



**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

FORM #1

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OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

**NOTICE OF PUBLIC HEARING ON A PROPOSED RULE**

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§22-5-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 3

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution from the  
Operation of Hot Mix Asphalt Plants"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

DATE OF PUBLIC HEARING: July 19, 1999 TIME: 6:00 p.m.

LOCATION OF PUBLIC HEARING: Office of Air Quality - Conference Room  
1558 Washington, Street East  
Charleston, WV 25311

COMMENTS LIMITED TO: ORAL , WRITTEN , BOTH

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: Mr. Edward L. Kropp, Chief

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

Office of Air Quality

1558 Washington Street, East

The issues to be heard shall be limited to the proposed rule.

Charleston, WV 25311

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

Karen G. Watson  
Karen G. Watson, Attorney

\$5.80



Executive Office  
10 McJunkin Road  
Nitro, West Virginia 25143-2506  
Telephone: 304-759-0515  
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## West Virginia Bureau of Environment

Cecil H. Underwood  
Governor

Michael P. Miano  
Commissioner

June 14, 1999

Ms. Judy Cooper  
Director, Administrative Law Division  
Office of the Secretary of State  
Capitol Complex  
Charleston, West Virginia 25305

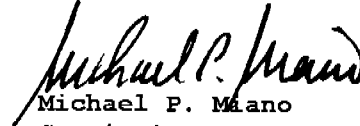
RE: 45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the above-referenced rule with your Office as "Notice of Public Hearing/Comment Period."

If you should have questions or require additional information, please contact Carrie Chambers in my office at 759-0515. Your cooperation in this regard is very much appreciated.

Sincerely yours,

  
Michael P. Miano  
Commissioner

MPM:cc

Attachment

cc: Skipp Kropp  
Karen Watson  
Carrie Chambers

**BUREAU OF ENVIRONMENT  
DIVISION OF ENVIRONMENTAL PROTECTION**

**BRIEFING DOCUMENT**

**RULE TITLE:** 45CSR3 - "To Prevent and Control Air Pollution from the  
Operation of Hot Mix Asphalt Plants"

**A. AUTHORITY:** W.Va. Code §§22-5-1 et seq.

**B. SUMMARY OF RULE:**

45CSR3 "To Prevent and Control Particulate Air Pollution From The Operation of Hot Mix Asphalt Plants" set standards for particulate matter weight and visible emissions from hot mix asphalt plants. The rule also establishes monitoring, record keeping, and reporting requirements and requires that each owner/operator obtain an annual operating permit from the Office of Air Quality without which the plant cannot be operated.

The revisions contained herein are intended to streamline the requirements of this rule, clarify the relationship between this rule and USEPA's New Source Performance Standards and the Office of Air Quality's General Permit of Hot Mix Asphalt Plants. The revisions also specify standards for particulate test methods.

**C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:**

The purpose of 45CSR3 is to establish particulate matter weight and visible emission standards for hot mix asphalt plants operated in West Virginia. 45CSR3 is part of the West Virginia State Implementation Plan (SIP) approved by the USEPA to assure attainment and maintenance of attainment with the National Ambient Air Quality Standards for particulate matter. The revisions proposed herein were initiated by the Office of Air Quality as part of a broad effort to modernize and streamline all the Agency rules. The current revision process is also intended to update and harmonize this rule with other rules of the Office of Air Quality. The proposed revisions are the result of a thorough review in a stakeholder process that was inclusive of the Office of Air Quality, representatives of the regulated community, concerned citizens and the environmental community.

**D. FEDERAL COUNTERPART REGULATIONS - INCORPORATION BY REFERENCE/DETERMINATION OF STRINGENCY:**

There is no federal counterpart regulation; therefore, a determination of stringency is not required.

**E. CONSTITUTIONAL TAKINGS DETERMINATION:**

In accordance with §22-1A-1 and 3(c,) the Director has determined that this rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

**F. CONSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:**

At their June 10, 1999 meeting, the Environmental Advisory Council reviewed and discussed this rule - there were no substantive changes as a result of their discussion. (See attached minutes of that meeting.)

## MINUTES

### ENVIRONMENTAL PROTECTION ADVISORY COUNCIL

June 10, 1999, Director's Conference Room, Nitro

The sixteenth meeting of the DEP Advisory Council was held Thursday, June 10, 1999, in the Director's Conference Room located in Nitro. Chairman Mike Miano called the meeting to order at 10:00 a.m.

#### ATTENDING:

##### Advisory Council Members:

Mike Miano, Chairman  
Jacqueline Hallinan  
William Raney  
Rick Roberts  
William Samples

##### Environmental Protection:

Bill Adams	Pam Nixon
Andy Gallagher	Rocky Parsons
Tony Grbac	Cap Smith
Randy Huffman	Charlie Sturey
Mike Johnson	Barbara Taylor
Mike Lewis	Karen Watson
Robert Keatley	Mike Zeto

1) Review and Approval of March 22, 1999 Minutes. Chairman Miano called the meeting to order at 10:00 a.m. The first item on the agenda was approval of the minutes of the March 22 Advisory Council; they were approved as written.

2) Discussion of Proposed Rule Amendments - 2000 Legislative Session. In accordance with WV Code §22-1-1(c), and DEP's new rule-making procedure that was implemented by Director Miano in September 1998 to involve the Advisory Council in DEP's rule-making process as early as possible to enable the Council to review, comment, and make recommendations to the Director on DEP's proposed legislative rule changes before they are filed for public hearing, the following proposed rules were brought to the Council's attention.

Chairman Miano said he would like to begin by saying he hoped all Council members had received their draft rules by E-mail without any complications and they were able to review them before the meeting. He informed the Council that due to the large number of rules being proposed for the 2000 Legislative Session, DEP's program offices would review them with the

Council as thoroughly as possible, in the allotted time frame, and try to answer any questions or concerns the Council may have.

The following Office of Air Quality's proposed rule amendments were discussed by Karen Watson, OAQ, with assistance from Richard Keatley, also from the OAQ office:

- **45CSR1 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COAL REFUSE DISPOSAL AREAS"**
- **45CSR2 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM COMBUSTION OF FUEL IN INDIRECT HEAT EXCHANGERS"**
- **45CSR3 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF HOT MIX ASPHALT PLANTS"**
- **45CSR4 - "TO PREVENT AND CONTROL THE DISCHARGE OF AIR POLLUTANTS INTO THE OPEN AIR WHICH CAUSES OR CONTRIBUTES TO AN OBJECTIONABLE ODOR OR ODORS"**
- **45CSR5 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE OPERATION OF COAL PREPARATION PLANTS, COAL HANDLING OPERATIONS AND COAL REFUSE DISPOSAL AREAS"**
- **45CSR6 - "TO PREVENT AND CONTROL AIR POLLUTION FROM COMBUSTION OF REFUSE"**
- **45CSR7 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MANUFACTURING PROCESSES AND ASSOCIATED OPERATIONS"**
- **45CSR10 - "TO PREVENT AND CONTROL AIR POLLUTION FROM THE EMISSION OF SULFUR OXIDES"**
- **45CSR12 - "AMBIENT AIR QUALITY STANDARD FOR NITROGEN DIOXIDE"**
- **45CSR16 - "STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES PURSUANT TO 40 CFR PART 60"**
- **45CSR17 - "TO PREVENT AND CONTROL PARTICULATE MATTER AIR POLLUTION FROM MATERIALS HANDLING, PREPARATION, STORAGE AND OTHER SOURCES OF FUGITIVE PARTICULATE MATTER"**
- **45CSR18 - "TO PREVENT AND CONTROL PARTICULATE AIR POLLUTION FROM DIRECT MEAT-FIRING DEVICES"**
- **45CSR23 - "TO PREVENT AND CONTROL EMISSIONS FROM MUNICIPAL SOLID WASTE LANDFILLS"**
- **45CSR25 - "TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES"**
- **45CSR33 - "ACID RAIN PROVISIONS AND PERMITS"**
- **45CSR34 - "EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS PURSUANT TO 40 CFR PART 63"**

Karen began by bringing the Council up to date on the status of two OAQ rules that were filed during the last session (or late in the session). 45CSR8 revised the ambient air quality for sulfur oxides and particulate matter, and 45CSR9 pertained to ambient air quality standards for carbon monoxide and ozone. The DC Circuit Court of Appeals has ordered EPA to show how they arrived at the new standards - EPA may go back to the previous standards. Karen also apprised the Council on the N<sub>ox</sub> State Implementation Plan. The Circuit Court stayed the implementation of that rule and there are no plans to develop any other amendments in the

immediate future. 45CSR28, which is the emissions trading rule that was filed late in the 1999 Session, was not taken up by the Legislature, but plans are to put the rule on the July agenda of the Interim Legislative Committee.

Karen explained the reason for the unusually large number of DEP rules that are being filed for the next Legislative Session. She informed the Council that several of the rules were outdated and were amended for consistency and streamlining, and are a result of months of on-going meetings with stakeholders -- involving both the regulated community and citizens. A particulate matter and sulfur oxide work group was also involved. Those rule amendments as a result of the stakeholders process include: 45CSR1 (which is being repealed and replaced with language in 45CSR5), 45CSR2, 3, 4, 5, 6, 7, 10, 12, 17, and 18 (which is being repealed since the rule is no longer deemed necessary). The amendments to the remainder of the rules, 45CSR16, 23, 25, 33, and 34 were necessary to adopt by reference definitions, clarifications, technical amendments, etc., recently adopted by US EPA.

After several minutes of discussion, the Advisory Council recommended to the Director that the following amendments be made to the OAQ rules:

***Mr. Samples pointed out that 45CSR2 and 45CSR7 contain different definitions for the term "opacity." The agency responded that this discrepancy was inadvertent and the language should be as it is in 45CSR2. The agency agreed to revise 45CSR7, subsection 2.23, accordingly.***

***Mr. Larry Harris was unable to attend the meeting; however, he expressed the following comments on 45CSR10 and 45CSR33 by e-mail. He stated that the State's rules should be more stringent than the federal counterpart regulations, since the State's streams are being adversely impacted. The agency responded that, at this point in time, it does not possess sufficient evidence to make the written finding that is required by WV Code §22-2-3a before promulgating a rule which is more stringent than a counterpart federal regulation.***

Cap Smith and Mike Zeto discussed the following Office of Waste Management proposed rule amendments:

- 33CSR2 - "Sewage Sludge Management Rule"
- 33CSR20 - "Hazardous Waste Management Rule"

Mike Zeto briefed the Council on the proposed amendments to 33CSR2. He stated that in 1996 the Legislature mandated DEP to perform a study on soil limitations for sewage sludge land application sites. These amendments (as a result of the study) were to be proposed by June 30, 1999. Other amendments to the rule include specifying the analytical method used for soil analysis, placing conditions on variances from the soil limits for land application sites, providing an incentive for municipalities to produce higher quality compost products, and adjusting the sewage sludge limits for four metals. Mr. Zeto told the Council these amendments are being proposed to update other related areas of the rule in an attempt to provide better management of sewage sludge within the state.

Cap Smith discussed 33CSR20 with the Council. He informed the Council that amendments are proposed in section 2 of the rule that will allow the Office of Waste Management to delist hazardous wastes, which has previously been handled by EPA. The other significant amendments that are being proposed by adoption of the Federal Register pertain to revision standards for owners and operators of closed and closing hazardous waste management facilities, post closure permit requirements, and the closure process. These amendments are referenced throughout the rule and will hopefully expedite site cleanup while maintaining environmental protection.

***There were several minutes of discussion on OWM's proposed rule amendments; however, no recommendations were made to the Director concerning the amendments.***

Mike Lewis, Office of Oil and Gas, discussed the following new proposed rule:

- **35CSR7 - "Well Operations - Within and Around Gas Storage Reservoirs"**

Mike informed the Council that 35CSR7 is a proposed "new" rule for the O&G Office. The rule is needed to provide protection of the environment, the public, and the state's natural gas resources. It is the intent of the proposed rule to accomplish this by addressing certain operating procedures that oil and gas and gas storage operators are to use when drilling into or through a gas storage reservoir or the gas storage reservoir protective area. In order to assure absence of leaking gas, the proposed rule requires gas storage operators to conduct monitoring and inspections of gas storage wells.

***There were no questions or discussion by the Council on this proposed rule.***

The following proposed rules were discussed by the Office of Mining and Reclamation:

- **38CSR2 - "Surface Mining and Reclamation Rule"**
- **38CSR2A - "Rules for Mining and Restoration for Sandstone, Limestone, and Sand"**
- **38CSR2B - "RULES FOR MINING AND RECLAMATION OF MINERALS OTHER THAN COAL"**

Ed Griffith, Office of Surface Mining, discussed the proposed amendments to the Surface Mining and Reclamation Rule. Ed told the Council that there are only minor amendments being proposed to this year's rule. The proposed definition of "woodlands" in subsection 2.136 relates to the utilization of commercial woodlands in Approximate Original Contour variance areas. This change is being proposed in order for the state to meet the federal policy that is expected to change in July 1999. The proposed amendment to change the bonding requirements of mining operations that request variances from contemporaneous reclamation to the maximum amount per acre bond (\$5,000 per acre) is found in subdivision 14.15.f. All other amendments are being proposed in order to meet the requirements of the Office of Surface Mining's program amendments.

Rocky Parsons, OMR's Philippi Office, next addressed OMR's proposed rules 38CSR2A and 2B. Rocky explained to the Council members that 38CSR2B has been in place since 1983 and regulates all minerals other than coal. However, in accordance with the requirement that separate rules for limestone, sandstone, and sand are to be promulgated, DEP is proposing

38CSR2A which will regulate only those minerals - 38CSR2B will regulate all minerals other than limestone, sandstone, sand, and coal. Both proposed rules will regulate roads, blasting, drainage control, methods of operation, excess spoil disposal, revegetation, mapping, transfer of permits, permit renewals, revisions and incidental boundary revisions. 38CSR2A will provide provisions for restoration and 38CSR2B will include provisions for reclamation. Rocky gave the Council a brief history on the roadblocks the agency has encountered in the past several years in their attempt to amend the quarry statute. He said since the agency has been unsuccessful in that approach, it has become necessary to try to accomplish this through rule making. He informed the Council of a public meeting held the previous week to discuss the two proposed rules. He said the meeting was well attended and he believes the rules were well received by everyone in attendance.

***The three OMR proposed rules were discussed by the Council members. Bill Raney said that although Rocky stated that the quarry rules have been well received by industry and the citizens, he is concerned about whether there has been enough time for the review of the proposed rules after they were drafted. He believes there would be a smoother transition into the rule making process, i.e., the public hearing/comment period, etc., if there had been more involvement from outside DEP during the drafting of the rules.***

***Mr. Larry Harris commented by e-mail 38CSR2A and 2B. His question is whether the siltation measures include silt fences where runoff might enter streams. He said it is not apparent what best management practices are for this situation, and he wonders if it needs to be spelled out. He knows of some operations in quarries where streams muddy after rainfalls, such as the Elkins and Waco quarries near Snowshoe, and he feels this is harming the streams. Do the new rules address this?***

***Rocky Parsons responded by saying that design criteria for drainage control structures is found in the technical handbook. Silt fences are not adequate for sediment control. The drainage system must be designed to hold .125 ac/ft of sediment for each acre of disturbed land. All runoff must pass through a drainage control structure. There is a provision for less sediment control (1/2 factor) for certain circumstances as approved by the Director. Effluent limits as established in the NPDES permit must be met.***

Tony Grbac, Office of Surface Mining, addressed the following rule:

**199CSR1 - "SURFACE MINING BLASTING RULE"**

Tony began by briefing the Council on the history of the Surface Mining Blasting Rule. This rule is being proposed to comply with SB681 - passed during the last session. This bill created the Office of Explosives and Blasting and the Office of Coalfield Community Development, which is under the West Virginia Development Office. The proposed rule will regulate blasting laws and rules associated with all surface-mining operations. All duties currently performed by OMR related to blasting, and all rules which now regulate blasting (38CSR2C) will be transferred to this new office. Besides regulating blasting on all surface mining operations, it will also implement and oversee pre-blast survey processes; maintain and operate a system to receive and address questions, concerns and complaints relating to mining

operations; determine the qualifications for individuals and firms performing pre-blast surveys; establish the education, training, examination and certification of blasters; administer a claims process for property damage caused by blasting; and conduct a study of blasting and make recommendations regarding any appropriate rule or code changes.

Tony explained that the revenue generated by the proposed fee in 199CSR1 (one-half cent times the number of pounds of explosive material used during the preceding month for any purpose on the surface mining operations) would fund both the offices, as required by SB681. After one year of collection, both offices are to report to the Legislature as to whether the revenue collected is sufficient to operate both offices.

***After several minutes of discussion between DEP and the Council members, Bill Raney expressed his concern in filing the rule for public hearing in the specified time frame. Mr. Raney asked if anyone outside DEP has been involved in drafting the rule. OMR answered by saying the rule was drafted by several staff within OMR. Mr. Raney replied that he believes there will be serious concerns with this rule once industry has had an opportunity to review it. He believes the rule drafting process definitely needs input from firms and individuals outside DEP, and he thinks the process will go smoother once everyone has had the opportunity to address their concerns. Mr. Raney recommended that the Director withhold this rule from the list of rules DEP proposes to file for public hearing/comment period in the coming week to give all interested parties a chance to participate in drafting the rule.***

***After discussion of this recommendation, Chairman Miano said he believes the best approach would be to continue with the filing of the proposed rule for public hearing, start the rule in the normal process and time frame, and in the meantime he would commit to putting together a work group of interested parties to discuss the rule. If DEP feels that more time is needed once the group begins their work on the rule, he will consider the possibility of either extending the comment period or filing for another public hearing. He said he will also decide in the near future whether DEP will file the rule as an "Emergency Rule" since HB 681 will become effective on June 11.***

***Council members also pointed out a typographical error in subdivision 3.9.a.3. of the rule relating to cross-references that will be corrected by DEP.***

Barb Taylor and Mike Johnson, Office of Water Resources, briefed Council on the following rules:

- 47CSR57A - "Groundwater Protection Standards at Steam Electric Generating Facilities"
- 47CSR26 - "Water Pollution Control Permit Fee Schedule"
- 47CSR31 - "State Water Pollution Control Revolving Fund Program Rule"

Barb described the proposed "new" rule relating to Groundwater Protection Standards at Steam Electric Generating Facilities. She noted that the rule is a result of a Notice of Intent filed on October 24, 1994, by the West Virginia Steam Electric Generation Industry, with the Director of DEP, in accordance with 47CSR57 to apply for a class variance for all West Virginia power stations and associated disposal sites. At that time, DEP provided AEP and AP with the

opportunity to conduct a four-year study to gather the necessary data to support their variance request. The objectives were met by assembling and reviewing data, estimating potential impacts to receptors, and performing an economic assessment impact analysis to the industry, commercial enterprises, and citizens at large if compliance with the Groundwater Protection Act were required without benefit of the variances. After review of the four-year study, the Director determined that granting this request for a variance at these locations would not pose adverse effects to human health or the environment. There are no human or environmental sensitive receptors between the coal storage areas or as ponds; therefore, it is unlikely there will be adverse affects. Barb gave each member a copy of the four-year study on which the Director made his determination.

Chairman Miano told Council that DEP is definitely willing to look at such cases where extensive research and study have been done by the regulated community to back up their findings before granting such variances, and believes DEP will see more studies like this in the future.

Barb next apprised the members on the proposed amendments of the Water Pollution Control Permit Fee Schedule. She stated that amendments are being proposed as a result of HB 2684, passed March 11, 1999, and effective ninety days from passage. The Director is required to implement an emergency rule to implement the fee schedule authorized by the amendments by July 1, 1999. This rule was filed as an "Emergency Rule" on June 7, 1999.

Mike Johnson, Office of Water Resources' Construction Assistance Office, briefed the Council on 47CSR31 - the Water Pollution Control Revolving Fund Program rule. The amendments to this rule are being proposed to allow the State Revolving Fund low interest terms to be extended from 20 years to 30 years for communities that qualify as "disadvantaged." There is only one other state in the country to receive such approval from EPA. Mike informed the Council that he was only recently made aware of this extension by EPA to extend the low interest loans from 20 to 30 years while attending a meeting out of state. This rule was filed as an "Emergency Rule" on May 24, 1999.

***Council members unanimously agreed that Mike Johnson should be commended for gathering this information and proposing the amendment to the rule that will enable disadvantaged communities to immediately take steps toward constructing watershed projects that will provide affordable monthly sewer rates.***

Open Discussion:

Chairman Miano and Council members expressed their compliments to the program offices for all their hard work, especially with the stakeholders process -- it is obvious a lot of hard work has gone into the process in order to make their efforts more productive.

Bill Raney asked a question relating to the "More or Less" Stringency statement that appears on the front of some DEP rules, but not on others, and voiced his concern if DEP is paying close attention to this, or if the same statement is appearing with all proposed rules. Carrie Chambers from the Director's Office explained that statement was once required to be included in the "General" section of each rule; however, it is now placed in the briefing document that is attached to each rule, and required by the Secretary of State's Office and the

Legislative Rule-Making Review Committee, before it is filed. She went on to explain that with the rush to get draft copies of the rules to Council members as soon as possible, some of the Briefing Documents had not been completed, but would be attached to all DEP rules before they are filed for public hearing. Chairman Miano went on to say it is his belief that all program offices are carefully scrutinizing each rule before that decision is made.

Chairman Miano thanked Council for taking time from their busy schedules to review the extensive list of DEP's proposed rules. He informed the Council that the minutes would be left open for comment until Wednesday, June 16, at which time the minutes will be attached to the rules and filed with the Secretary of State's Office and the Legislative Rule-Making Review Committee for notice of public hearing/comment period.

Before adjourning the meeting, the Council informed Chairman Miano that they would prefer beginning future meetings at 10:00 a.m., instead of the usual time of 1:00 p.m. The meeting was then adjourned at 3:30 p.m.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 45CSR3 - "To Prevent and Control Particulate Air Pollution from the Operation of Hot Mix Asphalt Plants"

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Office of Air Quality

Address: 1558 Washington Street, East  
Charleston, WV 25311-2599

1. Effect of Proposed Rule	Annual		Fiscal Year		
	Increase	Decrease	Current	Next	There-after
Estimated Total Cost	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates: The proposed revision to 45CSR3 contained herein will have no effect on the cost to the Office of Air Quality for continued implementation of this rule. Costs are covered under previous budget estimates.
  
3. Objectives of these rules: The objective of this rule is to set standards for particulate matter weight and visible emission from hot mix asphalt plants. The rule is also part of West Virginia's State Implementation Plan approved by the USEPA for the attainment and maintenance of attainment of the National Ambient Air Quality Standards for particulate matter.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

See Section 2.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

The changes to 45CSR3 proposed herein will have a negligible economic effect on the cost to owners/operators of hot mix asphalt plants.

C. Economic Impact on Citizens/Public at Large.

The changes to 45CSR3 proposed herein will have no economic impact on the citizens or public at large in West Virginia.

Date: 6/11/99

Signature of Agency Head or Authorized Representative

Karen G. Watson  
Karen G. Watson, Attorney

FILED

TITLE 45  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF AIR QUALITY

JUN 18 9 45 AM '99

OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

SERIES 3  
TO PREVENT AND CONTROL AIR POLLUTION  
FROM THE OPERATION OF HOT MIX ASPHALT PLANTS

**§45-3-1. General.**

1.1. Scope. -- The purpose of ~~Series 3~~ this rule is to establish emission limitations for hot mix asphalt plants and the plant property.

1.2. Authority. -- W. Va. Code §22-5-1 et seq.

1.3. Filing Date. -- ~~March 30, 1979.~~

1.4. Effective Date. -- ~~October 27, 1979.~~

1.5. Former Rules -- This legislative rule amends 45CSR3 - "To Prevent and Control Air Pollution from the Operation of Hot Mix Asphalt Plants" which was filed on March 30, 1979 and became effective October 27, 1979.

**§45-3-2. Definitions.**

2.1. "Air Pollution", 'statutory air pollution', shall have the meaning ascribed to it in W. Va. Code §22-5-2.

~~2.2. [RESERVED]~~

2.82. "Air Pollution Control Equipment" is defined as:

2.82.2.a. "Primary Collection" -- is that equipment ~~such as~~ including, but not limited to, cyclones or multicyclones incorporated for the collection of fine particulate matter generated and emitted principally from the drying operation and from which all collected material may or may not be reinjected into the main aggregate flow.

2.82.2.b. "Secondary Collection" -- is that equipment ~~such as~~ including, but not limited to, multicyclones, scrubbers, bag filters; and

electrostatic precipitators, incorporated for the collection of that particulate matter not collected by the primary collection equipment and from which such collected material may or may not be reinjected into the main aggregate flow.

2.3. "Director" means the ~~D~~director of the ~~West Virginia~~ ~~D~~division of ~~E~~environmental ~~P~~protection or such other person to whom the ~~D~~director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

2.64. "Fuel" means any gaseous, liquid or solid substance or any combination thereof burned in fuel burning equipment.

2.5. "Fuel Burning Equipment" means and includes any chamber, apparatus, device, mechanism, stack or structure used in the process of burning fuel or other combustible material for the primary purpose of producing heat for direct heat transfer as applied to ~~an asphaltic~~ hot mix asphalt plant excluding internal combustion engines.

2.126. "Fugitive Particulate Matter" means any and all particulate matter generated by the operation of ~~an asphalt~~ a hot mix asphalt plant which, if not confined, would be emitted directly to the atmosphere from points other than ~~the~~ a stack outlet.

2.7. "General Permit" means a general permit issued pursuant to 45CSR13.

2.8. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance.

careless operation, or any other preventable equipment breakdown shall not be considered malfunctions.

2.159. "Opacity" means the degree to which smoke and/or particulate matter emissions reduce the transmission of light and obscure the view of an object in the background.

2.10. "Operating Permit" means a general permit issued pursuant to 45CSR13 or a permit issued pursuant to 45CSR30, or section 5 of this rule.

2.11. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.12. "Particulate Matter Capture System" means any equipment or method used to confine, collect, and transport particulate matter from elevators, screens, mixers, weighing equipment, bins, and other plant components to air pollution control equipment. Particulate matter capture systems shall include, but not be limited to, hoods, bins, ductwork, enclosures and fans.

2.13. "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership, or association of whatever nature.

2.14. "Plant" means an ~~asphaltic~~ hot mix ~~asphalt~~ plant which shall mean and include all the equipment utilized in the manufacture of asphaltic hot mix concrete, such as including, but not limited to, burner(s), drier(s), elevators, screens, mixer(s), weighing equipment, bins, and air pollution control equipment; etc.

2.11. ~~"Ringelmann Smoke Chart" means the Ringelmann's Scale for Grading the Density of Smoke published by the United State Bureau of Mines as information circular 7718, August, 1955, or any chart, recorder, indicator, or device which is a standardized method for the measurement of~~

~~smoke density which is approved by the Director as the equivalent of said Ringelmann Scale.~~

2.15. "Shutdown" means the cessation of operation of a plant subject to this rule for any purpose.

2.16. "Smoke" means small gasborne and airborne particles arising from a process of combustion in sufficient numbers to be visible.

2.17. "Standard Conditions" for the purpose of this rule means a temperature of 68° F, 20° C and a pressure of 29.92 inches of mercury (760 mm of Hg).

2.18. "Start-up" means the setting in operation of a plant subject to this rule for any purpose.

2.19. Other words and phrases used in this rule, unless otherwise indicated, shall have the meaning ascribed to them in W. Va. Code §22-5-1 et seq.

### **§45-3-3. Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Visible.**

3.1. No person shall cause, suffer, allow or permit emission of smoke and/or particulate matter into the open air from any fuel burning equipment which is ~~as dark or darker in shade or appearance as that designated as number one (No. 1) on the Ringelmann Smoke Chart~~ or twenty percent (20%) opacity or greater based on six minute averages using 40 CFR Part 60, Appendix A, Method 9, or other equivalent method as approved by the Director.

3.2. The provisions of ~~sub-subsection 3.1 of this section~~ shall not apply to smoke and/or particulate matter emitted during the ~~starting up or shutdown of an~~ operation the ~~shade or appearance of~~ which is less than ~~number three (No. 3) on the Ringelmann Smoke Chart~~ or sixty percent (60%) forty percent (40%) opacity for a period or periods aggregating no more than four (4) minutes of six (6) minutes per start-up or shutdown based on six minute averages using 40 CFR Part 60, Appendix A, Method 9, or other equivalent method as approved by the Director.

3.3. Where the Director believes that start-ups and shutdowns are excessive in duration and/or frequency, the Director may require an owner or operator to provide a written report demonstrating that such frequent start-ups and shutdowns are necessary.

**§45-3-4. Emission of Smoke and/or Particulate Matter Prohibited and Standards of Measurement - Weight Emissions.**

4.1. Total allowable emissions from all plants except as defined in sub-section 4.2.1 and 4.2.2: For those plants placed in operation after June 11, 1973 or that have since been modified to cause such plant to be regulated pursuant to 40 CFR Part 60, Subpart I, no person shall cause, suffer, allow or permit total particulate matter emissions to be discharged into the open air from such plant in excess of 0.04 grains per dry standard cubic feet.

4.2. For those plants not subject to 40 CFR Part 60, Subpart I, No person shall cause, suffer, allow or permit particulate matter emissions from a plant into the open air in excess of the quantity as listed in the following table:

Aggregate Process Rate Pounds Per Hour	Stack Emission Rate Pounds Per Hour
10,000	10
20,000	16
30,000	22
40,000	28
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000	50

4.2.a. For a process weight between any two consecutive process weights stated in this table, the emission limitation shall be determined by interpolation.

4.2.3. No person shall cause, suffer, allow or permit total particulate matter emissions to be discharged into the open air from any stack of a plant located in the following counties and

magisterial districts in excess of 0.04 grains per dry standard cubic feet.

4.2.1.3.a. Counties -- Brooke, Hancock, Ohio, Marshall and Kanawha.

4.2.2.3.b. Magisterial Districts -- Valley (Fayette County), Scott and Pocatalico (Putnam County), Tygart (Wood County), Union and Winfield (Marion County, west of Interstate I-79).

4.3.4. In the case of more than one stack to a hot mix asphalt plant, the emission limitation of subsection 4.1.2 of this section will be based on the total emission from all stacks.

4.4.5. No person shall cause, suffer, allow or permit a plant to operate that is not equipped with a particulate matter capture system. This system shall be designed, operated and maintained in such a manner as to prevent the emission of particulate matter from any point other than the a stack outlet.

4.5.6. The owner or operator of the plant shall maintain control of fugitive particulate matter on the plant premises and plant owned, leased, or controlled access roads by paving, or chemical treatment; or other suitable measures. Good operating practices shall be observed in relation to the stockpiling, screen changing, and general maintenance to prevent fugitive particulate matter generation and atmospheric entrainment. Good operating practices, including water spraying or other suitable measures, shall be employed to minimize fugitive particulate matter generation and atmospheric entrainment when hot bins are pulled.

**§45-3-5. Registration:**

5.1. Within thirty (30) days after the effective date of this rule, all persons operating asphalt hot mix plants within the state shall have registered with the Director on forms to be made available by the Director the name of the person, company or corporation operating the plant, the address, location, county, ownership (lessee & lessor), the principal officer of the company, and any other such reasonable information as the Director may require including but not necessarily limited to capacity of the plant, type of fuel used, plant operating schedule, description of rotary drier;

~~height and size of stack and description of particulate matter control equipment.~~

~~5.2. When such plants are modified by changes in burner design, heating fuel, fan capacity, drier design, air pollution control equipment, stack parameters or like changes which significantly affect the emission characteristics of the plants then they shall be reregistered with the Director defining those changes within thirty (30) days after being placed in operation.~~

#### **§45-3-65. Permits.**

5.1. No person shall construct, modify or relocate a hot mix asphalt plant without first obtaining any permit(s) required by 45CSR13, 45CSR14 or 45CSR19.

5.2. No person shall operate a hot mix asphalt plant without first obtaining an operating permit. The possession of an operating permit issued pursuant to 45CSR30 or a general permit issued pursuant to 45CSR13 will satisfy the requirements of this subsection.

5.3. Applications for permits shall be made upon forms available from the Director and shall include such information as in the judgement of the Director will enable him or her to determine whether such source(s) will be so designed as to operate in conformance with the provisions of this rule and other applicable rules, the W.Va. Code §§22-1-1 et seq., and will not cause or contribute to the violation of applicable ambient air quality standards.

6-1-5.4. An operating permit, issued pursuant to this rule, will be granted for plants in existence on the effective date of this rule provided they meet and maintain the requirements as set forth in this rule. These permits will be valid for one (1) calendar year and must be renewed annually. Any person failing to maintain the requirements of this rule shall, at the discretion of the Director, have their operating permit revoked.

6-2-5.5. When operating permits are revoked, the Director will consider reissuing permits when such changes as necessary to meet the

requirements of this rule are made by the owner or operator of the plants.

~~6.3. No person shall construct, modify, or relocate any plant without first obtaining a permit in accordance with the provisions of W. Va. Code §22-5-11, and 45CSR13 of this agency. A new, modified, or relocated plant that meets the requirements of these rules will also be issued an operating permit by the Director for the same calendar year that the permit to construct, modify, or relocate is issued.~~

6-4-5.6. Plants operating without a all applicable permits will be in violation of this rule.

#### **§45-3-76. Reports and Testing.**

76.1. At such reasonable times as the Director may designate, the owner or operator of any asphalt hot mix asphalt plant may be required to conduct or have conducted certification stack tests and other stack tests to determine the particulate matter concentration in exhaust gases when the Director has reason to believe, based on observed violations, that the stack emission limitation(s) is/are being violated. Such tests shall be conducted in accordance with this agency's TP-5 "Determination of Particulate Emissions from Stationary Sources", or as the Director may specify and be filed on forms and in a manner acceptable to the Director 40 CFR Part 60, Appendix A, Method 5 or other equivalent method approved by the Director.

6.1.a. All Such tests shall be conducted under such reasonable operating conditions as the Director may specify. The Director, or his duly authorized representative, may at his option witness or conduct such stack tests. Should the Director exercise his option to conduct such tests, the operator will provide all the necessary sampling connections and sampling ports to be located in such manner as the Director may require, power for test equipment, and the required safety equipment such as scaffolding, railings, and ladders to comply with generally accepted good safety practices.

76.2. At such time as the Director may request, the operator of the plant will submit data,

including, but not limited to, on type, sizing, and quantity of the aggregate used and the hours of operation.

76.3. Any stack serving a hot mix asphalt plant shall contain flow straightening devices or a vertical run of sufficient length to establish flow patterns consistent with acceptable stack sampling procedures.

**~~§45-3-8. Delayed Compliance Order.~~**

~~8.1. The owner or operator of any plant which is in existence prior to the effective date of this rule which does not meet the emission limitations of this rule shall develop and submit to the Director, within such time as shall be allowed by the Director, an acceptable control program for attaining and maintaining of the emission limitations of this rule. The control program shall be embodied in a consent order as provided in W. Va. Code §22-5-4.~~

~~8.2. In the event that an owner or operator of such a plant fails to submit an acceptable control program within the time allowed, the Director shall, by final order, determine a reasonable control program for the attaining and maintaining of the emission limitations of this rule for such plant.~~

**§45-3-97. Variance.**

97.1. Due to unavoidable malfunctions of equipment, emissions exceeding those provided for in this rule may be permitted by the Director for periods not to exceed two (2) days upon specific application to the Director. Such application shall be made within twenty-four (24) hours of the malfunction or within such other time period as the Director may specify. When parts are not available for repair the Director may grant an extension of time for a period longer than two (2) days, but not to exceed ten (10) days.

**§45-3-108. Circumvention.**

108.1. No owner or operator subject to the provisions of this rule shall build, erect, install, or use any article, machine, equipment or process, the use of which purposely conceals an emission which would otherwise constitute a violation of an

applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

**§45-2-9. Inconsistency Between Rules.**

9.1. In the event of any inconsistency between this rule and Appendix and any other rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method or rule.