May 15, 2017

Ms. Sarah Rees
Regulatory Reform Officer and Associate Administrator
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 1803A
Washington, D.C. 20460

Re: EPA-HQ-OA-2017-0190, Evaluation of Existing Regulations

Dear Ms. Rees:

We are pleased to submit comments on Evaluation of Existing Regulations. We applaud the Trump administration's vision and leadership on regulatory reform, particularly this effort to collect information on burdensome EPA regulations. The following outlines regulations, rules or other practices where the costs drastically outweigh small or nonexistent gains. We are available to discuss any of the reforms in more detail at your convenience. We look forward to working with you.

As the National Stone, Sand and Gravel Association (NSSGA) is the leading advocate for the aggregates industry, we make the following recommendations that are certain to assist our industry and have a positive impact on the economy and creating jobs. The aggregates industry employs more than 100,000 highly-skilled men and women. Our industry generates $27 billion in annual sales and supports $122 billion in national sales in affiliated industries. For every job created in the aggregates industry, an additional 4.87 jobs are supported throughout the economy. Our members – stone, sand and gravel producers and the equipment manufacturers and service providers who support them – are responsible for the essential raw materials found in every home, commercial building, road, runway and public works project from schools to hospitals. This industry works diligently to protect the health of our workers, the public and the environment, but we agree with the administration that too many burdensome regulations and red tape hinder business. We present some of the most burdensome here.

Waters of the U.S. Rule
Action Needed: Withdraw and replace WOTUS rule, but maintain exemptions

EPA's 2015 Waters of the U.S. Rule (80 FR 37054) radically expands the jurisdiction under the Clean Water Act (CWA) to include areas suspected of only tenuous connections to navigable waters. The rule would make it even more difficult for aggregates operators to ensure a timely

supply of aggregates for public works and other vital projects, and will impose costs to businesses and taxpayers that far exceed any benefits to the aquatic ecosystem.

NSSGA fully supports the Trump administration's intent to reconsider this unlawful rule and replace it with a more sensible one that takes the environment and business certainty into account by only including waters with relatively permanent flow in Waters of the U.S., among other commonsense changes. While there were many problems with the 2015 rule, most of the exemptions in the final rule were of merit. NSSGA requests that numerous exemptions in the 2015 rule be considered for inclusion in the revised rule, such as excluding aggregates pits and quarries from being considered a Waters of the U.S.

Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity
Action Needed: Withdraw conductivity report and further evaluate need and feasibility

NSSGA finds that the Draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity (81 FR 94370) is inadequate as guidance for states to develop a conductivity standard. Conductivity has always been used as rough field screening tool, and it is completely inappropriate as a legally-binding standard on its own. Compared with the development of other water quality standards, EPA has skipped or ignored a myriad of technical issues with the measurement and use of conductivity and evaluation of treatment options.

NSSGA's view, based on available scientific data, is that a standard for conductivity is unsupportable. The agency has not performed the minimum required to provide the states with the necessary information to develop a conductivity standard. EPA and state technical documents indicate that conductivity is useful for screening, but of little value on its own. While NSSGA strongly opposes a conductivity standard for scientific and feasibility reasons, EPA - at a minimum - needs to show that there is a need for a standard, that there is a causal relationship between macroinvertebrates and conductivity, that conductivity is preferable to other, more specific analyses, and that wastewater treatment methods exist to attain a standard.

Furthermore, EPA has shirked its water quality standard development requirements under the CWA. There would be enormous consequences to states by encouraging a nebulous water quality standard which could trigger a host of other requirements, imposing an impossible burden on the regulated community. The CWA sets forth a clear procedure that has not been followed with the issuance of this draft guidance, and the EPA has not considered the effects on the aggregates industry and economy at large.

Toxic Substances Control Act (TSCA) Risk Evaluation
Action Needed: EPA's Chemical Risk Evaluation for "Asbestos" (and all substances) should be based on sound, up-to-date science and exclude *de minimis* conditions of use.

EPA announced that "asbestos" would be one of the first ten chemical substances to undergo a risk evaluation under the revised version of TSCA (81 FR 91927). NSSGA supports science-based

regulations that prevent harmful exposure to asbestos. Before EPA begins its asbestos risk evaluation, however, the Agency must clearly define "asbestos" for the purposes of this risk evaluation and any subsequent risk management rulemaking. That definition must be sufficiently precise to differentiate asbestos from common (rock-forming, *nonasbestiform*) elongated particles or "cleavage fragments," which have not been found to cause health effects like those associated with asbestos. EPA should precisely define asbestos based on its chemical makeup, physical and morphological properties, appropriate methods and criteria for identification, and other relevant factors. EPA's definition should also be consistent with Congress's longstanding definition of asbestos in Title II of TSCA:

> "The term 'asbestos' means asbestiform varieties of-- (A) chrysotile (serpentine), (B) crocidolite (riebeckite), (C) amosite (cummingtonite-grunerite), (D) anthophyllite, (E) tremolite, or (F) actinolite."

EPA should also retain the longstanding definition in Title II of "asbestos-containing material" to include only "material which contains more than 1 percent asbestos by weight."

As part of its regulatory definition for "asbestos," EPA should specify appropriate analytical methods, particularly EPA's 1993 PLM method as the default, for distinguishing between the rare *asbestiform* mineral varieties and the far more common *nonasbestiform* mineral varieties. Many common laboratory methods cannot always make this distinction.

EPA's scope of risk evaluations should interpret the term "conditions of use," or construe its obligation to review the conditions of use for selected substances, to exclude products to which asbestos is not intentionally added and that may unintentionally contain or contact trace amounts of naturally occurring asbestos. If EPA ultimately interprets TSCA to require that it evaluate all "conditions of use," then we support EPA's proposal that risk evaluations will be "fit for purpose." 82 FR 7566. "Conditions of use" that are uncommon or *de minimis*, such as the unintended inclusion of trace amounts of naturally-occurring substances in the raw materials for a product, will not "warrant the same level of evaluation" as uses that contain the chemical in quantities sufficient to pose a threat to human health or the environment.

EPA's apparent proposal (82 FR 7568, 7570) to limit the information considered in a risk evaluation to that which already exists when the risk evaluation commences is contrary to the express intent of the law. EPA should not exclude relevant data from a risk evaluation simply because it is published after the date the risk evaluation begins. The proposed approach may result in EPA conducting risk evaluations that are not based on the "best available science" as TSCA requires.

Regulation of Small Stationary Engines at Area Sources
Action Needed: Revise rule to exempt aggregates operations

EPA's rule for reciprocating internal combustion engines (RICE) sets strict emission limits and requires performance tests and onerous recordkeeping (40 CFR 63 Subpart ZZZZ). EPA's

success in air quality improvement has typically come from regulating very large or mobile sources; regulating very small sources is of limited value in comparison to the high cost to comply. The impact of emissions from smaller engines are limited to the immediate vicinity of the emission source; therefore, this rule is not needed to protect public health beyond the property lines of a facility. Previously unregulated small engines at tens of thousands of facilities, including aggregate operations, requires costly testing and upgrades, with very little positive net impact on overall air quality. The excessive recordkeeping and testing requirements are an unnecessary burden.

Startup, Shutdown and Malfunction Provisions
Action Needed: Reconsider allowing these exemptions from air regulations

Over the years, the federal courts have held that Startup, Shutdown and Malfunction (SSM) provisions in state implementation plans (SIPs) are necessary to ensure that emission limitations based on attainment of the National Ambient Air Quality Standards (NAAQS) are feasible. The same is true with respect to emission limits based on new source performance standards. EPA's revisions in 2015 (80FR33840) deviated from EPA's longstanding SSM policy by declaring that SIP provisions providing an affirmative enforcement defense in startup and shutdown situations are no longer acceptable. The stated reason is that because those are "planned" events, the source operator should be able to keep emissions within the limits. That is not the case in our industry, and the approach conflicts with court decisions; therefore, EPA re-instate this provision.

Additional controls to prevent excess emissions during SSM events for NSSGA member operations are infeasible and in most cases also unnecessary to assure attainment of the NAAQS. Beyond that, the overwhelming weight of the relevant judicial precedent is opposed to EPA's proposed approach. This is confirmed by over 30 years of prior EPA policy recognizing the necessity of the defense. EPA should grant an exemption or affirmative defense for excess emissions from SSM situations.

Thank you for your consideration and your efforts to reduce excessive regulation. Again, we look forward to working with you on these important matters. We can be reached at (703) 526-1060 / mjohnson@nssga.org.

Sincerely,

Michael W. Johnson
President & CEO