contested case under SDCL 34A-6-1.14, asserting concerns regarding groundwater and surface water contamination, wetlands, floodplains, domestic wells, wildlife impacts, aesthetic impacts, unauthorized waste disposal, road conditions, and allegations of insufficient transparency and due diligence in the City's site-selection process.

The parties submitted at hearing extensive testimony, exhibits, expert reports, and agency records, including DANR's draft permit, Petitioners' expert analysis, City testimony, environmental review letters, mapping data, and compliance history for the City's prior restricted use site ("Junius site").

Under SDCL 34A-6-1.13, the Applicant bears the burden of proving, by a preponderance of the evidence, that the proposed facility meets all statutory and regulatory requirements and is in the public interest. Petitioners bear the burden on any facts they assert requiring denial of the petition.

FINDINGS OF FACT

1. The City of Madison submitted a Restricted Use Site ("RUS") solid waste permit application pursuant to SDCL ch. 34A-6 and ARSD ch. 74:27. The application was originally submitted on or about August 2, 2023, with a revised application received by DANR on September 11, 2023.

2. The location of the proposed site is "The Southeast Quarter of the Southwest Quarter (SE ¼ SW ¼) of Section Thirty One (31), Township One Hundred Seven (107) North, Range Fifty Four (54), West of the 5th PM; and Lot Two (2) of Bessman's Subdivision of Lot Four (4) in Section Thirty One (31), Township One Hundred Seven (107) North, Range Fifty Four (54), West of the 5th PM; All in Lake County, South Dakota.

3. DANR performed a completeness review under ARSD 74:27:08:12 and determined the application was complete. DANR then conducted a technical review under ARSD 74:27:08:13 to determine compliance with applicable law.

4. On February 21, 2024, DANR published the Secretary's Recommendation to approve the facility with conditions and variances, as required by ARSD 74:27:08:16. Petitioners filed timely petitions for a contested case under SDCL 34A-6-1.14.

5. Petitioner Schaefer (filed March 4, 2024) and the Potters (filed March 13, 2024) asserted concerns involving groundwater, wetlands, floodplains, surface water, aesthetic impacts, wildlife, road conditions, and the City's past operational history.

6. On June 24, 2024, Petitioners filed a request to the Office of Hearing Examiner for a contested case to be held in this matter. On July 2, 2024, the Office of Hearing Examiners was assigned to preside over the contested case.

7. The Board of Minerals & Environment has jurisdiction over solid waste permitting under SDCL 34A-6-1.13 and is the ultimate decision-maker for the issuance or denial of the permit. The OHE's findings and recommendations are issued pursuant to SDCL 1-26D-6.

8. The proposed restricted use facility is located on a 73.04-acre parcel formerly owned by Wayne and Dawn Bessman, approximately 12.5 miles west of Madison, Lake County, SD, and 8 miles east of Howard, Miner County, SD. It is on the western edge of Lake County. The proposed site sits on 442A Avenue, 1 ¼ miles north of the Winfred Cemetery, which is on Highway 34/81.

9. The parcel includes upland game areas, wetland areas, and multiple natural drainage features.

10. The City's application identifies accepted waste types as: trees and untreated wood; construction and demolition debris (excluding asbestos); waste tires for temporary storage; furniture, mattresses, and similar bulky non-putrescible wastes; and wood ash. Approximately 1,000 tons of waste annually were projected.

11. The City submitted the application as an individual permit application because the site did not meet siting criteria to qualify for coverage under the general permit.

12. The Bessmans executed a Contract for Deed with the City on April 18, 2023, and the City later closed on the property on July 25, 2025.

13. The City had authority to operate a restricted use site and previously operated the "Junius site" for several decades. That site is closed or in the process of closure. The Junius site is about five miles to the east of the proposed site.

14. The City's application answered "no" to whether the site contained wetlands. DANR's technical review determined this was incorrect; multiple floodplain areas exist within and adjacent to the original boundary, including an east-west trending flood hazard zone through the central portion of the site. Portions of wetlands were originally within the proposed permit boundary.

15. DANR advised the City to incorporate setbacks. In December 2023, the City amended the permit boundary to exclude mapped wetlands and added a 200-foot buffer. This reduced the operational boundary to 54.43 acres.

16. DANR addressed this through a variance in the draft permit prohibiting any operational activities within floodplain areas and requiring additional floodplain delineation by a third-party consultant.

17. The site is within 200 feet of surface water bodies, including drainage features and water bodies affecting Schaefer Lake west of the site. Petitioners testified extensively regarding hydrological flow patterns, including drainage running both eastward and westward.

18. DANR included a variance prohibiting any activity that would impact surface waters and requiring setbacks and operational controls.

19. The City consulted the South Dakota Geological Survey, which indicated the first aquifer was more than 100 feet below the land surface. DANR's review confirmed this.

20. Petitioners expressed concern that no site-specific borings, hydrologic testing, or groundwater modeling were performed by the City. Petitioners' expert witness (Daigle) opined that additional hydrogeologic investigations were standard practice and that lack of testing represented a risk.

21. DANR staff visited the site on November 1, 2023, but did not conduct soil sampling or borings. Petitioners asserted the lack of due-diligence testing was insufficient for determining environmental suitability.

22. DANR reviewed the application materials, mapping, environmental review letters, and site characteristics. The Department determined that although the City's application contained errors, they were not intentional misrepresentations.

23. DANR developed conditions and variances addressing wetlands, floodplains, and surface water, requiring the City to operate in a manner preventing impacts to sensitive water resources.

24. S.D. Game Fish & Parks indicated they anticipated no significant impact to wildlife resources. U.S. Fish & Wildlife responded by stating that it had no concerns with the proposed site.

25. The Department published notice of the Secretary's revised recommendation in the Madison Daily Leader on February 21, 2024.

26. Petitioner Schaefer lives to the Southwest of the proposed site and her land and pond is adjacent to the proposed site. She operates a Belgian horse farm. These horses graze in the pastures adjacent to the proposed site.

27. Mark and Donita Potter live about 100 yards to the East of the site. Their house is set back about 100 yards from the road that trucks would use to access the site.

28. Karen Potter owns property adjacent to the east of the proposed site. The property includes an active well that is used for human and animal consumption. Her residence is about 2.5 miles south of the proposed site.

29. Petitioners Schaefer and the Potters own property adjacent to and downstream/ down-gradient from the proposed site. They testified to long-standing water movement patterns, springs, shallow groundwater, seasonal flooding, and the hydrologic connection to Schaefer Lake.

25. Petitioners expressed concerns regarding:
    a. groundwater contamination,
    b. surface-water runoff entering their properties,
    c. unauthorized wastes blowing off-site,
    d. potential impacts on livestock and agricultural production,
    e. aesthetic harm,
    f. increased heavy-truck traffic, and
    g. the City's transparency in the site-selection process.

26. Petitioners' expert engineer (Daigle) opined that the site lacked adequate field investigation, wetland delineation, and hydrogeologic study, and that the presence of wetlands and floodplains required caution. He also evaluated the City's historical compliance issues.

27. DANR compliance inspections at the City's prior restricted use site (Junius site) in 2019, 2022, and 2024 identified issues including insufficient soil cover, windblown litter, unauthorized wastes, and unauthorized burning.

28. The City corrected the identified deficiencies each time and no formal enforcement action or notice of violation was issued by DANR. DANR testified that the compliance history did not demonstrate poor character or inability to operate a restricted use site.

29. Petitioners argued that the compliance issues demonstrated a pattern indicating insufficient operational discipline. DANR and the City disagreed, asserting that the issues were promptly corrected.

30. SDCL 34A-6-1.13 requires proof that the facility is "in the public interest." The parties presented extensive evidence on potential environmental effects, operational feasibility, local need, and community impact.

31. Evidence was presented that contractors and residents had requested access to a local restricted use facility. Petitioners presented contrary testimony that the existing Junius site could continue to operate and that relocation was unnecessary.

32. Aesthetic impacts were raised by Petitioners, with evidence showing scenic views across the prairie and toward Schaefer Lake. DANR noted that aesthetics are among statutory considerations but that operational controls may mitigate impacts.

33. Petitioners and Miner County officials testified that road access and heavy-truck traffic could impose burdens on local infrastructure.

34. The City planted two shelterbelts of trees on the proposed site to create a visual buffer. One shelterbelt runs east and west along the south boundary of the proposed site and another lies north and south along the east boundary of the site. It will be a number of years before the trees or bushes are mature enough to be effective.

35. The Permit clearly explains that the City must obtain approval from the County before the issuance of the sold waste permit. This is required by law.

36. At hearing, the Department determined that their conditions needed to be increased.

37. The Department's new floodplain delineation requirement of the permit requires the operator of the landfill to utilize a third-party consulting service to delineate the potential flood hazard area generally located in the center of the permitted property within 120 days of issuance of the permit. The Boundary of any 100-year flood plain area that is delineated shall be mapped and staked or marked in some permanent manner No activity of the site may encroach upon this area.

38. Another new proposal by the Department for this site is that an operational plan for the prevention of unauthorized waste acceptance into the solid waste facility to be approved by DANR-WMP. This attempts to cure the issue of household waste being dumped at the solid waste facility. Household waste, such as was dumped illegally at the Junius site, creates aesthetic issues and potential injury to the environment.

39. To the extent that any of the foregoing are improperly designated, and are instead Conclusions of Law, they are hereby redesignated and incorporated herein as Conclusions of Law.

CONCLUSIONS OF LAW

1. The Board of Minerals and Environment has jurisdiction over the subject matter and parties pursuant to SDCL chs. 1-26, 1-26D, and 34A-6, and ARSD chs. 74:09 and 74:27.

2. SDCL 34A-6-1.13 authorizes the Board to issue a permit with all reasonable terms and conditions after public notice and opportunity for hearing. The requirements, as set out in the information in the application and received as evidence at hearing, must be reviewed by the Board before issuing or denying a permit.

3. SDCL 34A-6-1.14 requires the Department to publicize notice of solid waste application and the Secretary's recommendation concerning the application. A hearing may be held after a petition is timely filed. The Secretary published the notice of solid waste application and the Secretary's Recommendation. The contested case hearing was held after timely petitions were received. The Department followed all rules and procedures regarding public notice.

4. Under SDCL 34A-6-1.13, a solid waste facility permit may be issued only if the Board finds the proposed facility will meet the requirements of SDCL §§ 34A-6-1.1 through 34A-6-1.38 and is in the public interest. A permit may be denied only if the Board finds one or more of the statutory grounds, including material misrepresentation, violation of environmental laws, revoked permits, or lack of character or competency.

5. After hearing, the Board may impose terms and conditions upon a permit that the Board finds reasonable and necessary. SDCL 34A-6-1.13. Petitioners were notified of the additional terms and conditions prior to the conclusion of the hearing and were able to cross-examine witnesses regarding these changes.

6. The City of Madison, as permit applicant, bears the burden of proving by a preponderance of the evidence that its application satisfies all statutory and regulatory requirements, and that the proposed restricted use site is in the public interest. Petitioners bear the burden for facts asserted to support denial under SDCL 34A-6-1.13.

7. SDCL 34A-6-1.18 sets out that SDCL 34A-6-1.7, 34A-6-1.9 and 34A-6-1.17 are not applicable to solid waste facilities handling less than 25,000 tons of waste annually. The City's Application indicates that it will handle approximately 1000 tons annually.

8. SDCL 34A-6-1.8 requires that solid waste permits address the following items unless the Secretary determines they are inappropriate for the facility: an operations plan, a closure and post-closure plan, a leachate and methane control plan, and a financial plan.

9. SDCL 34A-6-1.10 requires that the owner or operator of each solid waste facility agree and acknowledge that they have perpetual responsibility for any pollution or detrimental effect caused by solid waste disposed of at their facility. The City acknowledges perpetual responsibility and liability.

10. SDCL 34A-6-1.11 authorizes the Board to impose a financial assurance condition on any permit. The Department did not recommend a financial assurance condition, but this is left to the Board's discretion.

11. SDCL 34A-6-1.12 authorizes the Board to require an owner to maintain closure and post -closure accounts. This is not a Department condition of the City's permit, but it remains an option at the discretion of the Board.

12. The evidence establishes that the City's application, as supplemented and amended, contains the information required of individual restricted use site permit applicants under SDCL ch. 34A-6 and ARSD ch. 74:27. DANR determined the application complete and conducted a technical review consistent with regulatory standards.

13. The initial City application contained errors regarding wetlands, floodplains, and proximity to surface water. Based on testimony, these errors were not intentional misrepresentations of material fact but incorrect responses based on the City's interpretation of site-wide versus cell-specific conditions. DANR did not treat these as intentional misrepresentations for purposes of SDCL 34A-6-1.13(1).

14. The record does not establish that the City has been convicted of any felony or crime involving moral turpitude, nor that it has had any permit revoked under the environmental laws of any state or the United States.

15. The City's compliance history at the Junius site includes instances of insufficient soil cover, windblown litter, unauthorized waste placement, and unauthorized burning. These deficiencies were corrected following DANR's inspections. No formal enforcement action or finding of violation under state or federal environmental law was made. Thus, Petitioners did not establish a violation under SDCL 34A-6-1.13(3).

16. Although Petitioners presented credible concerns regarding historical operations at the Junius site, the evidence does not establish that the City lacks the character or competency to operate the proposed site in compliance with SDCL ch. 34A-6, for purposes of SDCL 34A-6-1.13(5). DANR testified that the City's corrections to identified issues reflected acceptable responsiveness.

17. Variances may be granted under ARSD 74:27:11:09 if the applicant demonstrates that operation of the facility will not pose a hazard to human health or degrade the environment. DANR concluded, and incorporated into the proposed permit, specific conditions ensuring no operation occurs within wetlands, floodplains, or sensitive surface water areas.

18. Petitioners provided testimony concerning wetlands, floodplains, hydrology, and groundwater conditions that raise legitimate environmental considerations. Their expert identified additional testing and delineation work that he believed should occur. DANR's updated permit conditions incorporate additional delineation, setbacks, and monitoring obligations that address these concerns within the structure of ARSD 74:27.

19. Under SDCL 34A-6-103, county approval must be obtained within 24 months prior to the issuance of a solid waste permit. Lake County's prior approval expired. DANR's amended permit conditions require the City to obtain renewed county approval *before* undertaking any authorized activity. This condition satisfies the statutory requirement.

20. Argument by the Petitioners indicate that pursuant to 34A-6-1.4, the City altered the site prior to a permit being in place by planting trees as part of construction of a future site. The Department does not see the planting of a shelterbelt to be part of the "facilities or appurtenances connected with such facility ... to facilitate the disposal or storage of solid waste." There is no requirement in the permit for trees or shelterbelt and no violation of this statute is noted.

21. Petitioners' concerns regarding transparency in the City's land-acquisition process and its internal decision-making fall outside the Board's regulatory authority under SDCL ch. 34A-6, which focuses on environmental and operational criteria rather than municipal governance matters.

22. The evidence establishes that the proposed facility can be operated in a manner protective of public health and the environment if conducted under the variances, conditions, and operational controls included in DANR's draft permit and its amendments, including wetland setbacks, floodplain avoidance, surface water protections, unauthorized waste controls, and county approval requirements.

23. The record also contains evidence of local need for continued access to a restricted use facility. Evidence of need, combined with permit conditions designed to mitigate environmental risks, supports a finding that the facility, as conditioned, is in the public interest under SDCL 34A-6-1.13.

24. Petitioners presented credible factual concerns regarding hydrology, aesthetics, road impacts, and past operational practices. These concerns are appropriately addressed through permit conditions, variances, and oversight provisions. Under the legal standards governing permit denial, these concerns do not independently establish a statutory basis for denial.

25. Based on the entire record, the City has met its burden to establish compliance with SDCL ch. 34A-6 and ARSD ch. 74:27, and Petitioners have not established any statutory basis requiring denial under SDCL 34A-6-1.13(1)–(5). Accordingly, issuance of the permit with the amended conditions is authorized under South Dakota law.

26. SDCL 34A-6-1.16 allows the City's permit, if granted, to be valid for a two-year period, then capable of being renewed every five years. The Department recommended that the City's permit be valid for two years.

27. Any Finding of Fact that is properly construed as a Conclusion of Law, and any Conclusion of Law that is properly construed as a Finding of Fact, is hereby adopted and incorporated as such.

PROPOSED ORDER

Based on the Findings of Fact and Conclusions of Law set forth above, and pursuant to the authority granted under SDCL 34A-6-1.13 and ARSD ch. 74:27, it is the Proposed Order that the City of Madison's application for a restricted use solid waste facility permit be granted, subject to the conditions, variances, and requirements set forth in this Order and the Attached "Permit to Operate a Restricted Use Solid Waste Facility Under the South Dakota Solid Waste Program".

This Proposed Decision, Findings of Fact, Conclusions of Law, and Proposed Order is submitted to the South Dakota Board of Minerals and Environment for consideration pursuant to SDCL 1-26D-6. The Board may adopt, reject, or modify any portion of this Proposed Order following review of the record.

Dated 2nd day of October, 2026,

Catherine Williamson
Office of Hearing Examiners
Pierre, South Dakota

STATE OF SOUTH DAKOTA
BOARD OF MINERALS AND ENVIRONMENT
PERMIT TO OPERATE A RESTRICTED USE SOLID WASTE FACILITY UNDER THE SOUTH DAKOTA SOLID WASTE PROGRAM

OPERATOR:	City of Madison 116 West Center Street Madison, South Dakota 57042-2833
PERMIT NUMBER:	**26-XX**
ISSUE DATE:	2026
EXPIRATION DATE:	2028
CLASSIFICATION OF FACILITY:	Type III Restricted Use Facility – The facility may accept a maximum of 4,999 tons of waste per year.
GENERAL FACILITY DESCRIPTION:	The restricted use site may accept construction and demolition debris for burial. Furniture, carpeting, and similar nonputrescible wastes may be accepted for burial. Trees, branches, and untreated wood may be accepted for burning or burial. Waste tires may be accepted for temporary storage and recycling.
ACREAGE:	54.43 acres
LEGAL DESCRIPTION:	SE1/4 SW1/4 of Sec 31, T107N, R54W and Lot 2 of Bessman's Subdivision of Lot 4 in Sec 31, T107N, R54W, Lake County

In consideration of information contained in the application and supplements, the South Dakota Board of Minerals and Environment hereby issues this permit for the city of Madison to operate a restricted use solid waste facility. The issuance of this permit is pursuant to SDCL 34A-6-1.13 and ARSD 74:27. In addition to any provisions included herein by operation under state or federal law or regulation, this permit and all rights under it are subject to, defined by and limited by the conditions set forth herein. This permit shall be valid for a period of two years from the issuance date.

_____

Timothy Johns, Chair
Board of Minerals and Environment

1.0 GENERAL REQUIREMENTS

1.01 Operator Representations Incorporated

This permit incorporates by reference all representations made by the city of Madison (hereinafter called the operator) and its agents regarding plans, controls, designs, operations, and environmental impacts contained in the permit application dated August 2nd, 2023, and in supplemental documents.

1.02 DANR Limitation of Liability

This permit and all rights under it are expressly conditioned on the truth and accuracy of the representations made by the operator in the application and documents cited above. The Department of Agriculture and Natural Resources - Waste Management Program (DANR-WMP) assumes no liability for the accuracy and truth of such representations made by the operator.

1.03 Duty to Comply

The operator shall construct, operate, and maintain this facility in accordance with South Dakota Codified Laws and the Administrative Rules of South Dakota: SDCL 34A-6 and ARSD 74:27. If the provisions of the laws, rules, or any conditions of this permit are violated, DANR-WMP may take action to suspend or revoke this permit as provided for by SDCL 34A-6-1.21; may assess a civil penalty pursuant to SDCL 34A-6-1.4 and 34A-6-1.31; or issue a notice of violation with penalties pursuant to SDCL 34A-6-1.22.

1.04 Related Laws, Regulations and Permits

No provision of this permit exempts the operator from the requirements of any local, state, or federal laws, regulations, or rules in existence or promulgated after this permit becomes effective. It is the responsibility of the operator to obtain any other required permits and licenses.

1.05 Procedure for Requesting Amendments

The operator must contact DANR-WMP to request a permit amendment prior to any significant deviation in the design or operation of the facility, and before any expansion beyond the permitted site boundaries. This permit may be reopened and amended, following proper administrative procedures, to include the appropriate requirements of ARSD 74:27, SDCL 34A-6, and promulgated federal or state laws, rules, or regulations. Any permit modification shall be in compliance with ARSD 74:27, SDCL 34A-6, and applicable federal regulations.

1.06 Administrative Changes Authorized

DANR-WMP reserves the right to incorporate administrative changes and/or modifications to this permit at any time. When an administrative change is made to this permit, DANR-WMP shall notify the operator, in writing, within 10 business days of instituting the change. Administrative changes are authorized for the purposes of changing or correcting:

(a) typographical errors;
(b) regulatory references;
(c) titles of organizations or regulatory agencies; or
(d) items which do not substantially change the requirements of this permit.

1.07 Severability
The provisions of this permit are severable. If any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provisions to other circumstances and the remainder of this permit shall not be affected thereby.

1.08 Duty to Provide Access
The operator shall allow DANR-WMP unrestricted entry during regular business hours for site inspections, waste sampling, and reviewing facility records.

1.09 Duty to Provide Information
The operator shall furnish to DANR-WMP, within 10 business days, any information which DANR-WMP may request to determine compliance with this permit.

1.10 Variances Approved
DANR-WMP specifically recognizes and approves the variances and special condition listed in Attachments A and C of this permit, based on the reasons and documentation stated therein.

1.11 Special Condition — Statutory Reference SDCL 34A-6-103 – County Approval
SDCL 34A-6-103 requires county approval as a condition for the approval of a solid waste permit. The original Lake County approval for the restricted use site authorized by this solid waste permit was granted on September 5th, 2023. SDCL 34A-6-103 also states that county approval cannot occur more than 24 months before the issuance of a new solid waste permit. Therefore, the original Lake County approval effectively expired. The city of Madison is not authorized to implement any activity authorized by this solid waste permit until a second approval is obtained from Lake County. Lake County approval in the form of a resolution must be documented in writing to the DANR-WMP before the city of Madison can implement any activity authorized by this solid waste permit.

2.0 DESIGN AND CONSTRUCTION REQUIREMENTS

2.01 Access Control
The operator shall maintain access controls at the site. These shall include a fence around the entire facility, locked gate(s), and sign(s) stating the operator's name and phone number, hours of operation, acceptable waste types, and directions for disposal.

2.02 Acreage Limitation
The operator shall not exceed the 54.43 acre total operational area identified in the permit. Further, the operator must remain 200 feet away from wetlands as indicated in the map included in Attachment B.

2.03 Floodplain Delineation Requirement
Attachment A to this permit prohibits impacts to areas designated as 100-year floodplains. During the contested case hearing for this permit, there was testimony regarding an east-west trending potential flood hazard area in the approximate center of the permitted property.

The operator is hereby directed to utilize a third-party consulting service to delineate the potential flood hazard area generally located in the center of the permitted property. The

boundary of any 100-year floodplain area that is delineated shall be mapped and staked or marked in some permanent manner. The operator shall not allow any operational activity within the permitted boundary of the solid waste facility to encroach upon the mapped and marked 100-year floodplain area.

The third-party flood hazard area delineation, mapping and marking shall be completed within 120 days of issuance of this permit.

2.04 Storm Water Control

The operator shall construct and maintain soil berms or containment structures around disposal areas. The berms or containment structures should be designed to divert run-on and contain runoff from a 25-year, 24-hour storm event (4.5 inches). The berms shall be adequately compacted.

3.0 OPERATIONAL REQUIREMENTS

3.01 Emergency Requirements

The operator shall notify DANR-WMP, within one business day, of any emergency situation at the facility. For the purposes of this section, an emergency is defined as any unplanned event that could be a threat to personnel, the general public, or the environment.

3.02 Authorized and Unauthorized Wastes

The operator may accept the materials listed in Table 1 for disposal, burning, or storage as indicated in column 2 of Table 1. The operator may not accept the materials listed in Table 2. Any unauthorized waste found on-site must be handled according to Table 2 procedures. The operator shall contact DANR-WMP to determine how to handle any waste that is not clearly identified in Table 1 or Table 2.

3.03 Routine Inspections Required

The operator shall inspect the facility at least weekly and on all days the facility is open to the public to evaluate permit compliance and to prevent and/or detect the disposal of unauthorized wastes. Any unauthorized wastes shall be removed and properly disposed of at a facility permitted to accept such materials. The site inspections shall be documented as required by Section 4.01(c) of this permit.

3.04 Prevention of Unauthorized Waste – Operational Plan Requirement

Within 45 days of permit issuance, the operator shall develop an operational plan for the prevention of unauthorized waste acceptance into the solid waste facility. The operational plan shall outline specific procedures including onsite operator training, load inspections, unauthorized waste identification, rejection of materials or loads, management of unauthorized wastes, and recordkeeping.

The operational plan is subject to DANR-WMP review and approval. Once approved by DANR-WMP, the operational plan shall be immediately implemented by the operator and the plan will be considered incorporated into this solid waste permit by reference and shall be considered an enforceable part of the permit.

The operational plan is considered adjustable and subject to revision as requested by the operator or required by DANR-WMP. DANR-WMP reserves the right to approve changes to the operational plan without public notice.

3.05 Vector Control
The operator shall take any steps necessary to ensure the site is reasonably free of mosquitoes, rats, or other disease vectors.

3.06 Waste Separation Required
The operator shall place materials that are to be buried in a pile or piles that are well separated from the burn pile and the recycling piles.

3.07 Soil Cover Required
Construction and demolition debris and other inert wastes intended for burial must be covered with six inches of soil cover at least monthly. Monthly placement of six inches of soil cover is necessary to prevent blowing debris and minimize fire potential.

3.08 Open Burning Requirements
The operator may periodically open burn trees, branches, brush, and untreated wood, subject to existing state, federal, and local laws, rules, and regulations. The operator is responsible for removing materials other than trees, branches, brush, and untreated wood from the burn pile prior to burning. The local fire department, local law enforcement, and DANR-WMP shall be notified prior to open burning.

Open burning shall occur only:
(a) when the prevailing winds are away from adjacent residences;
(b) when smoke will not obscure visibility or create a traffic hazard on any public road; and
(c) during daylight hours.

The operator shall not burn within 300 feet of a waste tire pile.

3.09 Waste Tire Storage
The operator shall store tires as follows:
(a) each tire pile shall be surrounded by a 50-foot fire lane;
(b) all tire piles shall be maintained free of mosquitoes and rodents;
(c) tires may not be located within 300 feet of the tree pile or an open flame;
(d) waste tire piles may not have an area greater than 5,000 square feet or a vertical height greater than 10 feet; and
(e) waste tires may not be stored on-site for more than one year from the date of receipt.

4.0 RECORDKEEPING AND REPORTING REQUIREMENTS

4.01 Required Records
The operator shall maintain all records required by this permit and shall make records available to DANR-WMP as stated in ARSD 74:27:13:22. At a minimum, the records shall include:
(a) the amounts, sources, types, and dates for the wastes received;
(b) documentation of any unauthorized waste found on-site and the steps taken in response;
(c) documentation of the daily and/or weekly site inspections;

(d) records of any employee training;
(e) copies of the current solid waste permit, permit application, and any other permits required by state, local, or federal laws, rules, and regulations;
(f) records of any emergency conditions at the facility;
(g) documentation of complaints received and responses to complaints;
(h) data on open burning activities at the site (including dates, weather conditions, and an estimate of the quantity of wood in the pile); and
(i) documentation identifying the quantity and destination of all material removed from the site (tires, white goods/metals, compost, municipal solid waste, leachate, etc.).

4.02 Maintenance of Records
The operator shall maintain all required records for a period of three years from the date the records were generated.

5.0 CLOSURE REQUIREMENTS

5.01 Closure Notification
The operator shall notify DANR-WMP of the intent to close any portion of the site at least 90 days prior to closure.

5.02 Startup of Closure Activities
The operator shall begin closure activities for all waste disposal areas of the facility within 30 days of receipt of the last load of waste.

5.03 Removal of Stored Wastes and Recyclables
The operator shall remove all white goods, metals, tires, compost, and/or leachate prior to closing the site.

5.04 Final Closure Requirements
The final cover and closure activities for the site shall meet the requirements of ARSD 74:27:15:03 and include:
(a) covering the restricted use waste disposal areas/trenches upon completion/filling. The final cover for the waste disposal area shall consist of a minimum of two feet of earthen material capable of maintaining perennial vegetation;
(b) incorporating contours of the waste disposal area into the contours of the surrounding area;
(c) grading to prevent ponding of water; and
(d) seeding and revegetating the waste disposal area in consultation with the County Extension Agent or local Natural Resources Conservation Service representative.

5.05 Completion of Final Closure
The operator shall complete closure activities for all waste disposal areas within 180 days of receipt of the last load of waste.

5.06 Certification of Closure
Upon completion of closure of a waste disposal area or the facility, the owner or operator shall provide the DANR-WMP with a certification confirming that the provisions of the closure plan (if applicable) have been carried out, and the facility has been closed in accordance with this permit and the applicable performance standards of ARSD 74:27:15.

5.07 Notation on Deed Required

The operator shall record a notation on the deed to the property or on some other instrument that is normally examined during a title search. The notation shall state that the land has been used as a solid waste facility.

6.0 FINANCIAL ASSURANCE

6.01 Financial Assurance Requirement

DANR-WMP will not require financial assurance for the permitted facility as long as the operator complies with the environmental laws and rules of the state and the conditions of this permit.

Table 1
Authorized Wastes
Madison Restricted Use Solid Waste Facility

Under South Dakota law, local ordinances may further restrict some of the items listed below. The city of Madison may choose not to accept some of the items listed below.

Type of Waste	Handling Procedures / Requirements
Construction and demolition debris: Concrete, brick, stonework, asphaltic concrete, concrete block, asphaltic or fiberglass shingles, painted or stained wood, attached insulation, pipe, and similar wastes.	These wastes must be buried. These **wastes may not be burned.** Concrete, brick, stonework, asphaltic concrete, and concrete block may be buried or temporarily stored for subsequent recycling and reuse.
Trees and untreated wood: Scrap lumber, trees, tree branches, and brush. **Painted, stained, glued, or chemically treated wood is considered treated and cannot be open burned.**	These wastes may be burned or buried. Wastes to be burned must be isolated in a separate area of the site. Contact the local fire department, DANR-WMP, and local law enforcement prior to open burning.
Waste tires	Waste tires may be accepted for temporary storage only. Keep tires at least 300 feet away from any open flame. **Waste tires may not be burned or buried.** Storage is not to exceed one year.
Miscellaneous wastes: Carpets, chairs, couches, mattresses, linoleum, glass, and similar items.	These wastes may not be burned. These materials must be buried.
Ash	**Only** ash from wood burning stoves or other household sources and authorized on-site open burning may be accepted for burial.

Table 2
Examples of Unauthorized Wastes
Madison Restricted Use Solid Waste Facility

The following wastes **are not allowed** to be accepted at this facility. If these substances/materials are found at the site, proper specific handling procedures and requirements are stated here for operator use. The DANR-WMP can be contacted at (605) 773-3153.

Type of waste	Handling Procedures / Requirements
Hazardous waste: Waste oil, solvents, PCBs, ash, or similar wastes.	Isolate waste and contact DANR-WMP as soon as possible.
Pesticide containers	Waste must be removed from the site and taken to a permitted solid waste facility or contact the DANR-WMP for recycling options.
Regulated asbestos-containing materials	Isolate waste and contact DANR-WMP as soon as possible. Waste must be taken to a permitted solid waste facility.
Lead-acid batteries	Waste must be removed from the site and taken to a recycler that accepts lead-acid batteries.
Putrescible wastes: Municipal solid waste and household garbage.	Waste must be removed from the site and taken to a permitted municipal solid waste facility.
Liquid waste: Petroleum products, sludges, tar, paint, used motor oil, contaminated water, or other liquid wastes.	Isolate waste and contact DANR-WMP as soon as possible to determine appropriate disposal methods.
Treated wood: Wood treated with inorganic chemicals, chromated copper arsenate (CCA), pentachlorophenol (PCP), or creosote. CCA and PCP treated wood is commonly referred to as green or brown treated.	Waste must be removed from the site and taken to a permitted municipal solid waste landfill for disposal.
Miscellaneous wastes: Cardboard, plastic, plastic containers, Styrofoam, foam rubber, packaging materials, containerized paints, sealants, adhesives, and similar materials.	Waste must be removed and taken to a permitted municipal solid waste facility for disposal or recycled.
White goods/Metals/Electronic wastes: Refrigerators, washers, dryers, freezers, stoves, water heaters and other recyclable scrap metals, televisions, computers, monitors, cell phones, VCRs/DVDs, and similar electronic waste materials	Wastes must be removed from the site and taken to a recycler or permitted municipal solid waste landfill.

Table 2
Examples of Unauthorized Wastes
Madison Restricted Use Solid Waste Facility

The following wastes **are not allowed** to be accepted at this facility. If these substances/materials are found at the site, proper specific handling procedures and requirements are stated here for operator use. The DANR-WMP can be contacted at (605) 773-3153.

Type of waste	Handling Procedures / Requirements
Contaminated soil: Soil contaminated with diesel fuel, fuel oil, petroleum, kerosene, jet fuel, gasoline, pesticides, solvents, transformer oil, motor oil, lubricants, grease, tar, or similar materials.	Isolate waste and contact DANR-WMP as soon as possible to determine appropriate disposal methods.
Animal carcasses	Animal carcasses must be removed from the site and taken to a permitted solid waste facility for disposal.
Yard waste: Leaves, grass clippings and similar vegetation.	Yard waste must be removed from the site and taken to a permitted solid waste facility for disposal.

Attachment A
Variances Approved
Madison Restricted Use Site

The DANR-WMP specifically recognizes and approves the following variance with the conditions as listed below:

Regulatory Reference ARSD 74:27:11:03 – Floodplains

Facilities shall not be located in a 100-year floodplain.

State solid waste rules (ARSD 74:27:11:09) allow a variance to the 100-year floodplain location criteria if the owner or operator demonstrates that the facility location will not pose a hazard to human health or degrade the environment.

The Madison restricted use site contains 100-year floodplain designated areas within and immediately adjacent to the boundary of the permitted area. The operator shall not conduct any solid waste activities that would impact any 100-year floodplain. The operator's permit application indicates a willingness and the ability to operate the facility in a manner that is acceptable. Further, the operational and design requirements of this permit are specifically designed to ensure that operation of the facility will not pose a threat. The operator is hereby directed to ensure that operation of the facility does not impact floodplains.

The operator shall comply with the conditions of this permit.

Regulatory Reference ARSD 74:27:11:06 – Distance to surface water.

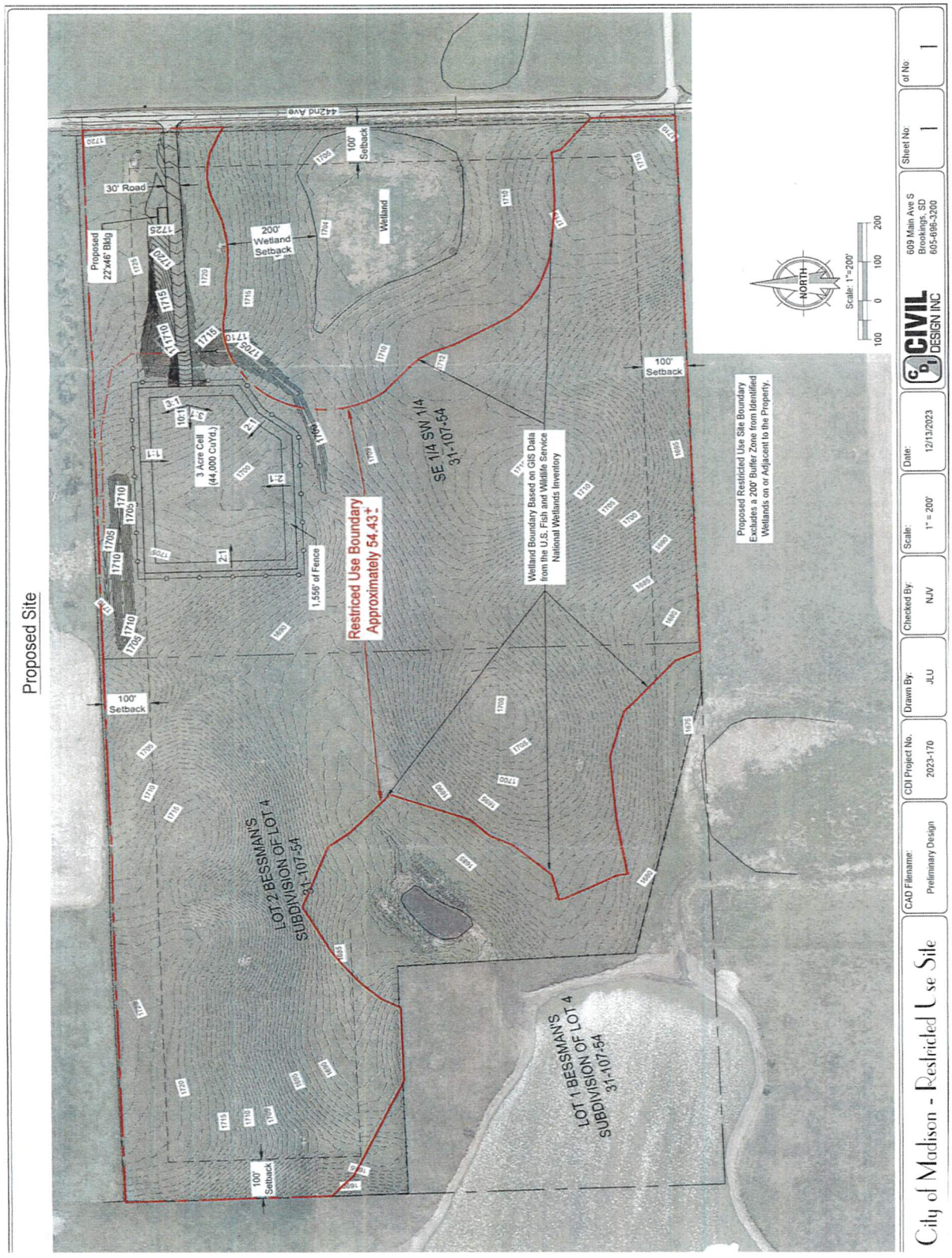
Facilities containing putrescible waste or other facilities disposing of materials that may pollute surface water may not be located within 1,000 feet of streams, creeks, lakes, reservoirs, or other bodies of water classified for fish life propagation.

State rules allow a variance for restricted use sites provided the facility is operated in a manner that will not pose a hazard to human health or degrade the environment.

The Madison restricted use site is located within 1,000 feet of an unclassified body of water. The operator shall not conduct any solid waste activities that would impact any surface water. The operator's permit application indicates a willingness and the ability to operate the facility in a manner that is acceptable. Further, the operational and design requirements of this permit are specifically designed to ensure that operation of the facility will not pose a threat. The operator is hereby directed to ensure that future operation of the facility does not impact the body of water.

The operator shall comply with the conditions of this permit.

Attachment B
Permit Boundary Map
Madison Restricted Use Site



CERTIFICATE OF SERVICE

I certify that on October 2, 2026, at Pierre, South Dakota, a true and correct copy of the Proposed Decision Findings of Fact and Conclusions of Law and Proposed Order in the above-entitled matter was sent via E-mail and USPS to each party listed below.

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