R-39 Rev. 9/2003

IMPORTANT: Read Instructions on bottom of Certification Page before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations.

STATE OF CONNECTICUT

REGULATION

OF

NAME OF AGENCY

Environmental Protection

Concerning

Amendment of Section 22a-174-20(k):
Restrictions on VOC Emissions from Cutback and Emulsified Asphalt

Section 22a-174-20(k) of the Regulations of Connecticut State Agencies is amended as follows:

(k) Restrictions on [cutbacks] VOC emissions from cutback and emulsified asphalt.

(1) Definitions. For the purposes of [As used in] this subsection:

(A) "Asphalt" means a dark brown [cementitious material which is solid, semisolid, or liquid in consistency and in which the predominating constituents are bitumens which] or black solid, liquid or semisolid cementitious material composed primarily of bitumens that occur in nature [as such] or [which] are obtained as residue in refining petroleum.

["Class 8 Bituminous Concrete" means material specified as Class 8 Bituminous Concrete in the most current version of the state of Connecticut, Department of Transportation Standard Specifications for Roads, Bridges and Incidental Construction.

"Cutback Asphalt" means asphalt which has been liquefied by blending with more than seven percent organic compounds by volume as determined by American Society for Testing and Materials' Distillation Test D-244.

"Medium-Curing Cutback Asphalt" means the material which meets the specifications of the American Society for Testing and Materials Designation D 2028.

"Penetrating Prime Coat" means an application of low-viscosity liquid asphalt to an absorbent surface which is used to prepare an untreated base prior to the application of an asphalt surface.]

(B) "Cutback asphalt" means asphalt that has been liquefied by blending with a diluent of petroleum solvents or any other diluent that contains VOC.

(C) "Emulsified asphalt" means an emulsion of asphalt and water that contains a small amount of an emulsifying agent; it is a heterogeneous system containing two normally immiscible phases (asphalt and water) in which the water forms the continuous phase of the emulsion, and minute globules of asphalt form the discontinuous phase.

[(k)(2) After October 1, 1985 no person shall store, use or apply cutback asphalt during the months of June, July, August and September unless less than five percent (5%) of the total solvent contained in such cutback asphalt evaporates at a temperature up to and including five hundred degrees Fahrenheit (500°F) as determined by ASTM Method D-402, except that:

(A) Medium-Curing Cutback Asphalt may be used solely as a penetrating prime coat for aggregate bases prior to paving.

(B) Medium-Curing Cutback Asphalt may be used for the manufacture of materials for long-period storage or stockpiling of patching mixes used in pavement maintenance.

(C) Class 8 Bituminous Concrete may be used at any time for surface treatments under one inch, for crack filling, relief joints, minor leveling or pothole patching.]

(2) Applicability.

This subsection shall apply to any person who, on or after May 1, 2009, stores, uses, solicits the use of, or applies asphalt for road paving, road maintenance or road repair.

(3) Standards.

(A) Except with prior written approval of the Commissioner and the Administrator as provided in subdivision (4) of this subsection, during the period from May 1 through September 30 of any calendar year, no person shall use or apply:

(i) Cutback asphalt; or

(ii) Emulsified asphalt, unless:

(I) The asphalt, as applied, was formulated to contain not greater than 0.1% VOC by weight, or

(II) The asphalt, as applied, produces not greater than 6.0 milliliter of oil distillate by distillation as tested by ASTM Method D 244 or AASHTO Method T 59.

(B) Any person who stores asphalt during the period of time from October 1 through April 30, may continue to store such asphalt during May 1 through September 30.

(4) Exceptions.

(A) The use or application of cutback asphalt or emulsified asphalt that does not comply with subdivision (3) of this subsection may be allowed upon obtaining approval from the Commissioner and the Administrator.

(B) Any request for an approval under this subdivision shall be made in writing to the Commissioner and the Administrator and shall include, at a minimum, the following information:

(i) The scope of the activity,

(ii) An assessment of alternative materials and procedures,

(iii) Quantification of the amount of VOC that would be emitted as a result of such activity,

(iv) The dates during which the activity will occur, and

(v) A demonstration that it is necessary for the activity to occur during the period commencing on May 1 and ending after September 30.

(5) Recordkeeping.

(A) Any person subject to this subsection shall:

(i) Maintain records of test, formulation, and usage data, and any other information necessary for the Commissioner to determine compliance with the requirements of this subsection,

(ii) Maintain all records required pursuant to this subsection in a readily accessible location in Connecticut for a minimum of five (5) years, and

(iii) Provide records made pursuant to this subsection to the Commissioner not later than thirty (30) days after a request to provide such records.

(B) Any person who has obtained approval for a non-complying use pursuant to subdivision (4) of this subsection shall maintain copies of the request, all supporting materials and the written approval of the Commissioner.

Statement of purpose: This subsection is revised primarily to reduce emissions of volatile organic compounds, a precursor to ground-level ozone, from asphalt paving. The revised requirements apply to persons applying either cutback or emulsified asphalt for road paving. The revisions include a seasonal ban on the use of cutback asphalt and a reduction in the acceptable VOC content of emulsified asphalt. The emissions reductions associated with this revision will support Connecticut's efforts to attain the national ambient air quality standards for 8-hour ozone and daily PM2.5 and are included in Connecticut's RACT State Implementation Plan.

CERTIFICATION

Be it known that the foregoing:

Are: ☒ Regulations ☐ Emergency Regulations

☐ Adopted ☒ Amended as hereinabove stated ☐ Repealed

By the aforesaid agency pursuant to:

☒ Section 22a-174 of the General Statutes.

☐ Section_____of the General Statutes, as amended by Public Act No.___of the___Public Acts.

☐ Public Act No._____of the Public Acts.

After publication in the Connecticut Law Journal on March 27, 2007 of the notice of the proposal to:

☐ Adopt ☒ Amend ☐ Repeal such regulations

(If applicable): ☒ And the holding of a public hearing on the 1st day of May 2007

WHEREFORE, the foregoing regulations are hereby:

☐ Adopted ☒ Amended as herein above stated ☐ Repealed

Effective:

☐ When filed with the Secretary of State.

(OR)

☒ The 1st day of January 2009.

In Witness Whereof:	DATE 09/09/08	SIGNED *(Head of Board, Agency or Commission)* Gina McCarthy	OFFICIAL TITLE, DULY AUTHORIZED Commissioner

Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4--169, as amended, of C.G.S.	SIGNED William B. Gundling	OFFICIAL TITLE, DULY AUTHORIZED Associate Attorney General 09/30/08

For Regulation Review Committee Use Only

☒ Approved

☐ Disapproved

☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance with Section 4-170, as amended, of the General Statues	DATE 12/17/08	SIGNED *(Administrator, Legislative Regulation Review Committee)* Pamela B. Booth

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE 12/29/08	SIGNED *(Secretary of the State.)*	BY Elections Division

INSTRUCTIONS

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes

2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.

3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.

4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language underlined or in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.

Regulations
of

Environmental Protection

.....

CONCERNING

Abatement of Air Pollution -
Restrictions on VOC emissions from cutback and emulsified asphalt

.....

Received and filed in the Office of the
Secretary of the State

.....

Approved by the Attorney General

.....09/30/08.....

Approved by the Legislative Regulation
Review Committee or General Assembly

.....12/17/08.....

Published in Connecticut Law Journal

.....

Office of Secretary of the State
State of Connecticut
P.O. Box 150470, Hartford, CT 06115-0470

Susan Bysiewicz
Secretary of the State

Lesley D. Mara
Deputy Secretary of the State

December 30, 2008

Hon. Gina McCarthy, Commissioner
Department of Environmental Protection
79 Elm Street
Hartford, CT 06105

Re: Agency Regulation Concerning:

Amendment of Section 22a-174-20(k): Restrictions on VOC Emissions from Cutback and Emulsified Asphalt (Abatement of Air Pollution)

Regulation Review Committee Docket Number: 2008-059
Secretary of the State File Number: 5885

Dear Commissioner McCarthy:

This is to acknowledge receipt of two certified copies of the above referenced regulation issued by the Department of Environmental Protection. One of the two copies has been forwarded to the Commission on Official Legal Publications as required by law.

Said regulation was received and filed in this office on December 29, 2008. The effective date of this regulation is January 1, 2009.

We request that you please forward the original or a copy of this acknowledgement letter to your agency's legal services department, and/or to the agency department responsible for adopting the regulation, for its files.

Sincerely,

Barbara Sladek
RLS Assistant Coordinator
860-509-6147

RECEIVED
JAN 05 2009
DEPT. OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER

CC: Commission on Official Legal Publications (Letter and Copy of Regulation)

File