



NJAPA

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VIA ELECTRONIC AND U.S. MAIL

Attention: DEP Docket No. 15-24-12. Proposal Number PRN 2025-025
Office of Legal Affairs
NJ Department of Environmental Protection
401 East State Street, 7th Floor
Mal Code 401-04L
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On behalf of the New Jersey Asphalt Pavement Association (NJAPA), we write to provide comments in connection with the Department's above-mentioned regulatory proposal.

The proposed rules are overly broad, much too expansive, and create unnecessary regulatory and recordkeeping requirements.

The Department uses the term "Hot Mix Asphalt" throughout the proposal. NJAPA recommends using the term "asphalt" to better reflect current manufacturing practices which often utilize warm mix asphalt. There no longer exists a need to explicitly reference "Hot Mix" when describing an asphalt mixture.

The Department also references NJDOT standards and requirements. This is restrictive as asphalt is also manufactured for a variety of other Governmental and Private end users including Counties, Municipalities, Independent Authorities and Private project owners. The engineering requirements for these entities may vary widely and are not always perfectly aligned with NJDOT requirements, and in many cases are more stringent than NJDOT requirements.

The major concern for NJAPA is the proposed storage limitations of recycled asphalt millings set forth at N.J.A.C. 7:26-1.4(a)1.i(3). NJAPA has communicated this concern to the Department consistently over a number of years and I again outline our concerns here.

Proposed Limitations on Storage of Recycled Asphalt Pavement and Millings

As you are aware, the RAP Legislation (S3521 and A5914), was signed into law on January 15, 2018, with an effective date of October 1, 2018. This law is referenced in the rule proposal as N.J.S.A. 13:1E-99.28a.

The Legislation was adopted to provide a solution to a major crisis which the asphalt and road construction industry has faced for decades: namely, the vast accumulation of RAP at contractors' and asphalt producers' facilities and quarries throughout the State. RAP is nothing more than the millings which are generated primarily from the removal of roadway surfaces prior to repairing or laying down new asphalt roads. These roadways are State-owned, and as a result, the State of New Jersey is likely the largest generator of millings and RAP in the State. As such, finding a solution has always been viewed as an issue facing both industry and the State.

The millings or RAP at issue are typically trucked back to the contractors' facilities or quarries, often awaiting re-use for some portion of the material in asphalt production, along with some minor other beneficial outlets; notwithstanding, these secondary outlets have been woefully inadequate to allow complete recycling or re-use of the millings or RAP, and have resulted in a steady and ever-increasing volume of RAP storage. In fact, storage and accumulation have become so problematic that these piles of RAP inhibit the ability of many major road construction and asphalt producers to fully operate at their own sites.

The Legislation adopted a practical solution to the RAP accumulation problem, premised on setting forth a much wider range of exempted beneficial and recycling uses. The Department's review of this matter should similarly be aligned with the RAP Legislation, focused on expanding the use of RAP. Any limitations on the storage or use of RAP are not appropriate or necessary.

As the Department is well aware, numerous scientific studies confirm that RAP does not leach into soil or groundwater, and there is no risk to human health, or the environment posed by RAP material. These studies have repeatedly been shared and discussed with the Department for many years, and in fact were specifically relied upon and formed the basis for the RAP Legislation. Indeed, the primary study relied upon by the New Jersey legislature was completed in May 2017, entitled "Environmental Impacts of Reclaimed Asphalt Pavement (RAP)". This study was put together over a period of two years, led by the NJ Department of Transportation, along with environmental, technical, and engineering experts from Columbia University, Rowan University and Stony Brook University. Similar to the many scientific studies that preceded it, the New Jersey RAP study found that RAP does not leach, and can be safely used for, and stored in connection with, many applications.

The Legislation which became effective on October 1, 2018, permits the following uses of unbound RAP, without restriction:

- Bedrock quarry reclamation;
- Underneath a guardrail of a public road or highway;
- As a surface material for a parking lot, farm road or pathway;

- As a base or subbase material in accordance with applicable engineering designs.

The focus of NJDEP should be aimed at expanding the use of RAP and allowing RAP to continue to be stored, without restriction, in connection with the expanded uses permitted by the Legislation. While we understand that the Department wishes to address the large piles of asphalt millings that have accumulated across the State, as has been demonstrated, these piles/materials do not pose any risk to the environment. Thus, the solution rests with the expansion of uses as provided for in the Legislation, while similarly permitting expanded storage of RAP to remain while the industry seeks to implement the RAP for reclamation and beneficial uses consistent with the RAP Legislation and State policy.

The Department should not modify the current exemption in any way that would limit the amount of RAP that can be stored at an exempt facility/operation. As noted above, RAP does not leach or pose any risk to the environment. Thus, the solution to reducing the large piles of millings in New Jersey is the expansion of permitted uses for the millings in accordance with the Legislation. Without this expansion, any limitation on storage of millings will result in the unnecessary landfilling/disposal of millings; a result that is both contrary to the intent of the Legislation and New Jersey's recycling program.

To reiterate, NJAPA does not believe it is appropriate or necessary to include any limitations related to the storage of RAP. It is unreasonable to place a fixed volume or throughput capacity limitation on the storage of millings given that sound science, testing and studies have conclusively shown that RAP does not leach, and poses no threat to the environment. Moreover, the State is the primary generator of this material and requires its removal during road construction projects. If these limitations are imposed, millings will need to be disposed of at landfills at an enormous and unnecessary cost, which is contrary to the Legislation and the intent of New Jersey's recycling program.

Conclusion

The RAP Legislation currently permits the use of unbound RAP, without limitation, for bedrock quarry reclamation, underneath a guardrail of a public road or highway, as a surface material for a parking lot, farm road or pathway, and as a base or subbase material in accordance with applicable engineering designs. The primary study relied upon by the New Jersey legislature concluded that RAP does not leach, and can be safely used for, and stored in connection with, many applications. In summary, RAP piles do not pose any environmental risk and do not need to be limited by volume, time or any other such storage requirements.

At the same time, the RAP accumulation problem poses a critical threat to the quarry and road construction industry as this accumulation has limited industries' ability to fully utilize and operate their sites. The RAP Legislation was a welcome turning point for the industry, recognizing it does not pose any environmental risk and can be used as fill for bedrock quarries, and many other unbound uses, including parking lots, pathways, roadways, and many sub-base related fill uses.

We submit that the Department should not take regulatory action which would effectively limit RAP storage and instead expand its exemptions for RAP consistent with the Legislation and sound science.

We look forward to continuing to work with the Department to address these important issues, and as always, remain available to discuss this further.

Very truly yours,

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