



**WEST VIRGINIA SECRETARY OF STATE**

**KRIS WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Air Quality TITLE-SERIES: 45-03  
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No  
RULE NAME: Control of Air Pollution from the Operation of Hot  
Mix Asphalt Plants  
CITE STATUTORY AUTHORITY: W. Va. Code § 22-5-4

COMMENTS LIMITED TO:

Oral and Written

DATE OF PUBLIC HEARING: 07/07/2026 6:00 PM

LOCATION OF PUBLIC HEARING:

Virtual

DATE WRITTEN COMMENT PERIOD ENDS: 07/07/2026 11:59 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Laura Jennings  
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Charleston, WV 25304  
EMAIL: laura.m.jennings@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule establishes emission limitations for hot mix asphalt plants and the plant property and sets forth the permitting, recordkeeping, reporting, and exemption requirements.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Summary of changes in the rule:

The rule is being revised primarily to address SIP approvability concerns with the severability language in section 10 by removing this language. Other miscellaneous typographical updates were also made.

Statement of circumstances requiring the rule:

Rule 3 remains subject to the U.S. EPA finding of failure to submit action [88 Fed. Reg. 23353, April 17, 2023] to address deficiencies identified in the U.S. EPA 2015 findings of substantial inadequacy and SIP Call for provisions related to excess emissions during periods of startup, shutdown, and malfunction (SSM) (SSM SIP Call). The rule was revised in 2024; however, it is not approvable as a SIP revision by EPA due to the severability language. The rule is exempt from the Regulatory Moratorium of Executive Order 21-21 under condition 2(f), implementing a federal mandate and no waiver is permitted.

Determination of Stringency:

A federal counterpart to the proposed rule does not exist; therefore, no determination of stringency is required.

Consultation with the Environmental Protection Advisory Council:

The Environmental Protection Advisory Council received a copy of the draft rule in advance of the scheduled June 3, 2026, meeting.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The proposed revisions to this rule should not impact revenues of state government.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

The proposed revisions to this rule should not impact special revenue accounts.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

The proposed revisions to this rule should not impact costs of state government beyond that resulting from currently applicable federal requirements, nor should it have an economic impact on the state or its residents.

D. FISCAL NOTE DETAIL:

| Effect of Proposal                 | Fiscal Year                            |  |  |
|------------------------------------|--|--|--|
|                                    | 2026<br>Increase/Decrease<br>(use "-") | 2027<br>Increase/Decrease<br>(use "-") | Fiscal Year (Upon<br>Full<br>Implementation) |
| <b>1. Estimated Total Cost</b>     | 0                                      | 0                                      | 0  |
| <b>Personal Services</b>           | 0                                      | 0                                      | 0  |
| <b>Current Expenses</b>            | 0                                      | 0                                      | 0  |
| <b>Repairs and Alterations</b>     | 0                                      | 0                                      | 0  |
| <b>Assets</b>                      | 0                                      | 0                                      | 0  |
| <b>Other</b>                       | 0                                      | 0                                      | 0  |
| <b>2. Estimated Total Revenues</b> | 0                                      | 0                                      | 0  |

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

The proposed revisions to this rule should have minimal effect on the costs to the Division of Air Quality. Revisions to the rule may require review of alternative emission limits in subsequent permit applications; however, any potential permitting activity resulting from the proposed revision is not expected to be significant.

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

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

Isaac Lewis Tincher -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 45  
LEGISLATIVE RULE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AIR QUALITY

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

**§45-3-1. General.**

1.1. Scope. -- This rule establishes emission limitations for hot mix asphalt plants and the plant property and sets forth the permitting, recordkeeping, reporting, and exemption requirements.

1.2. Authority. -- W. Va. Code §22-5-4.

1.3. Filing Date. -- ~~May 2, 2024.~~

1.4. Effective Date. -- ~~June 1, 2024.~~

1.5. Sunset provision. -- Does not apply.

**§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. "Air Pollution Control Equipment" is defined as:

2.2.1. "Primary Collection" -- is that equipment 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.

2.2.2. "Secondary Collection" -- is that equipment 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. "Alternative Emission Limitation" means an emission limitation that applies to a source during some but not all periods of normal operation (e.g., applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limitation is a component of a continuously applicable emission limitation, and it may take the form of a control measure such as a design, equipment, work practice or operational standard (whether or not numerical).

2.4. "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

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producing heat for direct heat transfer as applied to a hot mix asphalt plant excluding internal combustion engines.

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

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

2.8. "Malfunction" means a sudden and unavoidable breakdown of process or control equipment.

2.9. "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" or "Hot Mix Asphalt Plant" means a hot mix asphalt plant which shall mean and include all the equipment utilized in the manufacture of asphaltic hot mix concrete, including, but not limited to, burner(s), drier(s), elevators, screens, mixer(s), weighing equipment, bins, and air pollution control equipment.

2.15. "Secretary" means the Secretary of the Department of Environmental Protection or such other person to whom the Secretary has delegated authority or duties pursuant to W.Va. Code §§22-1-6 or 22-1-8.

2.16. "Shutdown" means the cessation of operation of a plant subject to this rule for any purpose, unless defined otherwise in a permit issued to create an alternative emission limitation.

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

2.18. "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).

2.19. "Startup" means the setting in operation of a plant subject to this rule for any purpose, unless defined otherwise in a permit issued to create an alternative emission limitation.

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2.20. 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 20% opacity or greater based on ~~six~~6-minute averages using 40 CFR Part 60, Appendix A, Method 9, and 45CSR16 or other equivalent EPA approved method as approved by the Secretary.

3.2. Reserved.

3.3. Any owner or operator that cannot comply with the emission limitation required by subsection 3.1 during periods of startup or shutdown shall request an alternative emission limitation pursuant to 45CSR1.

3.4. Where the Secretary believes that startups and shutdowns are excessive in duration and/or frequency, the Secretary 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. 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 and 45CSR16, 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 and 45CSR16, 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 Table 45-3:

**TABLE 45-3**

| <b>Aggregate Process Rate<br/>(Pounds Per Hour)</b> | <b>Stack Emission Rate<br/>(Pounds Per Hour)</b> |
|---|--|
| 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   |

4.2.1. For a process weight between any ~~two~~2 consecutive process weights stated in Table 45-3, the emission limitation shall be determined by interpolation.

4.3. No person shall cause, suffer, allow or permit total particulate matter emissions to be discharged

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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.

4.3.1. Counties -- Brooke, Hancock, Ohio, Marshall and Kanawha.

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

4.4. In the case of more than ~~one~~ stack to a hot mix asphalt plant, the emission limitation of subsection 4.2 of this section will be based on the total emission from all stacks.

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 a stack outlet.

4.6. 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, 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. 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 Secretary and shall include such information as in the judgement of the Secretary 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.

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

5.5. When operating permits are revoked, the Secretary 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.

5.6. Plants operating without all applicable permits will be in violation of this rule.

#### **§45-3-6. Reports and Testing.**

6.1. At such reasonable times as the Secretary may designate, the owner or operator of any hot mix

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asphalt plant may be required to conduct or have conducted stack tests to determine the particulate matter concentration in exhaust gases. Such tests shall be conducted in accordance with 40 CFR Part 60, Appendix A, Method 5 and 45CSR16 or other equivalent EPA approved method approved by the Secretary.

6.1.1. All such tests shall be conducted under such reasonable operating conditions as the Secretary may specify. The Secretary may at his option witness or conduct such stack tests. Should the Secretary 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 Secretary 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.

6.2. At such time as the Secretary 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.

6.3. 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.

#### **§45-3-7. Reserved.**

#### **§45-3-8. Circumvention.**

8.1. 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.

#### **§45-3-9. Inconsistency Between Rules.**

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

#### **§45-3-10. ~~Disposition of Rule; Severability.~~ Reserved.**

~~—10.1. In the event the U.S. EPA’s June 12, 2015 “State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA’s SSM Policy Applicable to SIPs; Finding of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,” at 80 Fed. Reg. 33840 (2015 SSM SIP Call) is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction, and/or is invalidated by an act of the West Virginia Legislature or United States Congress, the Secretary may terminate any permit or section of an existing permit issued pursuant to this rule.~~

~~—10.2. In the event the U.S. EPA’s April 17, 2023 “Air Plan Disapproval; West Virginia; Revision to the West Virginia State Implementation Plan To Add the Startup, Shutdown, Maintenance Rule 45CSR1—Alternative Emission Limitations During Startup, Shutdown, and Maintenance Operations,” at 88 Fed. Reg. 23356 (45CSR1 2023 Disapproval) is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction, and/or is invalidated by an act of the West Virginia Legislature or United States Congress, the Secretary may terminate any permit or section of an existing permit issued pursuant to this rule.~~

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~~— 10.3. In the event the U.S. EPA’s April 17, 2023 “West Virginia; Finding of Failure To Submit State Implementation Plan Revision in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction,” at 88 Fed. Reg. 23353 (2023 FFS) is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction, and/or is invalidated by an act of the West Virginia Legislature or United States Congress, the Secretary may terminate any permit or section of an existing permit issued pursuant to this rule.~~

~~— 10.4. In the event the 2015 SSM SIP Call, 45CSR1 2023 Disapproval, and/or the 2023 FFS is withdrawn by the U.S. EPA, is invalidated by a court of competent jurisdiction, and/or is invalidated by an act of the West Virginia Legislature or United States Congress, the Secretary may sever requirement § 45-3-3.3 and revert to the August 31, 2000 requirements found at §§ 45-3-3.2 and 7.1.~~