

401 KAR 52:090. Prohibitory rule for hot mix asphalt plants.

RELATES TO: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

STATUTORY AUTHORITY: KRS 224.10-100, 224.20-100, 224.20-110, 224.20-120

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. There is no federal mandate for this administrative regulation. This administrative regulation sets production limits for hot mix asphalt plants, which keeps their emissions below the major source threshold and avoids the necessity of having to obtain a Title V or conditional major permit.

Section 1. Applicability.

- (1) This administrative regulation shall apply to hot mix asphalt plants:
 - (a) Whose potential to emit (PTE) equals or exceeds a major source threshold for Title V;
 - (b) Who have not been issued a Title V or conditional major permit; and
 - (c) Who operate in compliance with:
 1. 401 KAR 59:010 or 401 KAR 61:020 as applicable; and
 2. The operational limits, fuel restrictions, and recordkeeping and reporting requirements of this administrative regulation.
- (2) Hot mix asphalt plants shall be treated as separate sources unless:
 - (a) Two (2) or more plants are located on one (1) or more contiguous or adjacent properties; and
 - (b) The plants are under common control of the same person or persons under common control.
- (3) For purposes of this administrative regulation, a covered source shall be a hot mix asphalt plant that chooses to comply with this administrative regulation in lieu of obtaining a Title V or conditional major permit.

Section 2. General Provisions.

- (1) Covered sources shall not be required to obtain Title V or conditional major permits, except as provided in:
 - (a) Subsections (3) and (4) of this section; and
 - (b) Section 4 of this administrative regulation.
- (2) Covered sources shall:
 - (a) Comply with the operation limits, fuel restrictions, and the notification, recordkeeping, and reporting requirements of this administrative regulation;
 - (b) Allow authorized representatives of the cabinet to enter the premises where the source is located or where records are kept:
 1. During normal office hours;
 2. During all hours of operation; or
 3. During periods of emergency;
 - (c) Demonstrate compliance with applicable requirements if so requested by the cabinet;
 - (d) Obtain a state-origin permit if required to do so under 401 KAR 52:040; and
 - (e) Operate in compliance with all applicable requirements.
- (3) If a covered source receives a notice of violation for noncompliance with any provision in subsection (2)(a) to (c) of this section:
 - (a) Within six (6) months after receiving the notice of violation, the source shall submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and

- (b) Each incidence of noncompliance shall be a separate violation until a Title V or conditional major permit is issued to the source.
- (4) If a covered source is required to obtain a Title V permit by the U.S. EPA, the source shall submit an application under 401 KAR 52:020 within twelve (12) months after publication of the final federal rulemaking.
- (5) Sources that meet the applicability criteria for this administrative regulation may voluntarily apply for a Title V or conditional major permit.

Section 3. Operation Limits and Fuel Restrictions. Covered sources shall meet the requirements of this section.

- (1) Operational limits.
 - (a) Batch mix plants shall not produce more than 360,000 tons of asphalt during any consecutive twelve (12) month period.
 - (b) Drum mix plants shall not produce more than 500,000 tons of asphalt during any consecutive twelve (12) month period.
- (2) Fuel restrictions. Waste oil shall not be used as fuel in the production of asphalt unless the oil has been recycled. Recycled oil:
 - (a) Shall not contain more than:
 - 1. Five (5) ppm of arsenic;
 - 2. Two (2) ppm of cadmium;
 - 3. Ten (10) ppm of chromium;
 - 4. 100 ppm of lead; or
 - 5. 1000 ppm of total halogens; and
 - (b) Shall have a minimum flash point of 100°F.

Section 4. Reconstruction or Modification. Prior to making a change that will cause the source to be unable to comply with this administrative regulation, a covered source shall:

- (1) Notify the cabinet by contacting the Division for Air Quality, Permit Support Section, at (502)564-3999;
- (2) Submit an application for a Title V permit under 401 KAR 52:020 or a conditional major permit under 401 KAR 52:030; and
- (3) Comply with the requirements of this administrative regulation until the source is issued a Title V or conditional major permit.

Section 5. Recordkeeping Requirements. Covered sources shall maintain records as specified in this section.

- (1) Logs shall be kept that show:
 - (a) The tons of asphalt produced for each month;
 - (b) The tons of asphalt produced for each consecutive twelve (12) month period, computed by adding each month's production to the total production for the previous eleven (11) months; and
 - (c) The type and amount of fuels used each month, as follows:
 - 1. Gaseous fuels usage, expressed in cubic feet or gallons and identified as natural gas (NAT), liquid propane gas (LPG), or liquid butane gas (LBG);
 - 2. Fuel oil usage, expressed in gallons and identified by number (i.e., #2, #4, etc.); and
 - 3. Additional information which the cabinet may request.
- (2) Material Safety Data Sheets (MSDS) shall be maintained with the fuel usage log for all fuel oils purchased and used.
- (3) The records shall be sufficient to determine actual emissions for each emission unit and shall be:
 - (a) Maintained on site for five (5) years from date of last entry in the log; and
 - (b) Made available on request for inspection by the cabinet or the U.S. EPA.

Section 6. Reporting Requirements. At the beginning of each calendar year, the cabinet shall mail a printout of the latest emission inventory data in the KyEIS to each covered source. On receiving the printout the source shall:

(1) Update the emissions information;

(2) Certify the report; and

(3) Return the report to the cabinet within thirty (30) days from the date that the printout is mailed to the source.

(401 KAR 052:090. 27 Ky.R. 642; 1304; 1797; eff. 1-15-2001; TAm eff. 8-9-2007; TAm eff. 5-20-2010; Crt eff. 9-12-2018; Crt eff. 8-28-2025.)