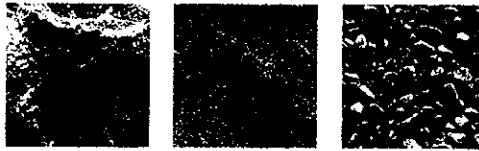


NATIONAL STONE, SAND & GRAVEL ASSOCIATION



*Natural building blocks for quality of life*

December 1, 2006

NEPA Modernization (CE)  
Council on Environmental Quality  
722 Jackson Place, NW  
Washington, DC 20503

Attn: Associate Director for NEPA

Dear Associate Director:

The National Stone, Sand and Gravel Association (NSSGA) submits the following comments on the Council on Environmental Quality's (CEQ) October 18, 2006, proposed guidance to federal agencies for establishing and using categorical exclusions in meeting their responsibilities under the National Environmental Policy Act (NEPA).

NSSGA, based near the nation's capital, is the world's largest mining association by product volume. Its member companies represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the U.S. and approximately 117,000 working men and women in the aggregates industry. During 2005 alone, a total of about 3.2 billion metric tons of crushed stone, sand and gravel, valued at \$17.4 billion, were produced and sold in the United States. Aggregates are the largest component of asphalt and concrete. Without these important natural products, the nation's infrastructure could not be built or maintained, and commerce and quality of life would be severely reduced.

NSSGA supports the opportunity for increased public comment and involvement in this process and the need for greater flexibility to be given to states to determine additional categorical exclusions.

Sand and gravel is often located in or near navigable waterways, floodplains, floodways, or near other isolated, non-navigable, intra-state wetlands or waters. Therefore, aggregate extraction is often considered a water-dependent activity. As such, NSSGA members often require Clean Water Act Section 404 permits for their activities in these areas. Likewise, federally funded highway or transportation projects that require stone, sand or gravel, may have rights-of-way that cross or otherwise impact intermittent or ephemeral streams, dry ditches or other isolated, intra-state, non-navigable waters or wetlands.

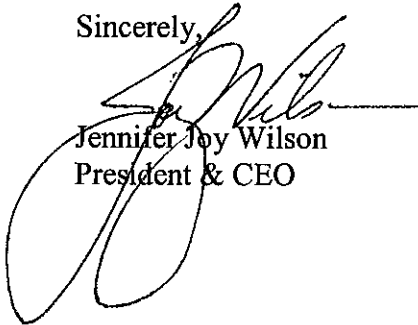
In light of the U.S. Supreme Court's 2001 SWANCC and 2006 Rapanos decisions, the Corps of Engineers and EPA may determine that certain isolated "wet" areas lack sufficient hydrological or ecological nexus to navigable waters and also otherwise have no other resource value. Examples include ephemeral streams, dry washes, roadside drainage ditches, puddles, vernal pools, arroyos,

storm drains, culverts, curb and gutters, isolated, non-navigable, intra-state waters or wetlands, and other means of water conveyance where these areas lack other resource value such as habitat for threatened and endangered species or do not provide other benefits such as flood attenuation and ground water recharge. In the event that such criteria are met, federally authorized transportation construction and improvements should be categorically exempt from NEPA compliance.

The Guidance, in general, promotes creation of categorical exclusions and attempts to streamline the NEPA process. NSSGA supports the efforts to streamline the NEPA process, which, too often, has been used to delay much needed, and cost-effective federal transportation projects. Under "Elements of a Categorical Exclusion," however, the Guidance states, "When developing a categorical exclusion, the Federal agency must make certain that the proposed category clearly describes **all** (*emphasis added*) the actions that should be included." NSSGA is concerned that this requirement may result in the omission of the exclusion, although they are very similar to listed actions. To remedy this problem, the Guidance could still require agencies to list all the actions included under an exclusion, but could also permit agencies to create a catchall provision for certain exclusions to capture actions that did not make the list, but that were similar to listed actions. The catchall provision would include criteria for analyzing whether an action was sufficiently similar to warrant inclusion under the exclusion.

NSSGA appreciates the opportunity to comment on this important issue. Please contact me at 703/526-1065 if you have any questions about these comments or need additional information about NSSGA and our interest in this important matter.

Sincerely,



Jennifer Joy Wilson  
President & CEO