

**PENNINGTON COUNTY
BOARD OF COMMISSIONERS' MINUTES
June 6, 2013**

A meeting of the Pennington County Board of Commissioners was held on Thursday, June 6, 2013, in the Commissioners' meeting room of the Pennington County Courthouse. Chairperson Lyndell Petersen called the meeting to order at 9:00 a.m. with the following Commissioners present: Ron Buskerud, Ken Davis, Don Holloway and Nancy Trautman.

APPROVAL OF THE AGENDA

MOVED by Davis and seconded by Buskerud to approve the agenda as presented. Vote: Unanimous.

CONSENT AGENDA ITEMS

The following items have been placed on the Consent Agenda for action to be taken by a single vote of the Board of Commissioners. Any item may be removed from the Consent Agenda for separate consideration.

MOVED by Trautman and seconded by Holloway to approve Consent Agenda Items 5-7 as presented. Vote: Unanimous.

5. Approve the minutes of the May 21, 2013, Board of Commissioners' meeting.
6. Approve the vouchers listed at the end of the minutes for expenditures for insurance, professional services, publications, rentals, supplies, repairs, maintenance, travel, conference fees, utilities, furniture and equipment totaling \$253,013.95.
7. Recognize and thank Pennington County volunteers for the month of April 2013. The list of volunteers is on file in the Human Resources office and is posted on the County Bulletin Board.

End of Consent Agenda

Change in Minimum Acre Requirement for Classification of Lands as Agricultural – Director of Equalization Shannon Rittberger

Items From Public

MOVED by Trautman and seconded by Holloway to allow three minutes for each speaker on the sign-up sheet and one and one half hour total for public comment. MOVED by Trautman and seconded by Holloway to amend the motion to eliminate the three minute limit but retain the one and one half hour total for public comment. Vote on the amendment: Unanimous. Vote on the motion as amended: Unanimous.

Moved by Davis and seconded by Trautman to take a 10 minute break. Vote: Unanimous. 10:52 am. To 11:02 a.m.

SECOND READING AND PUBLIC HEARING – AMENDMENTS TO PENNINGTON COUNTY AIR QUALITY ORDINANCE #12: MOVED by Davis and seconded by Trautman

to approve the second reading of the amendments to Pennington County Air Quality Ordinance #12. Vote: Unanimous.

PENNINGTON COUNTY ORDINANCE NO. 12

WHEREAS, pursuant to SDCL 34A-1-36, the County of Pennington County may establish and administer an air quality control program within its jurisdiction; and

WHEREAS, the implementation of an air quality program promotes the health, safety and general welfare of the public; and

WHEREAS, the County currently has adopted an air quality program which regulates fugitive emissions and smoke in a designated area within Pennington County per Ordinance Number 12; and

WHEREAS, the City of Rapid City and Pennington County have previously entered into a cooperative agreement to jointly regulate fugitive emissions and the abatement of smoke within their respective jurisdictions; and

WHEREAS, the Rapid City Area Air Quality Board has recommended revising certain provisions of the County's Air Quality Ordinance; and

WHEREAS, the Board of County Commissioners of Pennington County, South Dakota has determined that it is in the County's best interests to adopt the recommendations of the Rapid City Area Air Quality Board by enacting a new revised Pennington County Ordinance Number 12.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Pennington County, South Dakota that Pennington County Ordinance Number 12 be amended to read as follows:

PENNINGTON COUNTY ORDINANCE NO. 12

FUGITIVE EMISSIONS AND THE ABATEMENT OF SMOKE

SECTION 101 POLICY OF COUNTY

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 County of Pennington County, South Dakota to achieve and maintain the PM₁₀ and PM_{2.5} National Ambient Air Quality Standards by controlling fugitive emissions, open burning and wood burning in the interest of public health and welfare; to limit environmental damage to plant and animal life; to promote commercial and industrial development while limiting environmental degradation; and to educate the public 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 ordinance to provide for a program of fugitive emissions control by applying reasonably available control technology and solid fuel smoke abatement within the designated area identified in Section 102(A).

SECTION 102 APPLICABILITY

This ordinance shall apply to only the following limited area within Pennington County:

A. The geographical portion of Pennington County, South Dakota, that encompasses the northwest corner of Section 15, Township 2 North, Range 6 East to the northeast corner of Section 14, Township 2 North, Range 8 East, to the southeast corner of Section 35, Township 1 North, Range 8 East to the southwest corner of Section 34, Township 1 North, Range 6 East, to the northwest corner of Section 15, Township 2 North, Range 6 East and those portions of Sections 10, 11 and 12 of Township 2 North, Range 6 East, Sections 7, 8, 9, 10, 11 and 12 of Township 2 North, Range 7 East, Sections 7, 8, 9, 10 and 11 of Township 2 North, Range 8 East, 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 Rapid City and the City of Box Elder.

B. Within the area described in Section 102(A), this ordinance applies to:

1. Smoke from solid fuel burning devices and open burning;
2. Construction permits;
3. Parking or outdoor storage areas (paved parking areas or graveled areas); and
4. Compliance Plans for continuous operations.

SECTION 103 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 Section 108 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 Section 108(A)(6) and (7).

SECTION 104 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.

SECTION 105 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, 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.

SECTION 106 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.

SECTION 107 STREETS, ROADS AND PARKING AREA REENTRAINMENT REQUIREMENTS

A. All reentrainment prevention requirements are applicable to the area defined in Section 102(A).

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 three percent 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 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. When the streets are sufficiently dry to commence street sweeping; 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 the 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.

SECTION 108 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 ordinance, 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 for controlling fugitive emissions, additional measures shall be required. The controls may include, but not be limited to, the following practices:

A. For activities 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 Planning and Development Services 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.

SECTION 109 ACTIVITIES EXEMPT FROM THIS ORDINANCE

The following activities are exempt from this ordinance:

- 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 only exclusively handle or stockpile material with a silt content of 4% or less.

SECTION 110 AIR QUALITY CONSTRUCTION PERMIT REQUIREMENTS

- A. 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 an air quality 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. Note: A Construction Permit from Pennington County Planning and Zoning shall

be required for any excavation, clearing, or land disturbances greater than or equal to 10,000 square feet, pursuant to Pennington County Ordinance No. 507.

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

2. An air quality 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.

B. The air quality 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 indicating areas of soil disturbance, or a copy of the Erosion and Sediment Control Plan.

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

9. Proposed date for both 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 Section 108 to be applied which will prevent fugitive emissions that exceed 20 percent opacity.

C. *Procedure for approval.* The Air Quality Division shall have ten 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 ordinance, 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 Rapid City Common Council and a copy thereof will be submitted to the Pennington County Auditor.

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 an air quality construction permit shall be set by resolution of the Common Council and a copy thereof will be submitted to the Pennington County Auditor.

F. *Life of permit.* The air quality 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 modification to the air quality 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.

SECTION 111 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 one 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 Section 108 to be applied which will prevent fugitive emissions that exceed 20 percent 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 and a copy thereof will be submitted to the Pennington County Auditor.

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 and a copy thereof will be submitted to the Pennington County Auditor.

E. *Life of permit.* The parking and/or outdoor storage area permit shall be valid for three 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.

SECTION 112 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 three years. 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 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 Section 108 to be applied which will prevent fugitive emissions that exceed 20 percent 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 and a copy thereof will be submitted to the Pennington County Auditor.

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 and a copy thereof will be submitted to the Pennington County Auditor.

F. *Life of compliance plans.* After Air Quality Board approval of the compliance plan, a three-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.

SECTION 113 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 and a copy thereof will be submitted to the Pennington County Auditor. The first penalty fee will be assessed after a seven day grace period and additional fees will be assessed every week thereafter that a violation of this chapter continues. The Community Planning and Development Services Director or designee shall have the authority to waive all or part of the fee increase.

SECTION 114 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 six minutes of any one-hour period will be considered an indication that the provisions of the air quality 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 percent opacity. Exceeding this standard shall be considered a violation of the provisions of the air quality construction permit, parking and/or outdoor storage area permit or compliance plan, and shall cause a review of the air quality construction permit, parking and/or outdoor storage area permit or compliance plan. Fugitive emissions limitations of opacity specified in this paragraph 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.

SECTION 115 EXCEPTION TO VISIBLE EMISSION LIMIT

The provisions of Section 114 do not apply if all three 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.

SECTION 116 RESTRICTIONS ON SOLID FUEL BURNING DEVICES

A. *Inappropriate fuels burned in a solid fuel burning device prohibited.* No person shall, at any time, burn inappropriate fuel as defined in Section 132 (W) 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 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.

C. *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 twenty (20) percent opacity for six (6) consecutive minutes in any one (1) hour period, except for a twenty (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.

SECTION 117 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 in this section and Pennington County Ordinance No. 632:

- 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 or barbecue pit; and
- i. Open burning for ceremonial purposes.

B. Any inappropriate fuels, as defined in Section 132 (W), 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.* Prior to ignition, a person requesting to open burn for the exceptions allowed under subsection (A)(1)(a-f) of this section must gain permission from one of the following fire control entities listed below, based upon the location of the proposed burning activity. Note: All of the exceptions listed under (A)(1)(a-i) are subject to the provisions of Pennington County Ordinance No. 632 and any Resolution passed pursuant thereto as referenced in (D)(1)(c) below.

1. Zones of Jurisdiction for Gaining Permission to Open Burn.

- a. *The Black Hills Forest Fire Protection District.* The area designated by South Dakota State Legislature in SDCL 34-35-15. Permission to open burn will be granted by the Director/Wildland Fire Coordinator of the South Dakota Department of Agriculture, Wildland Fire Division, or designee.

- b. *Rapid City.* This includes all areas within the Rapid City corporate limits. Permission will be granted by the Rapid City Department of Fire and Emergency Services.

- c. *All Other Portions of the Air Quality 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 lying within the Black Hills Forest Fire Protection District), and the area of the Black Hawk VFD in the portion east of Interstate 90. Permission for these areas will be granted by the responsible volunteer fire department after consultation with the Pennington County Fire Administration to ensure compliance with Pennington County Ordinance No. 632 and any related Resolution of the Pennington County Commission.

SECTION 118 AUTHORIZATION TO INSPECT

By obtaining a permit under this ordinance, the permit holder consents to allow any duly authorized officer, employee or representative of any agency responsible for enforcing this ordinance to be allowed on the property for the purpose of inspecting the site to determine if the permit holder is in compliance with this ordinance, 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 ordinance 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 ordinance, such permit will be immediately suspended upon the order of the Director of Community Planning and Development Services 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 ordinance.

SECTION 119 NOTICE OF VIOLATION

A. If the Air Quality Division has reason to believe that a violation of any provision of this ordinance has occurred, the Air Quality Division may cause a written notice of violation to be given in the manner prescribed in Section 119(C) upon the person responsible for the violation as specified in this code. Notice shall specify:

1. The provision(s) of this ordinance 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 Section 124, the Director of Community Planning and Development Services or designee may revoke any permit that has been issued pursuant to this ordinance 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; or
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.

SECTION 120 VOLUNTARY COMPLIANCE

Nothing in this ordinance shall prevent the Air Quality Division from making efforts to obtain voluntary compliance through warning, conferences, or any other appropriate

means. However, the Air Quality Division shall not be obligated to make any such efforts and may proceed directly to available enforcement actions.

SECTION 121 CONSENT AGREEMENT

Nothing in this ordinance shall prevent the Air Quality Division from notifying an alleged violator of violations and negotiating a consent agreement. Any consent agreement shall be approved by the Community Planning and Development Services Director or designee.

SECTION 122 NUISANCE DECLARED

Violations of this ordinance are hereby declared to be a public nuisance pursuant to SDCL 7-8-33 and Pennington County Ordinance No. 106 and may be abated or removed under the provisions relating to nuisances in addition to any other remedies contained herein.

SECTION 123 RAPID CITY AREA AIR QUALITY BOARD

A. There is hereby created the Rapid City Area Air Quality Board (Air Quality Board) consisting of seven voting members and three ex-officio members. The composition and further requirements of the seven 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 in environmental issues, preferably air quality issues);
4. One member representing homeowners (member shall own a home in the area regulated by this ordinance or by Rapid City Municipal Code Chapter 8.34);
5. One member representing the business community (member shall be associated with a business in the area regulated by this ordinance or by Rapid City Municipal Code Chapter 8.34); and
6. One member at large (member shall be 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 Council for a term of three years on a staggered-term basis. One member at large will be appointed by the Pennington County Commission for a term of three 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 Section 8.34.020(A) of the Rapid City Municipal Code or the area as regulated in Section 102(A) of Pennington County Ordinance No. 12, and with the exception of the two industry members, and shall not derive a majority of their income, either directly or indirectly, from a person who is subject to regulation by Pennington County Ordinance No. 12 or by Rapid City Municipal Code Chapter 8.34. For purposes of this section, a person who is subject to regulation by Pennington County Ordinance No. 12 or by Rapid City Municipal Code Chapter 8.34 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 Pennington County Ordinance No. 12 or by Rapid City Municipal Code Chapter 8.34. The two 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 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.

D. The composition and professional associations of the three 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 Pennington County Commission and Rapid City Council on policies related to the air quality of the County and City. 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.

SECTION 124 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 Planning and Development Services 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 ordinance 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 County Commission. The alleged violator must submit a written request to appeal the Board's decision to the Pennington County Auditor within 15 days of the decision being appealed from. The Auditor will place the appeal on the agenda of the next regularly scheduled Commission meeting.

SECTION 125 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 ordinance, the Air Quality Board shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the implicated emissions or air pollution.

SECTION 126 PENALTY FOR VIOLATION

A violation of any provision of this ordinance shall be punishable by a fine not to exceed \$500 and/or 30 days in jail. Each calendar day a violation occurs shall be considered a separate offense.

SECTION 127 INJUNCTION

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

SECTION 128 RECOVERY OF COSTS INCURRED

All costs and expenses incurred by the Air Quality Division, the State's Attorney or other County staff in carrying out the provisions of this ordinance may be billed to the property owner. If not paid in full within 30 days, any permit issued pursuant to this ordinance may be suspended by the Director of Community Planning and Development Services or designee until such time as the balance is paid in full. The property owner may appeal any bill received pursuant to Section 124.

SECTION 129 REMEDY NOT EXCLUSIVE

Nothing in this ordinance shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property, or the right to maintain any action or other appropriate proceedings for such relief.

SECTION 130 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.

SECTION 131 SEVERABILITY OF PROVISIONS AND APPLICATIONS

If a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect.

SECTION 132 DEFINITIONS

- A. *AIR QUALITY CONTROL ZONE*: That area as defined in Section 102(A).
- B. *AIR QUALITY DIVISION*: The Air Quality Division of the Rapid City Department of Community Planning and Development Services, or its successor or designee. The Air Quality Division shall be responsible for the administration and enforcement of this ordinance.
- 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 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.

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 ordinance.

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 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 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 Section 117(C).

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 Section 117(C).

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, one acre or more in size, either vacant or used for the storage of materials or equipment.

GG. *PARKING AREA*: Any paved parking area, one acre or more in size, to which deicing and/or traction materials are applied during adverse weather and/or any unpaved parking area, one 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 one 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. *PM_{2.5}*: 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 Section 102(A).

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 Ordinance, 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 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.

PENNINGTON COUNTY BOARD OF COMISSIONERS

/s/ Lyndell Petersen, Chairman

ATTEST: (SEAL)

/s/ Julie A. Pearson
Pennington County Auditor

Central States Fairgrounds Update – Ron Jeffries

FY2014 Pennington County Provisional Budget Presentation – Auditor Julie Pearson

ITEMS FROM AUDITOR

- A. NEW MALT BEVERAGE & SD FARM WINE LICENSE APPLICATIONS: MOVED by Davis and seconded by Trautman to approve the new alcohol licenses as listed below and authorize the Chairperson’s signature thereto. Vote: Unanimous.

Package (off sale) Malt Beverage & SD Farm Wine

Hart Ranch Camping, Hart Ranch Camping Resort Club, Inc.
Horse Thief Campground & Resorts, Paul & Julie Stremick.

Retail (on-off sale) Malt Beverage

Whispering Pines Campground, Red Sky Enterprise LLC

- B. MALT BEVERAGE LICENSE RENEWALS: MOVED by Davis and seconded by Buskerud to approve the malt beverage license renewals listed below and authorize the Chairperson’s signature thereto. Vote: Unanimous.

Retail (on-off sale) Malt Beverage

Bear Country USA, Bear Country USA, Inc.
Black Hills Receptions, Black Hills Receptions & Rentals LLC.
Caputa General Store, Caputa General Store Inc.
Country Corner, Robin Robertson
Country Store at the Forks, Covington Consulting Group, Inc.
Depot Restaurant, Patrick S. Shannon
Happy Holiday RV Resort, Diamond Trek LP
Hart Ranch Golf Course, Hart Ranch Development Co.

JD's Catering and House of Pizza, Jeff Jundt and Dueene Zoller
Johnny's Billiards & Arcade, Johnny's Billiards & Arcade
Moonshine Gulch Saloon, Betty Harn
Mt. Meadow Store & Campground, Deerfield Lake Resort LLC
O'Malley's Casino, KJL Inc.
Putz N Glow Inc., Putz N Glow Inc.
Rochford Mall, The Rochford Mall Inc.
Sheridan Lake Marina, Goodwin Inc.
Sugar Shack, Sugar Daddy's LLC
Tatanka Trading Post, Kim Sealine
Valley Square Casino, Wal-East Development Inc.
Valley Square Sports Pub, Wal-East Development Inc.
Winery Hill City, Naked Winery Hill City LLC.

Retail (on-off sale) Malt Beverage and SD Farm Wine

Black Hills RV Services Center, Grover Repair, Inc.
Country Store at the Forks, Covington Consulting Group, Inc.
Mystery Mountain Resort, Black Hills Resort, Inc.
Rafter J Bar Ranch Campground, Hicow Co.

Package (off-sale) Malt Beverage

Corner Pantry – Moon Meadows, MG Oil Company
Dalcam EZ Mart, Dalcam Oil Company Inc.
Gaslight Restaurant, Big Guys LLC
Holy Smoke Resort, Holy Smoke Inc.

Package (off-sale) Malt Beverage & SD Farm Wine

Mt. Rushmore KOA, Recreational Adventures Co.
Stone Faces Winery, Valiant Vineyards, Inc.

ITEMS FROM BUILDINGS & GROUNDS

A. **EVIDENCE BUILDING EQUIPMENT PACKAGE – INNOVATIVE LABORATORY SYSTEMS, INC.**

MOVED by Holloway and seconded by Trautman to authorize the Chairperson's signature to Change Order #1 dated April 2, 2013, which decreases the Contract Sum by \$4,771 to \$56,110.37 and increases the Contract Time by 18 calendar days for Bid Item D, Fixed Lab Equipment Contract with Innovative Laboratory Systems, Inc. Vote: Unanimous.

MOVED by Holloway and seconded by Trautman to authorize the Chairperson's signature to the Certificate of Substantial Completion dated February 16, 2013, for Bid Item D, Fixed Lab Equipment Contract with Innovative Laboratory Systems, Inc. Vote: Unanimous.

MOVED by Trautman and seconded by Holloway to authorize the Chairperson's signature to Change Order #1 dated April 2, 2013, which increases the Contract Sum by \$1,306.00 to \$129,094 and increases the Contract Time by 18 calendar days for Bid Item D – Mobile Lab Equipment Contract with Innovative Laboratory Systems, Inc. Vote: Unanimous.

MOVED by Trautman and seconded by Holloway to authorize the Chairperson's signature to the Certificate of Substantial Completion dated February 16, 2013, for Bid Item D, Mobile Lab Equipment Contract with Innovative Laboratory Systems, Inc. Vote: Unanimous.

ITEMS FROM EQUALIZATION

- A. ABATEMENT APPLICATION – REAL LIFE CHURCH: MOVED by Buskerud and seconded by Davis to deny the abatement application for 2012 taxes for Real Life Church, Parcel ID 23041 in the amount of \$11,368.16, because the applicant purchased the property after the deadline to apply for an exemption for 2012 taxes. Vote: Unanimous.

ITEMS FROM HIGHWAY DEPARTMENT

- A. AUTHORIZATION TO PURCHASE ASPHALT ZIPPER: MOVED by Buskerud and seconded by Davis to authorize the Highway Department to purchase an Asphalt Zipper off the McPherson County Bid in the amount of \$167,470, which was awarded to Asphalt Zipper Inc., 831 East 340 South Suite 100, American Fork, Utah. Vote: Unanimous.
- B. LONG VIEW ROAD – MAINTENANCE PLAN: Information item.
- C. 2014-2018 TRANSPORTATION IMPROVEMENT PLAN: MOVED by Trautman and seconded by Petersen to approve the 2014-2018 Transportation Improvement Plan for Pennington County. The motion carried 4-1 on a roll call vote: Buskerud – no, Davis – yes, Holloway – yes, Trautman – yes, Petersen – yes.

ITEMS FROM HUMAN RESOURCES

- A. PENNINGTON COUNTY MISSION STATEMENT AND CODE OF ETHICS: MOVED by Holloway and seconded by Trautman to approve the Pennington County Mission Statement and Code of Ethics, amending line five of the Code of Ethics to read, "We will be fair to and respectful of fellow employees, citizens and customers. Vote: Unanimous.

ITEMS FROM INFORMATION TECHNOLOGY DEPARTMENT

- A. COUNTY WEBSITE REDESIGN: MOVED by Holloway and seconded by Trautman to authorize the IT Director to enter into a contract with GovOffice for redesign of the Pennington County website. Vote: Unanimous.

Request For Change Of Representative On Spring Creek Advisory Group – West Dakota Water Development District: The Board of Commissioners took no action on this item.

Application for Right-of-Way for an Isolated Tract to a Public Highway – David F. Morrow: MOVED By Buskerud and seconded by Davis to continue this item to the June 18, 2013, Board of Commissioners' meeting. Vote: Unanimous.

Request to Waive Administrative Fees – Jack Bradt : MOVED by Davis and seconded by Petersen that Pennington County retain the \$600 for the commercial building permit and penalty and allow Mr. Bradt to apply for the garage building permit at no additional charge. The motion failed 4-1 on a roll call vote: Buskerud – no, Davis – yes, Holloway – no, Trautman – no, Petersen – no.

MOVED by Trautman and seconded by Buskerud to retain the \$300 for building permit and \$300 for the penalty on the duplex and require Mr. Bradt to apply for the building permit for the garage at a cost of \$176 with no additional penalty on that application. Roll call vote: Buskerud – yes, Davis – yes, Holloway – no, Trautman – yes, Petersen – yes.

ITEMS FROM PLANNING & ZONING

Consent Agenda

The following items have been placed on the Planning & Zoning Consent Agenda for action to be taken on all items by a single vote of the Board of Commissioners. Any item may be removed from the Consent Agenda for separate action.

MOVED by Davis and seconded by Trautman that Planning & Zoning Consent Agenda Items A-C and E-G be approved as presented with Item D removed for separate consideration. Vote: Unanimous.

- A. SECOND READING OF REZONE / RZ 13-04: Siders Sisters; Linda Smoot – Agent. To rezone 0.834 of an acre from Limited Agriculture District to Low Density Residential District in accordance with Sections 207 and 508 of the Pennington County Zoning Ordinance.

ORDINANCE NO. RZ 13-04

AN ORDINANCE AMENDING SECTION 508 OF THE PENNINGTON COUNTY ZONING ORDINANCE, REZONING THE WITHIN DESCRIBED PROPERTY:

BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY COMMISSION THAT THE PENNINGTON COUNTY ZONING ORDINANCE BE AND HEREBY IS AMENDED BY AMENDING THE ZONING OF THE FOLLOWING DESCRIBED PROPERTY:

A portion of Parcel No. 4 located in SW1/4 of NE1/4 of Section 2, T2S, R5E, BHM,

Pennington County, South Dakota, said parcel of land is described as follows: Beginning at a point on the North line of said Parcel No. 4, the NW corner of said Parcel No. 4 bears S 88°48'45" W a distance of 231.01'; thence N 88°48'45" E a distance of 424.96'; thence S 0°29'06" E a distance of 156.95'; thence along the arc of a curve to the right whose angle is 13°35'32" and whose radius is 593.50' a distance of 140.80' to the PT of the curve; thence N 68°43'21" W a distance of 311.43' to the Point of Beginning. Said parcel of land contains 0.834 acre more or less.

The above-described property is hereby rezoned from Limited Agriculture District to Low Density Residential District.

Dated this 6th day of June, 2013.

PENNINGTON COUNTY COMMISSION

/s/ Lyndell Petersen, Chairperson

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

- B. SECOND READING OF REZONE / RZ 13-03: Lois McVey; Marv Matkins – Agent. To rezone 14.47 acres from General Agriculture District to Limited Agriculture District in accordance with Sections 206 and 508 of the Pennington County Zoning Ordinance.

ORDINANCE NO. RZ 13-03

AN ORDINANCE AMENDING SECTION 508 OF THE PENNINGTON COUNTY ZONING ORDINANCE, REZONING THE WITHIN DESCRIBED PROPERTY:

BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY COMMISSION THAT THE PENNINGTON COUNTY ZONING ORDINANCE BE AND HEREBY IS AMENDED BY AMENDING THE ZONING OF THE FOLLOWING DESCRIBED PROPERTY:

Located on a parcel of land being a portion of H.E.S. No. 636 located in N1/2 of SE1/4 of Section 36, T1N, R3E, BHM, Pennington County, South Dakota, said parcel of land is described as follows: Beginning of NE corner of said parcel identical to the E1/4 corner of said Section 36; thence S 0°08'35" W a distance of 759.50'; thence N 89°50'30" W a distance of 594.27'; thence N 0°05'02" E a distance of 562.79'; thence S 82°10'39" W a distance of 733.55'; thence N 0°23'41" E a distance of 297.06'; thence S 89°54'24" E a distance of 1320.02' to the Point of Beginning. Said parcel of land contains 14.470 acres more or less.

The above-described property is hereby rezoned from General Agriculture District to Limited Agriculture District.

Dated this 6th day of June, 2013.

PENNINGTON COUNTY COMMISSION

/s/ Lyndell Petersen, Chairperson

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

- C. SECOND READING OF REZONE / RZ 13-08: David Merchen; Davis Engineering – Agent. To rezone 3.32 acres from Planned Unit Development District to Low Density Residential District in accordance with Section 508 of the Pennington County Zoning Ordinance.

ORDINANCE NO. RZ 13-08

AN ORDINANCE AMENDING SECTION 508 OF THE PENNINGTON COUNTY ZONING ORDINANCE, REZONING THE WITHIN DESCRIBED PROPERTY:

BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY COMMISSION THAT THE PENNINGTON COUNTY ZONING ORDINANCE BE AND HEREBY IS AMENDED BY AMENDING THE ZONING OF THE FOLLOWING DESCRIBED PROPERTY:

Lot 4, Merchen Addition #2, Section 21, T2N, R6E, BHM, Pennington County, South Dakota.

The above-described property is hereby rezoned from Planned Unit Development District to Low Density Residential District.

Dated this 6th day of June, 2013.

PENNINGTON COUNTY COMMISSION

/s/ Lyndell Petersen, Chairperson

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

- D. Removed for separate consideration.
- E. SECOND READING OF REZONE / RZ 13-07 AND COMPREHENSIVE PLAN AMENDMENT / CA 13-02: Grant Bolt / Greg Bolt; Bolt Racing, Inc. To rezone 39.2

acres from General Agriculture District to Low Density Residential District and to amend the Pennington County Comprehensive Plan to change the Future Land Use from Public to Low Density Residential District in accordance with Sections 207 and 508 of the Pennington County Zoning Ordinance.

ORDINANCE NO. RZ 13-07

AN ORDINANCE AMENDING SECTION 508 OF THE PENNINGTON COUNTY ZONING ORDINANCE, REZONING THE WITHIN DESCRIBED PROPERTY:

BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY COMMISSION THAT THE PENNINGTON COUNTY ZONING ORDINANCE BE AND HEREBY IS AMENDED BY AMENDING THE ZONING OF THE FOLLOWING DESCRIBED PROPERTY:

Government Lot 1 in the NW1/4SE1/4, Section 22, T1S, R6E, BHM, Pennington County, South Dakota.

The above-described property is hereby rezoned from General Agriculture District to Low Density Residential District.

Dated this 6th day of June, 2013.

PENNINGTON COUNTY COMMISSION

/s/ Lyndell Petersen, Chairperson

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

- F. FIRST READING AND PUBLIC HEARING OF REZONE / RZ 13-06: Doug Sletten. To rezone two (2) acres from Limited Agriculture District to Suburban Residential District in accordance with Sections 210 and 508 of the Pennington County Zoning Ordinance.

Parcel A of S1/2SW1/4, Section 14, T1N, R8E, BHM, Pennington County, South Dakota.

First Reading of Rezone / RZ 13-06 is approved.

- G. SECOND READING OF ORDINANCE AMENDMENT / OA 13-01: Pennington County. To amend Ordinance 17 (Flood Damage Prevention Ordinance) to update and adopt the new DFIRMs.

ORDINANCE #34-25

AN ORDINANCE AMENDMENT TO THE PENNINGTON COUNTY ZONING ORDINANCE.

BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY BOARD OF COMMISSIONERS THAT THE PENNINGTON COUNTY ORDINANCE #34 BE AMENDED AS FOLLOWS:

FLOOD DAMAGE PREVENTION ORDINANCE

SECTION 100

STATUTORY AUTHORIZATION, FINDINGS OF FACT, TITLE, PURPOSE AND METHOD

101. STATUTORY AUTHORIZATION: South Dakota Codified Laws, Section 7-18A-2, 7-18-14, 7-18-15 and 11-2-11. Be it ordained by the Board of County Commissioners of Pennington County as follows:
102. FINDINGS OF FACT: The areas of special flood hazard of the County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. The flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.
103. TITLE: This Ordinance shall be known as the Pennington County Flood Damage Prevention Ordinance.
104. PURPOSE: To promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:
 - A. To protect human life and health;
 - B. To minimize expenditure of public money for costly flood control projects;
 - C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - D. To minimize prolonged business interruptions;

- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
 - F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
 - G. To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
 - H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
105. METHODS OF REDUCING FLOOD LOSSES: In order to accomplish its purpose, this Ordinance includes methods and provisions for:
- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 - B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
 - D. Controlling filling, grading, dredging and other development which may increase flood damage; and,
 - E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

SECTION 200

DEFINITIONS

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

AREA OF SPECIAL FLOOD HAZARD: The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH ,A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO or V1-30,

VE or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard.”

BASE FLOOD (also termed the “100-year flood”): The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT: Any area of the building having its floor subgrade (below ground level) on all sides.

BOARD: The Pennington County Board of Commissioners.

BOARD OF ADJUSTMENT: The entity designated by the Pennington County Board of Commissioners to hear and decide Variances.

COMMISSION: The Pennington County Planning Commission.

COUNTY: The unincorporated areas of Pennington County.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including, but not limited to: buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard

DIRECTOR: The Pennington County Planning Director.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) were completed before February 3, 1982.

EXPANSION TO EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

FLOOD OR FLOODING: A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters and/or,
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM): The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the County.

FLOOD INSURANCE STUDY: The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

FLOODWAY (also termed “regulatory floodway”): The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

HISTORIC STRUCTURE: Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on the state inventory of historic places which has been approved by the Secretary of the Interior; or,
4. Individually listed on the local inventory of historic places which has been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or,
 - b. Directly by the Secretary of the Interior.

LOWEST FLOOR: The lowest floor of the lowest enclosed area (including basement); an unfinished enclosure, usable solely for parking of vehicles, building access or storage, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

MANUFACTURED HOME: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

MANUFACTURED HOME PARK OR SUBDIVISION: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION: Structures for which the “start of construction” commenced on, or after, February 3, 1982, and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the

manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on, or after, February 3, 1982.

PLANNING DEPARTMENT: The Pennington County Planning Department.

RECREATIONAL VEHICLE: A vehicle which is:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection; and,
3. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel or seasonal use.

START OF CONSTRUCTION: The commencement of development as defined by this Ordinance.

STRUCTURE: Anything constructed, erected or placed, the use of which requires location on the ground, with the exception of fences erected for agricultural purposes.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement or repair is started, or,
2. If the structure has been damaged and is being restored, before the damage occurred.

For purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or,
2. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

VARIANCE: A grant of relief from the requirements of this Ordinance which permits development in a manner that would otherwise be prohibited by this Ordinance.

VIOLATION: Failure of a structure or other development to be fully compliant with Pennington County's Flood Damage Prevention Ordinance.

SECTION 300

GENERAL PROVISIONS

301. JURISDICTION: This Ordinance applies to all areas of special flood hazard within the County, outside of incorporated areas.
302. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD: The areas of special flood hazard are identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Pennington County, South Dakota," and accompanying Flood Insurance Rate Maps (FIRM's) dated June 3, 2013. The Flood Insurance Study and FIRM maps are hereby adopted by reference and declared to be part of this Ordinance, and are on file at the Planning Department.
303. COMPLIANCE: After February 3, 1982, no structure or land in designated areas of special flood hazard shall be constructed, located, extended, converted or altered without full compliance with the terms of this Ordinance and other applicable regulations.
304. ABROGATION AND GREATER RESTRICTION: This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another Ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the most restrictive provisions shall control the land use.
305. INTERPRETATION: In the interpretation and application of this Ordinance, all provisions shall be:
- A. Considered as minimum requirements;
 - B. Liberally construed in favor of the governing body; and,
 - C. Deemed neither to limit nor repeal any other powers granted under State law.
306. WARNING AND DISCLAIMER OF LIABILITY: The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. This Ordinance shall not create liability on the part of the County, any officer or employee thereof, or the

Federal Emergency Management Agency for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made thereunder.

SECTION 400

ADMINISTRATION

401. DESIGNATION OF THE FLOODPLAIN MANAGEMENT OFFICE: The Director is hereby appointed to administer and implement this Ordinance by granting or denying Floodplain Development Permits in accordance with its provisions.
402. FLOODPLAIN DEVELOPMENT PERMIT: Before the start of construction or development within any area of special flood hazard, as defined herein, a Floodplain Development Permit application shall be submitted for approval to the Director, who shall issue the permit only if the proposal conforms to the requirements of this Ordinance. Application for Floodplain Development Permits shall be made on forms furnished by the Planning Department.
403. INFORMATION REQUIRED FOR FLOODPLAIN DEVELOPMENT PERMIT: A Floodplain Development Permit Application may include, but not be limited to: plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:
- A. Elevation in relation to mean sea level of the lowest floor, including basement, of all structures.
 - B. Elevation in relation to mean sea level to which any structure has been floodproofed.
 - C. Certification by a registered professional engineer or architect that the floodproofing methods for any non-residential structure meet the floodproofing criteria described in this Ordinance.
 - D. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development. In the event of such alteration or relocation, the applicant must certify that the flood carrying capacity of the affected watercourse is not diminished.
404. FLOODPLAIN MANAGEMENT RESPONSIBILITIES OF THE DIRECTOR:
- A. The Director shall:
 - 1. Review all Floodplain Development Permit Applications to determine that the requirements of this Ordinance have been met, and, if so, issue the permit;

2. Determine that all necessary permits have been obtained from those federal, state and local government agencies from which prior approval is required before a Floodplain Development Permit can be issued. Copies of such permits shall be attached to the Floodplain Development Permit;
 3. Maintain for public inspection all records pertaining to the provisions of this Ordinance;
 4. Obtain and record the actual elevation in relation to mean sea level of the lowest floor, including basement, of all new or substantially improved structures, and whether or not the structure contains a basement;
 5. For all new or substantially improved floodproofed structures, obtain and record the actual elevation in relation to mean sea level to which the structure has been floodproofed and record the floodproofing certifications as required by this Ordinance;
 6. Maintain records of all variances including technical information and report such to the Federal Emergency Management Agency.
- B. Use of Available Flood Data. When base flood elevation data has not been provided in accordance with Section 302, the Director shall obtain, review and reasonably utilize any base flood elevation and flood way data available from a federal, state or other source, as criteria for requiring that development in areas of special flood hazard meets the requirements of this Ordinance.
- C. Watercourse Alteration. In the event that a watercourse is proposed to be altered so as to affect the base flood carrying capacity, the Director shall notify affected communities and the South Dakota Division of Emergency and Disaster Service prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency. The Director shall also require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- D. Interpretation of Boundaries. The Director shall make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazard. Such an example would be where there appears to be a conflict between a mapped boundary and actual field conditions or previous pertinent flood experience.
- E. Evacuation Plan. The Director shall see that a plan for the notification and evacuation in a flood emergency of residents of all manufactured home parks or subdivisions located within flood prone areas is developed and filed with, and approved by, the appropriate community emergency management authorities.

SECTION 500

PROVISIONS FOR FLOOD HAZARD REDUCTION

501. GENERAL STANDARDS: In all areas of special flood hazards, the following standards shall apply:

A. Anchoring:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure, and shall be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy generated by the 100-year flood. (If the structure is elevated on fill a minimum of one (1) foot above the base flood level, the anchoring requirement is satisfied.)
2. All manufactured homes to be placed within an area of special flood hazard shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be anchored to resist flotation, collapse, or lateral movement. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors, as specifically listed below.

Other anchoring techniques that are as effective, or more effective, in resisting flood forces as over-the-top or frame ties may also be employed (refer to FEMA manual “Manufactured Home Installation in Flood Hazard Areas”, published 9/85, and its successors for guidance on other anchoring techniques).

- a. Over-the-top ties shall be provided at each of the four corners of the manufactured home, with two additional ties per side at intermediate locations, with homes less than 50 feet long requiring only one additional tie per side; or,
- b. Frame ties shall be provided at each corner of the manufactured home with five additional ties per side at intermediate locations, with homes less than 50 feet long requiring only four additional ties per side;
- c. All components of the anchoring system shall be capable of carrying a force of 4,800 pounds; and,
- d. Any additions to the manufactured home shall be similarly anchored.

3. A registered professional engineer shall develop and/or review any designs, specifications and plans for anchoring, and shall certify that the design and methods of anchoring are in accordance with the applicable provisions of this Ordinance and are adequate to withstand flood forces associated with the base flood.
- B. Construction Materials and Methods: All new construction and substantial improvements shall be construed using methods, practices and materials that minimize flood damage.
- C. Utilities:
1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into the flood waters.
 3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
 4. Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D. Subdivision Proposals: (a proposal for dividing land into two or more parts for the purpose of development):
1. Shall be designed with features that recognize the need to minimize flood damage;
 2. Shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
 3. Shall have adequate drainage provided to minimize exposure to flood damage;
 4. For all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, base flood elevation data shall be prepared and certified by a registered professional engineer or taken from recognized base flood elevation data, and the source of the

base flood elevation data used by the registered land surveyor in preparing and certifying the proposed plat shall be clearly identified on the plat; and,

5. For all plats of land located in areas of special flood hazard, appropriate notations indicating possible flood hazards shall be placed on the plat prepared and certified by a registered land surveyor.

502. SPECIFIC STANDARDS: In all areas of special flood hazard where base flood elevation data has been provided from any source, the following standards are required:

A. Residential Construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to, or above, the base flood elevation.

B. Non-residential Construction. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor including basement, elevated to the level of the base flood or, together with attendant utility and sanitary facilities, shall be floodproofed using either wet floodproofing or dry floodproofing methods as specified in this Ordinance.

1. Dry Floodproofing:

- a. The structure must be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water; and,
- b. The structure must have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy generated by the 100-year flood.

2. Wet Floodproofing:

- a. Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize flood forces on exterior walls by allowing for the entry and exit of floodwaters.
- b. Designs for meeting this requirement must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

3. A registered professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this Ordinance and are adequate to withstand flood forces associated with the base flood.

C. Manufactured Homes.

1. Manufactured homes shall be anchored in accordance with Section 501A.
2. All manufactured homes, or those to be substantially improved, shall conform to the following requirements:
 - a. Manufactured homes that are placed or substantially improved on a site: (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - b. Manufactured homes to be placed or substantially improved on sites in existing manufactured home parks or subdivisions that are not subject to the provisions in (a) above be elevated so that either: (I) the lowest floor of the manufactured home is at or above the base flood elevation, or (ii) the manufactured home chassis is supported by reinforced piers or other foundation elements, of at least equivalent strength, that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

SECTION 600

FLOODWAYS

Located within areas of special flood hazard are areas designed as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- A. Encroachments, including fill, new construction, substantial improvements and other development, are prohibited unless certification by a registered professional

engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- B. If the above requirement is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Ordinance.

SECTION 700

VARIANCES

701. PURPOSE OF A VARIANCE: A Variance is a procedure whereby relief may be granted from specific requirements of this Ordinance. The Board of Adjustment shall hear and decide all Variance requests. Those aggrieved by the decision of the Board of Adjustment, or any taxpayer, may appeal such decision to the Circuit Court.

702. PROCEDURES:

A. Application

1. Variance application forms shall be obtained from the Planning Department. An application shall be accompanied by such site plans, drawings and technical data as are necessary for the Board of Adjustment to make a determination on the request.
2. A good faith effort must be made by the applicant to notify all owners (including contract for deed buyers) of land lying within five hundred (500) feet, inclusive of right-of-way, of the outer boundaries of the property involved in the request. The list of landowners to be notified shall be prepared by the Planning Department. The Planning Department shall provide the applicant with "Notice of Hearing" letters for this purpose, and the notices are to be sent by the applicant to all parties on the aforementioned list by certified mail with return receipt requested no less than ten (10) days prior to the public hearing on the request held by the Board of Adjustment.
3. The Planning Department shall provide to the applicant a sign which is to be posted on the property involved in the Variance request in a location with the greatest public visibility. Said sign shall be so placed no less than ten (10) days prior to the date of the public hearing before the Board of Adjustment.

B. Public Hearing

Upon receipt of an application and fee, a public hearing shall be held on the request in a location to be prescribed by the Board of Adjustment. Said hearing is to be held not less than ten (1) days after publication of notice of the time and place of such hearing in a legal newspaper of general circulation in the area affected. Approval of a Variance request shall require a 3/4 vote of the full Board of Adjustment.

703. CONSIDERATIONS: The Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Ordinance, and:

- A. The danger that materials may be swept onto other lands to the injury of others;
- B. The danger to life and property due to flooding or erosion damage;
- C. The susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner;
- D. The importance of the services provided by the proposed development to the community;
- E. The availability of alternative locations for the proposed development which are not subject to flooding or erosion damage;
- F. The compatibility of the proposed development with existing and anticipated development;
- G. The relationship of the proposed development to the comprehensive plan and flood plain management program of the area;
- H. The safety of access to the proposed development in times of flood for ordinary and emergency vehicles;
- I. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site of the proposed development; and,
- J. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical and water systems, and streets and bridges.

704. CONDITIONS FOR GRANTING VARIANCES: Certain conditions shall be met prior to approval of a Variance:

- A. Generally, Variances may be issued for development on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the foregoing considerations have been taken into account.

- B. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in the foregoing considerations or conflict with existing local laws or ordinances.
- E. Any applicant to whom a Variance is granted shall be given written notice of the specific action taken and of the fact that the cost of flood insurance will be commensurate with the increased risk resulting from the varied requirement(s).

SECTION 800

VIOLATIONS AND PENALTIES

A violation of any of the provisions of this Ordinance is punishable by a fine not exceeding one hundred dollars, or by imprisonment for a period not exceeding thirty days, or by both such fine and imprisonment. Each day of such violation shall constitute a separate violation.

Dated this 6th day of June, 2013.

PENNINGTON COUNTY COMMISSION

/s/ Lyndell Petersen, Chairperson

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

Removed for Separate Consideration

- D. SECOND READING OF REZONE / RZ 13-05 AND COMPREHENSIVE PLAN AMENDMENT / CA 13-01: Jude Wildeman. To rezone 9.5 acres from General Agriculture District to Highway Service District and to amend the Pennington County Comprehensive Plan to change the Future Land Use from Planned Unit Development Sensitive to Highway Service District to allow for a commercial use of rental cabins in accordance with Sections 210 and 508 of the Pennington County Zoning Ordinance.

MOVED by Buskerud and seconded by Trautman to deny the second reading of Rezone / RZ 13-05 and Comprehensive Plan Amendment / CA 13-01 without prejudice. Vote: The motion failed 3-2 with Petersen, Davis and Holloway voting no.

MOVED by Davis and seconded by Petersen to approve the second reading of Rezone / RZ 13-05 and Comprehensive Plan Amendment / CA 13-01. The motion carried 3-2 on a roll call vote: Buskerud – no, Davis – yes, Holloway – yes, Trautman – no, Petersen – yes.

ORDINANCE NO. RZ 13-05

AN ORDINANCE AMENDING SECTION 508 OF THE PENNINGTON COUNTY ZONING ORDINANCE, REZONING THE WITHIN DESCRIBED PROPERTY:

BE IT HEREBY ORDAINED BY THE PENNINGTON COUNTY COMMISSION THAT THE PENNINGTON COUNTY ZONING ORDINANCE BE AND HEREBY IS AMENDED BY AMENDING THE ZONING OF THE FOLLOWING DESCRIBED PROPERTY:

That Portion of the Southwest Quarter of the Southwest Quarter (SW1/4SW1/4) of Section 22, T1S, R6E, BHM, Pennington County, South Dakota, lying north and west of Lots H1 and H3, as shown on the plats filed in the Highway Plat Book 1, Page 113 and in Highway Plat Book 4, Page 194, Exception therefrom any highway rights-of-way.

The above-described property is hereby rezoned from General Agriculture District to Highway Service District.

Dated this 6th day of June, 2013.

PENNINGTON COUNTY COMMISSION

/s/ Lyndell Petersen, Chairperson

ATTEST: (SEAL)

/s/ Julie A. Pearson, Auditor

End of Consent Agenda

EXECUTIVE SESSION per SDCL 1-25-2

- A. Personnel Issue per SDCL 1-25-2(1)
- B. Contractual/Litigation per SDCL 1-25-2(3)

MOVED by Davis and seconded by Trautman to convene in executive session. Vote: Unanimous. The Board remained in executive session from 1:10 p.m. until 1:47 p.m. MOVED by Buskerud and seconded by Trautman to adjourn from executive session. Vote: Unanimous.

AUDITOR'S ACCOUNT OF THE TREASURER

To the Pennington County Board of Commissioners, I hereby submit the following report of my examination of the cash and cash items in the hands of the County Treasurer as of May 28, 2013: Total balances of checking/savings accounts, \$37,514,473.80; Total balance of Treasurer's Office safe cash, \$9,400.00; Total certificates of deposit, \$2,586,804.07; Total Prime Value Investment, \$6,275,226.33; Total petty cash, \$111,470.00; Total NSF Write Off, \$250.76; Total Cash Items, \$366.13; Total long/short, (\$377.99); Total, \$46,497,613.10. Submitted by Lori Wessel, Deputy Auditor.

PAYROLL

Commissioners, 10,004.51; Human Resources, 4,747.58; Elections, 12,593.08; Auditor - liens, 3,028.88; Auditor, 18,957.77; Treasurer, 50,464.75; Data Processing - General, 51,369.92; State's Attorney, 147,708.97; Public Defender, 93,463.38; Juvenile Diversion, 10,799.23; Victim's Assistance, 5,387.37; Buildings & Grounds, 102,507.71; Equalization, 66,683.97; Register of Deeds, 24,233.70; Sheriff, 330,612.53; Service Station, 8,837.19; HIDTA Grant, 9,719.00; Jail, 459,843.84; Jail Work Program, 5,226.63; Coroner, 419.47; Hill City Law, 11,493.24; Keystone Law, 5,332.90; New Underwood - Law, 4,340.08; School Liaison, 15,452.68; Wall Law, 11,185.41; JSC Teachers, 18,950.80; Home Detention, 9,052.01; JAIG/JSC, 3,430.42; Alcohol & Drug, 118,626.56; Friendship House, 64,949.78; Economic Assistance, 55,953.39; Mental & Alcohol-SAO, 8,049.84; Mental & Alcohol-HHS, 3,632.01; Extension, 2,587.20; Weed & Pest, 8,922.09; Planning and Zoning, 20,747.80; Water Protection, 5,727.29; Ordinance, 3,632.01; Juvenile Services Center, 224,498.35; Highway, 183,575.05; Drug Seizure, 1,983.37; Fire Administration, 6,596.35; Title III MPB, 2,568.00; Dispatch, 180,472.26; Emergency Management, 5,437.67; 24-7 Program, 16,554.05; PCCCC Building Projects, 2,999.92.

PERSONNEL

- Director of Equalization: Effective 6/3/2013 - C. Ackerman, \$3,222.99/month.
- ESCC: Effective 6/1/2013 - C. Tomjack, \$3,911/month.
- Highway: Effective 5/13/2013 - W. Anderson, \$37.73/hr.
- Public Defender: Effective 6/1/2013 - I. Moreland, \$4,910/month.
- Weed & Pest: Effective 5/20/2013 - D. Hensley, \$13.50/hr.; D. Muller, \$12.85/hr.; E. Neubauer, \$13.17/hr. Effective 5/27/2013 - D. Saxer, \$15.28/hr.; S. Jaure, \$12.85/hr.; J. Thovson, \$14.19/hr.

VOUCHERS

Adair Asset Mgmt., 11,152.54; Ahrlin, Lee, 32.00; Amcon Distributing, 407.30; Bachman, Jon, 52.22; Bennett, Mark, 53.70; Benzon, Karen, 61.84; Bh Power, 7,182.72; CBM Food Service, 5,378.80; City Of Hill City, 51.15; City Of Rapid City-Water, 819.79; City Of Wall, 135.00; First Administrators, 197,702.68; First Interstate Bank, 8,955.61; Georgas, Teri, 52.22; Knology, 5,412.31; Lynde, Elisa, 61.10; Machacek, Bridget, 51.48; Montana Dakota Utilities, 2,860.86; Qwest Corp, 516.15; Rottom, Joan, 54.44; SD Dept Of Revenue, 4,737.50; Verizon, 5,721.40; Weinkauf, Lynette, 53.70; West River Electric, 1,507.44.

ADJOURN

MOVED by Buskerud and seconded by Holloway to adjourn the meeting. Vote: Unanimous. There being no further business, the meeting was adjourned at 1:48 p.m.

Julie A. Pearson, Auditor

Published once at a cost of ____.

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