STATEMENT FOR THE RECORD

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SUBMITTED TO THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON SUPERFUND, WASTE MANAGEMENT,
AND REGULATORY OVERSIGHT
UNITED STATES SENATE

“OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY’S
IMPLEMENTATION OF
SOUND AND TRANSPARENT SCIENCE IN REGULATION.”

OCTOBER 3, 2018
Chairman Barrasso, Ranking Member Carper, and other members of the Environment & Public Works Committee:

The National Stone, Sand and Gravel Association (NSSGA) appreciates the opportunity to submit a statement for the record of this Committee hearing and to address the importance of transparency in regulatory science.

**Aggregates and the Economy**

NSSGA (www.nssga.org) is the leading voice and advocate for the construction aggregates industry. NSSGA advances public policies that protect and expand the safe, environmentally responsible use of aggregates that build America’s infrastructure and economy. NSSGA members—stone, sand & gravel producers and the equipment manufacturers and service providers who support them—supply the essential raw materials found in every home, building, road, bridge and public works project. The industry employs more than 100,000 highly-skilled men and women at 5,000 separate worksites, in all 50 states. Our members are committed to maintaining a sustainable environment for all, and to providing a safe and healthful work environment for their employees, whose daily efforts in today’s economy provide vital support to their families and the communities in which they live.

**The Need for Transparency in Regulatory Science**

The aggregates industry is not opposed to sensible, evidence-based regulations. Our members are directly impacted by the Agency’s regulations under a host of federal statutes. We believe that the foundations of the regulatory process will be immensely strengthened, and its benefits greatly increased, when the underlying models, assumptions, methods, and data that support regulatory research findings are made publicly available in a manner that is sufficient to permit independent validation.

We salute the leadership shown by the Environmental Protection Agency (EPA) in clarifying and proposing to codify the bedrock principles for scientific inquiry that led to a host of valid discoveries and beneficial action, but which have been deteriorating in the U.S. over time. The Agency should be congratulated for a sound and useful model that all federal and state regulatory bodies and research entities should emulate.

First and foremost, the Agency should continue to endeavor to ensure that the research methods and findings it relies on will pass rigorous scientific and legal review.
This concept has been recognized for decades in the courts and in many other contexts. The limitations of such reviews are now well documented, but they still provide a useful first-step toward valid science.

Tremendous environmental progress in the U.S. has been made in the last five decades. The Agency should be credited for its role in changing not only the state of the environment but also the way Americans think about the air, water, and land we all share.

Much environmental progress to date, however, has represented the “low-hanging fruit.” We are now in a time when many regulations depend on complex, assumption-laden mathematical models or constructs and ambiguous data sets—all of which are open to various interpretations. At the same time, no attempt is made to replicate the majority of peer-reviewed scientific papers and, indeed, many or most cannot be replicated when such attempts are made. Research findings from numerous scientific disciplines are affected.

Society’s need for a healthy environment must consider the needs of all those affected by its regulations. A transparent regulatory process—informed by accessible, reproducible scientific methods, data, and findings—provides the best opportunity for achieving both imperatives. That is particularly true considering the deference that courts provide to regulators’ choices of research methods and models. Petitioners today cannot rely on the courts to question an agency’s regulatory processes or conclusions, no matter how opaque, irreproducible, speculative, or erroneous their scientific foundation.

EPA’s proposal recognizes and catalogs ample convincing evidence that the Agency’s present rulemaking process is inadequate and should be modernized. The proposal lays out sensible and thoughtful steps that will vastly improve the scientific basis for technical regulations. Importantly, many of the ideas embodied in the proposal originated primarily outside the Agency before the current administration took office.

The proposal’s objectives are consistent with EPA’s authority under the numerous environmental statutes that it implements, which emphasize the need for regulatory decisions to be guided by sound science and informed public participation while also recognizing the need to protect important privacy interests. For example, the Toxic Substances Control Act (“TSCA”) requires EPA to make regulatory decisions based on the “best available science,” including the “degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented.” At the same time, TSCA recognizes the importance of certain privacy interests, such as protecting confidential business information and private personal
information. Clearly, EPA must ensure that any final action it takes on this proposal continues to respect the balance between sound, transparent science and legitimate privacy interests.

Mr. Chairman, NSSGA thanks you for holding this very important hearing. NSSGA looks forward to continuing to work with the committee in doing what is right for America. If we ignore or sideline this opportunity to strengthen the science that strengthens the Nation’s regulations, we put the future of our society at unnecessary and avoidable risk.