

**STATEMENT OF**

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**ON BEHALF OF**

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

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON SMALL BUSINESS**

**HEARING ON**

**EXPEDITING ECONOMIC GROWTH: HOW STREAMLINING FEDERAL PERMITTING  
CAN CUT RED TAPE FOR SMALL BUSINESSES**

**WASHINGTON, D.C.**

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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 how streamlining federal permitting can cut red tape for small businesses and expedite economic growth.

### **The National Stone, Sand & Gravel Association and Industry**

NSSGA is the world's largest trade association by product volume representing the mining industry. There are 10,000 construction aggregates businesses across the United States. These are 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 full-funded, robust highway trust fund. While nothing can take the place of these critical federal funds, regulatory over-reach can cause costly project delays, so regulatory reform is of great importance.

The United States annually 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. On a four-lane road, for example, one lane alone 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 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.

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 aggregates 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. So, our operations are limited to areas that are near cities and roads where they are needed. Generally, once aggregates are transported outside a 25-mile limit, the cost of the material 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.

The aggregates business can be described as making small rocks out of larger ones. We extract material for processing into crushed, sized, and washed stone. 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, 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. This is not an efficient use of resources for either the company or the agencies, and punishes the businesses who are trying to comply and care deeply about safety and the environment. It also shifts limited federal enforcement dollars away from actually protecting the environment.

### **Springfield Underground**

I am a past chairman of NSSGA and have worked in the industry since 1977. I appear today to stress the negative impact that excessive regulation has on small businesses like mine. My family’s business was started in 1946 by my father and uncle, who discovered limestone while digging a farm pond and recognized the need for road material in nearby Springfield, Missouri. Springfield Underground now employs 43 people, and in addition to supplying construction aggregates, we also use our former underground operations as cold storage for major corporations such as Kraft, Heinz, and Cargill. Like me, some of our employees are the second or third generation of their families to work at Springfield Underground.

I want to be clear that I am not against regulation, nor is NSSGA; in fact, as the co-chair of the Mine Safety Health Administration-NSSGA Alliance, I have led cooperative discussions with MSHA to develop and disseminate education and training materials intended to boost workplace safety and health for ten years. The MSHA-NSSGA Alliance is the first alliance MSHA ever entered into and is also its most active alliance. It has been very productive in terms of training programs for increased safety and efficient use of government and business resources. Last year, the industry finished with an injury incidence rate of just 1.95 injuries per 200,000 hours worked; the 16<sup>th</sup> year in a row in which our sector achieved a lower rate than in the prior year. We have found that we can accomplish more by working with agencies, rather than having just a “command and control” relationship. Unfortunately, not all my experiences with federal agencies have been as positive. In too many cases, agencies unnecessarily slow down projects.

The Small Business Administration estimates that regulations cost 36% more for small businesses per employee than for larger companies. At Springfield Underground, we simply do not have the resources that larger corporations use to comply with confusing and overlapping regulations. We

support efforts to reform the regulatory environment, recognizing that any reform is likely to benefit small businesses greatly because we suffer the most under the current structure.

### **Infrastructure Depends on Aggregates, but Federal Requirements Hamper Us**

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. Because so much of our material is used in public projects, any cost increases are ultimately borne by the taxpayer. 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, nature preserves, or in our case, underground storage.

On the federal level, we fall under regulations 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. But I don't want to complain about reasonable regulations that have defined benefits and are enforced fairly. The members of our industry comply every day with safety and environmental regulations that we support wholeheartedly as an industry. There are, however, regulations that provide no demonstrable public benefit, that delay or kill projects, and that cost many good jobs in construction and related fields. As government is the largest consumer of construction aggregates, the cost of excess regulation falls on the American taxpayer.

In particular, the application of the Endangered Species Act (ESA) and what constitutes a Waters of the United States have been expanded far beyond what Congress intended, and more often than not these act as an impediment to any development. For example, Section 7 ESA consultation by the Fish and Wildlife Service (FWS) is open-ended and lacking procedural guardrails that can be relied upon to define the scope, sequence and timing of agency review and action. Even when all the required information is provided, the FWS can take months or years to reach a decision. Permits in the U.S. take far longer to obtain than other developed countries, and the ESA is a major culprit. The ESA process has become a true impediment to any sort of development through a lack of timely response by FWS employees, who can delay projects significantly.

As previously mentioned, these problems are exacerbated with small businesses, because we do not have the same resources as large corporations to handle these issues. Small businesses have to run this overwhelming gauntlet of regulation, and it can cost jobs with very little (if any) benefit.

Small businesses like mine that have projects stalled over the ESA sometimes don't even involve the presence of endangered species, and can create a domino effect that hurts other businesses and citizens alike. In our case, we had approved plans from our city for an expansion of our tractor-trailer parking lot. When a state road contractor needed a place to dispose of crushed pavement from repaving MO Highway 65 in Springfield, we contracted with them to take the material as fill for this parking lot. This material had to be removed from the road so that repaving of an important artery in Springfield could occur. Highway 65 not only is the major commuter highway to Christian County (fastest growing county in Missouri), it is the tourist route to Branson from Interstate 44. The Missouri DOT put incentives in place for rapid completion. We applied for a land disturbance permit that was delayed, first by FWS, but then even longer by the Missouri Department of Conservation, who both required a study to determine if we were in a breeding area for the endangered bat. The habitat that we would potentially destroy amounted to a dozen trees and some brush. The permit was delayed by four weeks. It seems reasonable that this small area could have been excluded in a shorter period of time, while balancing the need for retaining habitat. That's an eternity for a state highway project like this. Finally, after all this, the Missouri Department of Conservation determined that we are not in a bat breeding zone. This may not seem like a long delay, but consider that lanes were closed and a major long-term road improvement could have been unnecessarily delayed, creating a ripple effect that impacts nearly all other businesses and citizens in the area due to commuting delays.

Sometimes NSSGA members agree to unreasonable conditions rather than accept long delays. One small business agreed to \$125,000 of mitigation at another site in order to proceed with a project rather than have the project be delayed indefinitely by having a permit application be put into pending status by FWS. That was a significant financial burden for a small family-owned business, but had to happen so that commitments to highway departments and other customers could be met. This is a case of a business agreeing to an agency's incorrect assessment in order to proceed.

Another NSSGA member has faced a delay of eight years waiting for the issuance of a Biological Opinion by FWS. This project involved an open engagement process involving meetings between federal agencies and local wildlife groups. The permitting process and mitigation requirements for species compensation reduced the project size from 1,100 acres to now less than 400 acres. This process led to a finalized group consensus years ago, but the assigned FWS biologist has repeatedly delayed finalization of the biological opinion. This is a project that has met relevant criteria, and has cost the significant investment in money, time and other resources by the member company, but has not been allowed to proceed.

In another example, a member worked diligently to protect the habitat and the listed species on a site, but has faced a delay of over a year waiting for an incidental take permit for a facility expansion. These delays harm not only the companies producing building materials and the infrastructure projects that rely on them, but also delay important conservation efforts.

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

The water on our site contains only natural dust, but under the CWA is called "process" water and requires a CWA/National Pollutant Discharge Elimination System (NPDES) permit for discharge, which sets strict limits on what can be in the water. We work to recycle this water and use it for dust suppression as part of our air permit required by the Clean Air Act. These permits are handled by the state, but the state permits are approved by the EPA. One of our sites was audited by EPA and warned that there were no signs designating the outflow points on our property, even though this is not a requirement of the state permit. This is just the sort of federal "check the box" requirement that does not improve the environment, but rather creates needless work and cost for small business.

Our air permit requires that we apply 100 gallons of water per day for every 1000 square feet of unpaved area unless it is freezing or unless ¼" of rainfall has occurred. In the spring and in the fall in Missouri it is cool and humid enough that the ground doesn't dry out and create dust, yet we still have to comply with this requirement. Putting that much water down creates a sticky mess that clings to truck tires. We then have to provide wash stations so the trucks don't track that out onto the public roads. This site is also close enough to the Springfield-Branson National Airport that the Federal Aviation Administration doesn't want us to impound water that will attract migratory birds that could affect planes taking off and landing. Of course, that leaves us without sufficient water supply for our water trucks in the summer time when it is most needed. This is just one example of where multiple, conflicting requirements cause problems that cost additional money to solve, again, without helping improve the environment.

While we have had success working with the Mine Safety Health Administration, numerous programs and requirements could be improved, particularly those that impact small businesses. The industry has a great safety record and we want to make sure every regulation has a demonstrable effect in improving safety or the environment.

To summarize, businesses like mine are put into impossible situations, such as trying to prove a negative, while federal agencies can stop projects nearly at will under the guise of authority under CWA or ESA.

## **Suggestions for Improvement**

Congress and the administration have come up with some great ideas for cutting red tape, and I would urge you to move forward with some of these. In particular, NSSGA supports:

- 1) Look at the impacts to small businesses beforehand: The Small Business Regulatory Flexibility Act should be expanded to include the Fish and Wildlife Service and the Mine Safety and Health Administration's rules so that impacts to small businesses must be evaluated for major rules in the same way that rules for EPA and OSHA are evaluated. SBREFA should be strengthened by not allowing agencies to improperly claim their rules do not meet the threshold, in addition to other reforms.
- 2) Improve the permitting process, deadlines and transparency: Currently small businesses often feel they are guilty until they prove themselves innocent and agencies are not accountable to respond to them in a timely fashion, or multiple agencies have overlapping requirements. The environment and worker safety can still be protected or even improved by making the process more transparent, timely and less adversarial.
- 3) Agencies should be held accountable: Just as businesses are accountable, so should agencies. Congress should ensure that they are fulfilling their core functions under the appropriate acts, while not promulgating unnecessary burdens and delays on industry.
- 4) Reform efforts should be continuous: Periodic review of rules should be required as well as updating outdated statutes to better respond to changing conditions.

We support reasonable regulation, based on science, 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. I appreciate this opportunity to speak on how streamlining federal permitting could help small businesses like mine, that are the lifeblood of our nation's economy. Thank you, Mr. Chairman, and I will be happy to respond to any questions.