

Oral Statement of Nick Goldstein
Before the Environmental Protection Agency
Public Meeting on Improving EPA Regulations
Arlington, VA
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Good morning, I am Nick Goldstein, Vice President of Environmental & Regulatory Affairs for the American Road and Transportation Builders Association (ARTBA).

ARTBA represents more than 5,000 members nationwide, involved in all sectors of the U.S. transportation design and construction industry. ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country.

I would like to begin my statement by thanking the Environmental Protection Agency (EPA) for the opportunity to speak at today's public meeting on improving EPA regulations. We also commend President Obama for initiating this review process when he signed a January 18 Executive Order noting that all regulatory efforts must "protect public welfare, safety and our environment while promoting economic growth, innovation competitiveness and job creation."

Specifically, the President's Executive Order notes agencies must tailor regulations to "impose the least burden on society." With this in mind, EPA should be cognizant of the impact its regulations have on other federal initiatives, such as effective transportation improvements. Regulations do not operate in a vacuum. A regulation promulgated and enforced by one agency, such as the EPA in one policy arena, often affects the ability to comply with other regulations issued by other agencies in completely different policy arenas.

For example, while EPA operates primarily in the environmental realm, its regulations can impact ARTBA members' ability to construct transportation improvements which are necessary from a public health and safety perspective. These effects should be considered by EPA as nearly 34,000 people die on U.S. highways each year and many federally-funded highway improvements are designed specifically to address this issue, but under many situations these interconnections are not recognized.

A prime example of this situation is in the regulations associated with the Clean Air Act and specifically:

- **Transportation Conformity** - The problem with the existing conformity process is caused by the fact that some have tried to turn these determinations into an exact science, when they are not. Rather, conformity findings are based on assumptions and “modeling of future events,” not often reflecting reality. To ensure this process meets its stated goals, ARTBA recommends:
 - 1) The air quality modeling process used in determining conformity levels needs to be reformed to utilize the most recent air quality data available, rather than prediction-based models. This would ensure conformity determinations are based on assumptions and “modeling of future events,” not often reflecting reality.
 - 2) Emissions budgets must have a built in level of flexibility (preferably a 10 to 15 percent cushion) for counties. This will prevent the conformity process from degrading into a “race for the courthouse door” every time a local or regional government experiences a momentary up-tick in emissions levels.
 - 3) “Hot-spot,” or project-level, conformity should be repealed. This practice provides a false picture of air quality levels by focusing on temporary emissions caused by specific transportation construction projects. Finished projects, however, often lead to an overall decline in emissions levels for the county in question.

Secondly, with respect to:

- **Setting National Ambient Air Quality Standards (NAAQS)** – Local officials need some sense of predictability in order to develop long-range transportation plans to achieve emissions reduction. Counties are focusing on addressing existing NAAQS and any further changes to the standards will undermine these efforts. If counties are to effectively comply with current NAAQS, additional requirements will only serve to hamper these efforts by opening the door to possible litigation and sanctions potentially resulting in the loss of federal funding for transportation improvement projects. In the future, EPA should consider counties’ progress towards current NAAQS before setting new ones. Also, EPA should consider the cost of implementing new standards including the loss of opportunities, including transportation improvements.

Moving on to Clean Water Act regulations, ARTBA recommends the following actions be taken to achieve the spirit of the President’s Executive Order:

- **Clean Water Act Jurisdiction** – There has been a good deal of discussion recently about clarifying the jurisdiction of the Clean Water Act with substantive perspectives on all sides. Any attempts to do so undertaken by the EPA should be done through a formal rulemaking and not via agency guidance. Issuing guidance bypasses public participation requirements offered through the rulemaking process and would deny the regulated community an opportunity to participate in the discussion of where jurisdiction under the

CWA begins and ends. Also, EPA should recognize the difference between clarifying jurisdiction and expanding it. The agency's focus should be on the former without accomplishing the latter.

- **Clean Water Act Permitting** – Reforming the wetlands permitting program is an opportunity to reduce needless project delays. One method which could help here is the establishment of firm deadlines for permitting decisions. Another improvement would be a wetlands classification system, with the most sensitive wetlands receiving greater regulatory protections than those of lower ecological value. Second, EPA should refrain from retroactively vetoing Clean Water Act permits unless a law has been broken. Retroactively vetoing permits upon which the regulated community depends undermines the entire permitting process by placing permit holders in a “regulatory limbo” not knowing whether a permit valid today will be valid tomorrow.
- **Stormwater Regulations** – Future stormwater measures affecting transportation projects should allow for the level of flexibility needed to make sure stormwater issues can be addressed in a manner suited to the individual nature of the project in question. Further, the issues of cost and liability need to be taken into account to ensure additional measures do not result in additional years of delay and unnecessary costs to affected projects.

In the spirit of the government-wide nature of President Obama's regulatory review, one of my colleagues is at a similar forum being hosted by the Department of Transportation right now. One of the topics he is addressing is the current review and approval process for transportation projects. This process involves the National Environmental Policy Act (NEPA) and multiple agencies, including the DOT and EPA. With projects taking up to two decades to complete in some cases, EPA must do everything it can to reduce delay in the project delivery process, including working with the DOT and other resource agencies to ensure timely completion of environmental reviews.

Finally, the EPA is considering how to regulate coal ash and non-harmful forms of asbestos. Both of these materials pose no threat to human health and are commonly used in materials, such as concrete, which is a key component of roads, transit systems, airport runways and other transportation improvements. Ultimately, without these materials, the nation's transportation infrastructure will become more expensive and less durable. This will not only increase the environmental footprint of the transportation sector, it will also increase the overall cost of transportation projects to the public. EPA should treat both of these materials as non-hazardous.

ARTBA intends to expand in more detail on all of these issues with written statements. Again, ARTBA thanks the EPA for initiating this regulatory review and urges EPA to draw upon the President's Executive Order and ensure that regulations operate in the most effective, least burdensome manner to achieve their stated goals.