

COPY

STATE OF SOUTH DAKOTA

**SECRETARY OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**IN THE MATTER OF THE)
MAY 10, 2013)
AIR QUALITY VIOLATIONS BY)
CITY OF RAPID CITY LANDFILL)**

**NOTICE OF VIOLATION
AND
ORDER**

**TO: Karl Merbach, Superintendent
City of Rapid City Landfill
300 Sixth Street
Rapid City, SD 57701-2724**

The Secretary of the Department of Environment and Natural Resources ("Secretary"), pursuant to South Dakota Codified Laws (SDCL) 34A-1-47 and Administrative Rules of South Dakota (ARSD) 74:36:05:47, hereby issues a Notice of Violation and Order to the City of Rapid City Landfill. This Notice of Violation and Order concerns violations of Title V air quality operating permit #28.1101-02, ARSD Chapter 74:36:05, and SDCL Chapter 34A-1, as specified below:

The Secretary alleges the following facts:

- I. The City of Rapid City Landfill owns and operates a municipal solid waste landfill in Rapid City, South Dakota. Under state and federal air quality laws, the City of Rapid City Landfill is required to have a Title V air quality operating permit issued in accordance with ARSD Chapter 74:36:05.

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2. On October 20, 2009, the Secretary issued the City of Rapid City Landfill a Title V air quality operating permit #28.1101-02 for operation of the municipal solid waste landfill.
 3. On March 18, 2011, the City of Rapid City Landfill notified the Department of Environment and Natural Resources (DENR) of the initial startup of a gas collection system and flare as required in permit condition 8.9. The initial startup date was March 3, 2011.
 4. In accordance with permit condition 8.17, the City of Rapid City Landfill is required to submit the initial semiannual report within 180 days of the initial startup of the gas collection system or by September 1, 2011. The initial semiannual report shall include the initial performance test report.
 5. On September 20, 2011, DENR conducted an annual full compliance air quality inspection and a performance test oversight. At this time, no semiannual report had been submitted for the gas collection system and flare by the September 1, 2011 deadline. In addition, the initial performance test required in permit condition 8.17 was not completed by September 1, 2011; but was being conducted during the inspection.
 6. On December 21, 2011, DENR sent a follow-up letter (see attachment 1) from the September 20, 2011 air quality inspection that gave the City of Rapid City Landfill 15 days from receipt of the letter to submit the semiannual report to become into full compliance with their Title V air quality operating permit.
 7. On January 18, 2012, DENR received the initial semiannual report for 2011.
 8. On September 6, 2012, DENR conducted an annual full compliance air quality inspection. DENR notified the City Rapid City Landfill that the semiannual report required in permit condition 8.17 for the first half of 2012 was not submitted. Landfill personnel indicated due

to personnel changes at the landfill they failed to submit the semiannual report for the first half of 2012.

9. On October 17, 2012, DENR sent a follow-up letter (see attachment 2) from the September 6, 2012 air quality inspection that gave the City of Rapid City Landfill 15 days from receipt of the letter to submit the semiannual report to become into full compliance with their Title V air quality operating permit.
10. On January 25, 2013, DENR emailed electronic copies of the annual operating report and the annual compliance certification to Mr. Merbach which he indicated he received at the January 30, 2013 Title V air quality inspection (see attachment 3).
11. On January 30, 2013, DENR conducted an annual full compliance air quality inspection. DENR notified the Rapid City Regional Landfill that the semiannual report required in permit condition 8.17 for the first half and second half of 2012 was not submitted. At the January 2013 inspection, landfill personnel indicated they are still behind in submitting the semiannual report.
12. On February 6, 2013, DENR sent a follow-up letter (see attachment 4) from the January 30, 2013 air quality inspection that gave the City of Rapid City Regional Landfill 20 days from receipt of the letter to submit the semiannual reports to become in full compliance with their Title V air quality operating permit. DENR followed-up with verbal correspondence on March 14, 2013 and the facility indicated they would submit the reports by March 21, 2013 (see attachment 5).
13. On March 28, 2013, DENR sent a follow-up letter (see attachment 6) that gave the City of Rapid City Landfill 20 days from receipt of the letter to submit the semiannual report to become in full compliance with their Title V air quality operating permit.

14. In addition, DENR notified the City of Rapid City Landfill on March 28, 2013 that they have not submitted the 2012 annual compliance certification in accordance with permit condition 5.5 and the annual operational report in accordance with permit condition 2.2.
15. The City of Rapid City Landfill is in violation with permit condition 8.17 for not submitting the semiannual reports for the first and second half of 2012 within the 30 day period following the end of the reporting period.
16. The City of Rapid City Landfill is in violation with permit condition 2.2 for not submitting the annual operational report for 2012 by March 1, 2013.
17. The City of Rapid City Landfill is in violation with permit condition 5.5 for not submitting the annual compliance certification for 2012 by March 1, 2013.

WHEREFORE, based upon the above, the Secretary hereby issues the following Order pursuant to SDCL 34A-1-44 and SDCL 34A-1-47:

1. The City of 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.
2. 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.

NOTICE IS HEREBY GIVEN that this Notice of Violation and Order is effective 20 days from its issuance, unless the City of Rapid City Landfill submits a written request for hearing before the Board of Minerals and Environment regarding the allegations. The written request must be filed before the expiration of 20 days, by delivering to: Secretary, Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501-3182. Upon receipt of a request for hearing, a contested case hearing following the procedures of SDCL Chapter 1-26 shall be scheduled before the Board of Minerals and Environment.

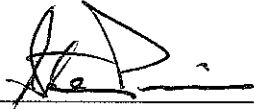
NOTICE IS ALSO GIVEN THAT, should the City of Rapid City Landfill fail to request a hearing within that time, the allegations stated herein shall be deemed fact and the Notice of Violation and Order shall be immediately effective and enforceable through the provisions of SDCL 34A-1-47.

NOTICE IS ALSO HEREBY GIVEN that these violations, as well as a failure to comply with the provisions of the Order, may subject the City of Rapid City Landfill to injunctive legal action pursuant to SDCL 34A-1-48, and to legal action for civil penalties and for damages to the natural resources pursuant to SDCL 34A-1-39.

This Notice and Order does not constitute a waiver or an election by the state to forego civil or criminal action to seek penalties or other relief as the State may deem appropriate under the provision of SDCL Chapter 34A-1. Further, this Notice of Violation and Order does not constitute a modification or amendment of the City of Rapid City Landfill's permit #28.1101-02,

or any of the terms and conditions thereof, which remains in full force and effect unless specifically amended by the corrective actions ordered by the Secretary herein.

Dated and signed this 13th day of August, 2013.



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

ATTACHMENT 1



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

2050 West Main Street, Suite #1
Rapid City, SD 57702-2493
Telephone: 605-394-2229
Fax: 605-394-5317

December 21, 2011

John Leahy
Landfill Manager
City of Rapid City Landfill
300 6th Street
Rapid City, SD 57701

Dear Mr. Leahy:

The South Dakota Department of Environment and Natural Resources (DENR) conducted an air quality inspection of the Rapid City Landfill on September 20, 2011. I would like to thank you for your time and cooperation in providing the requested information during the inspection. This inspection was conducted to determine if the City of Rapid City Landfill is in compliance with its Title V air quality operating permit #28.1101-02.

A copy of the inspection report is enclosed to provide insight on what DENR is looking for during inspections and how DENR determines if the City of Rapid City Landfill is in compliance with their permit.

During this inspection DENR determined that the City of Rapid City Landfill has not submitted all the information required by permit condition 8.17 – Semiannual report for an active collection system. The following information must be sent to DENR within 15 days of receiving this letter for the City of Rapid City Landfill to come into full compliance with all conditions of their Title V air quality operating permit.

- The Semiannual Report required by permit condition 8.17

If you have any questions, please contact me at 605-394-2229.

Sincerely,

Jon Epp, P.E.
Engineer III
Division of Environmental Services

Enclosure

ATTACHMENT 2

October 17, 2012

Karl Merbach
MRF Superintendent
City of Rapid City Landfill
300 6th Street
Rapid City, SD 57701

Dear Mr. Merbach:

The South Dakota Department of Environment and Natural Resources (DENR) conducted an air quality inspection of the City of Rapid City Landfill on September 6, 2012. I would like to thank you for your time and cooperation in providing the requested information during the inspection. This inspection was conducted to determine if the City of Rapid City Landfill is in compliance with its Title V air quality operating permit #28.1101-02.

A copy of the inspection report is enclosed to provide insight on what DENR is looking for during inspections and how DENR determines if the City of Rapid City Landfill is in compliance with their permit.

During this inspection DENR determined the City of Rapid City Landfill has not submitted the semiannual report required in permit condition 8.17 – Semiannual report for an active collection system. The City of Rapid City Landfill must submit the semiannual report to DENR within 15 days of receiving this letter for the City of Rapid City Landfill to come into full compliance with all conditions of their Title V air quality operating permit.

If you have any questions, please contact me at 605-394-2229.

Sincerely,

Jon Epp, P.E.
Engineer III
Division of Environmental Services

Enclosure

ATTACHMENT 3

From: Brakke, Ashley
To: "karl.merbach@rcgov.org"
Subject: SD Title V Air Quality Permit - Operational & Compliance Certification
Date: Friday, January 25, 2013 9:07:36 AM
Attachments: Rapid City Regional Landfill op2012.xlsx
Rapid City Regional Landfill cert2012.doc

January 25, 2013

Dear Karl:

The South Dakota Department of Environment and Natural Resources (DENR) developed an annual operational report and compliance certification report for your company. Both attached reports need to be completed and a hard copy submitted to DENR by March 1, 2013.

I apologize that these documents are not able to be sent back to DENR electronically; but since they have to be notarized, a hard copy must be submitted to the following mailing address:

Lita Magedanz
PMB 2020
Department of Environment and Natural Resources
523 East Capitol
Pierre, South Dakota 57501.

DENR will use the operational report to determine the amount of your company's air fees for the state fiscal year 2014. The official fee payment notice will be mailed in May 2013, which will provide you enough time to review for accuracy before it is due by July 31, 2013.

The annual certification report is attached for your convenience. If you choose not to use the annual compliance certification report we provided, the report you do submit must contain, at a minimum, the same information.

Please feel free to call me at (605) 773-3151, if you have any questions. If you wish to receive a hard copy of either report, please notify me by phone or at ashley.brakke@state.sd.us.

Thank you for helping us manage the natural resources of South Dakota.

Sincerely,

Ashley Brakke
Engineer I – Air Quality Program
SD Department of Environment & Natural Resources
Phone : (605) 773-3151

Attachments

ATTACHMENT 4



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

February 6, 2013

Karl Merbach
MRF Superintendent
City of Rapid City Landfill
309 6th Street
Rapid City, SD 57701

SCANNED
2-6-13
Air Quality

Dear Mr. Merbach:

The South Dakota Department of Environment and Natural Resources (DENR) conducted an air quality inspection of the Rapid City Landfill on January 29, 2013. I would like to thank you for your time and cooperation in providing the requested information during the inspection. This inspection was conducted to determine if the Rapid City Landfill is in compliance with its Title V air quality operating permit #28.1101-02.

A copy of the inspection report is enclosed to provide insight on what DENR is looking for during inspections and how DENR determines if the Rapid City Landfill is in compliance with their permit.

During this inspection DENR determined the Rapid City Landfill has not submitted the semiannual report required in permit condition 8.17 – Semiannual report for an active collection system. Rapid City Landfill must submit the semiannual reports for the first and second half of 2012 to DENR within 20 days of receiving this letter for Rapid City Landfill to come into full compliance with all conditions of their Title V air quality operating permit.

In addition, Rapid City Landfill needs to notify DENR of any changes (i.e., relocating the enclosed flare) that will need to be reviewed by the department to determine if any revisions to the Title V air quality operating permit are required before the change occurs.

DENR may consider enforcement action if the semiannual reports are not submitted within the 20 days of receiving this letter and/or on if the information provided in the semiannual reports demonstrates compliance with the permit. If you have any questions, please contact me at 605-773-3151.

Sincerely,

Ashley Brakke
Engineer I
Air Quality Program

Enclosure

ATTACHMENT 5

From: [Brakke, Ashley](#)
To: [Gustafson, Brian](#)
Cc: [Rombough, Kyril](#)
Subject: Rapid City Landfill
Date: Thursday, March 14, 2013 3:15:21 PM

Brian,

City of Rapid City Landfill will mail the 2012 semi-annual reports noted in the inspection report that have not yet been received by March 21, 2013. In addition, they will also mail their operational report and compliance report at this time.

Ashley

ATTACHMENT 6



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

March 28, 2013

Karl Merbach
MRF Superintendent
City of Rapid City Landfill
300 6th Street
Rapid City, SD 57701

Dear Mr. Merbach:

The South Dakota Department of Environment and Natural Resources (DENR) conducted an air quality inspection of the Rapid City Landfill on January 29, 2013. During this inspection DENR determined the Rapid City Landfill has not submitted the semiannual report required in permit condition 8.17 – Semiannual report for an active collection system for the first or second half of 2012.

On February 6, 2013 DENR notified Rapid City Landfill that enforcement action may be considered if the semiannual reports were not submitted within the 20 days of receiving that letter and/or on if the information provided in the semiannual reports demonstrates compliance with the permit. At this time, DENR still has not received Rapid City Landfill's semiannual reports.

Rapid City Landfill must submit the semiannual reports for the first and second half of 2012 to DENR postmarked no later than April 4, 2013 for Rapid City Landfill to come into full compliance with all conditions of their Title V air quality operating permit.

Additionally, DENR has not received Rapid City Landfill's operational report or compliance certification for 2012 that was due to DENR by March 1, 2013.

If the semiannual reports for 2012, compliance certification, and operational report are not postmarked by April 4, 2013; enforcement action will be taken.

If you have any questions, please contact me at 605-773-3151.

Sincerely,

Ashley Brakke
Engineer I
Air Quality Program

Enclosure