

RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF AIR RESOURCES

AIR POLLUTION CONTROL REGULATION NO. 25

CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS  
FROM CUTBACK AND EMULSIFIED ASPHALT

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25. Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt

25.1 Definitions

Unless otherwise expressly defined in this section, the terms used in this regulation shall be defined by reference to the Rhode Island Air Pollution Control General Definitions Regulation. As used in this regulation, the following terms shall, where the context permits, be construed as follows:

25.1.1 "**Asphalt**" means a dark brown to black cementitious material which is solid, semisolid, or liquid in consistence and in which the predominating constituents are bitumens that occur in nature or which are obtained as residue in refining petroleum.

25.1.2 "**Cutback asphalt**" means asphalt cement that has been liquefied by blending with petroleum solvents or any other diluents that contains volatile organic compounds (VOC).

25.1.3 "**Emulsified asphalt**" means an emulsion of asphalt cement and water that contains a small amount of an emulsifying agent; emulsified asphalts are heterogeneous systems containing two normally immiscible phases (asphalt and water) in which the water forms the continuous phase of the emulsion and the minute globules of asphalt form the discontinuous phase.

25.1.4 "**Solicit**" means to require for use or to specify, by written or oral contract.

25.2 Applicability and Exemptions

- 25.2.1 Except as specified in subsection 25.2.2, the provisions of this regulation shall apply to any person who, on or after May 1, 2010, solicits the use of or applies asphalt for road paving, maintenance or repairs.
- 25.2.2 The use of cutback asphalt or emulsified asphalt that does not comply with the provisions of section 25.3 shall be allowed provided that prior written approval is granted by the Director and the EPA. Any request for an approval under this subsection shall be made in writing and shall include, at a minimum, the following information:
- (a) The scope of the activity;
  - (b) An assessment of alternative materials and products available;
  - (c) The amount of VOC that would be admitted as a result of the activity;
  - (d) The dates during which the activity would occur; and
  - (e) A demonstration that it is necessary that the activity take place during the period of time between May 1<sup>st</sup> and September 30<sup>th</sup>.

25.2.3. \* \* \*

### 25.3 Prohibitions

- 25.3.1. During the period of May 1<sup>st</sup> through September 30<sup>th</sup> of any calendar year, no person shall use or apply cutback asphalt.
- 25.3.2. During the period of May 1<sup>st</sup> through September 30<sup>th</sup> of any calendar year, no person shall use or apply emulsified asphalt unless:
- (a) The emulsified asphalt was formulated to contain 0.1% or less VOC by weight, as applied, or

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*\* \* \* Note: EPA did not approve Section 25.2.3 which the state did not submit as part of the SIP revision.*

- (b) The emulsified asphalt, as applied, produces no greater than 6.0 milliliter of oil distillate by distillation as measured by ASTM Method D 244 or AASHTO Method T 59.

#### 25.4 Recordkeeping

Any person subject to this regulation shall maintain records of the use of asphalt for road paving, maintenance or repair; asphalt testing data; asphalt formulation data; and any other information that may be necessary to determine compliance with the requirements of this regulation. These records shall be maintained in a readily accessible location for a minimum of three years and shall be made accessible to the Office of Air Resources upon request.

#### 25.5 Compliance schedule

Compliance with the provisions of this regulation shall be required on and after May 1, 2010.

#### 25.6 General Provisions

##### 25.6.1 Purpose

The purpose of this regulation is to limit volatile organic compound emissions from cutback and emulsified asphalt used for road paving, maintenance or repairs during the ozone season

##### 25.6.2 Authority

These regulations are authorized pursuant to R.I. Gen. Laws § 42-17.1-2(s19) and 23-23, as amended, and have been promulgated pursuant to the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35

##### 25.6.3 Application

The terms and provisions of this regulation shall be liberally construed to permit the Department to effectuate the purposes of state law, goals and policies.

##### 25.6.4 Severability

If any provision of this regulation or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the regulation shall not be affected thereby

25.6.5. Effective Date

The foregoing regulation, "Control of Volatile Organic Compound Emissions from Cutback and Emulsified Asphalt", as amended, after due notice, is hereby adopted and filed with the Secretary of State this 23rd day of October, 2009 to become effective twenty (20) days thereafter, in accordance with the provisions of Chapters 23-23, 42-35, 42-17.1, 42-17.6, of the General Laws of Rhode Island of 1956, as amended.

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W. Michael Sullivan, PhD., Director  
Department of Environmental Management

**Notice Given on:        January 20, 2009**

**Public Hearing held:    February 20, 2009**

**Filing Date:             October 23, 2009**

**Effective Date:         November 12, 2009**