May 15, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OA-2017-0190

Dear Administrator Pruitt:

On behalf of the National Asphalt Pavement Association (NAPA), I am writing in response to EPA’s request for comments associated with Executive Order 13777, specifically input on regulations that may be appropriate for repeal, replacement, or modification.

NAPA is a 501(c)(6) trade association representing asphalt pavement material producers and paving contractors at the national level. Last year, the approximately 3,500 asphalt plants across the country produced more than 350 million tons of asphalt pavement mixture and employed some 250,000 individuals in the production and placement of asphalt-based pavements. Asphalt pavements account for more than 93 percent of the nation’s paved roadway surfaces, and it is an essential material for ensuring smooth, safe, and quiet roads for the travelling public.

Asphalt cement (AC), CAS No. 8052-42-4, the glue that binds together aggregates with other materials in an asphalt pavement, is a unique thermoplastic petroleum product. AC is solid at ambient temperature but viscous at approximately 300°F, when it can be mixed with aggregate and applied as an asphalt pavement mixture. Once applied as pavement, the material rapidly cools to the solid asphalt pavement most people are familiar with.

However, because of its petroleum base and inherent chemical characteristics, the storage and use of AC requires compliance with several environmental regulations that realistically should not apply due to the thermoplastic nature of AC. Specifically, NAPA requests the EPA modify the following regulations to exempt petroleum thermoplastic materials, such as AC, from:

- 40 CFR Part 112, also known as Spill Prevention, Control, and Countermeasure (SPCC) Regulation
- 40 CFR Part 372, Toxic Chemical Release Reporting: Community Right-to-Know, also known as Toxics Release Inventory (TRI) Program
Add Shop-Built Asphalt Cement Storage Tanks to SPCC 40 CFR §112.1(d)(8)
EPA has a long history of evaluating the applicability of SPCC regulations as they apply to AC. Notably, during its 2007 rulemaking process regarding oil pollution prevention and SPCC, EPA explicitly exempted hot-mix asphalt, also known as asphalt pavement mixture, from SPCC applicability and requirements. Shop-built AC storage tanks should be included in the exemption for hot-mix asphalt provided at 40 CFR §112.1(d)(8).

NAPA’s comments during the 2007 rulemaking process identify the rationale for exempting AC storage tanks, especially small, shop-built AC tanks with volumes generally between 20,000 and 50,000 gallons, from SPCC applicability and requirements. Our comments, submitted December 14, 2007 (ID: EPA-HQ-OPA-2007-0584-0131 Tracking Number: 8037a47f) and supported by the peer-reviewed research article (Guo, J.C.Y. (2006). Overland Flow Model for Asphalt Oil Spills. Journal of Environmental Management, Vol. 78, No. 1, pp. 102–105) cited in those comments, note that the maximum flow of AC from a large spill of a shop-built tank would be approximately 7 feet.

Analysis of petroleum spills involving AC from shop-built tanks do not indicate that such spills represent a threat or hazard to the environment because AC is unable to markedly penetrate earthen material or flow and solidifies quickly. In addition, asphalt production facilities store liquid fuel in tanks subject to SPCC regulation; therefore, on-site staff are trained and knowledgeable as to how to handle unintended release of petroleum liquids, including AC. There is no history of environmental hazards resulting from the release of AC from shop-built tanks, and therefore no reason why the storage of AC in shop-built tanks is applicable to SPCC.

For these reasons, shop-built AC storage tanks should be included in the exemption for hot-mix asphalt provided at 40 CFR §112.1(d)(8).

Exempt Asphalt Cement Under TRI 40 CFR §372.38(b) Based on Design Functionality and Lack of Toxic Chemical Release
Currently TRI exempts reporting requirement for articles under 40 CRF §372.38(b). “Articles” are defined at 40 CFR §372.3 as “a manufactured item: (1) Which is formed to a specific shape or design during manufacture; (2) which has end use functions dependent in whole or in part upon its shape or design during end use; and (3) which does not release a toxic chemical under normal conditions of processing or use of that item at the facility or establishments.” Asphalt cement (AC) is manufactured to meet specific design criteria established by state and federal agencies to ensure desired material properties when used in the production of asphalt paving mixtures. Its end use and function are highly dependent upon its design.

AC is manufactured at, and transported from a refinery at a typical elevated temperature of 300°F, and it is stored at an asphalt pavement production facility at a similar temperature. The process of producing asphalt pavement mixtures consists simply of mixing aggregate and AC according to specific design formulae. The composition of AC and its emissions have been well characterized under the EPA’s AP-42 program (see Compilation of Air Pollutant Emission
Factors (AP-42), Vol. 1, Section 11.1). AC does not contain any toxic chemical in excess of §372.38(a) de minimis concentrations. While AC does contain low part-per-million levels of polycyclic aromatic compounds (PACs) included under §372.28(a)(1) and (2), these constituents are generally bound within the AC article. Of the 25 individual PACs listed under §372.28, only one constituent, benzo[a]anthracene, has been detected by EPA in asphalt storage tank emissions. Using EPA’s benzo[a]anthracene speciation amount of 0.056 percent and the listed organic particulate matter (PM) emissions factor (EF) (see AP-42, Vol. 1, Section 11.1, Table 11.1-14), emissions of this PAC at a typical facility that produces 200,000 tons of asphalt pavement mix annually would be orders of magnitude below the 0.5-lb. threshold identified in EPA’s EPCRA Section 313 Industry Guidance (EPA 745-B-99-005), and therefore is not reportable as a toxic chemical release for an article.

For these reasons, per 40 CFR §372.38(b), AC should be exempt from TRI reporting obligations based on its article properties and the lack of toxic chemical release.

While NAPA supports EPA’s mandate to safeguard the nation’s air and water resources, we respectfully seek relief and revision of the above two regulations, which unnecessarily impact the road construction industry.

Sincerely,

Howard Marks, Ph.D., J.D., MPH
Vice President, Environment, Health & Safety