NSSGA
NATIONAL STONE, SAND & GRAVEL ASSOCIATION

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STATEMENT OF

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ON BEHALF OF

THE NATIONAL STONE, SAND, & GRAVEL ASSOCIATION

BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES

HEARING ON

Rocks to Roads: The Importance of Domestically Sourced Raw Materials for Infrastructure Projects

WASHINGTON, D.C.

March 21, 2017

Chairman Bishop, Subcommittee Chairman Gosar and members of the subcommittee, thank you for inviting me to testify at this hearing on behalf of the National Stone, Sand, & Gravel Association, or NSSGA, regarding The Importance of Domestically Sourced Raw Materials for Infrastructure Projects.

Introduction

My name is Ward Nye and I am the Chairman, President and Chief Executive Officer of Martin Marietta, a publicly traded, S&P 500 Company that is one of this country's largest producers of construction aggregates. I am a past Chairman of NSSGA, have spent over thirty years in this industry, and appear today to stress not only the importance of domestically sourced raw materials for infrastructure projects, but also the negative impact of excessive regulation on efforts to fix our nation's crumbling infrastructure. Importantly, please note that I early-on use the term "excessive" regulation – not mere regulation. Against that preliminary backdrop, I will endeavor to discuss the impacts of excessive regulation through the eyes of the construction aggregates industry, which is an essential component of repairing America's highways, roads, streets, bridges, dams, and airports.

My testimony is organized as follows. First I will address the role that aggregates, which are generally called crushed stone, sand or gravel, play in infrastructure; then I will address the burden of excessive regulation on the aggregates industry; and finally I will address the horrific delays and associated costs with which infrastructure projects have been saddled because of excessive regulation.

Ultimately, not only does this excessive regulation cost time, money, and jobs, but critically, it often puts the fate of vital infrastructure projects in the hands of special interest groups and their handpicked courts, instead of Congress and state governments. To be clear, if I could leave you with one single enduring message here today it would be this: Excessive regulation of infrastructure projects means that neither Congress nor the President will decide what projects can get built and when. That is because nearly every regulation that any program or project is subject to becomes a tool for activists to attack and stop the project in the courts. Usually that attack is directly or indirectly aided and abetted by an overreaching federal agency, EPA frequently comes to mind, issuing regulations well beyond what Congress intended. It doesn't matter that Congress appropriated money for the program or project, that the relevant federal agency has approved it, or that the relevant state agency has approved it. Rather, in the end a federal or state judge will decide whether the project should move ahead or not, and he or she will have that authority because the program or project is so burdened by excessive and overarching regulations that must be met that the power to build it is effectively ceded to the judiciary.

The National Stone, Sand & Gravel Association

As for the entity on whose behalf I testify today, allow me to offer that the NSSGA is the world's largest mining association by product volume. More specifically, there are 10,000 construction aggregate businesses across the United States, so each of you most likely has employees of an aggregates business among your constituents. Notably, more than 70% of NSSGA members are

small businesses. Our employees typically come from and live in the communities surrounding our facilities and our industry buys hundreds of millions of dollars of American made heavy equipment. 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.

Attention to the Environment

Our business is often simply described by saying we make little rocks out of big rocks. There is some truth to that, but the process of making specification-meeting little rocks from big rocks is dominated by attention to the environment and employee safety. To start, we use highly controlled blasting to extract "big rocks" for processing into crushed, sized, and washed stone. EPA studied potential impacts of blasting on air quality for many years and collected reams of monitoring data from the industry, only to conclude that blasting did not materially affect air quality, of no surprise to the industry.

The "big rocks" produced by blasting are then processed through a crushing, screening, and stockpiling process to make "little rocks." The layout, components, and output of that process are all specified in the Clean Air Act permit we must obtain for each site at which we operate. We can't blast or crush one ton of rock without that permit, and several others. Throughout our processes we use various water sprays for dust suppression, again as required by our Clean Air Act permit. A new water truck that we use to keep internal roads wet to reduce dust, again as specified in our Clean Air Act permit, costs from $300,000 to $700,000 depending on its size and features. This required investment is just for the truck that waters our internal roads, and some sites require two of them. The water for this dust suppression typically comes from our own mining pit and is recycled through the detention ponds described below.

Water that is used on site is captured in a series of detention ponds, as specified in our Clean Water Act/National Pollutant Discharge Elimination System, or NPDES permit. On a typical day, with no rain, we will simply recycle our existing on site water. When it rains we may have to discharge water, but our NPDES permit sets stringent limits on what can be in that water. Many years of tests of our discharge water at sites across the United States have shown that what we discharge meets strict water quality limits. That is because the water on our site, although sometimes classified as "process" water, is usually a mixture of water we use for dust suppression and any rain that falls. As a result, the principal impurity we control for is simply sediment, which is controlled through the use of the detention ponds and our mining pits, thus minimizing any discharges to any surrounding streams. Usually, what we are allowed to discharge is actually cleaner than the existing stream water into which it might ultimately find its way.

Infrastructure Depends on Aggregates

The United States consumes approximately 2.8 billion tons of aggregates annually. That's a staggering number, and one that I'm nearly certain is not wholly appreciated by the vast majority of Americans. Most people simply don't realize that modern construction, especially public projects, would come to an absolute halt without construction aggregates. I assure you that every Congressional district represented on this committee – whether Republican or Democrat, urban

or rural – depends on construction aggregates for its infrastructure. Why? Because crushed stone, sand and gravel typically make up over 80% of ready mixed concrete and over 90% of hot mixed asphalt. There is no cost effective or practical product substitute. There may be infrastructure projects that don't require aggregates, concrete, or asphalt, but none come to mind. Even if a project could somehow be built without aggregates, access to it by road, rail or air would require the industry's products.

On a four lane road, for example, one lane alone requires an average of 38,000 tons of construction aggregates for every mile. That is fourteen days of production at an average sized quarry just for that one lane mile of road. Some of that aggregate is the base over which the roadway is laid; the rest is stone used to make the concrete or asphalt. Bridges and interchanges, due to their heavier structural components, often require even more construction aggregates.

Other uses of construction aggregates are less obvious, but equally important. A new school or hospital typically requires 15,000 tons of aggregates in its construction. A new frame home uses aggregates in the base around its foundation, in its concrete or block foundation, and in its driveway (whether concrete, asphalt or stone), as well as in the utility easements that provide power to the dwelling. The agricultural industry uses aggregates for its roads, erosion control, and ponds, and sometimes to improve soil productivity. The oil industry uses aggregates to build the infrastructure necessary to drill, store and transport its products into and out of remote areas. Railroads use aggregate for ballast on which to lay their tracks. Even a steel pipeline typically uses aggregates for its base.

Aggregates have also become an important component enabling both private industry and all levels of government to meet federally mandated environmental standards. At the state and local level, aggregates are used to help government and industry meet the standards set under the Clean Water Act for water they discharge. High calcium carbonate aggregate is even used as a scrubbing agent for controlling air emissions from smoke stacks, helping industry meet National Ambient Air Quality Standards set under the Clean Air Act.

All of this, and more, is why aggregates are an important part of our economy and why a dependable domestic supply of aggregates is critical to meeting the challenge of restoring our crumbling national infrastructure. But the average selling price of aggregates in the United States is only about $12 per ton. Is there anything else in your life and work that you need or desire that you can purchase for $12 per ton except our product? If so, please share with me what that product may be. But until then let those numbers and what they mean sink in. Aggregates are critically important to our nation in terms of safe roads, bridges, and dams, but this is not an industry that can afford, literally, unnecessary and overreaching regulation.

That said, environmental stewardship remains a key industry pillar. We want what I know you want: clean air, clean water, and a safe working environment, all built around a culture of business ethics that promotes a responsible, enduring industry adding immeasurably to the fabric of our country. We seek to offer opportunities for hard working men and women not only to build meaningful careers in our industry, but also to provide for their families. It's not hyperbolic to say that our industry is truly the quiet and unassuming foundation of the American Dream.

Most of you don't go to work each day thinking about our business and why it's so vital to America, but regulators think about us every day.

The Regulatory Framework

No stone is left unturned when it comes to regulating the aggregates industry. Every level of government – local, state, and national – takes its turn at regulating us. At the national level, EPA alone regulates the industry under the Clean Air Act, the Clean Water Act, the Endangered Species Act, CERCLA, RCRA and TSCA just to name a few. Each of those has its subset of programmatic regulations. The Clean Air Act, for example, includes New Source Performance Standards (NSPS), the National Ambient Air Quality Standards (NAAQS), and the National Emission Standards for Hazardous Air Pollutants (NESHAP), the latter being primarily relevant to cement and asphalt operations.

And that is just one agency. In addition, the industry is subject to extensive regulations promulgated generally by the Department of Labor and even more specifically through its Mine Safety and Health as well as Occupational Safety and Health Administrations. As with EPA, each of those has multiple programs or rules that apply to the industry. The Army Corps of Engineers has extensive regulations in some areas that can require years for our industry to meet. The Department of Homeland Security and the United States Treasury Department also regulate us because we engage in blasting at our sites.

At the state level our industry must obtain approvals from state agencies for air and water quality permits and mining and blasting permits, all subject to a complex overlay of state environmental and blasting regulations that vary from state to state. For example, North Carolina's regulations are not the same as Missouri's, which are not the same as California's.

At the local level, multiple layers of land use approval, almost always an expensive, time consuming, and frustrating process, are often required before we can open a new facility or even expand an existing one. Public hearings associated with those undertakings can range from a few months, to years, depending on the state. Even if our application or permit is approved, that approval often comes with regulations on everything from our landscaping to the roads our customers can use. And then of course there are always appeals.

Yet I want to emphasize, and this is critically important, that NSSGA does not come here to complain about reasonable regulations that are thoughtfully drafted and enforced and that have a demonstrable public benefit. Its members comply everyday with environmental regulations that we support wholeheartedly as an industry.

There are, however, plainly regulations that provide no demonstrable public benefit, that delay or kill projects, and that cost an untold number of good jobs in construction and related fields. Ultimately, government is the largest consumer of construction aggregates, so the cost of excess regulation falls on the American taxpayer.

Unlike some other materials, construction aggregates cannot be grown, nor can more of it be created by adding an additional shift or expanding a facility. Additionally, not every stone deposit meets the stringent standards set by Federal Highway Administration (FHWA) and state

DOTs for use in federal or state projects. In fact, on a given federally funded project, aggregate may have to pass more than a half dozen tests and meet a host of written specifications before it can be used.

Aggregates that meet these criteria exist only in limited supplies that are being consumed every day at our facilities. We are literally depleting the material from which concrete and asphalt are made for public projects, so development of new or expanded supplies of aggregates is critical if we are to restore our nation's infrastructure. Just to give you one example, after Hurricane Katrina the domestic aggregates industry literally could not supply all of the aggregates needed to rebuild the Gulf Coast's infrastructure.

That is where we as an industry, and NSSGA as an Association, see the greatest burden of excessive regulation. Before the advent of excessive regulation and litigation we spent about two years to get a new site through the environmental permitting process. Now, it is not uncommon to take nearly a decade for a company in our industry to obtain all of the approvals necessary to open a new site. My company is in year eight on a project now. Throw in a supposedly endangered species, some tenuous connection to Waters of the United States, or computerized air emissions modeling, and what was just a long process becomes what often now seems to be a never ending endeavor costing millions of dollars for the hope of opening one site.

And remember, aggregate from that site, that took us years to open, currently sells for an average of just $12 per ton.

The Burden of Regulation on Fixing Our Infrastructure

It is not particularly useful to talk about how much regulation is too much. As the Supreme Court once observed, you know some things when you see them. But it is useful to evaluate whether past infrastructure projects, which we now find essential to our way of life, could even have been built under today's regulatory environment. We owe our way of life to decisions made decades ago. Where, for example, would we be without the interstate highway system? Are we now depriving future generations of needed infrastructure because we have made it impossible to build a major project?

The Hoover Dam is often cited as one of our great infrastructure achievements. Could it be built under today's regulatory regime? Even if it could, how long would it have been delayed and how much more would it have cost because of excessive regulation yielding no demonstrable benefit?

Worse yet, who would have decided whether it could be built? Not the Congress, or the states involved, but instead a federal judge sitting in a district handpicked by environmental activists to give them the best shot at stopping the project.

The same is true of our airports. Could Chicago's O'Hare be built today, or Atlanta's Hartsfield-Jackson Airport, the two busiest airports in the world and both of regional and national importance? And at what delay, what cost, and what impact on the economy from the delay. Who would have decided whether they could be built, a court or a legislature?

Other examples abound. I live in North Carolina, where millions of people use the Blue Ridge Parkway. It opened portions of western North Carolina, helped it begin to prosper, and changed that region's long-term economic trajectory. It made countless lives better. Could it be built under today's regulatory scheme? Likely not. Indeed, it now takes years to build a few miles of roadway opposed by any self-proclaimed environmental group.

Many of our national parks have lodges that attract tens of thousands of families annually. Yellowstone, Bryce Canyon, Zion National Park, the Grand Canyon, and countless other national parks have roads and facilities we have all come to take for granted, but could those same roads and facilities be built today? Even if they could, it would take a generation just to get them approved.

This burden of regulation permeates all levels of government. As increased population has caused us all to recognize the need for more drinking water, counties and cities have banded together to build regional reservoirs. However, because of excessive regulation those reservoirs take on average a minimum of ten years just to get necessary government approvals. Sometimes the culprit is a claimed endangered species that turns out not to be a separate species and not to be endangered. Other times it is a lengthy and expensive Corps of Engineers review, followed by the inevitable environmental lawsuit.

In Colorado, the Army Corps of Engineers began work on an Environmental Impact Statement, or EIS, for the Glade Reservoir project in 2004. It issued a draft for public comment in 2008, and now projects finally to have the new EIS done this year, more than a decade after it first began the process. Worse yet, the actual decision on the project by the Corps is not expected until 2018. And this is all before the courts get involved, so there may well be a decade of litigation ahead once the Corps decides whether to allow this project.

I don't claim to know the merits of this particular project, or even what the decision should be, but I do know this: it shouldn't take a decade to decide if it should be built.

Newport News, Virginia began work to develop a new regional reservoir in 1987, but after two decades of efforts it was blocked by a court in 2009 and abandoned.

When the I-35 Saint Anthony Falls Bridge in Minneapolis tragically collapsed in 2007, it was Minnesota's third busiest bridge, carrying 140,000 vehicles daily. Within only two months of the collapse, Minnesota DOT was able to complete the entire environmental review process and had selected a contractor to design and build the replacement bridge in its original location. This was only possible because the new bridge would have the same capacity and alignment as the old bridge, and so it was determined that the new bridge would have no significant effect on the environment.

But if Minnesota DOT had proposed to reconfigure approaches to the bridge, it would have triggered an expanded environmental review and probably added years to the reconstruction time line, even though the bridge was going in the same exact spot as it had been for decades before.

In fact, we have a good example of what would have happened on the I-35 Bridge if Minnesota had not used the same alignment and capacity. The Herbert C. Bonner Bridge in North Carolina carries NC Highway 12 across Oregon Inlet to Hatteras and Bodie Islands. Needless to say, it is essential to persons who live on those islands. It was built in 1963 with a design life of 30 years. In the late 1980's the North Carolina Department of Transportation began planning for a replacement bridge, but didn't award a contract for it until more than twenty years later, in 2011. The inevitable environmental lawsuit followed, and after the resulting delay NCDOT entered into a new contract that cost $30 million more than the original contract. The new bridge is finally expected to go in service in 2018, a near thirty year delay from when NCDOT first began pursuing replacement. During the delay NCDOT spent more than $65 million to keep the old bridge safe. All in, the delays cost the taxpayers $95 million, nearly 44% of the original replacement cost. That $95 million could have been used somewhere else to improve another element of our crumbling infrastructure; instead, it was lost to delay and litigation.

The same environmental group sued to stop a new road in a high traffic area near Charlotte that was proposed a decade ago and is only now finally being built.

In our industry, environmental activists have seized on the Endangered Species Act and an Orwellian interpretation of what constitutes Waters of the United States to stop new facilities or expansion of existing facilities. These Acts, in part, may be necessary, but their application has been expanded far beyond what Congress intended and they have simply become a tool to let courts, not agencies or state governments, decide what projects are approved. The burden and fear of these suits means that environmental activists now employ the sue-and-settle model, often settling their suit against one project for money that they can then use to fight the next project.

Small businesses cannot afford to run this gauntlet of regulation and environmental activism. Among other things, they don't have free lawyers supported by activist groups to represent them. Even some of NSSGA's larger members have had to scrap important job creating projects because of spiraling costs and delays. In my company we have been working on one project now since before 2010, have spent well over a million dollars in fees and expenses, and have won almost every round of hearings or litigation, but have not yet been able to turn even a shovel full of dirt to get started. By the time we get started we will likely have spent a decade on this project and postponed the creation of dozens of jobs.

All of this drives up costs that we have to recoup someday, and eventually our customers or end-users, mostly government, will pay more because of this excessive regulation.

Conclusion

As I hope my testimony reveals, the aggregates industry is essential to rebuilding our nation's infrastructure – not just the highways, bridges, roads, streets, runways and ports, but also the schools, hospitals, dams, and other projects. We support thoughtful 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 puts our infrastructure needs at the mercy of activists that oppose progress and whose interests are wholly inconsistent with growing our economy, creating new jobs, and remedying our aging infrastructure. The

power of Congress to see that needed infrastructure projects get built on time and on budget depends on rolling back the burdensome regulation that often puts the fate of projects in the hands of the judiciary, not this Congress or the States.

NSSGA appreciates this opportunity to speak on the vital role aggregates play in our nation's infrastructure. Thank you, Mr. Chairman, and I will be happy to respond to any questions.

END