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Rapid City, SD Code of Ordinances

CHAPTER 8.34: FUGITIVE EMISSIONS AND THE ABATEMENT OF SMOKE

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8.34.010 Policy of city.

In order to maintain a compliance status with the United States 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 declared to be the policy of the City of Rapid City, South Dakota to achieve and maintain the PM_{10} and $PM_{2.5}$ 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 city; and to promote commercial and industrial development while limiting environmental degradation; and to educate the residents of the city about air quality issues. As air travels without regard for political boundaries, maintaining compliance with federal air quality standards requires cooperation between the South Dakota Department of Environment and Natural Resources and the city and county to avoid costly consequences and protect public health in the area where nonattainment designation is most vulnerable. This policy is to be achieved and maintained through the development and implementation of programs of education, air pollution prevention, abatement and control. It is the purpose of this chapter to provide for a program of fugitive emissions control by applying reasonably available control technology and solid fuel smoke abatement.

(Ord. 5958 (part), 2013)

8.34.020 Applicability.

This chapter shall apply to:

A. All areas within the corporate limits of Rapid City located within the Air Quality Control Zone;

B. Smoke from solid fuel burning devices and open burning;

C. Construction permits;

D. Parking or outdoor storage areas (paved parking areas or graveled areas); and

E. Compliance plans for continuous operations.

(Ord. 5958 (part), 2013)

8.34.030 General standards for all construction projects.

All owners, contractors, subcontractors and operators involved in construction activities must provide and use reasonably available control technology as described in § 8.34.080 to prevent or minimize particulate matter from becoming airborne. All construction sites must maintain a trackout control device and/or clean up material deposited on a paved surface in accordance with § 8.34.080(A)(6) and (7).

(Ord. 5958 (part), 2013)

8.34.040 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.

(Ord. 5958 (part), 2013)

8.34.050 Reclamation of disturbed areas.

Landscaping and revegetation shall be completed as soon as grading or construction has been completed, but in no case later than 14 days after construction activity has stopped per § 8.50.040, to eliminate or reduce wind and/or water erosion. When landscaping and/or revegetation cannot 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 planting season. A written reclamation plan may be required by the Air Quality Division for sites where there are ongoing problems with vegetative and structural stabilization.

(Ord. 5958 (part), 2013)

8.34.060 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 rights-of-way and vehicle or equipment traffic.

(Ord. 5958 (part), 2013)

8.34.070 Streets, roads and parking area reentrainment prevention requirements.

A. All reentrainment prevention requirements are applicable to the area defined in § 8.34.020A.

B. Any political subdivision responsible for maintaining any public road on which deicing and traction materials are applied is required to have a compliance plan.

C. No person shall place any street deicing and/or traction materials upon any road, highway, driveway or parking area to which the public has general access which does not meet the following requirements:

1. A durability or hardness as defined in 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; and

3. For street deicing and/or 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 curved roads for safety purposes or steep roads if it is the only effective option available.

D. Any political subdivision responsible for maintaining any paved public road in the area defined in § 8.34.020A. shall clean the center line, travel lanes and areas immediately adjacent to the travel lanes. Cleaning shall commence under one or more of the following conditions:

1. Immediately once streets are sufficiently dry or when instructed to do so by the Air Quality Division. Political subdivisions do not need permission from the Air Quality Division to commence street sweeping;

2. When it has been determined by the Air Quality Division that there is a fugitive emissions problem due to the presence of street deicing and/or traction materials; and

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

E. Any political subdivision maintaining any paved public roads shall water flush the roadways when it has been determined by the Air Quality Division that street deicing and/or traction materials 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.

F. All vehicles that are transporting fugitive emissions emitting materials on public roads shall be covered with a tarp to reduce the emissions or must use a method that is equally effective in reducing the emissions.

G. Any material that is deposited, other than street deicing and/or traction materials, on any paved public roadway on which vehicular travel is not restricted, that could be reentrained as fugitive emissions shall be cleaned or removed as soon as possible or no more than 24 hours after deposition. The cleaning or removal process shall be conducted so that minimal fugitive emissions are generated.

H. Cleaning of Paved Surfaces. Deposited materials shall be cleaned up by using a vacuum sweeper or other method pre-approved by the Air Quality Division. 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.

(Ord. 5958 (part), 2013)

8.34.080 Requirements for controlling fugitive emissions using reasonably available control technology.

Any construction site, parking and/or outdoor storage area, or continuous operation as defined by this chapter, 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 proves to be insufficient for controlling fugitive emissions, additional measures shall be required. The 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. Applying chemical stabilizer or dust palliative;

3. Minimization of area disturbed;

4. Reclamation of disturbed areas as soon as possible during the planting season, if the completion of grading and/or construction activities fall outside of a planting season reclamation shall be completed at the start of the next planting season;

5. Vehicular speed limitation;

6. 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 paved areas shall be submitted in writing to the Air Quality Division for approval prior to the start of cleaning;

7. Maintenance of a trackout control device at all site access points to prevent tracking onto the public rights-of-way, private driveways or parking areas where fugitive dust may become reentrained;

8. Minimization of dust from open trucks or onsite storage piles; and/or

9. Installation of 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 surfaces:

1. Use of water to control fugitive emissions from disturbed areas or other work activities;

2. Applying chemical stabilizer or dust palliative;

3. Vehicular speed limitation;

4. Movement of materials by enclosed vehicles or covered conveyance systems;

5. Routine cleaning of paved areas by sweeping (mechanical with water or vacuum) to remove materials that may become reentrained;

6. Water flushing (when safety is not jeopardized); and/or

7. Wetting ahead of open sweepers on rural roads.

C. For paved parking areas:

1. Paved parking areas shall be cleaned either by sweeping (mechanical with water or vacuum sweeper), water flushing (when safety is not jeopardized), or by any means approved by the Community Development Director or designee.

D. For unpaved parking or outdoor storage areas:

1. The unpaved parking or outdoor storage areas shall be maintained to reduce dust reentrainment by methods such as:

a. Wetting down;

b. Applying chemical stabilizer or dust palliative; and/or

c. Vehicular speed limitation.

2. The most appropriate control measures shall be used to prevent erosion or trackout from an unpaved parking or outdoor storage area to paved public rights-of-way where the material can be readily reentrained.

E. 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 to 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 another method that is equally effective in reducing the emissions.

F. For erosion and sediment control:

1. Where a construction site or part thereof will become inactive for a period of 21 days or longer, long-term stabilization shall be implemented within 14 days following the cessation of active operations.

2. Controls may include:

a. Installing wind screens or equivalent wind speed reduction devices to control wind erosion;

b. Chemical stabilization;

c. Covering with a non-erodible material; and/or

d. Runoff control barriers, such as silt fences and dams.

G. For landscaping and revegetation:

1. Landscaping and revegetation shall be completed as soon as grading and/or construction has been completed.

2. When landscaping and/or revegetation cannot be completed immediately due to weather, the exposed areas shall be temporarily stabilized and final landscaping and/or revegetation shall be completed in the next planting season.

3. If necessary, a written reclamation plan may be required by the Air Quality Division.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.090 Activities exempt from this chapter.

The following activities are exempt from this chapter:

A. Fugitive emissions from permitted industrial sources. 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 at city or county recreational facilities. Activities conducted at city or 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;

E. Fugitive emissions from state facilities or state contractors. Fugitive emissions from state facilities or generated by state contractors that conduct a construction activity or continuous operation activity in the Air Quality Control Zone, which are permitted by the South Dakota Department of Environment and Natural Resources, as required by ARSD Chapter 74:36:18; and

F. Minor Continuous Operation Facilities. Minor continuous operation facilities are operations that handle less than 100 cubic yards of material per year or exclusively handle or stockpile material with a silt content of 4% or less.

(Ord. 5958 (part), 2013)

8.34.100 Construction permit requirements.

A. No person shall engage in any construction activity disturbing 1 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 1 acre of surface area is based on a cumulative area of anticipated disturbance to be completed for the entire project.

1. The permit must be maintained until all disturbed areas have been built upon, reclaimed and/or permanently stabilized.

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

B. The construction permit application shall be submitted to the Air Quality Division. The application shall contain:

1. Name, address, phone numbers and contact person for the property owner. If the property owner is a corporation, the name of its registered agent;

2. Name, address, phone numbers and contact person for the contractor, developer and other parties involved in site preparation or material handling;

3. Project name and address;

4. Legal description and location of the land affected;

5. Description of the proposed construction;

6. Size of the area (in acres) to be disturbed;

7. A project site plan/map;

8. Proposed date for both the commencement and termination of the operation;

9. Proposed date for the commencement and completion of reclamation including the method or manner of reclamation;

10. Haul route and contractor for imported or exported material, the import and/or export location and the distance from the site; and

11. Reasonably available control technology required in § 8.34.080 to be applied which will prevent fugitive emissions that exceed 20% opacity.

C. Procedure for Approval. 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 or parking and/or outdoor storage area permit. If the Air Quality Division determines the application is complete and is in compliance with this chapter, a permit shall be issued. In the event that the application has not been approved or rejected within the ten working day period, it shall be deemed to be approved.

D. Permit Fee. The permit fee shall be set by resolution of the Common Council.

E. Procedure for Amending. 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 fee for amending a construction permit shall be set by resolution of the Common Council.

F. Life of Permit. The construction permit shall be valid for 1 year. If all disturbed areas have not been reclaimed at the end of 1 year, the permit can be renewed for up to 1 additional year by submitting a modification to the construction permit application 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 all disturbed areas of the site have been adequately reclaimed through building construction, paving, landscaping, permanent revegetation and/or other permanent stabilization. Permanent revegetation is considered a uniform vegetative cover with a density of 70% of the native cover.

(Ord. 5958 (part), 2013)

8.34.110 Unpaved parking and/or outdoor storage area permit requirements.

A. All owners and/or operators of unpaved parking and/or outdoor storage areas that are 1 acre or more in size are required to obtain a permit from the Air Quality Division.

B. The application shall be submitted to the Air Quality Division. The application shall contain:

1. Name, address, phone numbers and contact person for the property owner. If the property owner is a corporation, the name of its registered agent;

2. Site name, site address, contact person's name and phone number for the site;

3. Legal description of the site;

4. Site information including the type of parking and/or storage area, type of surface material, condition of surface material, size of area, vehicle travel distance, type of traffic, speed limit, number of vehicle trips per day, number of days occupied and season of most use;

5. A site plan/map; and

6. Identification of the reasonably available control technology required in § 8.34.100 to be applied which will prevent fugitive emissions that exceed 20% opacity.

C. Procedure for Approval. 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 and/or outdoor storage area permit. If the Air Quality Division determines the application is complete and is in compliance with this chapter, a 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.

D. Permit Fee. The permit fee shall be set by resolution of the Common Council.

E. Procedure for Amending. Any change in operations or maintenance of the parking and/or outdoor storage area, which would result in an increase of fugitive emissions from the site, shall require an amendment to the parking and/or outdoor storage area permit. The fee for amending an unpaved and/or storage area permit shall be set by the Common Council.

F. Life of Permit. The parking and/or outdoor storage area permit shall be valid for 3 years. A new application for a parking and/or outdoor storage area permit shall be submitted to the Air Quality Division prior to the permit expiration.

(Ord. 5958 (part), 2013)

8.34.120 Compliance plan requirements.

A. All owners and/or operators of a non-exempt continuous operation which has the potential to generate fugitive emissions must obtain a permit from the Air Quality Division:

1. In order to receive a permit, a continuous operation must have a compliance plan which has been approved by the Air Quality Board;

2. The approved compliance plan shall become binding terms of the operation. Amendments to a compliance plan must be approved by the Air Quality Board and are enforceable provisions of the permit; and

3. A new compliance plan permit must be obtained every 3 years. Compliance plans shall be updated every 3 years or 3 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 3 years.

B. The compliance plan permit application shall be submitted to the Air Quality Division. The application shall contain:

1. Name, address, phone numbers and contact person of the property owner. If the property owner is a corporation, the name of its registered agent;

2. Site name, address, contact person and phone number;

3. Legal description of the site;

4. Detailed description of the continuous operation;

5. Size of the site (in acres);

6. A site plan/map; and

7. Identification of the reasonably available control technology required in § 8.34.080 to be applied which will prevent fugitive emissions that exceed 20% opacity.

8. A list of all types and amounts material stockpiled, imported to, or exported from the site;

9 Distances of travel on the site's unpaved surfaces for all vehicles and/or equipment used for handling materials;

10. Average weight of unloaded vehicles and/or equipment accessing the material storage areas;

11. The number of trips per year for vehicles and/or equipment accessing the material storage areas;

12. The sizes of each material stockpile; and

13. The size of the remaining storage area not covered by stockpiles.

14. Upon request by the Air Quality Division the percentage of efficiency of the control technology may be required.

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

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

C. Procedures for Approval.

1. All applications for a continuous operation permit and a compliance plan shall be submitted to the Air Quality Division at least 15 working days before the regular Air Quality Board meeting at which it would be considered. The 15 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 15 working-day period, the Air Quality Division shall determine if the application is complete. No application shall be submitted to the Air Quality Board that does not have all the information required by this chapter. If an application and/or plan are returned to the applicant as not being complete, the rejection notice shall be in writing and shall

specifically state what information is missing or not contained in sufficient detail to meet the requirements of this chapter.

2. Once an application for a compliance plan has been submitted to the Air Quality Board, a 90-day review period shall commence. The Air Quality Board must act upon the proposed permit and plan within 90 days or the plan shall be deemed to be 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 90 day review period shall be extended by a like number of days.

D. Permit Fee. Fees for the compliance plan permit shall be set by resolution of the Common Council.

E. Procedure for Amending a Compliance Plan. Any change in a continuous operation activity which would result in an increase of fugitive emissions from the site shall require an amendment to the approved compliance plan. Any amendment 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 an amendment to a compliance plan shall be set by resolution of the Common Council.

F. Life of Compliance Plans. After Air Quality Board approval of the compliance plan, a 3-year compliance plan permit shall be issued by the Air Quality Division. This permit allows the applicant to commence the operation thereunder. A new application for a compliance plan shall be submitted to the Air Quality Division 90 days prior to the expiration of the compliance plan permit.

(Ord. 5958 (part), 2013)

8.34.130 Additional fee for failing to obtain permit.

Failure to submit the application to obtain or renew a permit and/or pay the permitting fee prior to engaging in activities regulated by this chapter will result in an additional fee being added to the permit fee for each full week that the operation continues without a permit, and may further subject the person in violation to the penalty and injunctive provisions contained herein. Fees for this penalty shall be set by resolution of the Common Council. The first penalty fee will be assessed after a 7-day grace period and additional fees will be assessed every week thereafter that a violation of this chapter continues. The Community Development Director or designee shall have the authority to waive all or part of the fee increase.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.140 Emissions standards for permitted sites.

A. Facility Boundary Standard. The transportation of visible fugitive emissions off the property of a construction, parking and/or outdoor storage area or continuous operation facility site for more than 6 minutes of any 1-hour period will be considered an indication that the provisions of the construction permit, parking and/or outdoor storage

area 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 the source. Visible fugitive emissions limitations shall be determined by 40 C.F.R. Part 60 Appendix A, Method 22 (July 1, 2009). The visible fugitive emissions shall be determined by a certified observer at the property line.

B. Fugitive Emissions Source Standard. A fugitive emissions source shall not have a density greater than that designated as 20% opacity. Exceeding this standard shall be considered a violation of the provisions of the construction permit, parking and/or outdoor storage area permit or compliance plan and shall cause a review of the construction permit, parking and/or outdoor storage area permit or compliance plan. Fugitive emissions limitations of opacity specified in this division B. shall be determined by the procedures in 40 C.F.R. Part 60 Appendix A, Method 9 (July 1, 2009). The opacity readings shall be determined by a certified observer or by operation of equipment approved by the Air Quality Division that is known to produce equivalent or more accurate results.

(Ord. 5958 (part), 2013)

8.34.150 Exception to visible emission limit.

The provisions of § 8.34.140 do not apply if all 3 of the following meteorological conditions exist:

A. Five consecutive days of 0.02 inches or less of precipitation each day, excluding dry snow;

B. Peak wind gusts greater than 40 miles per hour, as documented at the East Rapid City National Weather Service site or other certified wind measurements; and

C. An average hourly wind speed greater than 20 miles per hour, as documented at the East Rapid City National Weather Service site or other certified wind measurements.

(Ord. 5958 (part), 2013)

8.34.160 Restrictions on solid fuel burning devices.

A. Building Permit Required. No person shall install or modify a solid-fuel burning appliance without first having obtained a building permit in accordance with RCMC Title 15: Buildings and Construction.

B. Inappropriate Fuels Burned in a Solid Fuel Burning Device Prohibited. No person shall, at any time, burn inappropriate fuel as defined in § 8.34.320X. 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.

C. 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 Environmental

Protection Agency in 40 C.F.R. 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.

D. Limit of Emissions from Solid Fuel Burning Device. No person shall cause or allow the emission of a smoke plume from a solid fuel burning device to exceed an average of 20% opacity for 6 consecutive minutes in any 1-hour period, except for a 20-minute period for cold start-up. Measurements of opacity shall be conducted by a certified observer in accordance with the Environmental Protection Agency's Method 9 in 40 C.F.R Part 60, Appendix A, or by operation of equipment approved by the Air Quality Division that is known to produce equivalent or more accurate results. Smoke from a chimney, flue, or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device.

(Ord. 5958 (part), 2013)

8.34.170 Open burning rules.

A. Open Burning Restricted.

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

a. Open burning of agricultural irrigation ditches;

b. Open burning for noxious weed control;

c. Open burning for wildfire control management;

d. Open burning for ecosystem management;

e. Open burning for Fire Department personnel training;

f. Open burning of a fire hazard;

g. Open burning for the heating or cooking of food for human consumption in residential areas, city parks and campground areas;

h. Open burning for recreational purposes when the fires are confined to a fireplace, barbecue pit, recreational fire pit, fire ring, chiminea, outdoor fireplace, fire pit, or rock ring; and

i. Open burning for ceremonial purposes.

B. Any inappropriate fuels, as defined in § 8.34.320X., that are present will be removed prior to ignition.

C. Pursuant to State Air Quality Regulations (ARSD 74:36:06;07) the following open burning practices are prohibited:

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 the use;

2. A municipality or county governmental agency may not burn municipal solid waste unless exempted by the small town exemption in accordance with ARSD 74:27:12:25;

3. A person may not conduct or permit the operation of a salvage operation by open burning, except as allowed in ARSD 74:27; and

4. A person may not burn railroad ties or wood treated with inorganic arsenicals, pentachlorophenol or creosols.

D. Conditions for Open Burning Approval within City Limits. Prior to ignition, a person requesting to open burn in the city limits for the exceptions allowed under division A.1.a. through f. of this section must gain permission from the Rapid City Department Fire Department.

(Ord. 5958 (part), 2013)

8.34.180 Authorization to inspect.

By obtaining a permit under this chapter the permit holder consents to allow any duly authorized officer, employee or representative of any agency responsible for enforcing this chapter to be allowed on the property for the purpose of inspecting the site to determine if the permit holder is in compliance with this chapter, the terms of their permit or with any compliance plan that applies to their operation. The officer shall notify the permit holder of their intent to inspect the property and after obtaining an escort and complying with safety regulations, may enter and inspect any portion of the property, premises or place in which the officer has reasonable grounds to believe is a source of air pollution or in which the officer has reasonable grounds to believe that the provisions of this chapter are not being followed. The entry and inspection may be conducted at any reasonable time for the purpose of investigating the pollution or of ascertaining the state of compliance with the ordinance. If any permit holder refuses entry to the officer to any portion of the site covered by a permit issued pursuant to this chapter, such permit will be immediately suspended upon the order of the Director of Community Development or designee. All work on the site must cease until such time as the permit holder allows the inspection of the property and the officer is able to determine that the permit holder is in compliance with the provisions of this chapter.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.190 Notice of violation.

A. If the Air Quality Division has reason to believe that a violation of any provision of this chapter has occurred, the Air Quality Division may cause a written notice of

violation to be given in the manner prescribed in § 8.34.190C. upon the person responsible for the violation as specified in this code. The notice shall specify:

1. The provision(s) of this chapter which are alleged to have been violated; and

2. The facts constituting the alleged violation.

B. The notice of violation shall include an order that necessary corrective action be taken within a reasonable time period. If the corrective action contained in the notice of violation is not completed within the prescribed time period or the alleged violator has not appealed pursuant to § 8.34.240, the Director of Community Development or designee may revoke any permit that has been issued pursuant to this chapter until such time as the violation has been corrected.

C. Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally;

2. Sent by certified or first-class mail;

3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure or area affected by such notice. Notice shall be deemed to be properly served as of the date of posting.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.200 Voluntary compliance.

Nothing in this chapter 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 Division shall not be obligated to make any such efforts and may proceed directly to available enforcement actions.

(Ord. 5958 (part), 2013)

8.34.210 Consent agreement.

Nothing in this chapter 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 Community Development Director or designee.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.220 Nuisance declared.

Violations of this chapter are hereby declared to be a public nuisance pursuant to SDCL § 9-29-13 and § 8.16.010C.8l. of this code and may be abated or removed under the provisions relating to nuisances in addition to any other remedies contained herein.

(Ord. 5958 (part), 2013)

8.34.230 Rapid City Area Air Quality Board.

A. There is hereby created the Rapid City Area Air Quality Board (Air Quality Board) consisting of 7 voting members and 3 ex-officio members. The composition and further requirements of the 7 voting members are as follows:

1. Two members representing industry;

2. One member representing the engineering profession (member shall have graduated from an accredited college or university with an engineering degree);

3. One member representing environmental interests (member shall have an interest and knowledge of environmental issues, preferably air quality issues);

4. One member representing homeowners (member shall own a home in the area regulated by this chapter or Pennington County Ordinance No. 12);

5. One member representing the business community (member shall be associated with a business in the area regulated by this chapter or Pennington County Ordinance No. 12); and

6. One member at large selected at large by the County Commission.

B. 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 Common Council for a term of 3 years on a staggered-term basis. One member at large will be appointed by the Pennington County Commission for a term of 3 years. The current Air Quality Board shall continue until their respective terms are up, and shall be replaced by application and appointment.

C. All voting members shall be residents of or work in the regulated area as defined in § 8.34.320A., or the area as regulated in Section 102(A) of Pennington County Ordinance No. 12, and with the exception of the 2industry members, shall not derive a majority of their income, either directly or indirectly, from a person who is subject to regulation by RCMC Chapter 8.34 or by Pennington County Ordinance No. 12. For purposes of this section, a person who is subject to regulation by Rapid City Municipal Code Chapter 8.34 or by Pennington County Ordinance No. 12 does not include one who is regulated solely for a parking and/or outdoor storage area, open burning, or a solid fuel burning device. Applicants for the above positions, except for the industry representatives, 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 Chapter 8.34 or by Pennington County Ordinance No. 12. The 2 industry members may derive their income from a person or company who is regulated by the Air Quality Division of the South Dakota Department of Environment and Natural Resources, and/or the provisions of Chapter 8.34 of the Rapid City Municipal Code and/or Pennington County Ordinance No. 12. Any further documentation which the Rapid City Common 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 Common Council or Pennington County Commission.

D. The composition and professional associations of the 3 ex-officio members are as follows:

1. One member representing state government (Secretary of the Department of Environment and Natural Resources, or designee);

2. One member representing the City of Rapid City, South Dakota (Mayor of Rapid City or designee); and

3. One member representing the Pennington County Commission (Chairperson of the Commission or designee).

E. The duties of the Air Quality Board shall be to review and approve compliance plans, serve as an Appeal Board, act on enforcement actions initiated by the Air Quality Division, and make recommendations to the Rapid City Common Council and Pennington County Commission on policies related to the air quality of the city and 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.

(Ord. 5958 (part), 2013)

8.34.240 Air Quality Board appeal procedures.

A. Any person who wishes to contest a notice of violation must request a hearing before the Air Quality Board. The request for a hearing before the Air Quality Board shall be submitted in writing to the Director of Community Development or designee within 15 days of receiving the notice of violation or it becomes final. In addition to requesting a hearing, the written request should contain a brief statement of the grounds for the appeal and the relief that the applicant is requesting. A petition to contest a notice of violation to the Air Quality Board shall be heard at the Board's next regularly scheduled meeting, or at a special meeting properly noticed.

B. At the hearing, the Air Quality Board will provide an opportunity for the applicant and staff to address the alleged violation and order for corrective action. After considering the information presented, the Air Quality Board may uphold the determination of staff that there has been a violation of the ordinance or may find that there has been no violation of the ordinance. If the Air Quality Board determines that there has been a violation, they may uphold or modify the corrective action(s) and/or timeline(s) contained in the notice of violation. The Air Quality Board may also order that any permits issued under this chapter be suspended or revoked for a period of time the Air Quality Board deems reasonable.

C. The alleged violator may appeal any decision or order of the Air Quality Board to the Common Council. The alleged violator must submit a written request to appeal the Board's decision to the City Finance Office within 15 days of the decision being appealed from. The Finance Office will place the appeal on the agenda of the next regularly scheduled Council meeting.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.250 Time allowed for corrective action in Air Quality Board order.

For any order issued as part of a notice of violation or after proceedings under this chapter, 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.

(Ord. 5958 (part), 2013)

8.34.260 Penalty for violation.

A violation of any provision of this chapter shall be punishable according to the General Penalty Provision, RCMC § 1.12.010.

(Ord. 5958 (part), 2013)

8.34.270 Injunction.

The City of Rapid City may seek to enjoin any person or entity violating the provisions of this chapter or who continues to operate after their permit has been suspended or revoked.

(Ord. 5958 (part), 2013)

8.34.280 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 this chapter may be billed to the property owner. If not paid in full within 30 days, any permit issued pursuant to this chapter may be suspended by the Director of Community Development or designee until such time as the balance is paid in full. The property owner may appeal any bill received pursuant to § 8.34.240.

(Ord. 6277 (part), 2019: Ord. 5958 (part), 2013)

8.34.290 Remedy not exclusive.

Nothing in this chapter 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, or the right to maintain any action or other appropriate proceedings for such relief.

(Ord. 5958 (part), 2013)

8.34.300 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.

(Ord. 5958 (part), 2013)

8.34.310 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.

(Ord. 5958 (part), 2013)

8.34.320 Definitions.

A. ***AIR QUALITY CONTROL ZONE.*** The geographical portion of Pennington County, South Dakota, that encompasses the northwest corner of Section 15, Township 2N, Range 6E to the northeast corner of Section 14, Township 2N, Range 8E, to the southeast corner of Section 35, Township 1N, Range 8E to the southwest corner of Section 34, Township 1N, Range 6E, to the northwest corner of Section 15, Township 2N, Range 6E and those portions of Sections 10, 11 and 12 of Township 2N, Range 6E, Sections 7, 8, 9, 10, 11 and 12 of Township 2N, Range 7E, Sections 7, 8, 9, 10 and 11 of Township 2N, Range 8E, BHM lying within Pennington County and subject to the jurisdiction of the Board of Commissioners of Pennington County, South Dakota excluding that portion located within the city limits of the City of Box Elder.

B. ***AIR QUALITY DIVISION.*** There is created the ***AIR QUALITY DIVISION***. The ***AIR QUALITY DIVISION*** shall be responsible for the administration and enforcement of this chapter.

C. ***AMBIENT AIR.*** That portion of the atmosphere outside of buildings to which the general public has access.

D. ***CHEMICAL STABILIZERS OR DUST PALLIATIVES.*** Dust control implemented to mitigate fugitive emissions by applying a chemical or water solution. The ***STABILIZER*** or ***PALLIATIVE*** shall not violate surface or ground water standards upon run-off or leaching.

E. ***CITY.*** The City of Rapid City, South Dakota.

F. ***COMMISSION.*** The Pennington County Commission.

G. ***COMPLIANCE PLAN.*** A plan prepared for the control and prevention of fugitive emissions from continuous operation activities.

H. ***CONSTRUCTION ACTIVITY.*** Any temporary activity which involves the removal or alteration of the natural or pre-existing cover of 1 acre or more of land. The 1 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 1 year.

I. ***CONTINUOUS OPERATION ACTIVITY.*** Any activity which may cause particulate fugitive emissions to be released into the ambient air and which is conducted on an ongoing basis in the same locality including but not limited to, street deicing and/or traction material activities, loading and unloading of material that may cause fugitive emissions and for a site with ongoing soil fill operations.

J. ***CONTROL MEASURE.*** A technique, practice or procedure used to prevent or minimize the generation, emission, entrainment, suspension and/or airborne transmission of fugitive dust.

K. ***CORRECTIVE ACTION.*** Actions required by the Air Quality Division or Air Quality Board to correct violations of this chapter.

L. ***COUNCIL.*** The Rapid City Common Council.

M. ***COUNTY.*** Pennington County, South Dakota.

N. ***DISTURBED AREA.*** A property where the natural or pre-existing cover has been disturbed but not properly reclaimed or stabilized to prevent fugitive emissions.

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

P. ***EROSION CONTROL.*** The measures that will be used to limit erosion of soil from disturbed areas at a construction site, parking area and/or outdoor storage area or continuous operation facility. The purpose of ***EROSION CONTROL*** is to limit the amount and rate of erosion occurring on disturbed areas.

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

R. ***FIRE DEPARTMENT PERSONNEL TRAINING.*** Activities designed for the purpose of training Fire Department personnel and conducted by a Fire Department.

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

T. ***FUGITIVE EMISSIONS.*** Those particulate emissions which do not pass through a stack, chimney, vent, or other functionally equivalent opening. In the event that any of the particulate emissions included by this definition are regulated by the State of South Dakota, the stricter and more extensive requirements for control of the 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.

U. ***GRAVEL PAD.*** A layer of washed gravel, rock or crushed rock which is at least 2 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 and width to dislodge mud, dirt and/or debris from the tires of motor vehicles, haul trucks and/or equipment prior to leaving the work area.

V. ***GRIZZLY.*** A device, such as rails, pipes or grates, used to dislodge mud, dirt, and/or debris from the tires and undercarriage of motor vehicles, haul trucks and/or other equipment prior to leaving the work site.

W. ***INAPPROPRIATE FUEL FOR OPEN BURNING.*** Includes, but is not limited to: leaves, grass clippings, 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, and the materials specified in § 8.34.170C.

X. ***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, and the materials specified in § 8.34.170C.

Y. ***MANUAL SWEEPING.*** 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.

Z. ***MECHANICAL SWEEPING.*** 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.

AA. ***NATIONAL AMBIENT AIR QUALITY STANDARDS (FOR PARTICULATES).*** The national primary and secondary ambient air standards for particulate matter as described in the current edition of the Code of Federal Regulations (C.F.R.), Title 40, Part 50.

BB. ***NORMAL AGRICULTURAL PRACTICES.*** All activities conducted by the owner or lessee at a site for the production of crops and/or nursery plants.

CC. ***NOXIOUS WEED.*** Undesirable vegetation that is characterized by profuse seed production and/or an ability to spread through rapid growth, making it difficult to control or eradicate through normal management operations.

DD. ***OPACITY.*** The degree to which fugitive emissions reduce the transmission of a light source.

EE. ***OPEN BURNING.*** The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passage through a stack, duct or chimney.

FF. ***OUTDOOR STORAGE AREA.*** Any unpaved area, 1 acre or more in size, either vacant or used for the storage of materials or equipment.

GG. ***PARKING AREA.*** Any paved parking area, 1 acre or more in size, to which deicing and/or traction materials are applied during adverse weather and/or any unpaved parking area, 1 acre or more in size.

HH. ***PERSON.*** Any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity.

II. ***PHASED WORK.*** 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 1 acre and not subject to the requirements of a permit.

JJ. ***PLANTING SEASON.*** April 15 through June 15 and August 31 through October 15.

KK. ***PM2.5.*** Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

LL. ***PM10.*** Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

MM. ***POLITICAL SUBDIVISION.*** Any public entity that maintains street operations within the area designated in § 8.34.020A.

NN. ***PROJECT COMPLETION.*** All surface areas have been reclaimed by building construction, paving, gravel, landscaping and/or permanent revegetation to prevent fugitive dust generation.

OO. ***REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT).*** The emission control technology determined on a case-by-case basis by the Air Quality Division to be feasible in meeting the requirements of this chapter, taking into account energy, the environment, economic impacts and other costs.

PP. ***RECLAMATION PLAN.*** The plan that describes the manner and timeframe in which all disturbed surfaces will be stabilized to prevent fugitive dust generation.

QQ. ***REENTRAINMENT.*** A process in which particulate matter that has been deposited is then liberated into the ambient air by vehicular travel, wind, or other causes.

RR. ***SEDIMENT CONTROL.*** 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.

SS. ***SMOKE.*** Small airborne particles resulting from incomplete combustion consisting predominantly, but not exclusively, of carbon, ash, and other combustible materials, that form a visible plume.

TT. ***SOLID FUEL BURNING DEVICE.*** Any fireplace, fireplace insert, wood stove, wood burning heater, wood-fired boiler, coal fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic, cooking or space heating inside a building.

UU. ***STABILIZATION.*** The use of practices that prevent exposed soil from eroding.

VV. ***STABILIZED CONSTRUCTION ENTRANCE.*** The entrance located at the interface of the 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 construction area.

WW. ***STATE CONTRACTOR.*** Any person under contract to provide services to a state facility, including any person under contract to provide construction or continuous operation activities on state highways or the state interstate system within the Air Quality Control Zone.

XX. ***STATE FACILITY.*** Any state agency, state-owned or state-leased property, or property subject to a temporary state easement in the Air Quality Control Zone.

YY. ***TRACKOUT CONTROL DEVICE.*** A device that includes but is not limited to, a gravel pad, grizzly, wheel wash system, stabilized construction entrance 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 area 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 that will prevent trackout onto paved surfaces and public rights-of-way.

ZZ. ***VACANT LOT.*** 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.

AAA. ***VACUUM SWEEPING.*** 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.

BBB. ***WHEEL WASH SYSTEM.*** A system at the site entrance used to wash soil from motor vehicles, haul trucks and/or other equipment to prevent trackout or material becoming dislodged from the vehicle, truck or equipment onto a public right-of-way or paved parking area.

CCC. ***WILDFIRE CONTROL MANAGEMENT.*** Activities, including open burning, that are conducted to reduce the potential for serious wild fires.

(Ord. 5958 (part), 2013)