

SUPPLEMENTAL BASIS STATEMENT  
CHAPTER 131 CUTBACK ASPHALT AND EMULSIFIED ASPHALT  
AUGUST 20, 2009

Commenters

1. Anne Arnold  
Environmental Protection Agency
2. Roland Fogg  
Pike Industries Inc.
3. John Koris  
Pike Industries Inc.
4. Eugene Weldon  
Lane Construction
5. Karen Hudson Desrosiers  
The Hudson Companies

1. Comment: The commenter finds Chapter 131 to be consistent with regulations adopted by other states in the region and with the recommended control measures of the Ozone Transport Commission for emulsified and cutback asphalt paving. (commenter 1)

*Response: The Department appreciates EPA's comment.*

2. Comment: Section 3(A)(2)(a): The asphalt contains no greater than 0.1 percent VOC by weight should be eliminated from the standard because Asphalt Cement now referred to as PG Asphalt (performance grade) has a specification which allows 1.0% loss as determined by the Rolling Thin Film Oven Test. If one was to say that no asphalt could contain greater than 0.1% then little asphalt would meet that requirement. One must remember that liquid asphalt is the binder for "hot top".

The commenter also provided two COAs (certificate of analysis) from NuStar, an asphalt refiner, who provides product to Pike Industries. The RTFO (rolling thin film oven) test shows the loss on one product of -0.291% and the loss of -0.601% on another product. Under the proposed Chapter 131, neither product could be used as a base material for cutback or emulsified asphalt. In addition, the commenter provided another COA from Inspectorate which certifies product for Irving Oil. This test also shows the same results as being over 0.1%. (commenter 2)

*Response: The proposed regulation includes two alternative methods of compliance – by formulation or by test method. The option to comply based on formulation was selected*

at a low enough level, 0.1 percent by weight, to allow use of emulsified asphalt that is applied without VOC additives. The second method is based on a standardized test that is widely used to characterize the emissions from asphalt. The Department recognizes that the two compliance methods are not equivalent. The compliance method using the standardized test is generally less stringent due to the detection limit of the test method. The formulation method may be less stringent in cases where the original asphalt base is less refined and so contains higher levels of distillate. No change to the rule.

3. Comment: Section 3(A)(2)(b) should be amended to read: The asphalt produces no greater than 6.0 milliliters of oil distillate when distilled to 500 F in accordance with ASTM Method D244, Standard Test Methods and Practices for Emulsified Asphalts, or AASHTO T59, Standard Method of Test for Testing Emulsified Asphalts, or ASTM Method D402, Standard Test Method For Distillation of Cutback Asphaltic Products, or AASHTO T-78, Standard Method of Test for Cutback Asphaltic Products, all as incorporated herein by reference. The reasons for these changes are to provide a true STANDARD which is the main point of this regulation. To treat one product differently from another is not correct. If you set different standards for products which could potentially be used for the same purpose, you are creating an unfair advantage of one product over another. While there is no green cutback asphalt available in this State at this time, the commenter believes we should not eliminate the possibility of having this product available at a later date. (commenter 2)

*Response: The Department agrees that there should be an opportunity to use cutback asphalt in the future if it meets the standards set forth in Section 3 of the proposed rule and has amended Section 3 to state:*

- A. *On or after May 1, 2010, no person shall use or apply, during the period May 1 through September 15, cutback asphalt or emulsified asphalt, unless:*
  - (a) *The asphalt contains no greater than 0.1 percent VOC by weight; or*
  - (b) *The asphalt produces no greater than 6.0 milliliters of oil distillate, in accordance with ASTM Method D244, Standard Test Methods and Practices for Emulsified Asphalts, or AASHTO T59, Standard Method of Test for Testing Emulsified Asphalts, or ASTM Method D402, Standard Test Method For Distillation of Cutback Asphaltic Products, or AASHTO T78, Standard Method of Test for Cutback Asphaltic Products, all as incorporated herein by reference. ASTM Method D244 and D402 are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, Pennsylvania 19428-2959, or from its website [www.astm.org](http://www.astm.org). AASHTO T59 and T78 are available from the American Association of State Highway and Transportation Officials (AASHTO), 444 North Capitol Street N.W., Suite 249, Washington, DC 20001, or from its website [www.transportation.org](http://www.transportation.org).*

4. Comment: This commenter supports the testimony given by commenter 2. (commenter 3)

*Response: See response to comment #3.*

5. Comment: Can product that is produced between September 15 and May 1 and is over the 6.0 ml standard be used during the ozone season? (commenter 4)

Another commenter adds that the volatilization that occurs does so during production not during stockpile storage. Contractors who produce cold patching material before the May 1 deadline should be allowed to store the stockpiled material and continue to use the material during the ozone season. (commenter 5)

*Response: Chapter 131 prohibits the use of noncompliant asphalt from May 1 through September 15 and therefore, noncompliant asphalt produced prior to May 1 cannot be used during this time period. Allowing the use of noncompliant asphalt during the summer would diminish the benefits of this control measure. There are alternatives to non-compliant cold patch that meet the standards required for summer use. Noncompliant cold patch can continue to be used outside of the summer season.*

6. Comment: We are concerned about the requirement to store cutback or emulsified asphalt in a sealed container from May 1 through September 15. A petroleum based product requires ventilation due to the pressure build-up. (commenter 5)

*Response: After further review, the Department agrees that enclosing the asphalt in a sealed container may be problematic and has removed that requirement from the proposed regulation. The Department understands that explosive proof containers would be prohibitively expensive and that these containers would not completely eliminate all safety concerns. Given the limited shelf-life of cutback and/or emulsified asphalts, the Department does not expect that significant stockpiling of excess material will occur.*

7. Comment: The cities and towns in Maine need time to evaluate how these regulations affect the roadwork performed for them and how it affects their budgets. Many of the rural towns depend on these products extensively for maintenance, as well as new construction. There needs to be a full understanding of how these changes will affect employment, road building and road maintenance. (commenter 5)

*Response: The Department did not receive any comments, specific recommendations, or cost figures from towns or municipalities concerning the amendments to this regulation. After consultation with the Maine Department of Transportation, the Department believes that any potential increase in cost to towns that maintain locally administered road projects in the Urban Compact Area is not significant. In addition, there are compliant cold patch alternatives that are available for use during the period May 1 through September 15.*