

**ORDINANCE 3597**

AN ORDINANCE AMENDING TITLE 8 OF THE RAPID CITY MUNICIPAL CODE BY CREATING NEW CHAPTERS 8.34, 8.36, 8.38, 8.40, 8.42, 8.44 AND CREATING NEW SECTIONS 8.34.010, 8.34.020, 8.34.030, 8.36.010, 8.36.020, 8.38.010, 8.38.020, 8.38.030, 8.38.040, 8.38.050, 8.38.060, 8.38.070, 8.38.080, 8.38.090, 8.40.010, 8.40.020, 8.40.030, 8.40.040, 8.40.050, 8.40.060, 8.40.070, 8.40.080, 8.40.090, 8.40.100, 8.40.110, 8.40.120, 8.40.130, 8.40.140, 8.40.150, 8.40.160, 8.40.170., 8.40.180, 8.40.190, 8.40.200, 8.40.210, 8.40.220, 8.40.230, 8.40.240, 8.40.250, 8.40.260, 8.40.270, 8.40. 280, 8.40.290, 8.40.300, 8.40.310, 8.40.320, 8.42.010, 8.44.10 PROVIDING FOR AIR QUALITY REGULATIONS.

BE IT ORDAINED by the City of Rapid City that Section 8.34.010, 8.34.020, 8.34.030 of Chapter 8.34 be added to the Rapid City Municipal to read as follows:

**8.34 POLICY, APPLICABILITY AND DEFINITIONS OF ORDINANCE**

**8.34.010 Policy of City:** In order to maintain a compliance status with the United State's Environmental Protection Agency's National Ambient Air Quality Standards and to prevent adverse health effects that result from fugitive emissions and smoke from wood burning and open burning, it is hereby declared to be the policy of the City of Rapid City, South Dakota to achieve and maintain the PM<sub>10</sub> and PM<sub>2.5</sub> National Ambient Air Quality Standards by controlling fugitive emissions, open burning and wood burning so as to protect the health and welfare of all the people who inhabit the city; to limit environmental damage to plant and animal life within the county; and to promote commercial and industrial development while limiting environmental degradation; and to educate the residents of the city on air quality issues. This policy is to be achieved and maintained through the development and implementation of programs of education, air pollution prevention, abatement and control. It is the purpose of this ordinance to provide for a program of fugitive emissions control by applying reasonable available control technology and solid fuel smoke abatement.

8.34.020 Applicability: This ordinance shall apply to:

1. The geographical area encompassing the city limits of the City of Rapid City;
2. Smoke from fuel burning sources;
3. Construction permits;
4. Compliance plans (paved and unpaved parking lots, streets sanding and cleaning operations);
5. Fugitive emissions requirements with the exception of industrial sources permitted by the South Dakota Department of Environment and Natural Resources.

**8.34.030 Definitions:**

1. Air Quality Board: There is hereby created an Air Quality Board consisting of seven (7) voting members and three (3) ex-officio members.
  - a. The composition and further requirements of the seven voting members are as follows:
    1. Two (2) members representing industry;
    2. One (1) member representing the engineering profession (member shall have graduated from an accredited college or university with an engineering degree);
    3. One (1) member representing environmental interests (member shall have an interest and knowledge in environmental issues, preferably air quality issues);
    4. One (1) member representing homeowners (member shall own a home in the regulated area);
    5. One (1) member representing the business community (member shall be associated with a business in the regulated area);
    6. One (1) member at large (member shall be selected at large by the County Commission).

Six of the voting members of the Air Quality Board shall be appointed on a rotating basis by the Mayor of Rapid City and confirmed by the Rapid City Council for a term of three (3) years on a staggered term basis. One member at large will be appointed by the Pennington County Board of Commissioners for a term of three (3) years. The current Board shall continue until their respective terms are up and shall be replaced by application and appointment.

All voting members shall be residents of the regulated area as defined in Section 8.34.020(1) or the area as regulated in Section 1.02 of Pennington County Ordinance No. 12, and with the exception of the two industry members, shall not derive a majority of their income, either directly or indirectly, from a person, as defined by Section 8.34.030(28), who is subject to regulation by this ordinance. For purposes of this section, a person who is subject to regulation by this ordinance does not include one who is regulated solely for a parking lot, open burning, or a solid fuel burning device. Applicants for the above positions, except for industry representative, shall submit a signed statement that they do not derive a majority of their income from a person who is subject to regulation by this ordinance. Any further documentation which the Rapid City Council or Board of County Commissioners may require concerning the applicant's finances are to be considered confidential and shall not be made available to anyone other than the Rapid City Council or Board of Commissioners.

- b. The composition and professional associations of the three Ex-Officio Members are as follows:

1. One (1) member representing state government (Secretary of the Department of Environment and Natural Resources, or designee);
2. One (1) member representing the City of Rapid City, South Dakota (Mayor of Rapid City or designee);
3. One (1) member representing the Pennington County Board of Commissioners (Chairman of Board or designee).

The duties of the Air Quality Board shall be to review and approve compliance plans, serve as an appeal board, act on enforcement action initiated by the Air Quality Division, and make recommendations to the Rapid City Council and Board of County Commissioners on policies related to the air quality of the City of Rapid City and Pennington County. The purpose and goal of the decisions made and actions taken by the Air Quality Board shall be to protect and serve the public interest.

3. Air Quality Control Zone: That area as defined in Section 8.34.020 (1).
4. Air Quality Division: There is hereby created the Rapid City Air Quality Division. The Air Quality Division shall be responsible for the administration and enforcement of this ordinance
5. Ambient Air: That portion of the atmosphere outside of buildings to which the general public has access.
6. Burning Season: That period of time from November 1<sup>st</sup> through March 31<sup>st</sup> in the following year.
7. Civil Action: In addition to the penalties set forth in this ordinance for a smoke abatement violation, the Air Quality Board may bring civil action for appropriate relief including a temporary or permanent injunction to enforce compliance with the provisions of this ordinance.
8. Commission: The Pennington County Board of Commissioners.
9. Construction Activity: Any temporary activity which involves the removal or alteration of the natural or pre-existing cover of one acre or more of land. Construction activity shall include but not be limited to stripping of topsoil, drilling, blasting, excavation, dredging, ditching, grading, street maintenance and repair, or earth moving. Construction activity is generally completed within one year.
10. Continuous Operating Activity: Any activity which may cause particulate fugitive emissions to be released into the ambient air and which is conducted on an on-going basis in the same locality. Continuous operation is associated with winter sanding of paved parking lots and maintenance of unpaved parking lots of more

than one acre in size and with street sanding and cleaning of streets, highways and roads.

11. Council: Rapid City Council.

12. Ecosystem Management: Those activities employed to maintain or enhance the floral or fauna habitat, or to reduce accumulated natural fuels in an area, and supervised by a local, state or federal land/wildlife management agency.

13. Entry on Property: Any duly authorized officer, employee or representative of any city or county agency responsible for enforcing this ordinance, after obtaining an escort and complying with safety regulations, may enter and inspect that part of any property, premises or place in which such officer, employer, or representative has reasonable grounds to believe is a source of air pollution or in which such officer, employee or representative has reasonable grounds to believe that the provisions of this ordinance are not being followed. The entry and inspection may be conducted at any reasonable time, without prior notice, for the purpose of investigating said pollution or of ascertaining the state of compliance with the ordinance. No person shall refuse entry or access to any authorized person who requests entry for the purpose of such an investigation, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such investigation.

14. Fire Hazard: Any thing or act, including buildings or flammable materials, which increases or could cause an increase of the hazard or menace of fire to a greater degree than that customarily recognized as normal by persons in the general public.

15. Fire Department Personnel Training: Activities designed for the purpose of training fire department personnel and conducted by a fire department.

16. Fuel: Solid matter burned in a solid fuel burning device or under the conditions of open burning that is limited to the following: untreated dry wood and lumber, coal and products manufactured for the sole purpose as a fuel. Untreated wood or lumber shall mean wood in its natural state that has not been chemically soaked or treated.

17. Fugitive Emissions: Those particulate emissions which do not pass through a stack, chimney, vent, or other functionally equivalent opening. In the event that any of the particulate emissions included by this definition are regulated by the State of South Dakota, the governmental entity which has the more strict and more extensive requirements for control of such emissions shall be crushers for which a permit to operate has been issued are excluded from this enforced over the least restrictive requirements. Particulate emissions from rock definition.

18. Inappropriate Fuel for Open Burning: Includes, but is not limited to: leaf piles, grass clippings, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, liquid gelatinous hydrocarbons, tar, paints and solvents, chemically soaked or treated wood, plastic or rubber, the materials specified in Section 8.36.020(4), or other materials not listed in Section 8.34.030(16).
19. Inappropriate Fuel for Solid Fuel Burning Devices: Includes, but is not limited to: leaves, grass clippings, pine needles, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically soaked or treated wood, plastic or rubber, the materials specified in Section 8.36.020(4), or other materials not listed in Section 8.34.030(16).
20. National Ambient Air Quality Standards (for particulates): The national primary and secondary ambient air standards for particulate matter as described in the July 18, 1997 publication of the Code of Federal Regulations, Part 50, Volume 62, No. 138 are:
- a. PM<sub>2.5</sub>: 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ), annual arithmetic mean concentration and  $65 \mu\text{g}/\text{m}^3$ , 24-hour average concentration. The daily standard is based upon an annual 99<sup>th</sup> percentile with a three year average of the 99<sup>th</sup> percentiles.
  - b. PM<sub>10</sub>:  $50.0 \mu\text{g}/\text{m}^3$ , annual arithmetic mean concentration and  $150.0 \mu\text{g}/\text{m}^3$ , 24-hour average concentration. The daily standard is based upon an annual 98<sup>th</sup> percentile with a three year average of the 98<sup>th</sup> percentiles.
21. Noxious Weed: Undesirable vegetation that is characterized by profuse seed production and/or an ability to spread through rapid growth, making it difficult to control or eradicate through normal management operations.
22. Opacity: The degree to which fugitive emissions reduce the transmission of a light source.
23. Open Burning: The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passage through a stack, duct, or chimney.
24. Open Burning Form: A form produced by the Air Quality Division and completed in cooperation with any person seeking approval to conduct open burning. The form provides relevant information regarding a planned open burning activity.

25. Parking Lot: Any parking lot to which street sanding material is applied and any unpaved parking lot to which the public has access that may generate fugitive emissions.
26. PM<sub>2.5</sub>: Particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half micrometers.
27. PM<sub>10</sub>: Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.
28. Person: Any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the State, trust, estate or any other legal entity.
29. Political Subdivision: Any public or private entity that maintains street operations within then area designated in Section 8.34.020(1).
30. Reasonably Available Control Technology (RACT): The emission control technology determined on a case by case basis by the Air Quality Board to be feasible in meeting the requirements of this ordinance, taking into account energy, environmental, economic impacts and other costs.
31. Reentrainment: A process in which particulate matter that has been deposited in one place, is then liberated into the ambient air by vehicular travel, wind, or other causes.
32. Smoke: Small airborne particles resulting from incomplete combustion consisting predominantly, but not exclusively, of carbon, ash, and other combustible materials, that form a visible plume.
33. Solid Fuel Burning Device: Any fireplace, fireplace insert, wood stove, wood burning heater, wood fired boiler, coal fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or space heating inside a building.
34. Wildfire: An uncontrolled fire spreading through vegetative fuels, exposing and possibly consuming structures.
35. Wildfire Control Management: Activities, including open burning, that are conducted to reduce the potential for serious or wild fires.

BE IT FURTHER ORDAINED by the City of Rapid City that Sections 8.36.010, 8.36.020 of Chapter 8.36 be added to the Rapid City Municipal Code to read as follows:

**8.36 SMOKE ABATEMENT**

### **8.36.010 Restrictions on Solid Fuel Burning Devices**

1. **Inappropriate Fuels Burned in Solid Fuel Burning Device Prohibited:** No person shall, at any time, burn inappropriate fuel as defined in this ordinance in any solid fuel burning device. No person shall use a fuel in a solid fuel burning device, except those that are recommended by the manufacturer, subject to any installation or operational restrictions imposed by the manufacturer.

2. **Sale of New Solid Fuel Heating Devices:** After July 1, 1991, no person shall sell or offer for sale, any new solid fuel heating device as defined by the United States Environmental Protection Agency in 40 CFR Part 60.530 through 60.539b, unless the solid fuel heating device has been emissions certified and labeled in accordance with those requirements. After July 1, 1991, no person shall sell or offer to sell any new solid fuel heating device that can not be certified under the aforementioned federal regulation unless the solid fuel heating device has an air to fuel ratio equal to or greater than 35 to 1 as determined by an independent testing laboratory.

### **8.36.020 Open Burning Rules:**

1. **Open Burning Restricted:** No person shall, at any time, engage in open burning activities within the Air Quality Control Zone, except as allowed under the following conditions:

- a. Open burning of agricultural irrigation ditches;
- b. Open burning for noxious weed control;
- c. Open burning for wildfire control management;
- d. Open burning for ecosystem management;
- e. Open burning for fire department personnel training;
- f. Open burning of a fire hazard.

Any inappropriate fuels, as defined in Section 8.34.030(18) present prior to open burning will be removed to the fullest extent possible prior to ignition.

2. **Conditions for Open Burning Approval:** Prior to ignition, a person requesting to open burn for the exceptions allowed under Section 8.36.020(1) must gain permission from one of the following fire control entities listed below, based upon the location of the proposed burning activity.

a. **Zones of Jurisdiction for Gaining Permission to Open Burn:**

1. **The Black Hills Forest Fire Protection District:** This includes all areas outside of the Rapid City city limits that are west of Interstate 90 to the north, and west of South Highway 79 to the south. Permission will be granted by the State Forester of the South Dakota Department of Agriculture, Resource Conservation and Forestry Division, or his designee.

2. Rapid City: This includes all areas within the Rapid City city limits. Permission will be granted by the Rapid City Department of Fire and Emergency Services.

3. All other portions of the Control Zone: This includes those areas served by the North Haines Volunteer Fire Department (VFD), the Box Elder VFD, the Rapid Valley VFD, except that portion west of South Highway 79, and those residents of the Black Hawk VFD who reside in that portion east of Interstate 90. Permission for these areas will be granted by the Rapid City Air Quality Division.

b. The following information, as outlined on the open burning form, will be provided to the appropriate fire control entity as described in Section 8.36.020(2)A:

1. The type of burning as described in Section 8.36.020(1);
2. Size of burn;
3. Location of the site;
4. Anticipated time and date of burn;
5. Name and phone number of contact person;
6. Name of responsible party assuming liability for the burn;
7. A contingency plan to be implemented in the event that control of the burn is lost.

A copy of the open burning form is available at the Air Quality Division and at all fire departments whose territories are outside of the Black Hills Forest Fire Protection District and inside of the Air Quality Control Zone.

3. Basis for Approval: Approval may be granted following receipt of the open burning form, and will be contingent upon the following:

- a. Current and forecast meteorological conditions;
- b. Current ambient air quality data;
- c. The volume of burning pending at the time of the request;
- d. The information provided on the open burning form;
- e. A site inspection, conducted at the discretion of the Air Quality Division.

Approval may be revoked or suspended by the Air Quality Division prior to the actual burn in order to protect public health and welfare. This determination would be based upon changing meteorological and/or ambient air conditions.

4. State Air Quality Regulations (ARSD 74:36:06) prohibit the following open burning practices:



- a. A person may not burn waste oils, rubber, waste tires, tarpaper, or asphalt shingles. For the purposes of this regulation, waste oil means any oil that has been refined from crude oil, used and contaminated by physical or chemical impurities as a result of such use;
- b. A municipality or county governmental agency may not burn municipal solid waste unless exempted by the small town exemption in accordance with ARSD 74:27:12:25:
- c. A person may not conduct or permit the operation of a salvage operation by open burning, except as allowed in article 74:27;
- d. A person may not burn railroad ties or wood treated with inorganic arsenicals, pentachlorophenol, or creosols.

BE IT FURTHER ORDAINED by the City of Rapid City that Sections 8.38.010, 8.38.020, 8.38.030, 8.38.040, 8.38.050, 8.38.060, 8.38.070, 8.38.080, 8.38.090 of Chapter 8.38 be added to the Rapid City Municipal Code to read as follows:

**8.38 CONSTRUCTION PERMITS AND COMPLIANCE PLANS:**

**8.38.010 Construction Permit Required:** No person shall engage in any construction activity which may cause fugitive emissions to be released into the ambient air without first obtaining a construction permit from the Air Quality Division.

**8.38.020 Compliance Plan Required:** No person shall engage in any continuous operation which may cause fugitive emissions to be released into the ambient air without first having a compliance plan approved by the Air Quality Board. After approval of the compliance plan, a three (3) year operating permit shall be issued by the Air Quality Division. This operating permit allows the applicant to commence the operation thereunder.

A construction permit shall not be required for construction activity at a continuous operation activity facility if such construction activity is a part of the site's compliance plan.

**8.38.030 Street Reentrainment Requirements:**

- 1. No person shall place any street sanding materials upon any road, highway, driveway, or parking lot to which the public has general access located in the area defined in Section 8.34.020(1) which does not meet the following requirements:
  - a. A durability or hardness as defined in MOH of greater than 6 for 70% of the material used;
  - b. No more than 3% of the total particle material content by weight may be smaller than 200 sieve.

For street sanding material, these criteria apply only to the material prior to the addition of salt or chemicals. Material of a lesser hardness may be used on steep roads if it is the only effective option available.

2. Any political subdivisions responsible for maintaining any public road inside the area in which road sanding materials are regulated shall clean the center line and areas immediately adjacent to the travel lane. Cleaning shall commence under one or more of the following conditions:

- a. When it has been determined by the Air Quality Division that the streets are sufficiently dry to commence street sweeping;
- b. When it has been determined by the Air Quality Division that there is a fugitive emissions problem due to street sanding material.

Street cleaning will not be required on public roads with restricted travel, or when unusual weather or other circumstances prevent it. The political subdivision shall include in its compliance plan a street cleaning plan listing priority streets and schedules.

3. Any political subdivisions maintaining any public roads inside the area in which road sanding materials are regulated shall water flush such roadways when it has been determined by the Air Quality Division that street sanding material is causing a fugitive emissions problem. This will be conducted after street cleaning. Street water flushing is not required if it endangers public safety or if water use restrictions are in effect. The political subdivision shall include in its compliance plan a water flushing plan.

4. All vehicles that are transporting fugitive dust emitting materials within the area designated in Section 8.34.020(1) on public roads shall be covered with a tarp to reduce such emissions or must use a method that is equally effective in reducing such emissions.

5. Any material that is deposited, other than street sanding material, on any public roadway on which vehicular travel is not restricted, that could be reentrained as fugitive emissions shall be cleaned or removed within 24 hours of deposition. The cleaning or removal process shall be conducted so that minimal fugitive emissions are generated.

**8.38.040 Reasonably Available Control Technology Requirements:** Any construction permit, continuous operation or political subdivision responsible for maintaining public roads shall provide for reasonably available control technology to prevent fugitive emissions from becoming airborne. Such controls may include, but not be limited to the following practices:

1. For activity involving the removal or alteration of natural or pre-existing ground cover including, but not limited to land clearing, excavating, grading, earthmoving, dredging, or demolition:

- a. Wetting down;

- b. Chemical stabilization;
  - c. Applying dust palliative;
  - d. Minimization of area disturbed;
  - e. Reclamation of disturbed area as soon as possible;
  - f. Vehicular speed limitation; and/or
  - g. Cleaning of paved areas.
2. For paved and unpaved roads, alleyways and storage areas, construction, altering, yearly street or highway maintenance and repair of road surface:
- a. Wetting down;
  - b. Chemical stabilization;
  - c. Applying dust palliative;
  - d. Vehicular speed limitation;
  - e. Movement of materials by enclosed vehicles or covered conveyance system;
  - f. Cleaning of paved areas;
  - g. Mechanical capture of fugitive emissions by vacuuming;
  - h. Water flushing (when safety is not jeopardized); and/or
  - i. Wetting ahead of open sweepers on rural roads.
3. Paved and unpaved parking lots:
- a. The paved parking lots shall be cleaned either by sweeping (mechanical or vacuum sweeper), water flushing (when safety is not jeopardized), or by any means possible to reduce sanding material reentrainment; and
  - b. The unpaved parking lots shall be maintained by any means possible to reduce dust reentrainment, such as wetting down, chemical stabilization, and vehicular speed limitation.
4. For material screening, handling, storage, processing or transportation:
- a. Installation of baghouses and other emission control and collection systems;
  - b. Enclosed conveyance systems;
  - c. Enclosing, covering, or applying dust suppressants on storage piles where practical;
  - d. Moisturizing or chemically treating the material during processing;
  - e. Cleaning of paved areas; and/or
  - f. Movement of materials by enclosed vehicle or covered conveyance system.
5. For erosion control:

- a. Planting of exposed area;
- b. Installing wind screen or equivalent wind speed reduction device;
- c. Chemical stabilization;
- d. Covering with a non-erodible material;
- e. Runoff control barriers and dams.

**8.38.050 Contents of Application for Construction Permit, Compliance Plan or Amendment to a Compliance Plan:** All applications shall be submitted to the Air Quality Division. The applications shall contain:

- 1. Name and address of the person making the application. If the applicant is a corporation, the name and address of its registered agent.
- 2. Legal description and location of the land affected.
- 3. Description of the proposed construction or proposed continuous operation activity including nature and description of equipment used.
- 4. Proposed date for both commencement and termination of operation.
- 5. Proposed date for both commencement and completion of reclamation plan including a detailed description of plan.
- 6. Necessity for state approval and, if so, an indication of:
  - a. If application been made;
  - b. When action on the application is expected;
  - c. Name, division and board or the state agency from whom approval is sought.
- 7. An overall description of the nature and scope of the construction or continuous operation activity and conditions which will result in fugitive emissions.
- 8. A plan of the Reasonably Available Control Technology required in Section 8.38.040 to be applied which will prevent fugitive emissions that exceed 20%.
- 9. Upon request by the Air Quality Division the following information may be required:
  - a. A listing of all sources of particulate fugitive emissions, stating in tons per year the uncontrolled emissions to be produced;
  - b. The control technology applied or proposed to be applied and the fugitive emissions expected in tons per year after the control technology has been applied;
  - c. The percentage of efficiency of the control technology.

The plan shall identify the sources of all emissions calculations or estimates and provide documentation of the methods used to determine control efficiency.

10. Upon request by the Air Quality Division a discussion of the economic and technical reasonableness of the proposed fugitive emission controls, including data which will assist the Air Quality Board in determining if the control technology specified in the compliance plan will meet the requirements set forth in this ordinance, may be required.

The Air Quality Board shall have the authority to require the applicant to provide actual or proposed production data to the Air Quality Division. This information shall be used by the Air Quality Division for the purpose of processing the application, and determining if a compliance plan or compliance plan amendment will meet the requirements of this ordinance, and for no other purposes.

**8.38.060 Records and Information Available to Public:** Any records or information obtained by the Air Quality Division or Air Quality Board from owners or operators of an air contaminant source or sources shall be available to the public.

**8.38.070 Application Procedure for Construction Permits:**

1. The Air Quality Division shall have (10) working days from the time a determination is made that the application is complete to either approve or reject the application and issue the construction permit. If the Air Quality Division determines the application is complete and is in compliance with the ordinance, a construction permit shall be issued. In the event that the application has not been approved or rejected within the (10) working day period, it shall be deemed to be approved.
2. No change in construction shall be allowed which would result in an increase of fugitive emissions from the construction site without first amending the construction permit. The amendment procedure is the same as set out in Section 8.38.070(1). The required fee for the amendment is described in Section 8.42.
3. The construction permit fee is as described in Section 8.42 . The fee is payable to the City of Rapid City, and shall be collected by Air Quality Division at the time an application is filed.

**8.38.080 Application Procedure for Compliance Plans:**

1. All applications for a compliance plan or amendments to a compliance plan shall be submitted to the Air Quality Division at least fifteen working days before the regular monthly Air Quality Board Meeting at which it would be considered. The fifteen working day time period shall commence on the day after the date the application was submitted and shall include the day of a Board meeting if such a

date is a working day. During the fifteen-day period, the Air Quality Division shall determine if the application is complete. No application shall be submitted to the Air Quality Board that does not have all the information required by this ordinance. If an application is returned to the applicant as not being complete, the rejection notice shall be in writing and specifically state what information is missing or not contained in sufficient detail to meet the requirements of this ordinance.

2. No change in continuous operation activity shall be allowed which would result in an increase of fugitive emissions from that site without first amending the approved compliance plan permit.

Any amendments to a compliance plan will take effect upon approval by the Air Quality Board. The existing compliance plan will be amended to reflect the change and will be valid through the life of the initial permit. Fees for amendment will be charged in accordance with Section 8.42.

3. Once an application for a compliance plan or an amendment to a compliance plan has been submitted to the Air Quality Board, a 60-day review period shall commence. The Air Quality Board must act upon the proposed plan within 60 days or such plan shall be deemed as approved. If the applicant is requested to provide additional information within a specified period of time and fails to act within such time period, the 60-day review period shall be extended by a like number of days.

**8.38.090 Operating with a Compliance Plan:** Upon approval of the compliance plan, a three (3) year permit shall be issued allowing the applicant to commence operation thereunder. The approved compliance plan shall become binding terms of the operation. Amendments to a compliance plan approved by the Air Quality Board are enforceable provisions of the permit.

Applications for a compliance plan renewal shall be submitted to the Air Quality Division sixty (60) days prior to the expiration, and shall follow the requirements as described in Section 8.38.050 of this ordinance.

Compliance plans shall be updated every three years, or three years from a plan's last review by the Air Quality Board, whichever is later. The update shall contain all changes, additions, modifications, and expansions which would result in an increase of fugitive emissions from the operation over the past three (3) years.

BE IT FURTHER ORDAINED by the City of Rapid City that Sections 8.40.010, 8.40.020, 8.40.030, 8.40.040, 8.40.050, 8.40.060, 8.40.070, 8.40.080, 8.40.090, 8.40.100, 8.40.110, 8.40.120, 8.40.130, 8.40.140, 8.40.150, 8.40.160, 8.40.170., 8.40.180, 8.40.190, 8.40.200, 8.40.210, 8.40.220, 8.40.230, 8.40.240, 8.40.250, 8.40.260, 8.40.270, 8.40. 280, 8.40.290, 8.40.300, 8.40.310, 8.40.320 of Chapter 8.40 be added to the Rapid City Municipal Code to read as follows:

## 8.40 EMISSION STANDARDS, ENFORCEMENT AND APPEAL PRODEDURES

### 8.40.010 Emissions Standards for Construction or Compliance Plan Activities:

1. Facility boundary standard: The transportation of visible fugitive emissions off the property of a construction or continuous operation facility site for more than 10% of the time for any one hour period will be considered as an indication that the provisions of the construction permit or compliance plan are not being complied with and shall cause a determination to be made of the source of the visible fugitive emissions and an opacity reading to be made at such sources. Visible fugitive emissions limitations specified in this paragraph shall be determined by a certified observer using Tennessee Visible Emission Evaluation Method (40 CFR 52.2220 Part A 73 Method 4), Visual Determination of Fugitive Dust Emission Crossing a Property Line, approved by EPA Fed. Reg. V52, No. 10, January 15, 1987, Page 1628.

2. Fugitive emissions source standard: A fugitive emissions source shall not have a density greater than that designated as twenty percent (20%) opacity. Exceedance of this standard shall be considered a violation of the provisions of the construction permit or compliance and cause a review of the construction permit or compliance plan. Fugitive emissions limitations specified in this paragraph shall be determined by a certified observer using Tennessee Visible Emission Evaluation Method 1, (40 CFR 52.2220 Part A 50, 51 Method) Visual Determination of Opacity of Emission From Nontraditional Source, approved by the US EPA in Federal Register, Vol. 47, No. 235, December 7, 1982, page 54936, as amended, Federal Register Vol. 28, No. 51, March 15, 1983, page 10834, Federal Register Vol. 50, No. 78, April 23, 1985, page 15892; or by operation of equipment approved by the Air Quality Division that is known to produce equivalent or more accurate results.

No readings shall be made when wind velocity exceeds twenty-five (25) miles per hour during, or within thirty (30) minutes of the reading as determined by a qualified person, or by use of one or more anemometers at the site. Anemometers shall be used where practical. The property line of public or private rights-of-way through the construction or continuous operation facility site shall not be used for a measurement location.

**8.40.020 Notice of Violation - Order for Corrective Action Included:** The Air Quality Division has reason to believe that a violation of any provision of this ordinance has occurred, the Air Quality Division may cause written notice to be served upon the alleged violator or violators. The notice shall specify:

1. The provision(s) of this ordinance alleged to be violated;
2. The facts alleged to constitute a violation thereof.

The notice may include an order that necessary corrective action be taken within a reasonable time period.

The Air Quality Division shall execute or issue a written notice of violation and order to any person who violates any portion of this ordinance.

**8.40.030 Penalties and Petition to Contest Notice of Violation:** Any person violating any portion of this ordinance shall be subject to a fine not to exceed \$100.00. Each calendar day a violation occurs shall be considered a separate offense. Any person who wishes to contest a notice of violation must request a hearing before the Air Quality Board within (15) days of receiving the notice of violation or it becomes final. A petition to contest a notice of violation to the Air Quality Board shall be heard at its next regularly scheduled meeting in which a decision on the notice of violation shall be rendered. The Air Quality Board's decision may be appealed to the Council in accordance with Sections 8.40.040 to 8.40.290 and must be petitioned within (15) days of the date the Air Quality Board's decision is rendered.

**8.40.040 Petition to Initiate Contested Case:** Any applicant or person wishing to contest a decision of the Air Quality Board concerning a permit application or enforcement action shall file a petition for a contested case hearing before the Council. The petition shall contain the following:

1. A statement of the petitioner's involvement in the matter;
2. A statement of the decision contested, if any, and the relief and decision requested from the Council;
3. A statement alleging the relevant facts and issues known to the petitioner upon which he bases his contest;
4. A statement of the legal authority and jurisdiction under which the hearing would be held, if known;
5. A reference to the particular section of the ordinance involved, if known;
6. The signature of the petitioner or the petitioner's attorney(s).

The petitioner shall serve a copy of the petition upon the Air Quality Board and all known persons affected by the petitioner's request who shall be considered parties to the proceeding.

**8.40.050 Notice and Hearing Required in Contested Cases:** In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

**8.40.060 Answer to Petition to Initiate Contested Case:** Within ten (10) days of receipt of a petition of contested case, the party whose decision is being contested shall serve a written answer thereto on the petitioner and other parties of record. The answer shall respond to the allegations in the petition and state the desired decision of the Council. Failure to answer an allegation in a petition shall constitute an admission of that fact. Further pleadings by parties in response to an answer shall not be required unless the



prehearing examiner orders them for purposes of clarification of the issues involved in the contested case.

**8.40.070 Pleadings to be Filed with Council:** The original of any petition, motion, or other pleading shall be filed with the Council. The person filing the pleading shall mail copies thereof to the hearing chairman, hearing examiner if applicable, and all parties of record.

**8.40.80 Appointment of Hearing Chairman:** Upon the filing of a petition for a contested case, the chairman of the Council shall appoint himself/herself or a member of the Council to act as hearing chairman. The hearing chairman shall be responsible for all prehearing rulings, including motions to intervene, motions for a continuance, and any other motions necessary to ensure an orderly hearing process. Any decision made by the hearing chairman is a final decision of the Council unless reversed by a majority of the Council at the hearing on the matter. Notice of this appointment and of the date set for a prehearing conference shall be served on all parties by the Council.

**8.40.090 Prehearing Motions:** Any party may make a prehearing motion by filing the same in writing with the Council before the date set for the prehearing conference. Copies of the motion shall be served upon the prehearing examiner and all parties of record. The motion shall contain the factual and legal basis for the motion. The motion shall be heard and a decision thereon made by the prehearing examiner at the prehearing conference.

**8.40.100 Prehearing Conference:** The hearing chairman shall hold a prehearing conference within twenty (20) days of the filing of a petition for a contested case. The prehearing examiner will decide all prehearing motions at this conference and will establish a reasonable discovery schedule. The prehearing examiner will also set the time and place of the hearing of the petition before the Council. Any other issue properly discussed at a pretrial conference under the Rules of Civil Procedure of the state of South Dakota may be heard at the prehearing meeting.

**8.40.110 Notice of Contested Case:** The Council shall issue a notice of a contested case proceeding. The notice shall reference the petition filed with the Council and shall be served upon all parties of record.

**8.40.120 Contents of Notice in Contested Case:** The notice shall include:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the relevant sections of the ordinance;
4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, a more definite and detailed statement shall be furnished;

5. A statement of any action authorized by law, which may affect the parties, as a result of any decision made at the hearing, whether it be the revocation of a permit, enforcement action, or other effect;
6. A statement that the hearing is an adversary proceeding and that a party has the right at the hearing, to be present, to be represented by a lawyer, and that these and other due process rights will be forfeited if they are not exercised at the hearing;
7. A statement that the decision based on the hearing may be appealed to the Circuit Court and the State Supreme Court as provided by law.

**8.40.130 Subpoenas:** The hearing chairman shall issue any subpoena necessary for the conduct of the hearing. Any party wishing to obtain a subpoena shall submit a written request and a proposed subpoena to the hearing chairman prior to the rehearing conference.

**8.40.140 Conduct of Hearing:** The hearing chairman shall act as the chairman of the Council for the contested case hearing and shall make all necessary evidentiary rulings during the proceeding.

**8.40.150 Rights of Parties at Hearings on Contested Cases:** Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. A party to a contested case proceeding may appear in person or by Council, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the parties interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in the party's behalf.

**8.40.160 Transcript in Contested Cases:** A verbatim recording of all proceedings and testimony shall be kept by the Council. Unless otherwise provided by law the Council shall not be required to transcribe the record unless the requesting party tenders and pays the reasonable cost thereof. If transcribed, a copy of the record shall be furnished to any other party to the hearing at the request and expense of such other party.

**8.40.170 Transcripts by Court Reporter:** Any party wishing to obtain a transcript of a contested case hearing must make arrangements with a court reporter prior to the hearing. The Council may, on their own motion, have a transcript of a contested case proceeding prepared; however, parties must obtain copies of the transcript from the court reporter at their own cost.

**8.40.180 Means and Proof of Service:** The service of all pleadings, notices, or orders may be made by certified mail or personal service. An affidavit of mailing or service copies of the receipts for delivery of certified mail, an admission of service, or other competent evidence shall be proof of service.

**8.40.190 Degree of Proof Required:** Whenever, under the provisions of this ordinance a person is required to find, demonstrate, show, or otherwise establish a fact, that fact must be established by a preponderance of the evidence.

**8.40.200 Rules of Evidence in Contested Cases:** Irrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the Circuit Court of the State of South Dakota, or as may be provided in statutes relating to a specific agency, shall be followed.

**8.40.210 Appointment of Hearing Examiner:** The Chairman of the Council may appoint a hearing examiner to conduct the hearing of the contested case. After hearing the proceeding, the hearing examiner shall make proposed findings of fact, conclusions of law, and an order to the Council. A copy shall be served upon all parties of record. The Council shall allow all parties to object in writing to the hearing examiner's decision and to present oral argument prior to the Council rendering a final decision on the contested case proceeding.

**8.40.220 Decision of Commission:** A final decision in a contested case shall be that obtained by a majority vote from a quorum of the Council. Any final decision and resulting orders shall be signed by the hearing chairman of the Council.

**8.40.230 Findings of Fact, Conclusions of Law, and Order:** All parties to a contested case proceeding may present proposed findings of fact, conclusions of law, and an order to the Council at the close of the hearing. The Council shall adopt or reject findings, conclusions and an order in support of its decision which shall constitute the final decision of the Council. The Council shall serve written notice of the findings, conclusions, and order upon all parties to the proceeding. A party may file written objections to the Council's final decision within ten days of receipt of the notice, although the appeal time shall run from the date of receipt of the notice.

**8.40.240 Contents of Record in Contested Cases:** The record in a contested case shall include:

1. All pleadings, motions, intermediate rulings;
2. Evidence received and considered;
3. A statement of matters officially noticed which have been refuted;
4. Questions and offers of proof, objections, and rulings thereon;
5. Proposed findings and exceptions;
6. Any decision, opinion, or report by the officer presiding at the hearing.

**8.40.250 Hearing Requested on Order For Correction Action-Time Allowed:** Any order issued pursuant to Section 8.40.020 shall be final unless, no later than twenty days after the date the notice and order are served, the person or persons named therein

request in writing a hearing before the Air Quality Board. Upon such request, the Air Quality Board shall proceed in the same manner as set forth for a contested case hearing before the Council.

**8.40.260 Contested Case Proceeding in Lieu of Order - Consent Agreement:**

In lieu of an order, the Air Quality Board chairman may schedule a contested case under this ordinance before the Air Quality Board. Nothing in this ordinance shall prevent the Air Quality Division from notifying an alleged violator of violations and negotiating a consent agreement instead of initiating proceedings under Section 8.40.020. Any consent agreement shall be approved by the Air Quality Board.

**8.40.270 Air Quality Board Orders After Hearing:** If, after proceedings held pursuant to 8.40.020 or 8.40.030, the Air Quality Board finds that a violation has occurred, it shall affirm or modify any order previously issued under Section 8.40.020 by the Air Quality Board chairman, or issue an appropriate order for the prevention, abatement or control of the emissions or air pollution involved. If, after proceedings on an order contained in a notice, the Air Quality Board finds that no violation is occurring, it shall rescind the order.

**8.40.280 Time Allowed for Corrective Action in Air Quality Board Order:** For any order issued as part of a notice or after proceedings under this ordinance, the Air Quality Board shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the implicated emissions or air pollution.

**8.40.290 Appeals:** Decisions of the Council may be appealed to the Circuit Court as provided by law. Decisions of the Air Quality Board may be appealed to the Council, the review of which shall be limited to the record as established before the Air Quality Board.

**8.40.300 Remedy Not Exclusive:** Nothing in this ordinance shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceedings for such relief.

**8.40.310 Voluntary Compliance:** Nothing in this ordinance shall prevent the Air Quality Division from making efforts to obtain voluntary compliance through warning, conferences, or any other appropriate means.

**8.40.320 Consent Agreement:** Nothing in this ordinance shall prevent the Air Quality Division from notifying an alleged violator of violations and negotiating a consent agreement. Any consent agreement shall be approved by the Air Quality Board.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 8.42.010 of Chapter 8.42 be added to the Rapid City Municipal Code to read as follows:

**8.42 FEES:**

**8.42.010** Application fees for permitting services are payable to City of Rapid City and shall be collected by the Air Quality Division at the time an application is filed. The City of Rapid City and County of Pennington County are exempt from paying fees. Fees administered by this office will be as follows:

1. Construction permit - for sites less than or equal to 5 acres: \$75.00; for sites over 5 acres: \$100.00;
2. Construction permit amendment - \$25.00;
3. Compliance plan for paved parking lots larger than or equal to one acre: \$15.00 per acre, not to exceed \$75.00;
4. Compliance plan for unpaved parking lots larger than or equal to one acre: \$25.00 per acre, not to exceed \$150.00;
5. Open burning form – no charge.

Failure to submit the application and/or pay the permitting fee will result in a daily fine not to exceed \$100.00. Each day in which the application and/or payment is not received, is considered a separate offense, and separate fines will be assessed. An air quality notice of violation will be attached to the deed of the property at the Register of Deeds office in the Pennington County Courthouse until the fines and permitting fees have been paid.

BE IT FURTHER ORDAINED by the City of Rapid City that Section 8.44.010 of Chapter 8.44 be added to the Rapid City Municipal Code to read as follows:

**8.44 SEVERABILITY OF PROVISIONS AND APPLICATIONS**

**8.44.010 Severability of Provisions and Applications:** If a part of this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

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Finance Officer

(SEAL)

First Reading:  
Second Reading  
Published:  
Effective: