



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

January 31, 2023

Honorable Sam Graves
Chairman
House Committee on Transportation and
Infrastructure
Washington, DC 20515

Honorable Rick Larsen
Ranking Member
House Committee on Transportation and
Infrastructure
Washington, DC 20515

Dear Chairman Graves, Ranking Member Larsen:

On behalf of the 400 members of the National Stone, Sand & Gravel Association (NSSGA), I am writing to share the aggregates industry's views, as the Committee holds its first hearing of the 118th Congress, entitled: "The State of Transportation Infrastructure and Supply Chain Challenges."

NSSGA is the voice of our nation's aggregates industry, which operates over 9,000 operations and employs over 100,000 people in high-paying jobs to source 2.6 billion tons of aggregates each year that are used to sustain our modern way of life and build our nation's communities and infrastructure. Our industry is the beginning of the building supply chain, as the products we source are the essential components needed to build roads, airports, transit, rail, ports clean water and energy networks.

First, as our country faces economic headwinds and an uncertain future, the historic Infrastructure Investment and Jobs Act (IIJA) is laying the groundwork to keep the aggregates and materials industry moving forward to build more resilient communities and stronger transportation networks that carry American goods and people. The certainty provided by IIJA, through the five-year reauthorization of our surface transportation programs allows companies in the aggregates industry to better plan and make robust investments in our people, plants and equipment.

We would like to provide the following policy recommendations, as the committee kicks off its critical work in the 118th Congress to ensure transportation and infrastructure policies are best delivering results in every American community.

Oppose Partisan Policies That Were Not Included in IIJA



Whether investing in a new road in a rural community or a new transit system in an urban city, infrastructure investment should benefit all Americans – a mantra well-known to members of this committee.

That is why we are concerned with proposed policies that insert new criteria into the planning process, such as suggesting disapproval of new highway capacity projects in Dec. 2021 FHWA Memorandum that encourages limiting investment in new capacity projects, or new selection criteria included in federal grant applications that are discouraging some communities from participating. These policies were considered and rejected by Congress and not carried in IIJA.

Limiting new transportation capacity projects and curtailing flexibility does nothing to ease congestion, reduce air emissions and improve the flow of goods, which helps address inflation. Further, roads are still an important aspect of achieving an electric vehicle future. For example, in California the stated goal is to move away from fossil-fueled passenger vehicles in the next decade. If this occurs, then new road capacity will not add increased emissions, but it will make the movement of goods and people cheaper and quicker. Lack of capacity has many negative impacts including increased inflation. Flexibility from Washington is critical, as states work to modernize our transportation networks, and we should not limit our ability to address increasing vehicular capacity to our systems.

It is critical for the administration to follow the will of Congress of providing maximum flexibility to state and local partners deploying infrastructure. Partisan mandates attached to federal infrastructure opportunities that discourage investment in new capacity projects, create more bureaucratic delays, or provide new workforce hurdles should be rejected.

Buy America Build America and the Aggregates Products Exclusion

One of the key policy changes made under the IIJA was the creation of new federal Build America Buy America (BABA) sourcing requirements, which include the addition of “construction materials” to Buy America preferences for federal infrastructure programs.

The aggregates, cement, concrete, and asphalt paving industry worked with Congress, to craft the new statutory requirements to exclude aggregates, cement, asphalt additives and paving binders as a construction material. Further, products that are made by combining these items, like concrete and asphalt, are also excluded from the new BABA requirements and subsequent Buy America sourcing rules.

Unfortunately, one critical roadblock has been the lack of clear and conscious communication over the new Build America, Buy America regulations, including the exclusion for aggregates-based products. Multiple state departments of transportation, in addition to federal agencies, have started issuing guidance and information requests to begin complying with BABA. Each state and federal agency has issued different, often inconsistent and sometimes conflicting guidance. Many times, the guidance fails to recognize the aggregates materials exclusion leading to confusion across our industries.

Keep in mind that certain geographic areas of the county do not have the geologic deposits that allow local sourcing of stone, sand and gravel to make concrete and asphalt and to be used in construction. These materials must be imported from nearby countries and often it is less costly and produces less air emissions than trucking long distances across U.S. regions.



Likewise, a lack of cement capacity in some states means cement must be imported. The lack of asphalt oil production and refineries, especially on the east coast, requires agencies and contractors to import from Canada to meet demand for basic street paving materials. The aggregates industry strongly supports the goals of Congress and the administration to expeditiously improve our outdated infrastructure. It is imperative that federal and state partners responsible for distributing federal investments follow the BABA law and subsequent Buy America requirements, as written by Congress, and not impose any sourcing requirements or paperwork burdens on concrete, asphalt, cement, cementitious material, aggregates, additives, and binder. This will ensure maximum project delivery and American job creation.

Permitting Reform Is Needed to Build

Last year, the White House Council on Environmental Quality issued a new regulation that complicates the permitting process for large infrastructure projects under the National Environmental Permitting Act (NEPA). This bureaucratic action broadens definitions and adds duplicative federal agency reviews that will do nothing to improve environmental outcomes. What is more frustrating is that these new rules run counter to the bipartisan NEPA reforms that were included in IIJA.

Aggregates suppliers across the country crave certainty, as we work to supply the billions of tons of essential materials needed to improve roads; upgrade bridges; advance transportation systems and ports; and advance our modern energy infrastructure that will be funded by the investments provided by the bipartisan IIJA. This is especially important in the current economic environment, where needless red tape will delay project implementation and drive-up costs of construction materials.

In one example, the fixed cost investments for aggregates reserves, plants and rolling stock to produce this material runs from \$3 to \$4 per ton of material produced, which requires tremendous replacement capital each year from companies. This requires a huge commitment of capital which can be exacerbated by the high inflation we now experience. America uses over 2.6 billion tons of aggregate a year. This means an annual commitment by private companies of up to \$10 billion per year for new reserves, plants, and equipment to keep producing the materials needed to meet the demand.

Instead of proceeding with new NEPA guidance that complicates the procedures, we urge rapid enactment of policies included in IIJA like “one federal decision” that will streamline bureaucratic review and reduce infrastructure permitting timelines from seven to two years.

NEPA is just one part of the permitting problem. Aggregate producers must often wait years for federal agencies such as the Army Corps of Engineers and the U.S. Fish & Wildlife Service, amongst others to issue decisions. Often, the federal regulations conflict with similar state regulations adding complexity and red tape in the permitting process. Our operations need clear rules and accountable federal agencies to produce materials to meet the goals of the IIJA.

Reject the new Waters of the United States (WOTUS) rulemaking until the Supreme Court rules in the Sackett vs. EPA case.



It is anticipated that the Supreme Court could change how the EPA and Army Corps of Engineers define a Waters of the United States (WOTUS). On Oct. 3, the Supreme Court heard oral arguments examining the Sackett vs. EPA case and questioned the significant nexus analysis.

All the while, EPA and the Army Corps finalized a new rule on Dec. 30, which makes substantive and new changes to the definition of WOTUS, under the guise of withdrawing the 2020 Navigable Waters Protection Rule. In fact, in Feb., the Small Business Administration found that the agencies have improperly certified the proposed rule, determined the proposed rule expands the definition of WOTUS and impacts small businesses requiring a small business regulatory review.

With the flawed rulemaking now final, material producers will be forced to comply with multiple complex changes, resulting in the fifth change in a decade. Because of the uncertainty, aggregates producers are unsure of when and how new operations and expansions can be permitted. With EPA finalizing yet another rule while SCOTUS stands poised to alter the rule's underpinning only adds to an already time consuming and uncertain permitting process. The current regulatory ambiguity is impacting industry ability to obtain CWA permits to establish new domestic manufacturing facilities and build infrastructure projects that are critical to addressing our supply chain crisis.

Unfortunately, despite hearing from impacted stakeholders, 201 House members and 50 Senators, the agencies still proceeded with a final rule that is likely to conflict with the Supreme Court action. To provide our industry with certainty needed to produce construction materials that supply the projects funded under IJIA, it is critical for the administration to halt this doomed rulemaking process and await the SCOTUS decision before proceeding with a new rulemaking process.

Rail Service Reform is Needed

It is no secret that rail service conditions are failing for the aggregates and industrial sand industry. Deteriorating rail service conditions have a direct impact on our ability to supply millions of tons of aggregates and industrial sand, which are used to improve outdated infrastructure, build resilient communities, and drive America's energy production.

In detailed comments to the Surface Transportation Board (STB), NSSGA shared how service disruptions and unwarranted price increases are severely impacting our industry. If action is not taken to improve service, the constant delays, and the inability to move product to market will continue to have a direct impact on supplying key infrastructure projects across the country. This will ultimately plague the implementation of the bipartisan IJIA.

NSSGA calls on Congress and the STB to enact meaningful rail reform that levels the playing field between shippers and carriers. One such proposal is the pending rulemaking at STB related to reciprocal switching. If enacted, this would drive greater competition, especially for facilities captive to one carrier.

Workforce Development

A skilled and highly trained inclusive and diverse workforce is paramount to safely operating quarries that produce the critical materials found in infrastructure projects. Unfortunately,



many aggregate producers are unable to hire and retain a full workforce in today's labor market.

The aggregates industry takes pride in investing in its employees by providing attractive salaries, competitive benefits, robust training, support and career development. Our industry's average annual salary is over \$75,000, and most employees spend their entire careers in the industry.

NSSGA supports policies and funding from the federal government to train workers, increase the diversity of our workforce and ensure aggregate producers can access the skilled employees needed to continue producing the building blocks of America. We also encourage Congress and the administration to continue its bipartisan support for programs that work with America's veterans, active and reserve service members, and their spouses to find meaningful careers and employment opportunities.

Thank you for providing the opportunity for our members to share their views as you examine the critical issues impacting our transportation network and supply chains.

Do not hesitate to contact NSSGA should we be able to provide any assistance, as the Committee works through this Congress.

Sincerely,

Michael W. Johnson
President and CEO
National Stone, Sand & Gravel Association

CC: Members of the House Committee on Transportation and Infrastructure

