



April 4, 2024

Attn: Jennie Romer, Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20640-0001

**Subject: Draft Criteria for Product Category Rules to Support the Label Program for Low Embodied Carbon Construction Materials
Docket Number EPA-HQ-OPPT-2024-0075**

Dear Ms. Romer:

Thank you for the opportunity to provide comments on the Draft Criteria for Product Category Rules (PCRs) to Support the Label Program for Low Embodied Carbon (LEC) Construction Materials released on March 5, 2024.

With more than 1,100 member companies, the National Asphalt Pavement Association (NAPA) is the only trade association that exclusively represents the interests of the asphalt pavement producer/contractor on the national level with Congress, government agencies, and other trade and business organizations. NAPA's membership also includes companies and individuals that support the asphalt pavement industry, such as construction equipment manufacturers and material suppliers. NAPA members are leaders in implementing sustainable plant and pavement technologies, such as reclaimed asphalt pavements (RAP) and warm-mix asphalt (WMA), that reduce environmental impacts and greenhouse gas emissions.

While NAPA is the trade association for the asphalt paving industry, it also serves as the Program Operator for the *Product Category Rule (PCR) for Asphalt Mixtures in North America*. As Program Operator, NAPA ensures that its PCR and environmental product declarations (EPDs) for asphalt mixtures are compliant with the latest standards. Based on our experience, NAPA is providing feedback to the EPA's Draft PCR Criteria.

General Comments

The PCR Criteria should be published as an interim set of requirements. PCRs and the applicable standards, such as ISO 14025 and ISO 21930, are developed through a formal consensus process that involves numerous stakeholders. EPA's proposed PCR Criteria supplant this process by creating an agency-specific standard that has not gone through a consensus process. OMB Circular A-119 requires federal agencies to "use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical." We understand that it's impractical to integrate EPA's PCR Criteria into one or more of the existing consensus standards, or fund the development of a new consensus standard, within the timeframe required for implementation of the LEC Label Program. However, in the long term, EPA does have the time to do so. As such, the PCR Criteria should be presented as Interim PCR Criteria that will become obsolete once appropriate criteria have been integrated into new or existing voluntary consensus standards. EPA should consider working with or funding other entities, such as the American Center for Life Cycle Assessment (ACLCA), to develop an appropriate consensus standard.

We strongly encourage EPA to consider the protection of confidential business information in all aspects of the low carbon label program. One of the advantages of EPDs is their ability to communicate environmental information without jeopardizing trade secrets and other confidential business information. In the low-bid environment of public procurement, competition can be fierce, and companies take appropriate measures to protect their confidential information. Some of the proposed criteria require manufacturers to disclose confidential information. We encourage EPA to consider the protection of confidential business information in all aspects of the LEC Label Program. We have identified specific criteria where disclosure of confidential business information is a concern.

The timelines for implementation of some measures create a moving target that's difficult to achieve. In particular, Criteria 2.1.F, 3.2.B, 3.2.E, and 3.2.H provide specific dates by which datasets under development by EPA must be utilized. Depending on the date that such datasets are finalized, program operators may have very little time to adopt these new datasets within the specified time frame. A better approach would be to tie the implementation date(s) to a defined period of time (e.g. two years) after the datasets are finalized.

Criteria-Specific Comments

1.1.G is confusing as worded, but we interpret it to require LCA results for additional stages beyond cradle-to-gate to be reported in EPDs if the PCR includes scenarios for beyond cradle-to-gate stages. We believe the decision regarding whether additional life cycle stages must be reported should lie

with the program operator and PCR committee, who are best suited to determine whether the environmental information about beyond cradle-to-gate stages should be necessary or optional.

1.1.J requires PCRs to include all minimally required, core indicators for ISO-compliant EPDs, including the LCIA characterization methodology and its reference for each indicator. It would be preferable for EPA to provide a list of minimally required, core indicators, LCIA characterization methodologies, and references for purposes of the LEC Label Program to ensure consistency across the board.

1.3.C requires all EPD verifiers to be associated with an organization that has been accredited to ISO 17065 by January 1, 2026. We are concerned that this requirement will significantly narrow the pool of eligible EPD verifiers at a time when there is already a critical shortage of qualified EPD verifiers while the demand for verified EPDs is growing substantially. Also, EPA should consider alternative accreditation programs to ISO 17065, which may not be appropriate for verifying EPDs. One potential alternative is the ACLCA Certified Life Cycle Assessment Reviewer credential. The timeline for complying with an accreditation program should be extended to January 1, 2028, to allow sufficient time for EPD verifiers to gain accreditation.

2.1.B requires the underlying LCA report to be publicly posted and accessible via a web link included in the PCR. In general, we agree that underlying or reference LCA reports and other studies should be publicly posted and accessible in most cases. We also believe that relevant underlying LCA reports and other studies should be referenced in a draft PCR that goes out for public comment. However, there are some materials for which there are only one or very few producers, for which it would be impossible to publish the LCA report without disclosing confidential business information. In such cases, the requirement for publicly posting an underlying or reference LCA report or other study should not apply, provided that the PCR Review Panel agrees.

2.1.C requires PCRs to list the standards they conform with, including upstream and downstream PCRs. However, it's impossible for a PCR to conform to an upstream or downstream PCR. Instead, PCRs should be harmonized with upstream and downstream PCRs when relevant and feasible, with any such deviations explained in the PCR. We understand the importance and challenges associated with harmonizing upstream and downstream PCRs. EPA can assist with this effort by hosting stakeholder groups among related PCRs to address inconsistencies and other harmonization issues. To avoid potential confusion in the marketplace, it's imperative that language be added to Criterion 2.1.C indicating that upstream and downstream PCRs are not required to comply with EPA's PCR Criteria.

2.1.E requires the PCR to list all processes where primary data is required, and that such processes must be represented in the underlying LCA. This criterion further requires the PCR to specify the level of granularity of unit processes to be analyzed. While we understand the value of this level of specificity, we are concerned that this criterion may be overly prescriptive. This concern could be

addressed by adding a statement in the PCR that any deviations from these requirements shall be explained in the EPD.

2.1.F and 1.1.J are redundant, since both discuss which indicators should be reported in EPDs. Also, with EPA-designated datasets still under development, it's premature to set a date by which indicators will have to be based off of them. NAPA and other stakeholders need an opportunity to determine whether basing indicators off of EPA-designated datasets is feasible and appropriate. Also, it's not clear how much time will be provided between the release of EPA-designated datasets and the proposed implementation date of January 1, 2026.

2.1.I relies on ISO 14027 Clause 6.6 as its supporting reference. However, Clause 6.6 applies to Additional Environmental Information and is intended to set forth the criteria for claims in an EPD that are not captured by the LCA, LCI, or Information Modules. Criterion 2.1.I misconstrues and misapplies the spirit, intention, and meaning of ISO 14027 Clause 6.6 and should be removed or clarified. As written, this criterion would essentially prohibit the reporting of any additional environmental information that is not LCA-based, including the Energy Performance Score for asphalt plants. However, the intent of ISO 14027 Clause 6.6 is to allow the reporting of additional environmental information that is not LCA-based, provided that this information is based on substantiated and verifiable information.

2.1.Q requires a system diagram(s) to identify the module in which the midpoint indicators are captured. We note that ISO 14025 and ISO 21930 allow modules A1-A3 to be aggregated in an EPD, and that any such system diagram should be allowed to be aggregated accordingly, unless the given PCR explicitly disallows aggregating modules A1-A3.

2.1.R is unclear and impossible to interpret or enforce without further explanation. It should be removed.

2.2 requires an underlying or reference LCA to meet all relevant standards and lists numerous standards that apply to EPDs but not necessarily to LCAs. In particular, ISO 21930, 14027, and 14025 do not necessarily apply to an underlying or reference LCA. If specific provisions of these standards should be followed, then this criterion should indicate the specific provisions or clauses to be followed. This will ensure consistency in the LCA critical review process. We also note that PCRs may be based on additional studies that are not LCAs and may not meet all of EPA's proposed requirements in criterion 2.2.

3.1.C requires the PCR to provide data collection sheet(s) for collecting primary data. However, standardized data collection sheets are not always relevant or feasible and should not be required. We also note that Criterion 3.1.E essentially accomplishes the same goal as 3.1.C, but 3.1.E is more flexible and feasible for implementation. Criterion 3.1.C diverges from the language in the ACLCA PCR Guidance Clause 2-21, resulting in duplicative requirements between Criteria 3.1.C and 3.1.E. Criterion 3.1.C should be removed.

3.1.D requires the PCR to specify that primary data must be used for every process in the product system under the control of the organization making the product claim. This requirement is not supported by the ISO standards and is not always feasible or appropriate. In some cases, a foreground process has a very small contribution to cradle-to-gate environmental impacts, and a generic or industry average parameter value is sufficient to characterize a given unit process. In other cases, strict implementation of this criterion would lead to double counting. For example, it's not uncommon for an asphalt mix producer to also own an asphalt terminal. But the generic upstream data for asphalt binder includes information associated with asphalt terminal operations, and it's not feasible to replace the generic asphalt terminal data with primary data. Since the asphalt terminal is part of the asphalt mixture product system, a strict interpretation of Criterion 3.1.D would require the asphalt mix producer to also include primary data for its terminal operations, leading to double counting of terminal operations for mix producers who also own the asphalt terminal that supplies the asphalt mix plant.

Criterion 3.1.D also requires EPDs that use secondary data for any unit process that contributes 30% or more to any disclosed impact category to disclose the data source, including the database name and version, dataset name, dataset geography, and dataset allocation method. We are concerned that disclosing the data set name, geography, and allocation method may require manufacturers to disclose confidential business information about product ingredients. These parameters (dataset name, geography, and allocation method) should not be required to be disclosed in an EPD. Instead, the PCR should identify and prescribe the allowable sources of secondary data.

Criterion 3.1.D further requires the PCR's specification of the type of data to be used to be supported by the underlying or reference LCA that supports and aligns with the scope of the PCR. This requirement could be interpreted as preventing program operators from updating prescribed datasets unless the underlying or reference LCA is also updated. Such a requirement would significantly increase the cost and slow the pace of adopting new or updated upstream secondary datasets.

3.2.D requires that EPDs disclose the name, source, reporting period, publication date, and version associated with any data used in the resulting EPD. This requirement is redundant and is not necessary when this information is prescribed in the PCR. We are also concerned that this may result in the disclosure of confidential business information regarding product ingredients or formulations. If the PCR prescribes upstream datasets, and the EPD includes the name and version number of the PCR it complies with, this criterion should not be required.

3.2.E requires PCRs to specify the use of the most recent version of publicly accessible background data as designated by EPA, effective January 1, 2026. NAPA supports the use of publicly accessible background data and has prescribed the use of public background data in the PCR for Asphalt Mixtures. However, this criterion should be clarified to indicate that the PCR should adopt the most recent version of publicly accessible background data as designated by EPA at the time the PCR is

published. This would ensure that all EPDs under a given PCR use the same version of a prescribed dataset (noting that the U.S. Life Cycle Inventory dataset is updated on a quarterly basis).

3.2.F requires EPDs to use facility-specific data for upstream unit processes that cumulatively contribute 50% or more to the disclosed GWP. While NAPA encourages the development and utilization of facility-specific upstream data, this requirement is not implementable for all EPDs developed under a given PCR. Moreover, the term “facility-specific data” has not been defined. Any parameter that is to be quantified (like the percentage of facility-specific data that contributes to GWP) must be based on a mathematical calculation. Within the context of an LCA, unit process emissions are often calculated by multiplying a scalar (e.g., the amount of fuel or the distance traveled) by a vector (the emissions associated with a unit process per unit of measurement). In many cases, only the scalar is facility-specific while the vector relies on representative data for a given unit process. This requirement could be interpreted to mean that both the scalar and the vector must be facility-specific, a proposition that is untenable due to the cost of collecting facility-specific emissions data. Any requirement for facility-specific upstream data should clearly indicate how to quantify this percentage to avoid confusion, and this approach should not impose new requirements for measuring facility-specific emissions at the unit process level. These quantification methods should be developed in the context of a consensus-based standard. Additionally, thresholds for facility-specific upstream data should be developed on a sector-specific basis.

Assuming that the calculation methodology is clearly stated and understood, the requirement that all EPDs under a given PCR be based on facility-specific data that contribute at least 50% to the disclosed GWP is not feasible due to the lack of available facility-specific upstream data. Even though this information is desirable and may be critical for EPA’s LEC Label Program, there are many other uses of EPDs that would no longer be viable if a manufacturer is not able to obtain facility-specific upstream data. A better approach would be for PCRs to require EPDs to report the percentage of the GWP value that relies on supply chain-specific data, and then establish a minimum threshold (e.g., 50%) for an EPD to qualify under EPA’s LEC Label Program.

Note that our suggested language is for supply chain-specific data rather than facility-specific data. This would ensure that manufacturer-specific upstream data that averages data from multiple facilities would meet this requirement.

3.3.A requires PCRs to require all EPDs to disclose the ENERGY STAR Energy Performance Score in the additional environmental information section. NAPA is a strong supporter of the ENERGY STAR program and has been recognized as an ENERGY STAR Partner of the Year for two consecutive years. The PCR for Asphalt Mixtures was the first PCR to allow information related to ENERGY STAR to be reported in EPDs and to specify the rules for documenting this information. However, the ENERGY STAR Energy Performance Score should be optional, not required, since it’s not clear how this information will be used for the LEC Label Program.

3.3.B requires EPDs to disclose additional information if facility-specific data are not available for upstream unit processes, and the upstream facility is required to report to EPA's Greenhouse Gas Reporting Program. It's not clear how disclosure of this information is necessary for EPA's LEC Label Program, and it should not be required. Also, the proposed requirement oversimplifies what might otherwise be a complex supply chain with multiple entities contributing to emissions for a given input.

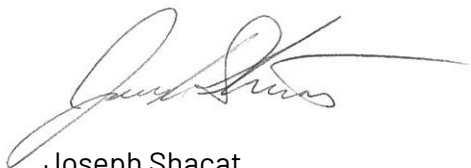
Spelling out the complexity of the supply chain for asphalt mixtures, often the most significant contribution is upstream manufacturing of asphalt binder. Within the asphalt binder supply chain, there are three major carbon-intensive steps: crude oil extraction, refinery operations, and terminal operations – each accounting for 63%, 12%, and 16% (respectively) of the GWP for neat asphalt binder.¹ Some asphalt binder terminals blend asphalt binder supplied from multiple refineries, and most refineries use a blend of crude source feedstocks. These choices are often dynamic and change according to market demand, logistics, cost, quality, and other factors. Asking an asphalt mix producer to track down and disclose the upstream carbon intensity of each of these processes would be a very heavy lift, and it's not at all clear how this information might be used in the LEC Label Program. Confounding this effort is the fact that carbon intensities are generally not publicly reported under the Mandatory Greenhouse Gas Reporting Rule, and many manufacturers regard this as confidential business information. Even if an asphalt mix producer were able to track down this information for manufacturers within their supply chain that are subject to the Mandatory Greenhouse Gas Reporting Rule, the information would often be incomplete since not all upstream suppliers are subject to the rule (viz., domestic refineries are subject to the rule, but not foreign refineries; and domestic terminals are only subject to the rule if they import asphalt binder from foreign countries). Another concern is that the Mandatory Greenhouse Gas Reporting Rule requires importers of petroleum products to assume that all imported petroleum is emitted, even for products such as asphalt binder that are never expected to be combusted or oxidized. Ultimately, what matters is the carbon emissions intensity of the finished product. There is no reason to require disclosure of the carbon intensity of individual upstream suppliers.

3.3.C requires EPDs to report the recycled content of the product. This information is already required under ISO 21930 Clause 7.2.10, which requires EPDs to report Secondary Materials. EPA's recommended language in Appendix A.3 differentiates pre- and post-consumer recycled contents. We emphasize that differentiation of pre- and post-consumer recycled contents should not be required in EPDs. Quantifying pre- and post-consumer recycled contents can be challenging in some markets, and it's not clear how this information will be used in EPA's LEC Label Program.

¹ Asphalt Institute (2019). Life Cycle Assessment of Asphalt Binder. https://www.asphaltinstitute.org/wp-content/uploads/Asphalt-Institute-LCA-Report_2019-03-14_final.pdf.

Thank you for considering our comments regarding this groundbreaking program. If you have any questions, please do not hesitate to reach out or email me at jshacat@asphaltpavement.org.

With regards,

A handwritten signature in black ink, appearing to read 'Joseph Shacat', with a long horizontal flourish extending to the right.

Joseph Shacat
Director, Sustainable Pavements