



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-5035

## Growth Management Department

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## MEMORANDUM

TO: Legal and Finance Committee

FROM: Keri Schiferl, Air Quality Specialist

DATE: June 14, 2010

RE: Repeal of Chapters 8.34, 8.36, 8.37, 8.38, 8.39, 8.40, 8.41, 8.42 and 8.44 of the Rapid City Municipal Code and adopt a new revised Chapter 8.34 of the Rapid City Municipal Code.

On June 14, 2010, the Rapid City Area Air Quality Board recommended approval of revisions to the Air Quality Ordinance. The changes are summarized below.

1. *Chapters 8.34, 8.36, 8.37, 8.38, 8.39, 8.40, 8.41, 8.42 and 8.44 were combined into a single chapter. The chapter title was changed to "Fugitive Emissions and the Abatement of Smoke" to more accurately reflect the contents of the Air Quality Ordinance.*
2. *The order of the sections that were previously chapters have been reorganized so that the Ordinance has a more logical flow.*
3. *Various grammatical errors were corrected.*
4. *The word "lot" was changed in most places to "area" to be more widely applicable; such as "parking area" and "storage area".*
5. *The sections pertaining to permit applications, amendments and approval were rewritten to be more uniform and specific.*
6. *A nuisance section (8.34.320) was added to declare that violations of the Air Quality Ordinance are public nuisances. This allows the City to legally enter onto a property and abate the nuisance and assess the cost of abatement.*



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7. *An injunction section (8.34.360) was added to give staff more options to achieve compliance with the Code.*

8. **8.34.020 Applicability.**

A. *The applicable boundary was changed to exclude Pennington County and the City of Box Elder.*

9. **8.34.030 Definitions.**

**“Air Quality Board”** was corrected to *“Rapid City Area Air Quality Board”* and moved to § 8.34.40. *The member requirements were amended to allow for members to live or work in the regulated area and to allow for members from an industry that is regulated by the State, Rapid City or Pennington County.*

**“Air Quality Control Zone”** was corrected to *remove the City limits of the City of Box Elder and add BHM to the legal description.*

**“Best Management Practices”** was removed. *Storm water management is addressed in the Storm Water Ordinance.*

**“Burning Season”** was removed.

**“Chemical Stabilizers or Dust Palliatives”** was added.

**“City”** was added.

**“Civil Action”** was removed. *Civil action is addressed in § 8.34.220(D), § 8.34.350 and § 8.34.360.*

**“County”** was added.

**“Entry on Property”** was removed and replaced by § 8.34.280 *Authorization to Inspect.* *Warrantless searches of private property violate State and Federal constitutions.*

**“Erosion Control”**. *New language was added to address erosion from parking and/or outdoor storage areas and continuous operation facilities.*

**“Inappropriate Fuel for Open Burning”**. *The phrase “or other materials not listed in this section” was removed as it was too vague.*

**“Inappropriate Fuel for Solid Fuel Burning Devices”**. *The phrase “or other materials not listed in this section” was removed as it was too vague.*

**“Open Burning Permit”** was removed since *permits for open burning are covered in § 8.34.260 (D).*

**“Outdoor Storage Area”** was added.

**“Planting Season”** was added to give guidelines for reclamation work.

**“Reentrainment”**. The phrase “in 1 place” was considered unnecessary and removed.

**“Road Construction Travel Surface”** was changed to “Stabilized Construction Entrance” since stabilized construction entrances are required for all construction projects, not just road construction projects.

**“Stabilization”** was added.

**“Wildfire”** was considered unnecessary and was removed.

10. **8.36.020 (8.34.260) Open burning rules.**

**B(D). Conditions for open burning approval.** This section was rewritten to apply only to the City’s jurisdiction. The requirement for approval for heating or cooking food, for recreational purposes and for ceremonial purposes was removed. Sections B.1, 2, 3 and C pertaining to open burning approval were removed. Approval for open burning within the City limits is granted by the Rapid City Department of Fire and Emergency Services.

11. **8.37.010 (8.34.050) General standards for all construction projects.** “Regardless of the size of the construction project” was removed to clarify the requirements.

12. **8.38.010 (8.34.120) Construction permit required.** Item B was added to ensure reclamation is done. Item C was added to clarify the requirements for construction permits at continuous operation facilities.

13. **8.38.020 (8.34.130) Parking lot permit requirements.** The title and section were changed to include unpaved parking and outdoor storage areas. The requirement for a paved parking lot permit was removed. However, the maintenance of air quality is preserved through § 8.34.090, § 8.34.100(C) and § 8.34.230. Unpaved parking and/or storage lots one acre or more in size require a permit.

14. **8.38.030 (8.34.140) Compliance plan required.** The requirement for permits for operations that handle less than 100 cubic yards of material per year or exclusively handle material with a silt content of 4% or less were removed. Specific permitting requirements were added.

15. **8.38.040 (8.34.110) Exempt activities from Chapters 8.34 through 8.44 (Chapter 8.34).**

F. “Minor continuous operation facilities” was added to remove the requirement for operations that handle less than 100 cubic yards of material per year and/or facilities that exclusively handle materials with a silt content of less than 4% to obtain a permit.

16. **8.38.050 (8.34.100) Reasonably available control technology requirements.**

A, B, D. Chemical stabilization and dust palliative were combined into one control to match the definition.

- A.4. *Specific timelines for reclamation of areas where ground cover has been removed or altered were added to prevent graded areas from remaining bare for extended periods of time.*
  - B.5. *The approved methods for cleaning of paved areas specifies that water must be used with mechanical sweepers.*
  - C.1. *Arbitrary language pertaining to which cleaning methods are acceptable for paved parking areas was removed.*
  - C.2. *This section pertaining to unpaved outdoor storage areas was replaced with item D.*
  - E.6. *The covered conveyance system for material transportation was changed to allow for other methods that are equally effective.*
  - F.1. *The time frame for soil stabilization was clarified and the time period for an inactive site was changed from 30 to 21 days to be consistent with the storm water regulations.*
17. **8.38.100(8.34.200) Application procedure for compliance plan.**
- B. *The 60-day review period for a compliance plan was changed to a 90-day review period to match the change in the Air Quality Board meeting frequency.*
18. **8.38.110 (8.34.220) Life of permits and compliance plans.**
- A. *Language was added to specify that permanent revegetation is considered a uniform vegetative cover with a density of 70% of the native cover.*
  - B. *The requirement for submittal of a parking and/or outdoor storage area permit was changed from 60 days prior to the permit expiration to prior to the permit expiration.*
  - C. *The requirement for submittal of a compliance plan was changed from 60 days to 90 days prior to the expiration of the permit to match the change in the Air Quality Board meeting frequency.*
  - D. *Item D was added to penalize for failure to obtain or renew a permit or pay the permitting fee.*
  - E. *Item E was added to give the Growth Management Director or designee the option to waive the penalty.*
19. **8.38.120 Operating with a compliance plan.** *This section was removed as it is addressed in § 8.34.140.*
20. **8.39.010 (8.34.090) Streets, roads and parking lot reentrainment requirements.**

- B. *“On which deicing and traction materials are applied” was added to exclude political subdivisions that do not apply deicing and traction materials from obtaining a compliance plan permit.*
  - E. *“The political subdivision shall include in its compliance plan a water flushing plan” was considered unnecessary and was removed.*
  - G. *“Deposited materials shall be cleaned up using a vacuum sweeper or other method pre-approved by the Air Quality Division. The use of a dry mechanical broom or compressed air is prohibited” was removed.*
  - H. *Manual sweeping is not allowed unless the area is small. Other cleaning methods may be approved by the Air Quality Division.*
21. **8.39.020 Reasonably available control technology requirements** *was considered unnecessary and was removed because it is addressed in § 8.34.100.*
22. **8.40.010 (8.34.230) Emissions standards for construction, parking lots or continuous operation facility sites.**
- A. *Parking and/or outdoor storage areas were included in the facility boundary standard. The method for determination was changed from Tennessee Visible Emission Evaluation Method 4 to 40 C.F.R. Part 60 Appendix A, Method 22.*
  - B. *Parking and/or outdoor storage areas were included in the fugitive emissions source standard. 40 C.F.R. Part 60 Appendix A, Method 9 is the method specified for use to determine the opacity. The option to use Tennessee Visible Emission Evaluation Method 1 was removed from this section.*
23. **8.41.010 (8.34.290) Notice of violation – order for corrective action included.** *This section was renamed and the ability of the Director of Growth management or designee to revoke a permit was added.*
24. **8.41.020 (8.34.350) Penalties and petition to contest notice of violation.** *This section was renamed and modified. The appeals provision was separated from the penalty provision. The fine was changed from \$200 to \$500 and the option of a penalty of 30 days in jail was added*
25. **8.41.030 (8.34.330) Air Quality Board appeal procedures.** *This section was rewritten. The new language explains more clearly the timelines and requirements for appeal.*
26. **8.41.040 Action after expiration of time for appeal.** *This section was considered arbitrary and was removed.*
27. **8.41.050 (8.34.370) Recovery of costs incurred.** *Assessing property for recovery of costs was removed since the nuisance section allows for assessments. The option for the Growth Management Director or designee to suspend a permit was added.*

28. **8.41.080 (8.34.310) Consent agreement.** *The approval of the consent agreement was changed due to the infrequency of the Board meetings.*

29. **8.42.010 (8.34.270) Fees.**

B. *The daily fine of \$200 was changed to \$250 being added to the permit fee for each full week that the operation continues without a permit. The option to apply penalty and injunctive provision was added. A seven day grace period is given prior to assessing the fee.*

**Recommendation: The Air Quality Board recommends repealing Chapters 8.34, 8.36, 8.37, 8.38, 8.39, 8.40, 8.41, 8.42 and 8.44 of the Rapid City Municipal Code and adopting the new revised Chapter 8.34 of the Rapid City Municipal Code.**