



## **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 materials suppliers. Our unified voice is consistent – ensure critical construction material suppliers are not held liable for passively receiving and deploying recycled materials containing per- and polyfluoroalkyl substances (PFAS) across our 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 ‘passive receiver’ 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, that may contain deleterious chemical substances. Promulgation of those legislative vehicles was based on scientific studies identifying that the presence of potentially deleterious materials in recycled pavements is effectively encapsulated, safe, and does not adversely impact the environment. Below we provide a simple solution to revise existing legislation, that meets the Agency’s request to provide liability relief for the passive inclusion of PFAS in pavement infrastructure systems, while ensuring environmental protectiveness.*

**ECONOMIC IMPACT.** Recycling pavements is an integral part of the road construction industry and keeps pavement material costs low. In 2022, for example, almost 100 million tons of reclaimed asphalt pavement (RAP) was reused / recycled into new asphalt roadway pavements, constituting less than a quarter of the total pavement material applied – [but saving State DOT agencies almost \\$5 billion in annual road construction costs](#) – and making asphalt pavement the most recycled material in the nation. Unfortunately, the ongoing ability to efficiently **increase the reuse** of recycled pavements is now hampered by EPA’s 2024 Superfund PFAS designation because pavements may contain PFAS from firefighting foams and other ambient sources.

Currently, road pavement construction companies are looking at pavement disposal costs of up to 30-times more than actual project costs, all in a low-bid environment. And recent litigation, for example like in NY state (<https://casefilingsalert.com/wp-content/uploads/2025/02/Estee-Lauder-Teva-Sued.pdf>) alleges over a dozen defendants contaminated a municipal water supply, even though many of those defendants, including an asphalt mix plant, have absolutely no history of ever using PFAS in their operations. Unfortunately, situations like this, which are becoming more common and reminiscent of the costly Superfund litigation in the 1990s, will continue to mire-down innocent parties or passive receivers of PFAS across all sectors – governmental, municipalities, non-profits, utilities, industry, etc. – in unwarranted and ongoing litigation costs.

***These unnecessary disposal and potential litigation costs are now being factored into some project bids, instead of safely recycling existing pavements, as identified by current research findings. This is one of the reasons why liability relief, similar to what Congress enacted in 1999 and EPA promulgated in 2007, is needed for pavement manufacturers unaware of PFAS in their supply chain raw materials, and who do NOT purposefully add PFAS during the pavement production process.***

**OUR SOLUTION.** 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”

**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 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.** 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 heavy truck traffic are surfaced with concrete. Concrete is produced locally across the United States, and concrete paving contractors hire local labor to build critical infrastructure, supporting local communities, and bolstering 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 that \$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](#). 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 and many are currently 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 a Federal Aviation Administration (FAA) grant, illustrate recycling PFAS-contaminated airfield millings into new concrete and asphalt pavements, can encapsulate 90 – 95 percent or more of PFAS – ensuring environmental protection.

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;

(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 current recyclable materials; and recyclers of such materials should also be afforded passive receiver liability exemption.*

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