

**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 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. -- June 2, 2000.

1.4. Effective Date. -- August 31, 2000.

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. "Air Pollution Control Equipment" is defined as:

2.2.a. "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.b. "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. "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to W. Va. Code §§22-1-6 or 22-1-8.

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 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 and all 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 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.

2.9. "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" 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. "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 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 subsection 3.1 shall not apply to smoke and/or particulate matter emitted during the start-up or shutdown of an operation which is less than forty percent (40%) opacity for a period 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. 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.

4.3. 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.

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

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

4.4. 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 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.

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 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.

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.

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 Director may designate, the owner or operator of any hot mix 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 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.

6.2. 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.

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. Variance.**

7.1. 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.

**§45-3-8. 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.

**§45-2-9. 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.