

January 22, 2025

The Honorable Brett Guthrie
Chairman of the House Energy & Commerce
Committee
2434 Rayburn House Office Building
Washington DC, 20515

The Honorable Frank Pallone
Ranking Member of the House Energy & Commerce
Committee
2107 Rayburn House Office Building
Washington DC, 20515

The Honorable Morgan Griffith
Chairman of the Environment Subcommittee
2202 Rayburn House Office Building
Washington DC, 20515

The Honorable Paul Tonko
Ranking Member of the Environment Subcommittee
2369 Rayburn House Office Building
Washington DC, 20515

Dear Energy & Commerce Committee Chairman Guthrie, Ranking Member Pallone, Environment Subcommittee Chairman Griffith and Ranking Member Tonko,

On behalf of the National Asphalt Pavement Association (NAPA), we welcome the Committee's introductory hearing of the 119th Congress, titled "*A Decade Later: Assessing the Legacy and Impact of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.*", and beginning the conversation in earnest about where our industry's key regulatory implementation stands regarding The Toxic Safety Control Act (TSCA). How such legislative packages are interpreted by the Environmental Protection Agency (EPA), which also underpin other major environmental rules like the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), are paramount.

NAPA is the only national trade association representing over 1,000 member companies operating about 3,500 asphalt pavement mix plants across the country. The asphalt pavement industry is essential to the nation's mobility and economic growth, providing the critical pavement materials needed to build and maintain the nation's almost 4M roadway miles. Our industry represents well over 90% of the roadway pavement market and about 80% of the airfield pavement market, with production facilities in every Congressional district, producing over 400M tons of asphalt pavement annually, and supporting the employment of over 350,000 hard-working men and women.

We call the Subcommittee on the Environment's attention to two discreet EPA rules that will significantly impact ongoing maintenance of critical surface transportation and airfield pavements. We question EPA's authority to excessively regulate per- and polyfluoroalkyl substances (PFAS) and ban chlorinated solvents under TSCA, as amended by the *Frank R. Lautenberg Chemical Safety Act*. While we are aware but not participating in litigation associated with these 2024 rulemakings, we ask Congress to examine EPA's authority and processes in the agency's rulemaking of both PFAS and chlorinated solvents. It appears EPA finalized CERCLA's Superfund 'hazardous substance' designations for certain PFAS chemistries by first determining they were water pollutants subject to the Clean Water Act's Maximum Contaminant Levels. Such designations, and especially how the agency addressed health-outcome uncertainties at exceedingly low concentrations, must also be examined.

While neither class of chemistries are purposefully added to pavement mixtures, we know that both asphalt and concrete pavements are exposed to and likely contain PFAS from firefighting foams, brake pads and vehicle depositions into surface pavements. Repurposing or recycling pavement materials is key for the roadbuilding industry but is currently being met with skepticism due to liability concerns and costs. For example, an asphalt

airfield pavement maintenance contract that would include removal and replacement, and that might typically cost \$2M, could now be laden with an additional \$60M in disposal costs, simply because of EPA's current PFAS Superfund designations and liability provisions.

Similarly, regarding EPA's recent rule banning chlorinated solvents (methylene chloride, trichloroethylene, and perchloroethylene), the agency did provide certain partial exemptions for military applications, other critical needs, and for laboratory use – for 10 years. However, almost a dozen state Departments of Transportation (DOT) require the use of chlorinated solvents to determine (and extract) asphalt binder content from pavement mixtures, ensuring the pavement material meets DOT's stringent specification. While we understand certain organizations are investigating effective and equivalent non-chlorinated solvent substitutes, this will take years for acceptance, especially by DOTs. And we are also aware that the majority of state DOTs allow other non-extraction methodologies to approximate asphalt binder content. Regardless, even if a state DOT lab, a private third-party lab, or an asphalt company's quality assurance lab, uses such chlorinated solvent extraction procedures, even in automated closed-loop extractors, EPA's existing chemical exposure level (ECEL) for these solvents are between 10 and 10,000 times more stringent than OSHA's current legally-binding Permissible Exposure Levels (PELs). We question EPA's authority and expertise to regulate occupational exposure levels in a workplace setting that are up to 10,000 times lower than OSHA's legally-binding occupational exposure levels.

While the pavement industry can certainly meet compliance obligations associated with these two EPA category rules (PFAS and chlorinated solvents), the costs to do so are simply impractical. We ask Congress to examine EPA's authority and processes in the agency's rulemaking of both PFAS and chlorinated solvents.

We are headed into a critical juncture for our industry, and the work before Congress over the next two years will be incredibly consequential to our member companies and industry. As you know, the *Infrastructure Investment and Jobs Act* (IIJA) expires at the end of 2026, and Congress must pass a new highway reauthorization before the 119th adjourns. NAPA is eager to work with this Committee as you continue to explore appropriate legislative oversight and regulatory authority of the EPA and other agencies. How our member companies efficiently develop and deploy asphalt pavements, given the current regulatory scheme and constraints, will be critical as we aim to maximize our nation's infrastructure investment.

Thank you for your consideration. NAPA stands ready as an industry resource to your Committee, as Congress drafts the next highway reauthorization this session.

Best,



Nile Elam
Vice President of Government Affairs
National Asphalt Pavement Association