

TESTIMONY OF

WILLIAM SCHMITZ

VICE PRESIDENT, QC AND SALES

GERNATT ASPHALT PRODUCTS, INC.

ON BEHALF OF

**THE NATIONAL STONE, SAND & GRAVEL
ASSOCIATION**

BEFORE THE HOUSE SMALL BUSINESS COMMITTEE

HEARING ON

“American Infrastructure and the Small Business Perspective”

MARCH 21, 2018

Chairman Chabot, Ranking Member Velázquez, and members of the committee, thank you for inviting me to testify at this hearing on behalf of the National Stone, Sand & Gravel Association, (NSSGA), on “American Infrastructure and the Small Business Perspective.” I am Bill Schmitz, Vice President of Dan Gernatt Gravel Products, Inc. I spoke before the committee in 2015 about the impacts infrastructure has on the successes of small businesses and I am honored to once again represent my industry before Congress. We are encouraged by the President’s commitment to infrastructure and urge Congress to work to implement a fully-funded infrastructure package.

NSSGA is the world’s largest trade association representing the mining industry by product volume. There are 10,000 construction aggregates businesses across the United States, located in every state and nearly every congressional district. More than 70% of NSSGA members are small businesses. It is an industry that directly employs over 100,000 people, and each of those 100,000 jobs indirectly supports an additional 4.87 jobs throughout the economy. Overall, NSSGA member companies represent more than 90% of the crushed stone and 70% of the sand and gravel produced and consumed annually in the United States. NSSGA’s primary concern is a fully-funded, robust Highway Trust Fund to insure adequate infrastructure investment. We are also concerned that regulatory over-reach can and does cause costly project delays, so on the whole, we support regulatory reform efforts.

The United States consumes approximately 2.8 billion tons of aggregates annually. Crushed stone, sand and gravel typically make up over 80% of ready mixed concrete and over 90% of hot mixed asphalt. For example, one lane of a road requires an average of 38,000 tons of construction aggregates for every mile. Aggregates are used in nearly all residential, commercial, and industrial building construction and in most public works projects, including parks, roads, highways, bridges, dams, and airports. A new school or hospital typically requires 15,000 tons of aggregates in its construction. Aggregates are used for many environmental purposes including: treating drinking water and in sewage treatment plants, for erosion control and in cleaning air emissions from power plants. While Americans take for granted this essential natural material, it is imperative for construction and daily life.

Through its economic, social and environmental contributions, aggregates production helps to create sustainable communities and is essential to the quality of life Americans enjoy. Aggregates are a high-volume, low-cost product. According to the most current data from the Bureau of Labor Statistics, it may be said that it is safer to work in a quarry than a retail store. When aggregates producers are finished using the stone, sand or gravel in an area, they pay to return the land to other productive uses, such as water reservoirs, residential developments, farm land, parks, or nature preserves – a critical fact often overlooked by communities and lawmakers.

Small Businesses and Infrastructure

The Administration’s Infrastructure Principles unveiled on February 12th allocate \$200 billion of federal funds over a decade as seed money for states, local governments and private sectors to leverage a total investment of \$1.5 trillion. NSSGA president and CEO Michael W. Johnson, said “It’s a welcomed and necessary way to start a very overdue conversation on infrastructure investment. We look forward to more in-depth conversations with Congress as they create a bill.” To meet the administration’s goal, NSSGA supports a wide variety of funding options, especially shoring up the Highway Trust Fund.

According to the American Society of Civil Engineers’ 2017 Report Card, the United States has a \$2 trillion investment gap for infrastructure over the next ten years. Combined with a yearly deficit of a trillion dollars, the Federal Government has strained resources to address this disparity. Currently, the United States is ranked behind many of its biggest global competitors at 11th in infrastructure quality. By some estimates, without significant and timely upgrading of our

infrastructure, the United States will lose more than 2.5 million jobs by 2025 and more than 5.8 million by 2040.

The HTF, which funds the vast majority of federal aid highway projects across the United States, is funded mainly with motor fuels taxes that have been static since 1993. As such, the HTF faces a \$121 billion shortfall over the next decade. The Fixing America's Surface Transportation (FAST) Act [P.L. 114-94], authorizing \$305.5 billion for federal highway and other transportation programs through 2020, unfortunately does nothing to address the structural problems with the HTF. In order to address this, both financing solutions and a comprehensive modernization of the HTF are needed to sufficiently bolster the funding mechanism and grow much-needed investments in transportation infrastructure.

The HTF has provided stable, reliable, and substantial highway funding for decades since its inception in 1956, but this is no longer the case. Since 2008, the HTF has been sustained through a series of General Fund transfers now amounting to \$140 billion. According to the January 2017 baseline of the Congressional Budget Office, HTF spending is estimated to exceed receipts by roughly \$17 billion in FY 2021, growing to about \$24 billion by FY 2027.

The outdated tax on motor fuels cover an ever-shrinking portion of America's yearly infrastructure costs due to a confluence of factors, including increased fuel efficiency of cars and trucks, eroded purchasing power, and an increase in alternative fuel vehicles that do not pay their share in highway user fees. As established through numerous studies and commissions over the last decade (most notably the National Surface transportation Policy and Revenue Study Commission, 2007) the simplest and most efficient means to address the HTF funding deficit and ensure a robust and reliable funding source moving forward, is to raise the motor fuels tax rates last raised in 1993 (18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel), and index it to inflation.

The United States needs to move beyond simply maintaining existing infrastructure and toward becoming a world leader again. We need a 21st century infrastructure system that delivers economic vitality and the ability to compete in the global marketplace on an integrated national, intermodal surface transportation network that reliably moves goods and people to maximize the quality of life, and economic prosperity for all Americans.

I work at the state and local level on infrastructure funding and permitting on a daily basis. These are important conversations for my company, but the federal level is where decisions are made that impact us for years in the future. When Congress delays the enactment of a highway bill or puts off fixing the HTF yet again, it has a huge impact on small businesses, especially in our industry, since we are both a material provider as well as a user of the system.

Multi-year surface transportation investments are particularly vital for the funding confidence they instill in state departments of transportation. When states know that the Federal Highway Administration will apportion their funding year after year, they have confidence that their state expenditures will be reimbursed and the process of building and maintaining our infrastructure can proceed smoothly. Confidence in the stability of the program is a critical factor in ensuring success, particularly for small businesses.

As a small business, we need consistency and a steady direction from our federal partners. Congressional action or inaction can have huge downstream impacts for years in the future, which is why I am here today.

Small businesses need the certainty of a fully-funded long-term infrastructure program to make vital business decisions. This includes land acquisition, technology updates, purchase of equipment (often produced by other small businesses) and the hiring and training of employees.

At Gernatt, we think of infrastructure in four ways:

- 1) the physical means to get our material to where it is needed, and have our suppliers and employees reach our facility,
- 2) the way we communicate with our suppliers and customers,
- 3) the material that creates an infrastructure project that we provide,
- 4) and the actual project itself.

Regulatory Reform

Unlike other businesses, we cannot simply choose where we operate. We are limited to where natural forces have deposited the materials we mine. Not every aggregate deposit meets the stringent standards set by the Federal Highway Administration (FHWA) and state Departments of Transportation (DOTs) for use in federal or state projects. Generally, when aggregates are transported outside a 25-mile limit, the cost of the material on a project can increase 30% to 100% in addition to creating environmental and transportation concerns. Because our product is so heavy, over 90% of aggregates are used within 50 miles of their original location, making our industries' businesses uniquely tied to their community. So, our operations are limited to locations that are geologically sound and are near where cities and roads are needed.

The aggregates business can be described as making small rocks out of larger ones. We extract material for processing into crushed, sized, and washed product. For safety and efficiency purposes, our operations tend to utilize large parcels of land that must be located where quality rock naturally occurs. Our operations are heavily regulated before, during and after extraction. Our primary waste is finer crushed rock or dust from processing. For this we must perform a number of "one size fits all" controls required under air and water permits. Our facilities are routinely monitored to ensure we are operating in a safe and environmentally responsible manner. Some of the requirements make sense and others do not, particularly for small businesses.

It gets even more complicated when we need to expand our operations, open a new or temporary operation, or merely do minor construction work at a site to upgrade our facilities to provide needed material for crucial infrastructure projects. A host of federal requirements come into play, among them the Clean Water Act, Clean Air Act, the Endangered Species Act, and the Historic Preservation Act. These statutes often require businesses to prove that we should not fall under their jurisdiction. A "regulated until proven otherwise" approach is very costly and difficult for any business, particularly a small company like mine, without the resources for dedicated compliance staff that larger corporations employ. Agencies are not accountable to respond in a timely fashion, and interagency disputes are common, so to obtain approval for even small projects can take years. This is not an efficient use of resources for either the company or the permitting agencies and punishes the businesses like ours who are trying to comply and care deeply about safety and the environment.

On the federal level, we must comply with regulations set forth by the Department of Labor, Environmental Protection Agency, Fish and Wildlife Service and the Army Corps of Engineers. The Department of Homeland Security and the United States Treasury Department also regulate us because we engage in blasting. At the state level, we obtain approvals from state agencies for air and water quality permits and mining and blasting permits. At the local level, multiple layers of land use approval are required before we can open a new facility or even expand an existing one.

Gernatt and NSSGA support reasonable regulation that preserves our natural resources, protects our environment and ensures the safety of our employees and neighbors. We are opposed, however, to overreaching regulation that hurts our businesses and by extension, infrastructure.

Our operations devote substantial resources to safety. Last year, the industry finished with an injury incidence rate of less than 2 injuries per 200,000 hours worked; the 17th consecutive year in which our sector achieved a lower rate than in the prior year. Despite the use of heavy equipment and natural hazards our injury rate is lower than that of retail employees.

The Small Business Administration estimates that regulations cost 36% more for small businesses per employee than for larger companies. We support efforts by the President and Congress to ease the regulatory burden that small businesses disproportionately bear. At Gernatt, we simply do not have the resources that larger corporations use to comply with confusing, overlapping and unnecessary regulations. Since 1946, the Gernatt family and their companies have been proud to serve all of western New York. Comprised of Gernatt Asphalt Products; Dan Gernatt Gravel Products, Inc.; and Country Side Sand and Gravel, Inc., our companies provide sand, gravel, stone, landscape aggregate, hot mix asphalt products and trucking to Buffalo, N.Y., western New York and northwestern Pennsylvania.

Our locations are spread over three rural western N.Y. counties where people struggle to find good paying jobs. The Gernatt organization considers its 210 loyal employees as family and we want to provide them the well-paying, stable employment they deserve. The business has grown because of the hard work by the Gernatts and their employees who work together for the common goal of making the company successful. The Gernatts are strong supporters of both local businesses and community efforts where we operate. It is important to us that these benefit from our success. We are an integral part of the western New York community and we do this because it is the right thing to do.

We applaud the Administration for focusing on creating roads, bridges, airports, schools, and expanding access to broadband. This broad idea of what infrastructure is benefits our company and our community. We operate in rural areas where increased investment is necessary, and infrastructure projects help create jobs and move goods that are essential to the American way of life. These rural areas also lack a critical component of today's technology infrastructure; the lack of broadband cost us hundreds of thousands of dollars as we have had to work around the lack of connectivity to our business network.

However, we need to focus on both the project and the supply of materials. Streamlining permitting for a road so that it can be built in two years instead of ten is a great stride forward, but if the material needed to create it takes 5 or 10 years to permit and is so expensive due to over regulation that it doubles or triples the cost of the project, then we are failing to fix the root problem.

For example, the application of the Endangered Species Act (ESA) and the definition of "Waters of the United States" have been expanded far beyond what Congress intended, and often these act as impediments to any development. Both involve open-ended processes that have become a true roadblock to any sort of development because of the lack of clearly defined requirements and timely response by federal regulators, both of which can delay projects significantly.

NSSGA supports the administration's withdrawal of the 2015 Waters of the United States Rule, which would have radically expanded jurisdiction under the CWA to include areas suspected of only tenuous connections to navigable waters. While the agencies' decision to return to the "pre-rule" status quo once the 2015 rule is rescinded is not an ideal long-term solution, the action at least restores the guidance that aggregate operators are familiar with while the agencies work to develop a rule that provides clarity and certainty. While the 2015 rule would have cost aggregates operations millions of additional dollars in mitigation to expand or open new facilities, the current system is cumbersome and lengthy. Even without the expansive 2015 rule,

determining applicability under the CWA can create confusion and delays which are particularly burdensome for small businesses.

My company has firsthand experience with unreasonable delays and mitigation requirements at our Countryside Sand and Gravel Dredging operation in South Dayton, NY. The dredge in this location acts as a virtual vacuum cleaner picking up aggregate from the bottom of our lake. As we wash our material, fine sand and silts are removed from the usable sand and gravel resulting in a slurry mixed with the water. We use created ponds to settle this material out before discharging or reusing the water at our site. While these are water treatment systems and should not be considered a federally regulated water, the lack of clarity in this program causes the Corps to sometimes consider them so.

We operated this way from the late 1960s, consulting with the Corps to confirm compliance. This changed significantly in 2006 when a pair of bald eagles built a nest in a tree adjacent to the lake we were dredging in at the time. The New York Department of Environmental Conservation contacted US Fish & Wildlife who then brought in the Army Corps of Engineers. The Corps promptly showed up and shut our operation down, claiming that our settling basins were "Waters of the U.S.", despite extensive correspondence we had over the years with their office.

The Corps decided our settling basins that were located 25' higher in elevation than the surrounding grounds were also "affected wetlands." We explained the settling basins were wet because of introduced hydrology and if we stopped pumping, the water would not remain. However, Corps personnel insisted that we had disturbed 1.164 acres of wetlands. When we tried to work with the Corps to mitigate or fix this alleged disturbance, the amount and method of repair was a moving target. This lack of clarity is devastating to a small business; we need to know what a problem is and how to fix it.

The mitigation ended up being so convoluted and expensive. The Corps accepted leaving an area to cede back into wetland growth, plant 500 bare root trees and shoot topsoil into a portion of the lake, and plant 5 acres of wetland species planting. We also had to install 10 miles of string to create a goose fence, as well as a six-foot plastic fence in the water to keep the muskrats away from the plantings, only to have fish and a swan get stuck in the fence and drown. At that point we said "no more" to the Corps but were still required to mitigate for the bare root trees that failed and the water plants that were eaten. Finally, the Corps agreed to let us build a hemi-marsh which included placing over 300,000 cubic yards of material back into a portion of the lake to build the marsh. Unfortunately for us we had already excavated and moved this material as part of our reclamation process, necessitating an additional \$750,000 to move it again so that we could operate.

In an effort to prevent a repeat of this debacle, we have revised our reclamation plans to include building more marsh area concurrent with stripping, allowing us to only handle the materials once. When completed, our Company will have created 40 acres of individual submerging marshes. But that is hardly a silver lining in a cloud of uncertainty that covered this project; moving targets and unclear expectations dragged a process much longer – and made it much more expensive than it needed to be. This took 12 years; we operated but spent hundreds of thousands of dollars on attorney and consultant fees, employee time and effort, and equipment all in the quest to hit that moving target. 12 years that could have been better spent on other projects and supporting our workers and our community. 12 years where state and federal standards caught us in the crosshairs. 12 years for a small business means something, and I would encourage this committee to look at ways to reform our regulatory system so that Gernatt does not have to constantly worry if by following the rules, we will find ourselves in another expensive years-long battle.

As my personal experience shows, small businesses in all sectors depend on clear and certain federal rules and regulations, as well as consistent investment in infrastructure.

When Federal, State and City Regulators work together great things can and do happen. An excellent example is the Ohio St. Inner and Outer Harbor Connector project in Buffalo, NY for which we were the materials supplier to another small business - CatCo Construction. This infrastructure project has revitalized the old first ward neighborhood in the City while providing access between the downtown and the progressive outer harbor. Bridges were rehabilitated, abandoned buildings torn down, water, sewer and electrical utilities replaced, and a barely industrial road was replaced by a beautiful new highway including bike and walking paths.

This project cleaned up environmental problems, created water side parkland and recreational ship canal access and has spurred millions in residential and commercial development. Projects like Ohio St. are examples of how a small business like Gernatt can improve a community.

There are thousands of small businesses in my industry alone that in partnership with the federal government can help improve the communities we live and work in. To do that, we need an open discussion of how to streamline regulations, and how to ensure that federal funding is a consistent and uninterrupted stream that states – and small businesses – can depend on.