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## West Virginia Bureau of Environment

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Cecil H. Underwood  
Governor

Michael C. Castle  
Commissioner

**August 27, 1999**

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

**RE: 45CSR3 - "To Prevent and Control Air Pollution From the Operation of Hot Mix Asphalt"**

**Dear Ms. Cooper:**

**This letter will serve as my approval to file the above-referenced rule with your office and the Legislative Rule-Making Review Committee as notice of rule modification.**

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

**Sincerely yours,**

**Michael C. Castle  
Commissioner**

**MCC:cc**

**Attachment**

**cc: Skipp Cropp  
Karen Watson  
Carrie Chambers**

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

**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:

~~2.8.1.2.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.

~~2.8.2.2.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 upset condition or 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.

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

2.112. "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.

2.113. "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.

2.114. "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 EPA approved 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 EPA approved 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 foot.

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, oil 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 EPA approved 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 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.



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## West Virginia Division of Environmental Protection

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Cecil H. Underwood  
Governor

Michael C. Castle  
Director

September 20, 1999

Ms. Judy Cooper, Director  
Administrative Law  
Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

Re: Office of Air Quality -- Modified Rules -- 45CSR2 and 45CSR3

Dear Ms. Cooper:

We recently discovered an error in a filing we made with your office on August 27, 1999. On that date, we filed a "Notice of Rule Modification of a Proposed Rule" for 45CSR2 and 45CSR3, respectively, but mistakenly included the wrong version of each of the two rules. We have corrected the error and would appreciate it if you would substitute the enclosed rules for the ones we filed on August 27, 1999.

We apologize for any inconvenience we may have caused, and as always, we appreciate your continued cooperation.

Sincerely,

Karen G. Watson, Attorney

cc: Joe Altizer, Counsel.  
Legislative Rule-Making Review Committee  
Enclosures

KGW/cn

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"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."

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West Virginia  
Division of  
Environmental Protection