



# CITY OF RAPID CITY

RAPID CITY, SOUTH DAKOTA 57701-2724

## PLANNING DEPARTMENT

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### MEMORANDUM

TO: Legal and Finance Committee

FROM: Teresa Whitney, Air Quality Specialist

DATE: May 22, 2002

RE: Amendments to Rapid City Municipal Code Chapters 8.34 through 8.44

At the Rapid City Area Air Quality Board meeting on May 13, 2002, the Board unanimously recommended approval of the attached amendments to the City Air Quality Ordinance. The amendments are related to clarification on types, duration and cost of permits, better definitions of terms used through the ordinance, clarification on types of exemptions on open burning that were in conflict with fire control agencies, general air quality practices regarding erosion, sediment and reclamation control measures, clarification on exemptions to the ordinance and a new appeal process for notice of violation. The former appeal process was cumbersome. The change to the appeal process makes it more consistent with other administrative appeal processes.

**Recommendation: Approval of the amendments to Rapid City Municipal Code Chapters 8.34 through 8.44 as attached.**



EQUAL OPPORTUNITY EMPLOYER

## ORDINANCE NO. 3825

**AN ORDINANCE AMENDING THE RAPID CITY AIR QUALITY REGULATIONS BY AMENDING 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, 8.38.100, 8.38.110, 8.38.120, 8.39.010, 8.39.020, 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, AND 8.44.010 AND BY ADDING CHAPTER 8.37 AND CHAPTER 8.41 OF THE RAPID CITY MUNICIPAL CODE.**

BE IT ORDAINED, that Chapter 8.34 of the Rapid City Municipal Code is hereby amended as follows:

### **8.34 POLICY, APPLICABILITY AND DEFINITIONS OF ORDINANCE AIR QUALITY COMPLIANCE**

**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 PM10 and PM2.5 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 Chapters 8.34 through 8.44 to provide for a program of fugitive emissions control by applying reasonable available control technology and solid fuel smoke abatement.

**8.34.020 Applicability:** Chapters 8.34 through 8.44 **pertaining to air quality compliance to control particulate matter** shall apply to:

- A. The geographical area encompassing the city limits of the City of Rapid City;
- B. Smoke from solid fuel burning devices and opening burning;
- C. Construction permits;
- D. **Parking lot permits (paved parking lots or graveled lots);**
- E. Compliance plans (~~paved and unpaved parking lots, streets sanding and cleaning operations~~) **for continuous operations.**
- F. ~~Fugitive emissions requirements with the exception of industrial sources permitted by the South Dakota Department of Environment and Natural Resources.~~

### **8.34.030 Definitions:**

#### **Air Quality Board:**

1. 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:
    - i. Two (2) members representing industry;
    - ii. One (1) member representing the engineering profession (member shall have graduated from an accredited college or university with an engineering degree);
    - iii. One (1) member representing environmental interests (member shall have an interest and knowledge in environmental issues, preferably air quality issues);
    - iv. One (1) member representing homeowners (member shall own a home in the regulated area);
    - v. One (1) member representing the business community (member shall be associated with a business in the regulated area);
    - vi. One (1) member at large (member shall be selected at large by the County Commission).
2. Six of the voting members of the Air Quality Board shall be appointed 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 Commission 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.
3. All voting members shall be residents of the regulated area as defined in Section 8.34.020(A), or the area as regulated in Section 1.02 of Pennington County Ordinance No. 12, with the exception of the two industry members, shall not derive a majority of their income, either directly or indirectly, from a person, who is subject to regulation by Rapid City Municipal Code Chapters 8.34 through 8.44. For purposes of this section, a person who is subject to regulation by Rapid City Municipal Code Chapters 8.34 through 8.44 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 the 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 Rapid City Municipal Code Chapters 8.34 through 8.44. Any further documentation which the Rapid City Council or Pennington County Commission 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 Pennington County Commission.
4. The composition and professional associations of the three Ex-Officio Members are as follows:

- a. One (1) member representing state government (Secretary of the Department of Environment and Natural Resources, or designee);
  - b. One (1) member representing the city of Rapid City, South Dakota (Mayor of Rapid City or designee);
  - c. One (1) member representing the Pennington County Commission (Chairman of Board or designee).
5. 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 Pennington County Commission 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.

“Air Quality Control Zone” means that area as defined in Section 8.34.020 (A).

Air Quality Division. There is created the Rapid City Air Quality Division. The Air Quality Division shall be responsible for the administration and enforcement of Chapters 8.34 through 8.44.

“Ambient Air” means that portion of the atmosphere outside of buildings to which the general public has access.

**“Best Management Practices” means a storm water technique, measure or structural control that is used for a given set of conditions to manage the quantity and improve the quality of storm water runoff in the most cost-effective manner.**

“Burning Season” means that period of time from November 1<sup>st</sup> through March 31<sup>st</sup> in the following year.

Civil Action. In addition to the penalties set forth in Chapters 8.34 through 8.44 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 Chapters 8.34 through 8.44.

“Commission” means the Pennington County Commission.

“Compliance Plan” means the plan prepared for the control and prevention of fugitive emissions from continuous operation activities.

“Construction Activity” means any temporary activity, which involves the removal or alteration of the natural or pre-existing cover of one acre or more of land. **The one acre of surface area is based on a cumulative area of anticipated disturbance to be completed for the entire project.** Construction activity shall include but not be limited to stripping of topsoil, drilling, blasting, excavation, dredging, ditching, grading, street

maintenance and repair, **road construction**, or earth moving. Construction activity is generally completed within one year.

“Continuous ~~Operating~~ **Operation** Activity” means 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 **including but not limited to, street deicing and traction material activities, loading and unloading of material that may cause fugitive emissions and for a site with ongoing soil fill operations.** ~~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.~~

**“Control Measure” means a technique, practice or procedure used to prevent or minimize the generation, emission, entrainment, suspension, and/or airborne transport of fugitive dust.**

**“Corrective Action” means actions required by the Air Quality Division or Air Quality Board to correct violations of the Chapters 8.34 through 8.44.**

“Council” means the Rapid City Council.

**“Disturbed Area” means a property where the natural or pre-existing cover has been disturbed but not properly reclaimed or stabilized to prevent fugitive emissions.**

“Ecosystem Management” means 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.

“Entry on Property” any duly authorized officer, employee or representative of any city or county agency responsible for enforcing Chapters 8.34 through 8.44, 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 Chapters 8.34 through 8.44 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.

**“Erosion Control” means the measures that will be used to limit erosion of soil from disturbed areas at a construction site. The purpose of erosion control is to limit the amount and rate of erosion occurring on disturbed areas.**

“Fire Hazard” means 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.

“Fire Department Personnel Training” means activities designed for the purpose of training fire department personnel and conducted by a fire department.

“Fuel” means 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.

“Fugitive Emissions” means 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 stricter and more extensive requirements for control of such emissions shall be enforced over the less restrictive requirements. Particulate emissions from rock crushers for which a permit to operate has been issued are excluded from this definition.

**“Gravel Pad” means a layer of washed gravel, rock or crushed rock which is at least two inches or larger in diameter, located at the interface of the construction site and a paved surface. The gravel pad shall be an adequate length to dislodge mud, dirt and/or debris from the tires of motor vehicles, haul trucks and/or equipment prior to leaving the work area.**

**“Grizzly” means a device, such as rails, pipes or grates, used to dislodge mud, dirt, and/or debris from the tires and undercarriage of motor vehicles and/or haul trucks prior to leaving the work site.**

“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, **building materials**, 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(D), or other materials not listed in this section.

“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, **building materials**, 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(D), or other materials not listed in this section.

**“Manual Sweeping” means the use of a hand broom and shovel or bobcat for clean up of soil deposited on a paved surface. This method shall be used only if the area of impact is small or as a pre-cleaning for another clean up method.**

**“Mechanical Sweeping” means the sweeping method used to remove material from a paved surface utilizing a water system and mechanical capture of material to eliminate or reduce fugitive emissions.**

“National Ambient Air Quality Standards (for particulates)” means the national primary and secondary ambient air standards for particulate matter as described in the Code of Federal Regulations (CFR), Title 40, Volume 2, Part 50 (July 1, 1997) specifically:

1. PM2.5: The annual primary and secondary PM2.5 standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix N (July 1, 1997) is less than or equal to 15.0 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The 24-hour primary and secondary PM2.5 standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR, Part 50, Appendix N (July 1, 1997), is less than or equal to 65  $\mu\text{g}/\text{m}^3$ .
2. PM10: The annual primary and secondary PM10 standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR, Part 50, Appendix K (July 1, 1997) is less than or equal to 50  $\mu\text{g}/\text{m}^3$ . The 24-hour primary and secondary PM10 standards are attained when the expected number of days per calendar year with the 24-hour average concentration above 150  $\mu\text{g}/\text{m}^3$ , as determined in accordance with 40 CFR, Part 50, Appendix N (July 1, 1997), is less than or equal to one.

**“Normal Agricultural Practices” means all activities conducted by the owner or lessee at a site for the production of crops and/or nursery plants.**

“Noxious Weed” means 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.

“Opacity” means the degree to which fugitive emissions reduce the transmission of a light source.

“Open Burning” means 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.

“Open Burning **Permit Form**” means the **permit form** ~~produced by~~ **that must be obtained from** the Air Quality Division and completed ~~in cooperation with~~ **by** any person seeking approval to conduct open burning. The **permit form** provides relevant information regarding a planned open burning activity. **Depending on the location of the open burn, a permit may be required by the South Dakota Department of Agriculture, Wildland Fire Suppression Division or Rapid City Department of Fire and Emergency Services.**

“Parking Lot” means any paved parking lot, one acre or more in size, to which ~~street sanding~~ deicing and/or traction materials ~~is~~ are applied during adverse weather and any unpaved parking or storage lot, one acre or more in size, ~~to which the public has access that may generate fugitive emissions.~~

**“Phased Work” means work completed in phases for subdivision improvements. A separate permit will be required for each phase of subdivision work. Work can not be phased for the sole purpose of reducing the size of the work to be less than one acre and not subject to the requirements of a permit.**

“PM2.5” means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half micrometers.

“PM10” means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers.

“Person” means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the State, trust, estate or any other legal entity.

“Political Subdivision” means any public or private entity that maintains street operations within the area designated in Section 8.34.020(A).

**“Project completion” means all surface areas have been reclaimed by building construction, paving, gravel, landscaping and/or permanent revegetation to prevent fugitive dust generation.**

“Reasonably Available Control Technology (RACT)” means the emission control technology determined on a case by case basis by the Air Quality ~~Board~~ Division to be feasible in meeting the requirements of Chapters 8.34 through 8.44, taking into account energy, the ~~environmental~~, economic impacts and other costs.

**“Reclamation Plan” means the plan that describes the manner and timeframe in which all disturbed surfaces will be stabilized to prevent fugitive dust generation.**

“Reentrainment” means 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.

**“Road Construction Travel Surface” means the surface material located at the interface of the road construction activity and the paved public right of way. The travel surface shall be constructed of a material and length to adequately dislodge mud, dirt and/or debris from the tires of motor vehicles, haul trucks and/or equipment prior to leaving the road construction area.**



**“Sediment Control” means the measures that will be used to limit transport of sediment to off-site properties, public rights of way and downstream receiving waters. The objective of sediment control is to capture the soil that has been eroded before it leaves the construction site.**

“Smoke” means small airborne particles resulting from incomplete combustion consisting predominantly, but not exclusively, of carbon, ash, and other combustible materials, that form a visible plume.

“Solid Fuel Burning Device” means 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.

**“Trackout Control Device” means a device that includes but is not limited to a gravel pad, grizzly, wheel wash system, road construction travel surface and/or paved area for temporary use that has restricted public access, located at the point of intersection of a construction activity and a paved road, street or parking lot to dislodge mud, dirt, and/or debris from the tires of motor vehicles, haul trucks and/or equipment prior to leaving the work area. The device shall be the full width of all points of ingress and egress. The device shall be maintained in a condition, which will prevent trackout onto paved surfaces and public rights of way.**

**“Vacant Lot” means a lot or property where there is no current activity but fugitive dust can be generated because the property has not been properly reclaimed or stabilized to prevent fugitive emissions.**

**“Vacuum Sweeping” means the method of sweeping used to remove material from a paved surface that utilizes a water system and vacuum capture of material to eliminate or reduce fugitive emissions.**

**“Wheel Wash System” means a system at the site entrance used to wash soil from motor vehicles or equipment to prevent tracking or material becoming dislodged from the vehicle or equipment onto a public right of way or paved parking lot.**

“Wildfire” means an uncontrolled fire spreading through vegetative fuels, exposing and possibly consuming structures.

“Wildfire Control Management” means activities, including open burning, that are conducted to reduce the potential for serious or wild fires.

BE IT FURTHER ORDAINED, that Chapter 8.36 of the Rapid City Municipal Code be amended as follows:

## 8.36 SMOKE ABATEMENT

### 8.36.010 Restrictions on Solid Fuel Burning Devices

- A. Inappropriate Fuels Burned in Solid Fuel Burning Device Prohibited: No person shall, at any time, burn inappropriate fuel as defined in Section 8.34.030 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.
- B. 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 cannot 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:

- A. 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:
  1. Open burning of agricultural irrigation ditches;
  2. Open burning for noxious weed control;
  3. Open burning for wildfire control management;
  4. Open burning for ecosystem management;
  5. Open burning for fire department personnel training;
  6. Open burning of a fire hazard.
  7. **Open burning for the heating or cooking of food for human consumption in residential areas, City of Rapid City parks and campground areas.**
  8. **Open burning for recreational purposes when such fires are confined to a fireplace or barbecue pit.**
  9. **Open burning for ceremonial purposes.**

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

- B. Conditions for Open Burning Approval: Prior to ignition, a person requesting to open burn for the exceptions allowed under subsection (A) of this section must gain permission from one of the following fire control entities listed in subsection (B)(1)(a) through (c) of this section, based upon the location of the proposed burning activity. **Permits are not required for activities covered under subsection (A)(7) of this section.**
  1. Zones of Jurisdiction for Gaining Permission to Open Burn:
    - a. 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~~ **Wildland Fire Coordinator** of the South

Dakota Department of Agriculture, ~~Resource Conservation and Forestry~~ **Wildland Fire Suppression** Division, or his designee.

- b. 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.
  - c. 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 **by obtaining an open burn permit**.
2. The following information, as outlined on the open burning ~~form~~ **permit**, will be provided to the appropriate fire control entity as described in subsection (B)(1) of this section:
- a. The type of burning as described in subsection A of this section;
  - b. Size of burn;
  - c. Location of the site;
  - d. Anticipated time and date of burn;
  - e. Name and phone number of contact person;
  - f. Name of responsible party assuming liability for the burn;
  - g. A contingency plan to be implemented in the event that control of the burn is lost.

A copy of the open burning ~~form~~ **permit** 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.

- C. Basis for Approval: Approval may be granted following receipt of the open burning ~~form~~ **permit**, and will be contingent upon the following:
1. Current and forecast meteorological conditions;
  2. Current ambient air quality data;
  3. The volume of burning pending at the time of the request;
  4. The information provided on the open burning ~~form~~ **permit**;
  5. 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.

- D. State Air Quality Regulations (**Administrative Rules of South Dakota** ARSD 74:36:06) prohibit the following open burning practices:
1. 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;

2. A municipality or county governmental agency may not burn municipal solid waste unless exempted by the small town exemption in accordance with Administrative Rules of South Dakota ARSD 74:27:12:25:
3. A person may not conduct or permit the operation of a salvage operation by open burning, except as allowed in the Administrative Rules of South Dakota article 74:27;
4. A person may not burn railroad ties or wood treated with inorganic arsenicals, pentachlorophenol, or creosols.

BE IT FURTHER ORDAINED, that Chapter 8.37 of the Rapid City Municipal Code be added to read as follows:

### **8.37 GENERAL AIR QUALITY PRACTICES**

**8.37.010 General Standards for All Construction Projects: All owners, contractors, subcontractors and operators involved in construction activities must provide reasonably available control technology as described in Section 8.38.050 to prevent or minimize particulate matter from becoming airborne regardless of the size of the construction project. All construction sites must maintain a trackout control device and/or clean up material deposited on a paved surface in accordance with Section 8.39.010.**

**8.37.020 Erosion and Sediment Control Measures: All sites, including but not limited to, construction sites, vacant lots or homes without landscaping, shall maintain erosion and sediment control measures to prevent soil from going off site to public rights of way where soil can be readily reentrained.**

- A. **Erosion controls are surface treatments that stabilize soil exposed by excavation or grading. Erosion control measures, or best management practices, are variously referred to as source controls, vegetative controls or non-structural controls.**
- B. **Sediment controls capture soil that has been eroded. Soil particles suspended in runoff can be filtered through a porous media or deposited by slowing the flow and allowing the natural processes of sedimentation to occur. Sediment controls, or best management practices, are built to perform this function, and are also referred to as structural controls.**

**8.37.030 Reclamation of Disturbed Areas: Landscaping and revegetation shall be completed as soon as grading or construction has been completed to eliminate or reduce wind and/or water erosion. When landscaping and/or revegetation can not be completed immediately due to weather, the exposed areas can be temporarily stabilized and final landscaping and/or revegetation can be completed in the next planning season. A written reclamation plan may be required by the Air Quality Division for sites where there are on going problems with vegetative and structural stabilization.**

**8.37.040 Stabilization of Vacant Lots: Vacant lots shall be maintained and stabilized to prevent fugitive dust generation from sources including but not limited to wind and/or water erosion, trackout or erosion to public right of way, and vehicle or equipment traffic.**

BE IT FURTHER ORDAINED, that Chapter 8.38 of the Rapid City Municipal Code be amended to read as follows:

**8.38 CONSTRUCTION PERMITS, PARKING LOT PERMITS AND COMPLIANCE PLANS**

**8.38.010 Construction Permit Required:** No person shall engage in any construction activity disturbing one acre or more of surface area which may cause fugitive emissions to be released into the ambient air without first obtaining a construction permit from the Air Quality Division. **The one acre of surface area is based on a cumulative area of anticipated disturbance to be completed for the entire project.**

**8.38.020 Parking Lot Permits Requirements: All owners and operators of parking and/or storage lots one acre or more in size that meet the following criteria are required to obtain a permit from the Air Quality Division:**

- A. **Any paved parking lot on which deicing and traction materials are applied during adverse weather; and.**
- B. **All unpaved parking lots or storage lots.**

**8.38.020 .030 Compliance Plan Required:** No person shall engage in any continuous operation that 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.

**8.38.040 The following activities are exempt from Rapid City Municipal Code Chapters 8.34 through 8.44:**

- A. **Fugitive emissions from industrial sources permitted by the South Dakota Department of Environment and Natural Resources that have incorporated fugitive dust control requirements or conditions.**
- B. **Activities conducted at City of Rapid City or Pennington County recreational facilities, such as but not limited to ball fields, bicycle racetracks or the fairgrounds.**
- C. **Landscape maintenance. Landscape maintenance does not include grading, trenching or any other mechanized surface disturbance activities.**

**D. Normal agricultural practices.**

**The use of dust control measures for these exempted activities is recommended but not required.**

**8.38.040 .050 Reasonably Available Control Technology Requirements:** Any construction permit, **parking lot 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. If the reasonably available control technology selected for the site proves to be insufficient at controlling fugitive emissions, additional measures shall be required. Such controls may include, but not be limited to the following practices:

- A. For activity involving the removal or alteration of natural or pre-existing ground cover including, but not limited to road construction, land clearing, excavating, grading, earthmoving, dredging, or demolition:
1. Use of water to control fugitive emissions from disturbed areas or other work activities;
  2. Chemical stabilization;
  3. Applying dust palliative;
  4. Minimization of area disturbed;
  5. Reclamation of disturbed area as soon as possible;
  6. Vehicular speed limitation;
  7. Routine cleaning of paved areas, with a vacuum sweeper, as necessary to remove any materials deposited through tracking or erosion that may become reentrained. Any other method of cleaning shall be submitted in writing to the Air Quality Division for approval;
  8. ~~50 feet of crushed rock pad or dirt grates~~ **Maintain a trackout control device** at all site access points to prevent tracking onto the public right of way or private driveways or parking lots where fugitive dust may become reentrained;
  9. Minimization of dust from open trucks or onsite storage piles and/or;
  10. Install plastic fences to reduce wind erosion.
- B. For paved and unpaved roads, alleyways and storage areas, construction, altering, yearly street or highway maintenance and repair of road surface:
1. Use of water to control fugitive emissions from disturbed areas or other work activities;
  2. Chemical stabilization;
  3. Applying dust palliative;
  4. Vehicular speed limitation;
  5. Movement of materials by enclosed vehicles or covered conveyance system;
  6. Routine cleaning of paved areas by sweeping (mechanical or vacuum) to remove materials that may become reentrained;
  7. Water flushing (when safety is not jeopardized); and/or
  8. Wetting ahead of open sweepers on rural roads.

- C. Paved **parking lots** and unpaved parking **or storage** lots:
1. 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 **reentrainment of sanding deicing and traction materials**; and
  2. 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. **The most appropriate control measures shall be used to prevent erosion or trackout from an unpaved parking or storage lot to a paved public right of way where the material can be readily reentrained.**
- D. For material screening, handling, storage, processing or transportation:
1. Installation of baghouses and other emission control and collection systems;
  2. Enclosed conveyance systems;
  3. Enclosing, covering, or applying dust suppressants on storage piles where practical;
  4. Moisturizing or chemically treating the material during processing;
  5. Cleaning of paved areas; and/or
  6. Movement of materials by enclosed vehicle or covered conveyance system.
- E. For erosion **and sediment** control:
1. ~~Planting~~ **Soil stabilization** of exposed area **and stockpiles within fourteen (14) days on areas that will remain dormant for longer than thirty (30) days;**
  2. Installing wind screen or equivalent wind speed reduction device to control wind erosion;
  3. Chemical stabilization;
  4. Covering with a non-erodible material; and/or
  5. Runoff control barriers, such as silt fences, and dams.
- F. **Landscaping and Revegetation: Landscaping and revegetation shall be completed as soon as grading or construction has been completed. When landscaping and/or revegetation can not be completed immediately due to weather, the exposed areas can be temporarily stabilized and final landscaping and/or revegetation can be completed in the next planning season. If necessary, a written reclamation plan may be required by the Air Quality Division.**

**8.38.050 .060 Contents of Application for Construction Permit, Parking Lot Permit, Compliance Plan or any Amendment to a Permit or Compliance Plan:** All applications shall be submitted to the Air Quality Division. The applications shall contain:

- A. Name and address of the person making the application. If the applicant is a corporation, the name and address of its registered agent.
- B. Legal description and location of the land affected, **including a site map.**
- C. Description of the proposed construction or proposed continuous operation activity including nature and description of equipment used, ~~including a site map.~~

- D. Proposed date for both commencement and termination of operation.
- E. Proposed date for both commencement and completion of reclamation plan including a detailed description of plan.
- F. Necessity for state approval and, if so, an indication of:
  - 1. If application has been made;
  - 2. When action on the application is expected;
  - 3. Name, division and board or the state agency from ~~whom~~ **which** approval is sought.
- G. An overall description of the nature and scope of the construction or continuous operation activity and conditions, which will result in fugitive emissions.
- H. A plan of the Reasonably Available Control Technology required in Section 8.38.040 .050 to be applied, which will prevent fugitive emissions that exceed 20% opacity.
- I. Upon request by the Air Quality Division the following information may be required:
  - 1. A listing of all sources of particulate fugitive emissions, stating in tons per year the uncontrolled emissions to be produced;
  - 2. 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;
  - 3. 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.

- J. 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 Chapters 8.34 through 8.44, 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 Chapters 8.34 through 8.44, and for no other purposes.

**8.38.060 .070 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 .080 Application Procedure for Construction Permits:**

- A. 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.



- B. Any change in construction, which would result in an increase of fugitive emissions from the construction site, shall require an amendment to the construction permit. The amendment procedure is the same as set out in subsection A of this section. The required fee for the amendment is described in Chapter 8.42.
- C. The construction permit fee is as described in ~~Section~~ **Chapter** 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.

**8.38.090 Application Procedure for Parking Lot Permits:**

- A. **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 parking lot permit. If the Air Quality Division determines the application is complete and is in compliance with the ordinance, a parking lot 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.**
- B. **Any change in operations or maintenance of the parking lot, which would result in an increase of fugitive emissions from the site, would require an amendment to the parking lot permit. The amendment procedure is the same as set out in Section 8.38.080(A). The required fee for the amendment is described in Chapter 8.42.**
- C. **The parking lot permit fee is as described in Chapter 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 .100 Application Procedure for Compliance Plans:**

- A. 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 bimonthly 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 Chapters 8.34 through 8.44. 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 Chapters 8.34 through 8.44.
- B. Any change in continuous operation activity, which would result in an increase of fugitive emissions from that site shall require an amendment to 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 Chapter 8.42.

- C. Once an application for a compliance plan or an amendment to a compliance plan has been submitted to the Air Quality ~~Board~~ **Division**, a sixty (60) day review period shall commence. The Air Quality Board must ~~act upon~~ **approve** the proposed plan within sixty (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 sixty (60) day review period shall be extended by a like number of days.
- D. The compliance plan fee is as described in Chapter 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.

**8.38.110 Life of Permits and Compliance Plans:**

- A. **Construction permit: The construction permit shall be valid for one year. If all areas have not been reclaimed at the end of one year, the permit can be renewed for up to one additional year by submitting a written request to the Air Quality Division prior to the expiration of the permit. For subdivision work that is to be completed in phases, a separate permit is required for each phase. Project completion is the date on which the site has been reclaimed through building construction, paving, landscaping, permanent revegetation and/or other permanent stabilization.**
- B. **Parking Lot Permits: The parking lot permit shall be valid for three years unless site conditions or operations change. Applications for a parking lot permit 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 8.38.090.**
- C. **Compliance Plans: After Air Quality Board 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. 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 8.38.100.**

**8.38.090 .120 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 8.38.070 of this chapter.~~

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, that Chapter 8.39 of the Rapid City Municipal Code be amended to read as follows:

## **8.39 STREETS, ROADS AND PARKING LOT REINTRAINMENT REQUIREMENTS**

### **8.39.010 Streets, Roads and Parking Lot Reentrainment Requirements.**

- A. All reentrainment requirements are applicable to the areas defined in Section 8.34.020(A).
- B. Any political subdivision responsible for maintaining any public road is required to have a compliance plan as described in Chapter 8.38.
- C. No person shall place any street ~~sanding~~ **deicing and traction** materials upon any road, highway, driveway, or parking lot to which the public has general access which does not meet the following requirements:
  - 1. A durability or hardness as defined in ~~MOH~~ **Mohs scale** of greater than 6 for 70% of the material used;
  - 2. No more than 3% of the total particle material content by weight may be smaller than 200 sieve.

For street ~~sanding~~ **deicing and traction** materials, 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.

- D. Any political subdivisions responsible for maintaining any public road shall clean the center line and areas immediately adjacent to the travel lane. Cleaning shall commence under one or more of the following conditions:
  - 1. When it has been determined by the Air Quality Division that the streets are sufficiently dry to commence street sweeping;
  - 2. When it has been determined by the Air Quality Division that there is a fugitive emissions problem due to street ~~sanding~~ **deicing and traction** materials.

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. The compliance plan is as described in Chapter 8.38.

- E. Any political subdivisions maintaining any public roads shall water flush such roadways when it has been determined by the Air Quality Division that street ~~sanding~~ **deicing and traction** materials **is are** 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.
- F. All vehicles that are transporting fugitive dust emitting materials 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.
- G. Any material that is deposited, other than street ~~sanding~~ **deicing and traction** materials, 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. **Deposited materials shall be cleaned up by 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.**
- H. **Cleaning of Paved Surfaces: Deposited materials shall be cleaned up by using a vacuum sweeper or manually sweeping up materials. Sufficient water shall be used to prevent or minimize fugitive dust during sweeping activities. The use of a dry mechanical broom or compressed air to clean up deposited materials is prohibited.**

#### **8.39.020 Reasonably Available Control Technology Requirements:**

Any political subdivision responsible for maintaining public roads in the areas defined in Section 8.34.020 (A) shall provide for reasonably available control technology to prevent fugitive emissions from becoming airborne as described in Chapter 8.38.

BE IT FURTHER ORDAINED, that Chapter 8.40 of the Rapid City Municipal Code be amended to read as follows:

#### **8.40 EMISSION STANDARDS, ENFORCEMENT AND APPEAL PRODEDURES**

##### **8.40.010 Emissions Standards for Construction, Parking Lots or ~~Compliance Plan Activities~~ Continuous Operation Facility Sites:**

- A. Facility boundary standard: The transportation of visible fugitive emissions off the property of a construction, **parking lot** 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, **parking lot 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.

- B. 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, parking lot 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)~~ **twenty (20)** 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 Chapters 8.34 through 8.44 has occurred, the Air Quality Division may cause written notice to be served upon the alleged violator or violators. The notice shall specify:~~

- ~~A. The provision(s) of Chapters 8.34 through 8.44 alleged to be violated;~~  
~~B. 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 Chapters 8.34 through 8.44.~~

~~**8.40.030 — Penalties and Petition to Contest Notice of Violation:** Any person violating any portion of Chapters 8.34 through 8.44 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:~~

- ~~A. A statement of the petitioner's involvement in the matter;~~
- ~~B. A statement of the decision contested, if any, and the relief and decision requested from the Council;~~
- ~~C. A statement alleging the relevant facts and issues known to the petitioner upon which he bases his contest;~~
- ~~D. A statement of the legal authority and jurisdiction under which the hearing would be held, if known;~~
- ~~E. A reference to the particular section of the ordinance involved, if known;~~
- ~~F. 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.~~

~~**8.40.080 — 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:~~

- ~~A. A statement of the time, place, and nature of the hearing;~~
- ~~B. A statement of the legal authority and jurisdiction under which the hearing is to be held;~~
- ~~C. A reference to the relevant sections of the ordinance;~~
- ~~D. 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;~~
- ~~E. 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;~~
- ~~F. 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;~~
- ~~G. 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 Chapters 8.34 through 8.44 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:~~

- ~~A. All pleadings, motions, intermediate rulings;~~
- ~~B. Evidence received and considered;~~
- ~~C. A statement of matters officially noticed which have been refuted;~~
- ~~D. Questions and offers of proof, objections, and rulings thereon;~~
- ~~E. Proposed findings and exceptions;~~
- ~~F. 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 Chapters 8.34 through 8.44 before the Air Quality Board. Nothing in Chapters 8.34 through 8.44 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 Chapters 8.34 through 8.44, 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 Chapters 8.34 through 8.44 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 Chapters 8.34 through 8.44 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 Chapters 8.34 through 8.44 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, that Chapter 8.41 of the Rapid City Municipal Code be added to read as follows:

## **8.41 ENFORCEMENT AND APPEAL**

**8.41.010 Notice of Violation - Order for Corrective Action Included:** The Air Quality Division has reason to believe that a violation of any provision of Chapters 8.34 through 8.44 has occurred, the Air Quality Division may cause written notice to be served upon the alleged violator or violators. The notice shall specify:

- A. The provision(s) of Chapters 8.34 through 8.44 alleged to be violated;
- B. 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 Chapters 8.34 through 8.44.

**8.41.020 Penalties and Petition to Contest Notice of Violation:** Any person violating any portion of Chapters 8.34 through 8.44 shall be subject to a fine not to exceed \$200.00. Each calendar day a violation occurs shall be considered a separate offense. Any person who wishes

to contest a notice of violation or order requiring corrective action 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 or order requiring corrective action 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 **Common 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 **Section 8.41.030 (D).**

## **8.41.030 Air Quality Board Appeal Procedures**

### **A. General Provisions**

- 1. The Air Quality Board shall presume the Notice of Violation or order requiring corrective action is correct and proper.**
- 2. The violator shall bear the burden of proving it is more likely than not that the Notice of Violation or order requiring corrective action was improperly issued.**
- 3. The Air Quality Board may modify the Hearing Procedure set out in 8.42.030(B) prior to the start of any hearing. All parties shall be given at least five days notice of any proposed changes and the opportunity to comment on any procedural modifications. Any party may waive the notice requirement and consent to a modified hearing procedure prior to the start of a hearing if it appears that the times allotted will not be sufficient, and the modifications grant the parties additional time for argument.**
- 4. Upon receipt of a request for a hearing, the Air Quality Division shall schedule the hearing for the next regularly scheduled meeting and inform the violator of the date and time of the hearing. The violator shall also be given a copy of the provisions governing the appeal procedure.**

### **B. Hearing Procedure**

- 1. City staff shall briefly present to the Air Quality Board the circumstances that lead to the issuance of a Notice of Violation or order requiring corrective action. The staff shall be allotted five minutes for their presentation.**
- 2. The violator shall be allotted ten minutes to present its basis for appeal to the Air Quality Board.**
- 3. City staff shall have ten minutes to reply to the violator's arguments.**
- 4. The violator shall have five minutes for rebuttal to City staff's reply.**

5. The Air Quality Board may direct questions to the violator or to City staff.
6. The Chair of the Air Quality Board, may in its discretion, allot additional time to each party for additional comment after the Board members have completed questioning the parties.

C. Decision of the Air Quality Board

1. At the completion of the hearing procedure set out in 8.42.030(B), the Chair shall declare the hearing complete. The Board shall then deliberate the merits of the appeal.
2. The Chair may, in its discretion, accept additional comments from the parties.
3. During the deliberation process, any member of the Board may make an appropriate motion regarding disposition of the appeal. If the motion is seconded, the standard practice for discussing and deciding motions shall apply.
4. Any motion regarding the disposition of an appeal shall require the support of a majority of the Board members present for the Hearing. The Chair shall not vote except in the case of a tie vote.

D. Appeal to the Common Council

1. The violator may appeal any adverse decision of the Air Quality Board to the Common Council.
2. To initiate an appeal to the Common Council, the violator must file with the Finance Officer a written request for reconsideration of the Air Quality Board's action within fifteen days of the Air Quality Board's decision. The Finance Officer shall include the request for reconsideration on the next Common Council agenda and inform the violator of the date and time of the meeting.
3. The violator may appear before the Common Council and request that the decision of the Air Quality Board be reconsidered and a hearing be set by the Council.
4. If the Common Council approves the request for reconsideration, it shall immediately set a hearing on the reconsideration for the next regularly scheduled Council meeting.

**5. Failure of the applicant to appear and request reconsideration or failure to appear for the hearing on the appeal shall be deemed a waiver of the appeal and shall finalize the decision of the Air Quality Board.**

**8.41.040 Action After Expiration of Time For Appeal: When the time for appeal to the Air Quality Board has passed without an appeal of a Notice of Violation and Order issued under 8.41.010 or when the time for corrective action granted by the Air Quality Board pursuant to 8.41.060 has passed without completion of all corrective action, the Air Quality Division may take any action it deems necessary to prevent further violations of the Chapters 8.34 through 8.44.**

**8.41.050 Recovery of Costs Incurred: All costs and expenses incurred by the Air Quality Division, the City Attorney or other City Staff in carrying out the provisions of 8.41.040 shall be billed to the property owner. If not paid in full within 30 days, the remaining amount due shall be assessed to the property where the violation occurred.**

**8.41.060 Time Allowed for Corrective Action in Air Quality Board Order: For any order issued as part of a notice or after proceedings under Chapters 8.34 through 8.44, 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.**

**8.41.070 Remedy Not Exclusive: Nothing in Chapters 8.34 through 8.44 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.**

**8.41.080 Consent Agreement: Nothing in Chapters 8.34 through 8.44 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.**

**8.41.090 Voluntary compliance: Nothing in Chapters 8.34 through 8.44 shall prevent the Air Quality Division from making efforts to obtain voluntary compliance through warning, conferences, or any other appropriate means. However, the Air Quality Divisions shall not be obligated to make any such efforts and may proceed directly to available enforcement actions.**

BE IT FURTHER ORDAINED, that Chapter 8.42 of the Rapid City Municipal Code be amended 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:

- A. Construction permit for sites one to five acres: seventy-five dollars; for sites over 5 acres: one hundred dollars, **one year permit renewal: twenty-five dollars;**
- ~~B. Construction permit amendment: \$25.00;~~
- C. ~~Compliance plan~~ **B. Permits** for paved parking lots larger than or equal to one acre: ~~\$15.00 per acre, not to exceed \$75.00~~ **seventy-five dollars;**
- D. ~~Compliance plan~~ **C. Permits** for unpaved parking **or storage** lots larger than or equal to one acre: ~~\$25.00 per acre, not to exceed \$150.00~~ **one hundred dollars;**
- E. **D. Compliance plan for continuous operations: one hundred and fifty dollars.**
- F. **E. Amendments to construction permits, parking lot permits or compliance plans: twenty five dollars.**
- G. ~~E.~~Open burning permit: no charge.

Failure to submit the application and/or pay the permitting fee **prior to the commencement of fugitive dust generating activities** will result in a daily fine not to exceed \$100.00 **\$200.00**. 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, that Chapter 8.44 of the Rapid City Municipal Code be amended 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 Chapters 8.34 through 8.44 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.

CITY OF RAPID CITY

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Finance Officer

(SEAL)

First Reading:

Second Reading:

Published:

Effective: