



ENCOURAGE THE BENEFICIAL, ECONOMICAL, AND ENVIRONMENTALLY PROTECTIVE RECYCLING OF PAVEMENTS BY EXPANDING THE EXISTING SUPERFUND RECYCLING EQUITY ACT

The above trade organizations encompass and represent our nation's roadway pavement and infrastructure material suppliers. Our unified voice is consistent – ensure critical construction materials suppliers are not held liable for passively receiving and deploying recycled materials containing per- and polyfluoroalkyl substances (PFAS), throughout our national surface transportation network.

*On Sept. 17, 2025, [EPA requested that Congress provide](#) a “**statutory fix to protect passive receivers [of PFAS-containing materials] from liability, which EPA would follow to the letter of the law. EPA stands ready to provide technical assistance to Congress as requested on this issue.**” While the mechanism to provide such liability relief for a wide swath of impacted industries would indeed be broad and difficult to implement, such legislative/regulatory vehicles were enacted in both 1999 and 2007 for recyclable materials, typically utilized in pavement infrastructure designs, that may contain certain deleterious chemical substances. Promulgation of those legislative vehicles were based on scientific studies identifying that the inclusion of potentially deleterious materials into recycled pavements were effectively encapsulated, safe, and would not adversely impact the environment. Below we provide a simple solution to revise existing legislation and regulation, that meets the Agency's request to provide liability relief for the passive inclusion of PFAS in pavement infrastructure systems.*

BOTTOM LINE. Expand the existing CERCLA Recyclable Materials Exemption to include PFAS-containing recycled pavements. Specifically, amend [42 USC 9627](#) as follows:

Beneficial Reuse and Recycling of Reclaimed Pavement Materials. – Section 127 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC 9627) is amended –

- 1) In subsection (b), immediately following “scrap textiles” by inserting “reclaimed and reprocessed road, highway, and other surface pavement materials”
- 2) In subsection (b) (2), immediately following “polychlorinated biphenyls” by inserting “or per- and polyfluoroalkyl substances”
- 3) In subsection (c), immediately following “textiles” in the title, by inserting “reclaimed and reprocessed pavements”, and immediately following “scrap textiles” by inserting “reclaimed and reprocessed road, highway, and other surface pavement materials”
- 4) In subsection (c) (6), add a new subsection (D) as follows: “the result of an EPA SW-846 Test Method 1315, or similar, identifying the sum of chemical mass released in leachate from the recycled material, in its finished form, is encapsulated at or above 90 percent; or

on a daily basis, does not exceed background or existing levels, or any attenuated regulatory criteria for the applicable environmental media.”

Introduction to NAPA. The National Asphalt Pavement Association (NAPA) is the only trade association nationally representing over 1,000 companies associated with the production and application of over 400 million tons of asphalt pavement mixtures annually. NAPA members operate pavement mix plants in virtually every Congressional district, coast to coast, border to border. More than 94 percent of America’s roadways and over 80 percent of airfields are surfaced with asphalt.

Introduction ACPA. Founded in 1963, The American Concrete Pavement Association (ACPA) is the world’s largest trade association that exclusively represents the interests of those involved with the design, construction, and preservation of concrete pavements. Most heavy-duty major hub airfield pavements and many interstate highways with significant heavy truck traffic are surfaced with concrete pavements. Concrete is produced locally across the United States, and concrete paving contractors hire local labor to build critical infrastructure, supporting local communities, which is great for the economy.

Introduction to NRMCA. Founded in 1930, the National Ready Mixed Concrete Association (NRMCA) is the leading concrete industry advocate. Our mission is to create opportunities for our members and the industry to prosper through leadership in safety, environmental & operational excellence, promotion, advocacy, workforce development, and concrete technology advancements. Ready mixed concrete is produced locally in the US by approximately 8,000 batch plants which produce 400 million cubic yards of concrete annually. Concrete is the enabler of modern society and contributes more than \$100 billion to the US economy annually.

Background

Recycling pavements is an integral part of the road construction industry and keeps pavement material costs low. For example, almost 100 million tons of reclaimed asphalt pavement (RAP) were reused and recycled into new asphalt roadway pavements in 2022 – [saving State DOT agencies over \\$3 billion in annual road construction costs](#) – and making asphalt pavement the most recycled material in the nation. Additionally, the repurposing of certain potential pavement aggregate substitutes like tire rubber, plastics, and other similar discarded waste materials into pavements, can also reduce unnecessary landfilling. Some of those materials, like tire- and other vehicle-wear particles that are deposited on our roadways, are similarly recycled back into new pavements.

Over the last three decades, Congress, EPA, and scientific institutions have addressed the incorporation of such discarded and potential waste materials into pavements – all with the same conclusion – once recycled into pavements, potentially deleterious materials are encapsulated and are NOT able to adversely impact the environment. For example, in 2007, after conducting various leachate studies, EPA allowed the [beneficial reuse of \(Chat\) lead- and other metal-](#)

[containing mine tailings](#). Even earlier, in 1999 Congress enacted the [Superfund Recycling Equity Act \(SREA\)](#) which EPA further expanded in their 2002 [EPA memo](#) (codified at [42 USC 9627](#)), **explicitly exempting certain recycling transactions and recyclable materials from CERCLA liability**, e.g., “plastic, ... glass, ... textiles, ... rubber (other than whole tires), ... metal, or spent lead-acid, ... nickel-cadmium, and other spent batteries”, as long as the material contains minimal amounts of polychlorinated biphenyls (PCBs). Currently PCBs are the only CERCLA ‘hazardous substance’ [40 CRF 302.4](#) currently identified in the recycled materials liability exemption

Today’s PFAS landscape

In May of 2024, EPA [finalized its rule](#) designating certain per- and polyfluoroalkyl substances (PFAS) as CERCLA (Superfund) hazardous substances. While the asphalt and other roadway pavement industries do not use, manufacture, nor intentionally add PFAS into pavements, we are increasingly aware that pavements may contain or be contaminated with PFAS from firefighting foams, especially at airfields or on roadways where firefighting foams are used to extinguish vehicular and tanker truck fires. Compounded by atmospheric source deposition, we also know that pavements may contain PFAS from vehicle-wear particles like brake pads, tires, plastics, and interior fabrics.

PFAS is ubiquitous and can be found virtually everywhere - but despite its pervasiveness, the pavement construction industry does not purposefully add/include nor deliberately facilitate, PFAS in its manufacturing processes. Unfortunately, EPA’s rule assigns joint and several liability to any entity that transports or stores PFAS-containing materials, even if unknowingly, unintentionally, or simply passively receiving such material during normal commerce.

In September of 2025, under Court order, EPA recognized the inherent unfairness in potential liability associated with the unknowing capture and use of remnant PFAS in recycled and manufactured products, but let the 2024 rule stand with the idea the Agency would “continue to collect information on ... costs and benefits” associated with passive receivership as they look toward other regulatory and statutory vehicles. Further, in its Sept 2025 Announcement, the Agency identified [“\[t\]he best, most enduring solution to this issue is a statutory fix to protect passive receivers from liability, which EPA would follow to the letter of the law. EPA stands ready to provide technical assistance to Congress as requested on this issue.”](#) However, framework for that statutory ‘fix’ already exists under the previously identified Superfund Recycling Equity Act.

A permanent liability shield is needed for recycling pavements – while ensuring environmentally-protective safeguards

As Congress and EPA currently address generic CERCLA liability shields for ‘passive receivers’ of PFAS-containing material, we encourage Congress to simply expand the existing liability shield provided by the 1999 Superfund Recycling Equity Act (codified at [42 USC 9627](#)) for PFAS-containing materials, which already provides safeguards to ensure environmental protection of such newer pavement or aggregate-substitute materials. Specifically, that Act includes language

to ensure environmental protection by requiring such recyclers to meet existing environmental law or regulation (see, e.g., subsections (c)(5) and (c)(6)(C). In addition, we propose the addition of recommending a simple EPA standard leachate test, for potential chemicals of additional concern that have not been studied, to further ensure any deleterious materials are encapsulated in the recycled material (e.g., pavement matrix) and do not pose an adverse environmental impact. Preliminary research findings conducted by University of Florida, under an Federal Aviation Administration grant, illustrate recycling PFAS-contaminated airfield millings into new concrete and asphalt pavements, can encapsulate 95 percent or more of PFAS – ensuring environmental protection. See above for more specificity regarding revisions to the Act’s legislative language.

Note: Amending various environmental statutes through other legislative vehicles, like the Surface Transportation Reauthorization legislation, is not new. For example, Title IV (Sec 70402 (c) Federal Procurement) of the Infrastructure Investment and Jobs Act amended Sec 6002 of the Solid Waste Disposal Act to provide additional clarification on recycling practices.

Revising the CERCLA Recyclable Materials Exemption to include PFAS-containing recycled pavements is the proper statutory vehicle, consistent with the Act’s purposes below:

[Superfund Recycling Equity Act](#) | ([Pub. L. 106–113, div. B, § 1000\(a\)\(9\) \[title VI, § 6001\(a\)\]](#)), Nov. 29, 1999, [113 Stat. 1536](#), 1501A–598):

The purposes of this section [enacting this section] are—

(1) to promote the reuse and recycling of ... in furtherance of the goals of waste minimization and natural resource conservation while protecting human health and the environment;

(2) to create greater equity in the statutory treatment of recycled versus virgin materials; and

(3) to remove the disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions.

NAPA, ACPA, and NRMCA look forward to working with Congress to ensure pavements, containing PFAS from firefighting foams or other depositions, are repurposed environmentally responsibly. Such reclaimed pavement materials must be exempt from CERCLA liability, similar to other recyclable materials; and recyclers of such materials should also be afforded passive receiver liability exemption.

NAPA Contacts: For more information, please contact NAPA’s Vice President of Government Affairs, [Nile Elam](#), or Vice President of EH&S, [Howard Marks](#) regarding these critical issues.

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