



Testimony of Brian Enders, Vice President, Walbec Group,

On behalf of the National Asphalt Pavement Association (NAPA),

Before the House Transportation and Infrastructure
Subcommittee on Highways and Transit Hearing on
"Implementation of Buy America Provisions: Stakeholder Perspectives."

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Introduction

Full Committee Chairman Graves, Ranking Member Larsen, Highways Subcommittee Chairman Crawford, Ranking Member Holmes Norton, and members of the committee, thank you for inviting me today to discuss lessons learned from the Buy America provisions via the implementation of the Infrastructure Investment and Jobs Act (IIJA) package. For the asphalt pavement industry and my company, the Buy America exemption for aggregates and cementitious materials, including asphalt binder, enshrined in the IIJA legislation, is an absolute necessity to continue the essential business of constructing roadways, serving state departments of transportation and the traveling public.

My name is Brian Enders, Vice President of the Walbec Group, a Waukesha, Wisconsin-based construction company employing over 2,000 hard-working men and women throughout the Upper Midwest. Walbec is a vertically integrated organization of six companies – Payne and Dolan, Northeast Asphalt, Zenith Tech, Parisi, Premier Concrete, and Construction Resources Management. Together, we produce high-quality construction materials and deliver unparalleled professional design, engineering, and construction services. While we are often associated with state, municipal, and federal projects, many of our customers are commercial businesses. We build various infrastructure, including highways, roads, bridges, parking lots, bike trails, athletic tracks, and so on. Walbec is committed to helping people, including our team members, customers, and the public, reach their destinations. Our team comprises a great group of people across our companies who are ethical, positive, and family-focused.

I have worked for the Walbec Group my entire career, beginning as an intern in 2004 working on a paving crew with Northeast Asphalt and eventually joined the team as a project manager in 2007. I later became the area manager for Northeast Asphalt South in 2017 before becoming Vice President of Northeast Asphalt in 2019. I was born and raised in Laona, Wisconsin, and majored in civil engineering with an emphasis in construction management at the University of Wisconsin-Madison. I currently serve on the board of directors of the Wisconsin Asphalt Pavement Association and the National Asphalt Pavement Association (NAPA). In addition, I am the Chair of the National Center for Asphalt Technology (NCAT) located on the campus of Auburn University in Alabama; NCAT is the industry's premier academic and research institution aimed at advancing the industry's ability to provide asphalt pavements that are safe, sustainable, durable, and economical for road owners.

I am proud to join you on behalf of NAPA, the only national trade association representing the interests of asphalt producers and the asphalt pavement industry in the United States. NAPA represents over 1,100 member companies across the country and has advocated for our industry's critical legislative and regulatory priorities for nearly 70 years.

The Walbec Group is a multi-faceted construction materials producer, as we own and operate aggregate, ready-mix concrete, and asphalt facilities, but our company owes its success to its long and storied past producing and providing asphalt mixtures throughout the Midwest, and we have been a member of NAPA since its founding in 1955. The Walbec Group operates over 40 asphalt plants, producing millions of tons of asphalt each year, with projects across the major thoroughfares and highways throughout the Midwest, including I-43 and I-39. We also operate three multi-modal storage terminals on the Great Lakes, providing asphalt binder to the region.

Asphalt Background

When discussing highway funding and infrastructure policy – a key objective of this committee – it is vital to understand how asphalt is used for our surface transportation network. NAPA and the Federal Highway Administration (FHWA) report that asphalt accounts for almost 95% of the roadway market, which includes local and county roads, subdivisions and commercial/industrial parks, state and regional thoroughfares and highways, as well as federal and national interstate and intrastate networks¹. Further, our product makes up almost 80% of the airfield pavement market, which includes private and regional airstrips, military bases and airfields, along with larger, highly utilized national and commercial airports².

Asphalt pavement is 100% recyclable. In fact, at a rate of 99%, it is the most recycled product in America. The industry reuses and recycles 100 million tons of asphalt pavement a year, incorporating reclaimed asphalt pavement (RAP) into new pavements and saving taxpayers over \$2 billion annually.³ Asphalt mix requires 20% less energy to produce and construct than other pavement materials.⁴ Despite the scope of asphalt pavement utilization across the country, our industry's cradle-to-gate emissions associated with asphalt mix production represent only 0.3% of total U.S. GHG emissions⁵ and we are committed to industry-wide efforts to reduce that figure.

Now that I have established the scale of our product's varied and essential uses, I will illustrate its components and the relevance to Buy America policies. It is important to understand asphalt production and the materials we rely upon from the perspective of asphalt producers. You do not need a civil engineering degree to quickly understand asphalt production; it is straightforward, as asphalt pavement primarily consists of two materials:

1. Aggregate – the stone, sand, and rock raw material product that is the base of our finished product, and
2. Asphalt binder – the specific refined oil product that serves as the 'glue' that keeps the aggregate materials bonded and connected.

Roughly speaking, asphalt is made up of about 95% aggregate and 5% binder, and depending on the mix or maintenance strategies, may contain emulsifiers, additives, and other post-consumer waste products. Asphalt mix types can serve different purposes based on the customer's objectives, including traffic volumes, climate conditions, budget, performance expectations, and so much more.

¹ U.S. Department of Transportation, Federal Highway Administration. (2018, August 23). Table HM-12 – Highway Statistics 2017. <https://www.fhwa.dot.gov/policyinformation/statistics/2017/hm12.cfm>

² Federal Aviation Administration (FAA) Airport Master Records (5010) Module in Airport Data and Information Portal. Retrieved by FAA representative September 15, 2020. <https://adip.faa.gov/agis/public/#/airportSearch/advanced>

³ Williams, B.A., J.R. Willis, & J. Shacat. (2022). *Asphalt Pavement Industry Survey on Recycled Materials and Warm-Mix Asphalt: 2021*. (12th Annual Survey). National Asphalt Pavement Association. <https://member.asphaltpavement.org/Shop/Product-Catalog/Product-Details?productid={BDAB6C1D-7D96-ED11-AAD1-0022482A4988}>.

⁴ Gambatese, J.A. & S. Rajendran (2005). Sustainable Roadway Construction: Energy Consumption and Material Waste Generation of Roadways. In Proceedings of the Construction Research Congress 2005: Broadening Perspectives. American Society of Civil Engineers, Reston, Virginia. doi:10.1061/40754(183)21

⁵ Shacat, J., J.R. Willis, & B. Ciavola. (2022). *GHG Emissions Inventory for Asphalt Mix Production in the United States*. National Asphalt Pavement Association. <https://member.asphaltpavement.org/Shop/Product-Catalog/Product-Details?productid={45E463A7-BBF7-EC11-BB3D-0022482BC80B}>.

Asphalt Production

In most parts of the United States, asphalt pavements can be produced reliably with local or regional access to aggregate materials, additives, and asphalt binder. However, certain parts of the country – particularly the West Coast, Pacific Northwest, Upper Midwest, and Northeast – depend upon importing raw materials that cannot be sourced locally. I will share insights on raw material imports and the need for supporting the current construction material exemption, but this underlying point is important: 100% of all asphalt mixtures used in the United States are produced right here in the United States in every Congressional district across the country. Local production is designed to meet local needs and support local communities – producing and constructing asphalt pavements are inherently local operations.

While I am best suited to discuss how our company's asphalt binder is sourced and the impact on our regional market, I would be remiss if I did not mention how this same issue exists for aggregates, primarily along coastal cities on the East and West Coast, as well as the Southeast and Gulf of Mexico. These regions are too built up and cannot access local aggregate deposits, cannot be properly permitted, and/or lack the geological makeup necessary for suitable aggregate production. These constraints can be exacerbated by a difficult permitting process, taking years, if not over a decade, for aggregate facilities to be operational. Similar to asphalt binder, aggregate sourcing may be dependent upon what is available based on regional geological makeup.

The majority of asphalt binder used in our nation's roadways is refined domestically, however a small portion is imported. According to figures from the Energy Information Administration (EIA), the U.S. Chamber of Commerce, and the Asphalt Institute, in 2022 18.4% of the total liquid asphalt supply used for U.S. production was imported – with 88% of those imports coming from Canada.

If Buy America requirements were in effect for asphalt binder, the United States would need to increase refining capacity, especially in the Northeast, or refiners would need to increase production and/or expand material transport, counterproductive to climate goals. Further, costs to build and maintain U.S. highways – especially in certain regions – would be delayed and costs would skyrocket. For example, if Canadian-sourced asphalt binder and additives were arbitrarily delayed, it would have major disruptions to the binder market in the United States, including material shortages and higher prices. Given the lack of refining capacity in regions like the Pacific Northwest, Upper Midwest, and Northeast, Canadian imports are the most economical, efficient, and practical means to obtain the appropriate asphalt binder content for our mixes.

Within the Walbec Group's profile, we operate three multi-modal terminals that serve as an entry point for this necessary component of our asphalt products. These locations across the Great Lakes serve our entire spectrum of asphalt plants. Given the sheer scale and scope of projects we maintain and execute in the region, our work would not be possible without this raw material input.

As mentioned, RAP is the most recycled product in the country and continues to grow in use across our nation's roadway network, with RAP comprising 94 million tons of new pavement mixtures in 2021³. Through enhanced engineering innovations, asphalt is 100% recyclable, and the industry has worked hard to engineer RAP mixtures that provide an environmental benefit, without sacrificing quality or performance. Using RAP involves milling an existing road, processing and incorporating it into a new

mixture, then laying that new mixture down as a new road surface. It represents circularity at its finest without any degradation, while reducing the virgin materials required to renew a road's surface.

Nationally, RAP is utilized at an average rate of 21.1% with positive impact on cost, materials, and emissions. To illustrate its importance to our sustainable road network, increasing RAP just 1% would avoid the equivalent greenhouse gas (GHG) emissions of approximately 30,000 passenger vehicles.⁵ RAP is a key component of the industry's goal to produce and construct net zero carbon emissions asphalt pavements by 2050. Ensuring the necessary raw materials to re-engineer and reuse RAP to meet performance and environmental demands is critical to achieving this vision.

Buy America Background

NAPA understands and supports the merits of Buy America and why we need to support our domestic labor force, manufacturing, and raw material resources where available. But the asphalt pavement industry cannot execute a broad application of unincumbered Buy America provisions without unintended consequences on our product's design, quality, and cost to American taxpayers.

NAPA was a vocal supporter of IIJA. When it was signed into law in 2021, IIJA provided long-term, sustainable transportation revenue that has allowed us to make our communities safer, more efficient, and better connected. As a result, Wisconsin was able to invest in over 1,300 state and local highway and bridge projects to significantly improve our state's system, and this investment led to job creation and economic growth.

The multi-year highway reauthorization package contained in IIJA included various policies beyond the surface transportation formula funding and authorities granted to the FHWA, including the Build America, Buy America Act, regarding revised mandates to Buy America sourcing guidelines. I am here to share with you how we acquire our essential raw materials and how asphalt mix producers are impacted by Buy America.

For more than 40 years, Buy America required a domestic manufacturing process for certain products permanently incorporated into federal-aid highway and transit projects. The road building industry has operated without these sourcing requirements because the components in asphalt pavements are not considered manufactured products based on a waiver granted in 1983 by FHWA⁶. Yet, as IIJA moved through Congress and enveloped other bills like the US Innovation and Competition Act of 2021,⁷ Buy America was revisited under the updated Build America, Buy America standards via Section 4101.

IIJA's original text revised Buy America standards to be applicable to all materials and products within the General Services Administration's procurement, including raw materials like aggregates and asphalt binder that were previously exempted. Working with Senator Baldwin and industry coalition partners representing aggregates, cement, and ready-mix concrete, NAPA conveyed the importance of continuing the 1983 exemption status for certain construction materials including asphalt binder and aggregates.

⁶ Federal Highway Administration, DOT (1983, November 25). Buy America Final Rule. Retrieved February 13, 2024, from <https://www.fhwa.dot.gov/construction/contracts/831125.cfm>

⁷ U.S. Government Publishing Office (2022, March 28). *H.R. 4521 - United States Innovation and Competition Act of 2021*. Retrieved February 13, 2024, from <https://www.congress.gov/bill/117th-congress/house-bill/4521/text>

Further, Congress understood that, without an exemption, a cumbersome and inefficient individual waiver process would be utilized. Thanks to the historic highway funding that IIJA provided, state departments of transportation (DOTs) are administering a record number of contracts. With this scaling up in project delivery and development, the individual waiver process would have hindered states' ability to deliver projects on time and on budget, due to the unnecessary regulatory burden. With even a medium size state like Wisconsin investing into 1,300 projects thanks to IIJA, it is easy to comprehend the added administrative burden an individual waiver process would have put on state DOTs, FHWA, and the entire asphalt contracting community.

Thus, when IIJA passed inclusive of the Buy America exemptions for certain construction materials like asphalt binder and aggregates, Congress recognized the uniqueness of our raw material sourcing was based purely on local market limitations and efficiencies. These actions provided certainty to the construction material supply chain, road owners, and road builders.

Closing

We appreciate the work of many members across this subcommittee who reached out to the Office of Management and Budget (OMB) and the White House last summer to reaffirm the legislative exemption in IIJA⁸. Thanks to your support and coalition comments submitted by NAPA and its peer construction material trade associations⁹, OMB issued extensive clarification that reaffirmed IIJA's congressional intent to ensure federal, state, and local agencies do not place a new domestic sourcing requirement on materials such as aggregate and asphalt binder. These materials are essential to building and maintaining our modern way of life in every neighborhood coast to coast.

The backbone of America's economy is its vast roadway system. Our roads connect people and goods from one end of the country to the other and asphalt is key to facilitating that connectivity. Asphalt offers a high-performing, strong, smooth, durable roadway surface for the traveling public. Long-lasting, durable asphalt pavements are the result of collaborative partnerships between researchers, manufacturers, paving contractors, and agencies. These experts work together to engineer and develop optimal pavement and mix designs, equipment, and processes to improve asphalt durability and performance. In addition, they engage in research and collaboration to develop best practices and techniques to enhance asphalt's performance. As American business moves, so do the demands on our nation's roads. I want to thank the committee for the continued support of transportation investment funding absent unrealistic mandates, thereby allowing us to continue building roads that are safe, sustainable, durable, and cost-effective for the traveling public around the country.

On behalf of my company and industry, thank you for hearing my perspectives on Buy America and working with us to continually ensure that no legislation or regulation unnecessarily impedes our ability to efficiently build roads, using the best materials possible, that help Americans and American businesses in every community thrive.

⁸ The White House (2023, August 14). *Biden-Harris Administration Releases Final Guidance to Bolster American-Made Goods in Federal Infrastructure Projects*. Retrieved February 13, 2024, from <https://www.whitehouse.gov/omb/briefing-room/2023/08/14/biden-harris-administration-releases-final-guidance-to-bolster-american-made-goods-in-federal-infrastructure-projects/>

⁹ NSSGA, PCA, NAPA, & NRMCA (2023, March 13). *Comment to the Office of Management and Budget on proposed amendments to 2 CFR 184 and 200 to implement the Build America, Buy America Act provision of the Infrastructure Investment and Jobs Act*. Retrieved February 13, 2024, from https://www.asphaltpavement.org/uploads/documents/GovAffairs/Buy_America/Association_coalition_OMB_BABAA_Comment.pdf