



# CITY OF RAPID CITY

**RAPID CITY, SOUTH DAKOTA 57701-2724**

## PLANNING DEPARTMENT

300 Sixth Street

LF021302-02

Rapid City Area Air Quality Board

Phone: 605-394-4120

Fax: 605-394-6636

### MEMORANDUM

TO: Rapid City Council and Pennington County Commission

FROM: Chairperson Bob Riggio and the Rapid City Area Air Quality Board

DATE: February 4, 2002

RE: Rapid City Air Quality

This memorandum brings to the attention of the Rapid City Council and the Pennington County Commissioners a matter the Rapid City Area Air Quality Board (Air Quality Board) believes needs to be addressed. The issue at hand is SDCL 34A-1-36 (Municipal and County Programs approved by Board – BME). The City Attorney's staff has interpreted this statute to state that the Air Quality Board does not have authority to regulate the State or contractors of the State.

#### **Air Quality Issue**

In 1978, Rapid City was determined to be in violation of the National Ambient Air Quality Standard for Total Suspended Particulates (TSP) by the Environmental Protection Agency and was given a "Non-attainment" designation for this pollutant. The Air Quality Board was created in 1980 to address the non-point source air pollution (i.e. fugitive emissions – dust) in Rapid City. Under SDCL 34A-1-36, the South Dakota Board of Minerals and Environment approved this program to address this problem. The Department of Environment and Natural Resources addresses point source emissions (emission that come out a stack) and fugitive emissions from industrial sources. The Air Quality Board addresses all other fugitive emissions through the Rapid City Municipal Code Chapters 8.34 through 8.44 and the Pennington County Ordinance No. 12. This includes reasonable controls on excessive dust-producing activities, which include general construction, road construction, open burning, street deicing and traction materials and traffic on unpaved roads and parking lots.

Under SDCL 34A-1-36, the Air Quality Board had the authority to regulate State facilities since the Rapid City area was designated "Non-attainment" for TSP. In 1987, Environmental Protection Agency changed the TSP particulate standard to PM10 (particulate matter less than 10 microns). The smaller sized particle was determined by scientific study to cause more health problems than



EQUAL OPPORTUNITY EMPLOYER

TSP. With the change in pollutant, Rapid City was no longer considered to be “Non-attainment” of the TSP standard. A new designation of “Unclassified/Attainment” was given for the PM10 standard until three years of acceptable data was collected from the monitoring system set in Rapid City. To date, the Rapid City area has experienced exceedances of the daily PM10 standard. However, these exceedances have not caused a violation (Non-attainment status) of the PM10 standard. The Rapid City area remains in jeopardy of violating this standard if we continue to experience exceedances and do not control dust sources from all activities.

According to the City Attorney, South Dakota Law (SDCL 34A-1-36) exempts State Agencies and State contractors from the regulations promulgated by the City and County Air Quality Ordinances since the area is not in violation (“Non-attainment”) of the PM10 standard. The South Dakota Department of Transportation or its contractors, for example, may emit excessive dust from road building activities without any official recourse by the Air Quality Board. Only after Rapid City is designated “Non-attainment” does the South Dakota Law allow the Air Quality Board to enforce the Air Quality Ordinances on State activities.

Clearly this places the Air Quality Board in a reactive position and not the preferred proactive position. This also creates an inequity amongst contractors in the Rapid City area. A contractor conducting non-state business has stricter requirements and standards than do contractors conducting State business. In the same token, State entities (Department of Transportation, National Guard, SDSM&T, etc) do not have to comply with our rules, but generate the same amount of dust as other non-state entities that are regulated.

The Air Quality Board believes that the current State law as written, places Rapid City at risk of being designated “Non-attainment” for dust by the U. S. Environmental Protection Agency due to potential dust-producing activities by the State or its contractors. The Air Quality Board has the responsibility of addressing only a portion of the air quality issues in Rapid City. Currently, this statute precludes us from addressing the fugitive dust emissions from State activities.

## Options

The Air Quality Board respectfully offers three options for the Rapid City Council and the Pennington County Commission to consider.

1. **Do Nothing** - Consider this memorandum as an information item only. The Rapid City Air Quality Division staff will continue enforcing the City and County Air Quality Ordinance for all non-state activities.
2. **Establish Tracking Procedures** - Direct the Rapid City Air Quality Division staff to monitor the State’s activities that generate fugitive dust. If problems are observed by the Air Quality Division, the person responsible for generating the fugitive dust would be contacted and asked to voluntarily comply with the Air Quality Ordinance. This information would be used to consider changes to the State statute in the future, if warranted. This option would not allow the Air Quality Division to enforce the ordinance if the State or its contractors choose not to comply with the provisions of the Air Quality Ordinances. The complaint will be forwarded to the South Dakota Department of Environment and Natural Resources to take steps to bring the facility into compliance.
3. **Amend the State Law** – Pursue a change in SDCL 34A-1-36 (Air Pollution Control). The Air Quality Board has provided a suggestion regarding this change (see attached).

**Recommendation: The Air Quality Board recommends Option No. 2. (See the attached minutes from the February 4, 2002 Special Air Quality Board meeting for details.)**

If you have any questions, please feel free to contact me or Marcia Elkins Rapid City Planning Director. Your attention to this matter is appreciated.

Cc: Mr. Steve Pirner, Secretary South Dakota Department of Environment and Natural Resources  
Mr. Richard R. Long, Air Quality Administrator Environmental Protection Agency

34A-1-36. Municipal and county programs approved by board -- Application to state facilities. Each municipality and each county may with the approval of the Board of Minerals and Environment establish and thereafter administer programs within its jurisdiction an air pollution control program which provides by ordinance or local law for requirements as strict or more strict and more extensive than those imposed by this chapter and regulations issued thereunder, upon prior review and approval by the board, less restrictive requirements. The air pollution control jurisdiction authorized pursuant to this section shall apply to **all state facilities facility activities that generate fugitive emissions** located within the boundaries of the municipality or county ~~in the event the municipality or county has been found to be in violation of the National Ambient Air Quality Standards.~~ **with an approved air pollution control program.**

**Minutes of the February 4, 2002  
Special Meeting of the Rapid City Area Air Quality Board**

**1. Call to Order.**

Mr. Bob Riggio called the meeting to order at 1:19 pm.

The following members were present: Bob Riggio, Tim Rogers, Duane Sudman and Pam Sutterfield.

The following members were absent: Joel Brannan, Steve Flanery and George Nelson.

Others Present: Bill Waugh, Kendra Larson, Brad Schultz, Jon Epp, Teresa Whitney, Marcia Elkins, Jason Green, Adam Altman and Mayor Jerry Munson.

**2. Old Business**

**A. Discussion on memo to the Rapid City Council and Pennington County  
Commission regarding State Facilities**

Riggio proposed that the Board review the draft as distributed and then determine if they wish to make a recommendation and if so, identify which option to recommend. Discussion followed.

Schultz suggested a change on page 2, paragraph 1, sentence 1 to refer to the designation as "Unclassified/Attainment". Schultz suggested the change to the sentences 2 and 3 in the same paragraph as follows – "To date the Rapid City area has experienced exceedances of the daily pm10 standard. However, these exceedances have not caused a violation (Non-attainment status) of the PM10 standard."

Schultz recommended a change on page 2, paragraph 2 sentence 1 to begin "According to the City Attorney, South Dakota Law..."

Schultz suggested that the Option 1, sentence 2 be revised to include "and the state contractors." Discussion followed. Rogers suggested removing the entire second sentence in Option 1. Additional discussion followed.

Subsequently, Schultz suggested that a new second sentence be added to Option 1 to read: "The Rapid City Air Quality Division staff will continue to enforce the City and County Air Quality Ordinances for all non-State activities."

Schultz suggested adding to Option 2 "The complaint will be forwarded to the South Dakota Department of Environment and Natural Resources to take steps to bring the facility into compliance."

Sudman stated there was a grammatical error on page 2, paragraph 2, sentence 2. He suggested that the word "may" should be used instead of "can."

Riggio stated that on page 1, paragraph 1, sentence 3, the word "State" should be lower case "state."

Riggio requested that the heading on page 1 "What is the issue?" be changed to "Air Quality Issue."

Riggio stated that on page 2, paragraph 3, sentence 3, the word "state" should be upper case "State."

Riggio stated there should be a wording change on page 2, paragraph 4, sentence 2 to "The Air Quality Board has the responsibility to enforce its piece of the air quality." Discussion followed. Riggio suggested this sentence be changed to read: "The Air Quality Board has the responsibility of addressing only a portion of the air quality issues in Rapid City."

Riggio stated the reference to the State Law in Option 3 needed to be amended to "SDCL 34A-1-36."

Whitney indicated that Jason Green has proposed a change to the statute as outlined on page 4. Whitney suggested that the last sentence be revised to read: "The air pollution control jurisdiction authorized pursuant to this section shall apply to all state facility activities."

Whitney indicated that Flanery had asked if the South Dakota Department of Transportation or South Dakota National Guard should be sent a copy of the memo. Discussion followed. Riggio indicated that these agencies will not be sent a copy of the memo at this time.

Jason Green joined the meeting at this time.

Riggio asked if the Board felt they should make a recommendation or not. Waugh, Whitney and Elkins all suggested that the Board provide a recommendation to the City Council and County Commission. Discussion followed.

In response to a question from Rogers, Elkins indicated that based on discussions with Jason Green, staff is not comfortable with the recommendation presented in Option 2

Mayor Munson joined the meeting at this time.

Green elaborated on his concerns regarding Option 2.

Riggio expressed his support for Option 2. He suggested that Option 3 was a quantum leap. Discussion followed regarding cooperation by the State in the past.

Rogers indicated that in his conversations with Secretary Pirner, Pirner had requested documentation showing the problems that have been experienced with State activities. Rogers expressed concerns that there is an inequity when the same rules are not being applied to State projects. Rogers also suggested that requesting an Attorney General's Opinion is another alternative. Discussion followed.

Larson joined the meeting at this time.

Elkins expressed concern that requiring staff to enforce the Air Quality Ordinances on a voluntary basis could undermine the credibility of the staff. She indicated that staff could track problems and complaints. Waugh suggested that proceeding with Option 2 with the language being revised to indicate that staff is tracking these projects, but not enforcing or permitting the projects. Discussion followed.

Green suggested that perhaps an additional option would be to consider combining Option 2 for tracking projects and Option 3 requesting State statute changes. Discussion followed.

Sutterfield indicated that she supports Option 3 because it might get the attention of State Agencies and State contractors which may result in more action to control fugitive dust.

Sudman suggested changes to Option 2. Discussion followed.

Larson also expressed support for making a change to the statute.

In response to a question from Riggio, Elkins outlined revisions to Option 2 to read as follows: "Direct the Rapid City Air Quality Division staff to monitor the State's activities that generate fugitive dust. If problems are observed by the Air Quality Division, the person responsible for generating the fugitive dust would be contacted and asked to voluntarily comply with the Air Quality Ordinance....."

**Rogers made a motion to include Option 4 which would combine Options 2 and 3; Sudman seconded the motion for purposes of discussion.**

Rogers stated that in his opinion, staff should start the tracking problems and complaints related to State activities, and that the process for legislative changes for consideration in the 2003 Legislative Session should also be started.

Sudman expressed his opinion that sentence 4 in Option 2 should read as follows: "This information would be used to consider changes to the State statute in the future, if warranted." He stated that with changes to Option 2, Option 4 would not be needed. Sudman expressed concern with getting too many options in front of the governing bodies. Discussed followed.

Larson indicated the need to regulate the State agencies and treat State and private activities the same. Additional discussed followed.

**Motion failed with a 0-3 vote, with Rogers, Sudman and Sutterfield opposed.**

Riggio reviewed the three remaining options. Riggio requested that the minutes of the meeting be forwarded with the memo to the City Council and County Commission. Sudman requested that the Options be numbered 1 through 3 and referred to in that way to prevent confusion.

**Sutterfield made a motion to recommend Option 3 to the City Council and County Commission. Sudman seconded the motion for purposes of discussion.**

Rogers stressed the need to document the problems with State activities to justify the need for the local Air Quality Board to regulate State agencies.

**The motion failed with a 1-2 vote, with Sutterfield in favor and Sudman and Rogers opposed.**

**Sudman moved to submit the letter with three options to the City Council and County Commission with the Air Quality Board recommendation of Option 2 with the following revised language “Direct the Rapid City Air Quality Division staff to monitor the State’s activities that generate fugitive dust. If problems are observed by the Air Quality Division, the person responsible for generating the fugitive dust would be contracted and asked to voluntarily comply with the Air Quality Ordinance. This information would be used to consider changes to the State statute in the future, if warranted. This option would not allow the Air Quality Division to enforce the ordinance if the State or its contractors choose not to comply with the provisions of the Air Quality Ordinances. The complaint will be forwarded to the South Dakota Department of Environment and Natural Resources to take steps to bring the facility into compliance.” Rogers seconded the motion.**

**The motion to recommend Option 2 with the revised language was approved with a 2-1 vote, with Sudman and Rogers voting in favor and Sutterfield opposed.**

### **3. Adjournment**

**Sudman moved to adjourn the meeting. Sutterfield seconded the motion. The motion was approved unanimously.**