

STATE OF SOUTH DAKOTA
BEFORE THE SECRETARY
SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

IN THE MATTER OF THE)	
MAY 10, 2013 AIR QUALITY)	SETTLEMENT
VIOLATIONS BY THE)	AND
CITY OF RAPID CITY LANDFILL,)	COMPLIANCE AGREEMENT
RAPID CITY, SOUTH DAKOTA)	

I. Introduction

1. This Settlement and Compliance Agreement is entered into by the State of South Dakota, by and through the South Dakota Department of Environment and Natural Resources (“DENR”) pursuant to its authority in South Dakota Codified Laws (SDCL) 34A-10-17 and Administrative Rules of South Dakota (ARSD) 74:36:05:47, and the City of Rapid City Landfill, hereinafter jointly referred to as “Parties”.
2. This Agreement is intended to settle and resolve all claims brought in the above-entitled administrative action pursuant to a Notice of Violation issued by DENR and all associated claims for civil penalties arising from the allegations contained in the Notice of Violation, as further described herein.
3. This Agreement has been negotiated by the Parties in good faith to avoid the costs and risks of prolonged and complicated litigation and to resolve their differences. In the respective opinions of the Parties, this Agreement and the settlement embodied herein is fair, reasonable, consistent with the purposes of the statutes pursuant to which this action was brought, and in the opinion of DENR, is in the public interest.

II. Definitions

4. Unless otherwise expressly provided for herein, the terms used in this Agreement shall have the meaning provided below:
- A. "Agreement" shall mean this Settlement and Compliance Agreement.
 - B. "Action" shall mean the administrative proceeding entitled In the Matter of the May 10, 2013, Air Quality Violations by the City of Rapid City Landfill, Rapid City, South Dakota, initiated by the issuance of a Notice of Violation by DENR.
 - C. "Covered Matters" shall mean all claims raised in the Notice of Violation, and all claims that DENR has or could have made arising from or out of the facts alleged in the Notice of Violation filed in the Action except those brought pursuant to §15, Reservation of Rights, or §16, Reopeners, of this Agreement.
 - D. "Effective Date" shall mean the date upon which this Agreement has been executed by both of the Parties.
 - E. "Termination" shall mean the date this Agreement is terminated pursuant to the procedure set forth in §22, Termination, of this Agreement.
 - F. "DENR" shall mean the State of South Dakota, by and through the South Dakota Department of Environment and Natural Resources.
 - G. "City of Rapid City Landfill" shall mean the City of Rapid City Landfill, and its officers, employees, agents, successors, and assigns.
 - H. "Title V Permit" shall mean the air quality permit number 28.1101-02 issued by DENR originally to the City of Rapid City Landfill on October 20, 2009.

III. Background

5. DENR has alleged that the City of Rapid City Landfill committed certain violations of the conditions of its Title V Permit and state air quality statutes and rules concerning the reporting requirements of permit conditions 2.2, 5.5, and 8.17.
6. DENR and the City of Rapid City have negotiated extensively concerning the matters alleged in the Notice of Violation and have determined appropriate procedures for assuring the City of Rapid City's compliance with its Title V Permit and state air quality statutes and rules.
7. The Parties have arrived at a mutually acceptable settlement of their differences, which is embodied herein.

IV. Settlement

8. Release. In consideration of the City of Rapid City Landfill's agreement to make the payments and undertake the actions described in this Agreement, and except to the extent otherwise provided herein, DENR releases and discharges the City of Rapid City Landfill from all claims, demands, actions and causes of action arising from, out of, or related to the allegations in the Plaintiff's Notice of Violation and Covered Matters, and all other claims, demands, actions and/or causes of action, whether now known or arising in the future, related to or arising from the factual allegations made in the Notice of Violation, except as provided in §15, Reservation of Rights, and §16, Reopeners, of this Agreement.
9. Payments. the City of Rapid City Landfill shall pay to DENR as a civil penalty and in settlement of all claims for damages to the environment, the sum of \$5,775 (five thousand seven hundred and seventy five dollars), due thirty (30) days following Effective Date. The payment shall be in full and complete settlement of all claims for civil penalties and environmental damage as the same are considered by rule and statute, arising from the

Covered Matters. In determining the amount of this penalty, the DENR considered the following factors, among others: the willfulness and seriousness of the violations, the duration of the violations, the economic impact of the penalty, the City of Rapid City Landfill's compliance history and efforts to comply, and the economic benefit of noncompliance.

10. Payment Procedure. Payment of civil penalties to DENR shall be completed by mailing a check in first class mail, addressed to: Secretary, Department of Environment and Natural Resources, 523 East Capitol, Pierre, South Dakota 57501 and referencing "DENR – City of Rapid City Landfill NOV."
11. Compliance Plan. The City of Rapid City Landfill agrees to undertake and perform the following activity as its plan to come into compliance with its Title V Permit and the State's air quality statutes and rules:
 - A. The City Rapid City Landfill shall submit the first and second semiannual report, annual operational report, and annual certification report for 2012 to DENR within 20 days of receiving the notice of violation and order.
 - B. The City of Rapid City Landfill shall submit a written notification to DENR within 20 days of receiving the notice of violation and order. The notification shall specify corrective actions taken by the City of Rapid City Landfill to ensure compliance with the reporting requirements in permit conditions 2.2, 5.5, and 8.17.
12. Modification of Permit. This Agreement does not, except as specifically provided herein, modify, amend, or alter the conditions and requirements of the Title V Permit.
13. Modification of Facility. The emission reductions resulting from implementation of this Agreement may not be used by the City of Rapid City Landfill for any emissions offset,

banking, selling or trading program, and may not be used as credit for determining whether a future modification to the facility will result in a significant net emissions increase.

14. Not a Permit. This Agreement is not a permit, and compliance with its terms does not guarantee compliance with any applicable federal or state statutes or regulations. To the extent that terms of this Agreement conflict with the terms of the City of Rapid City Landfill's currently existing Title V Permit, the terms of this Agreement shall control until Termination.
15. Reservation of Rights. Nothing in this Agreement shall in any way limit or restrict the authority of the State of South Dakota or its agencies, including DENR, to initiate appropriate action against the City of Rapid City Landfill, either judicial or administrative, with respect to: claims unrelated to the Covered Matters; claims based upon a failure of the City of Rapid City Landfill to fulfill its obligations under this Agreement; claims based on the City of Rapid City Landfill's past, present, or future failure to comply with its environmental permits, including the City of Rapid City Landfill's Title V Permit, or any state statute or regulation, which do not arise from and are not related to Covered Matters or violations otherwise considered in this Action or this Agreement; and claims based on criminal liability.
16. Reopeners. Notwithstanding any other provision in this Agreement, DENR reserves the right to re-assert claims arising from or related to Covered Matters against the City of Rapid City Landfill where conditions unknown to DENR and willfully concealed by the City of Rapid City Landfill, in existence on or before entry into this Agreement, are discovered that may in the future result, or have at the time of discovery resulted, in releases of pollutants that will materially injure or destroy the environment or cause injury to the public health. For

purposes of this paragraph, no condition shall be considered “unknown” if the condition is identified in, contained in, or could be reasonably determined from the facts, documents, evidence, and data in the possession of DENR on or before entry of this Agreement, or otherwise could have been discovered by DENR through reasonable investigation.

17. Modification. The terms of this Agreement may be modified only by a subsequent written agreement signed by the Parties, except that DENR may extend any deadlines set forth in this Agreement, and upon acceptance by the City of Rapid City Landfill, such an extension shall constitute a modification to this Agreement.
18. Enforcement. This Agreement shall be enforceable by the Parties pursuant to the applicable laws of South Dakota. The City of Rapid City Landfill agrees that it will not challenge the DENR’s authority to bring, or the court’s jurisdiction to hear, any action filed to enforce the terms of this Agreement.
19. Signatories. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into this Agreement and each of the terms and conditions hereof, and to execute and legally bind such Party to it.
20. Service. Each Party shall identify, on the attached signature page, the name, address, and telephone number of any agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Agreement.
21. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to its subject matter.
22. Termination. This Agreement shall be terminated by DENR after DENR determines that the City of Rapid City Landfill has fully complied with all terms and conditions of this Agreement. Upon Termination, all obligations of the Parties under this Agreement shall

cease, except that such Termination shall not affect the provisions of §15, Reservation of Rights, and §16, Reopeners, of this Agreement, and except that such Termination shall not affect the terms, conditions, or status of the City of Rapid City Landfill's obligations to comply with its environmental permits, including the Title V Permit, or the environmental statutes and regulations.

Signed and dated as indicated below.

Date

Steven M. Pirner, Secretary
Department of Environment and Natural Resources

Date

Sam Kooiker, Mayor
City of Rapid City

