

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

----- X
In re: : Chapter 11
: :
HI-CRUSH PERMIAN SAND LLC, *et al.*,¹ : Case No. 20-33505 (DRJ)
: (Jointly Administered)
Reorganized Debtors, : (Formerly Jointly Administered under Lead
: Case: Hi-Crush Inc., Case No. 20-33495)²
----- X

WISCONSIN TORT CLAIMANTS’ RESPONSE TO
REORGANIZED DEBTORS’ FOURTEENTH OMNIBUS OBJECTION
TO CERTAIN CLAIMS (WISCONSIN TORT CLAIMS)

Months after renewed proceedings in the previously stayed state court litigation in Wisconsin as specifically agreed to by the Debtors under the Confirmation Order, the Debtors have now filed *Reorganized Debtors’ Fourteenth Omnibus Objection to Certain Claims (Wisconsin Tort Claims)*(the “POC Objection”) seeking anew to adjudicate the tort claims in lieu of the state court process. The following persons (collectively, the “Wisconsin Tort Claimants”) represented by Fitzpatrick, Skemp & Butler, LLC: (A) (i) Cory Berg, Julie Berg, and Danielle Holstad; (ii) Greg Bluem and Lorraine Bluem; (iii) Dianna Brown; (iv) Michael Johnson and Paula Knutson; (v) Patrick Mathson and Deborah Clare; (vi) Randy Rose and Cara Rose; (vii) James Syverson and

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Reorganized Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

² On December 11, 2020, the Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* [Case No. 20-33495, Docket No. 505], which closed each Reorganized Debtor’s case except for Hi-Crush Permian Sand LLC, Case No. 20-33505, and directed that all further filings be made in that case.



Kimberly Syverson (collectively, the “Berg Claimants”); (B) (i) Darrell Bork, Mary Jo Bork, Dakota Bork, and Colton Bork; (ii) Robert Guza, Lisa Guza, Emily Guza, and Kaitie Guza; (iii) Todd Lulig, Amy Kulig, and H.K. (a minor child by her natural parents and guardians Todd and Amy Kulig); (iv) Broney Manka; (v) Jared Manka; and (vi) John Manka and Mary Manka (collectively, the “Bork Claimants”); (C) Leland Drangstveit and Mary Drangstveit (the “Drangstveit Claimants”); (D) (i) Michael J. Sylla, Stacy L. Sylla, Chase Sylla, and M.S. (a minor child by her natural parents and guardians Michael and Stacy Sylla); (ii) William J. Sylla, Angela Sylla, W.S. and Z.S. (minor children by their natural parents and guardians William and Angela Sylla); and (iii) Ann Sylla (collectively, the “Sylla Claimants”) and (E) together with the following additional claimants with as yet unfiled claims: Kate Connell, Scott Dykstra, Glenn Willers, Beth Willers, and S.S. (a minor child by her natural parents and guardian Cara Rose) (collectively referred to herein as the “Connell Claimants”), hereby files this *Wisconsin Tort Claimants’ Objection to Reorganized Debtors’ Fourteenth Omnibus Objection to Certain Claims (Wisconsin Tort Claims)* (the “Response”). In support of the Response, the Wisconsin Tort Claimants respectfully represent as follows:

A. PRELIMINARY STATEMENT

1. The Wisconsin Tort Claimants have prima facie valid claims that the Debtors either (i) apparently want to expunge in this Court to protect their insurers or (ii) to disallow the claims through procedural tactics that are contrary to what the Plan contemplated to presumably give their insurers the opportunity to escape liability. The POC Objection should be denied, or if there is a factual dispute needing adjudication, the matter should be heard on the evidence, some of which is preliminarily referenced herein to demonstrate the claims’ legitimacy and the procedural

inadequacy in the perfunctory objections made, which simply appears to be a rehash of a similar effort made prebankruptcy in the state court case that was denied by the state court judge.

2. As reflected in filings made during the bankruptcy case, the Wisconsin Tort Claimants are rural landowners [some are farmers] that have properties adjacent and near two of the Debtors' industrial frac sand mines and associated processing facilities. For years they have suffered from the effects of these operations. While a few have exhibited some respiratory distress, most of their damages comprise property damages claims and sound in nuisance, trespass, and strict liability for ultra-hazardous activity for the degradation of their separate properties. To seek redress, the Wisconsin Tort Claimants presented their claims in separate state court lawsuits as applicable to the two separate Debtors involved. Curiously, in addition to making similar arguments now presented here to dismiss the claims that ultimately were denied,³ the Debtors also disclaimed knowledge of insurance coverage. These suits were pending on the Petition Date, and despite a distinct lack of required formal notice given of the bankruptcy, the Wisconsin Tort Claimants on learning of it pursued timely relief here as required, including seeking stay relief, filing required separate proofs of claim, and otherwise prepared to object to confirmation until language was agreed to preserve and enable the claims to proceed.

3. After proceeding in the state court as the Plan and Confirmation Order permitted which now also included newly identified nondebtor co-liable entities [the insurers and contractors, all discovered only in connection with discovery taken on the lift stay proceedings in this Court] and the Wisconsin Tort Claimants *expressly* limiting any relief against the Debtors to

³ In the state court case, Hi Crush made a run at summary dismissal just like it is doing now. While providing delay, the Wisconsin Tort Claimants defeated this prior effort by presenting credible evidence to show the claims were legitimate. *See, e.g.*, Affidavit of Tim Jacobson in Opposition for Lone Pine Order and attachments attached hereto as **Exhibit 1** and Second Affidavit of Tim Jacobson in Opposition for Lone Pine Order and attachments attached hereto as **Exhibit 2**.

(i) liquidation of their unsecured claims for purposes of plan treatment, to the extent the POCs remained in dispute and it remains opaque what the stock issuance they would ever be entitled to was actually worth as a value proposition, and (ii) damages for any continuing tort post Effective Date harms, the Debtors then incorrectly attempted to seek total *extinguishment* of the Wisconsin Tort Claimants claims in the state court because of the bankruptcy discharge. After forcing needless but required briefing by the Wisconsin Tort Claimants to demonstrate this was NOT proper relief, Hi Crush abandoned this baseless argument and replaced it now with the forum shopping POC Objection here in a renewed parallel, but flawed, effort to get some dispositive ruling that presumably would be welcomed by the Debtors' insurers, which of course should not occur.

4. This appears⁴ given the flip flopping by Hi Crush on where its liability will be liquidated for plan purposes to probably be nothing short of an effort by its recently disclosed insurers, who on being discovered, now want to use the Debtors' bankruptcy to eliminate their independent liability on the tort claims as now pending in the state court case. This effort should be rejected, and the Court should either (i) reaffirm the reserved rights the Plaintiffs have to pursue complete relief in the state court [as limited against Hi Crush for pre Effective Claims solely to allocation of some newly issued stock per the Plan], or (ii) if the Court here is so inclined, direct the trial of the Wisconsin Tort Claimants' claims on the property damages claims in a manner that fully binds all liable parties, or at least its insurers who are of course co-liaible.

⁴ The appearance seems well founded from the Wisconsin Tort Claimants' perspective, because while it appears their liquidated claims once determined would be relegated to some apparently small and diluted stock issuance under the Plan, the actual value of that issuance seems uncertain based on what the Debtors' have disclosed and on events and transactions for which the Wisconsin Tort Claimants lack information. If indeed small as to allocation or value, why would Hi Crush agree in the Confirmation Order to allow the state court case to proceed, then when efforts to deem away those claims failed, now return here to fight liquidation of the amounts when the result of that could be issue preclusive for its insurers? In any event, as seen below, the Wisconsin Tort Claimants welcome a liquidation of their claims before this or any court, and only want to slice through the procedural games being deployed to somehow permit the insurers the benefit of proceedings without a trial on the merits.

B. BACKGROUND

5. The Wisconsin Tort Claimants asserted prepetition personal injury and property damages claims in state court; because the Debtors imposed a bar date, the Wisconsin Tort Claimants timely filed individualized proofs of claim in the bankruptcy cases. In addition, there are property damage claims emanating from continuing conduct after the Effective Date which, while appearing less severe than what arose prepetition since operations at these two plants have been temporarily scaled back [but not entirely stopped], nonetheless comprise continuing torts for which damages may flow.

6. During the bankruptcy the Wisconsin Tort Claimants were able to confirm previously undisclosed insurance coverage that had been completely obscured in the state court case [where before bankruptcy Hi Crush claimed a “lack of knowledge”—really?]. This provided a framework by which the Confirmation Order’s language could permit the claims to proceed in the state court cases, with the Wisconsin Tort Claimants simply receiving their allotment of whatever newly issued stock might be allocated to unsecured creditors, or if need be, to escrow that stock if liquidation by deemed allowance of the claims in the liquidated amounts asserted in the proofs of claim not be acceptable.

7. Under the Plan, the Wisconsin Tort Claimants reserved their right to proceed in the state court case and this was agreed to by the Debtors. The stay and discharge injunction were modified accordingly. After the Effective Date, the Wisconsin Tort Claimants then timely sought under the applicable Wisconsin state procedural rules to amend their suits to add the insurers and other independent contractors on their direct liability. In this process it was made clear that as to the Debtors the relief sought was limited solely to whatever the Plan accorded their liquidated prepetition claims, comprising some diluted grant of restricted stock that even to this date has a

value that is completely undeterminable, and from all appearance, negligible. To date the Debtors have not been forthcoming on what the stock grant might comprise, or what the value of the stock might be, and prefer to keep this cloaked in their go forward operations.

8. The Debtors, instead of simply handing their defense off to the insurers [if not already done well before now], have now tried to use the bankruptcy to front arguments that (i) the bankruptcy discharge forced the total extinguishment of the Wisconsin Tort Claimants' claims entailing they should be dismissed on the merits, in a form of adjudication that could be misused by others to bar the claims from ever pursuing other co-liable parties, including all applicable insurance, and (ii) then after being refuted on these arguments in the state court, abandoning that tactic and now running to do what appears to be the insurers bidding to have this Court summarily disallow the claims on their merits, through some perfunctory generalized legal argument and a declaration by someone lacking any personal knowledge at all that somehow the claims are "not on the books" and thereby invalid.

9. To be sure, the Wisconsin Tort Claimants have valid claims as further demonstrated herein and any trial, whether here or in state court. After securing agreement by Debtors in the Confirmation Order to proceed, they sought to pursue liable parties in the state court where all claims can be adjudicated, including those against the insurers and contractors. They recognize and accept that as to the Debtors, their recovery will be limited to pursuit of insurance and whatever stock issuance the Plan provides.

10. If the Debtors remain determined to use the POC Objection in some misguided effort to limit liability by the insurers, then the Wisconsin Tort Claimants are prepared to present their case for an award of damages that this Court certainly can liquidate on account of their property damages claims to simply get past the procedural roadblocks being erected. It is

recognized this Court, as one of the busiest in the land, doubtless has many competing matters on its docket. But under the notion that justice delayed is justice denied, in a case where the Debtors have deployed all manner of delay tactics in the state court before the bankruptcy and now even after the bankruptcy when it was agreed to allow the state court case to proceed, the Wisconsin Tort Claimants are prepared to submit to this Court's jurisdiction on their prepetition property damages claims in the hopes of bringing these disputes to a conclusion. Certainly, as the Debtors point out and which underpins the POC Objection, this Court has jurisdiction to adjudicate claims against a Debtor. *See, e.g., Katchen v. Landy*, 382 U.S. 323, 329 (1966) (describing the bankruptcy court's authority under the Bankruptcy Act regarding the claims allowance process as including the "full power to inquire into the validity of any alleged debt or obligation of the bankruptcy upon which a demand or a claim against the estate is based"). While it is less clear why the Debtors are doing this POC Objection given the apparent negligible value of the stock issuance even if the Wisconsin Tort Claimants' claims remained liquidated in the \$82 million aggregate set forth on the POCs for each, if the Debtors want an adjudication and this Court is able to accommodate it in its very busy schedule, then the Wisconsin Tort Claimants do not seek to avoid it—they simply seek their day in Court to present their claims, and have confidence the Court will fairly address their dispossessed rights, property value and nuisance damages that they have endured for many years before bankruptcy.

C. SPECIFIC RESPONSES TO THE POC OBJECTION

11. The Wisconsin Tort Claimants deny the allegations in paragraph 1 of the Debtors' POC Objection.

12. The Wisconsin Tort Claimants admit the allegations in paragraph 2 of the POC Objection to the extent there is core jurisdiction over property damages claims arising prepetition,

but otherwise deny them to the extent jurisdiction is lacking or that there may be claims or parties for which jurisdiction and indispensability of participation is lacking.

13. The Wisconsin Tort Claimants neither admit nor deny the allegations in paragraph 3 of the POC Objection because these are legal argument and allegations, but to the extent necessary they deny these allegations to the extent applicable to negate the Wisconsin Tort Claimants' claims.

14. The Wisconsin Tort Claimants admit the allegations in paragraph 4 of the POC Objection but not as to the substance of the Declaration.

15. The Wisconsin Tort Claimants admit the allegations in paragraph 5 of the POC Objection.

16. The Wisconsin Tort Claimants admit the allegations in paragraph 6 of the POC Objection.

17. The Wisconsin Tort Claimants admit the allegations in paragraph 7 of the POC Objection but not as to the substance or characterization of, among other things, the Wisconsin Tort Claimants' claims included therein.

18. The Wisconsin Tort Claimants admit the allegations in paragraph 8 of the POC Objection.

19. The Wisconsin Tort Claimants admit the allegations in paragraph 9 of the POC Objection.

20. The Wisconsin Tort Claimants admit the allegations in paragraph 10 of the POC Objection.

21. The Wisconsin Tort Claimants admit that the Wisconsin Tort Claimants initiated litigation prior to the Debtors' filing of their bankruptcy cases that asserted claims for damages for

torts committed by or for which the Debtors are responsible and deny the remaining allegations in paragraph 11 of the POC Objection.

22. The Wisconsin Tort Claimants admit the allegations in paragraph 12 of the POC Objection.

23. The Wisconsin Tort Claimants deny the allegations in paragraph 13 of the POC Objection. They further reply to this conclusory statement of points regarding the adequacy of the claims and their merit under applicable state law in further detail below in Section D.

24. The Wisconsin Tort Claimants neither admit nor deny the allegations in paragraph 14 of the POC Objection because this is a request for disallowance of claims and not allegations, but to the extent necessary they deny any allegations to the extent applicable to negate the Wisconsin Tort Claimants' claims.

25. The Wisconsin Tort Claimants neither admit not deny the allegations in paragraph 15 of the POC Objection because these are legal argument and allegations, but to the extent necessary they deny these allegations to the extent applicable to negate the Wisconsin Tort Claimants' claims.

26. The Wisconsin Tort Claimants neither admit not deny the allegations in paragraph 16 of the POC Objection because these are legal argument and allegations, but to the extent necessary they deny these allegations to the extent applicable to negate the Wisconsin Tort Claimants' claims.

27. The Wisconsin Tort Claimants deny the allegations in paragraph 17 of the POC Objection.

28. The Wisconsin Tort Claimants deny the allegations in paragraph 18 of the POC Objection and assert that such purported reservation of rights fails as a matter of law because the

Debtors must timely bring forth all objections to claims and cannot somehow circumvent this Court's overruling of the POC Objection by purporting to preserve rights to object again in violation of the express provisions of the Plan and controlling law.

29. The Wisconsin Tort Claimants deny the allegations in paragraph 19 of the POC Objection.

D. WISCONSIN TORT CLAIMANTS' FURTHER RESPONSE TO REORGANIZED DEBTORS' FOURTEENTH OMNIBUS OBJECTION TO CERTAIN CLAIMS (WISCONSIN TORT CLAIMS)

30. As a threshold matter, the Wisconsin Tort Claimants assert the Debtors' POC Objection should be procedurally denied as defective since they previously agreed in the Plan to allow the state court action to proceed and then did so, only later deciding to try to switch venue from there to here by belatedly filing the POC Objection. While the agreed negotiated language in the Confirmation Order might have provided limited initial optionality to the Debtors to pursue liquidation here, their abandonment of that by participating in the state court should preclude that from being allowed now.⁵ If not at this point "deemed allowed POCs" in this Court for purposes of plan treatment, the Wisconsin Tort Claimants claims can proceed against all liable parties in state court.

31. More specifically to the POC Objection and the perfunctory effort to simply deem away these claims, in paragraph 13 of the POC Objection, the Debtors summarily posit that "the

⁵ The Confirmation Order language included:

- "Notwithstanding anything in the Plan or in this Confirmation Order to the contrary, the Wisconsin Tort Claimants' right to seek resolution of the Wisconsin Tort Claimants' Claims in state court is hereby preserved, and the automatic stay applicable to the Wisconsin Tort Claimants' Claims arising prior to the Petition Date shall be deemed modified and lifted upon the Effective Date." Confirmation Order, p. 53 of 143.
- "To the extent any of the Wisconsin Tort Claimants' Claims accrued prior to the Petition Date, such Claims shall constitute General Unsecured Claims under the Plan and any recovery on account of such Claims shall be in accordance with the treatment provided to holders of General Unsecured Claims in Class 5 under the

Wisconsin Tort Claims are without merit” for four reasons: (1) the Wisconsin Tort Claimants cannot establish negligence or negligence per se because the Reorganized Debtors operated their mines with reasonable care and in full compliance with all applicable safety statutes and regulations at all times; (2) the nuisance claims fail because, under Wisconsin law, liability for a nuisance requires an underlying tort, which the Wisconsin Tort Claimants cannot establish; (3) the Reorganized Debtors are not liable for any trespass claims because trespass claims require intent to bring about the intrusion or negligence, and the Wisconsin Tort Claimants cannot establish either. Further, claims of trespass as a result of particulate matter fail as a matter of law; and (4) Finally, the Wisconsin Tort Claimants cannot establish strict liability for the Reorganized Debtors engaging in an ultra-hazardous activity because the Reorganized Debtors' activities were made safe through the exercise of reasonable care in compliance with state and federal statutes as well as industry standards. This fails both legally and upon the prima facie facts alleged, and to whatever extent this comprises a weak attempt at a Rule 12(b)(6) claim it should be denied.

32. It is important to recognize that, pre-petition, Hi-Crush Whitehall, LLC and Hi-Crush Blair, LLC, already unsuccessfully litigated related defenses as part of prior motions to dismiss filed in the state court actions, all of which were denied.⁶ So in effect, Hi Crush in the POC Objection is seeking a determination from this Court where it failed before in the state court—a complete waste of this Court and the Wisconsin Tort Claimants time. The Reorganized Hi-Crush Whitehall, LLC and Hi-Crush Blair, LLC are now raising the same or similar issues from their

Plan; provided that, for the avoidance of doubt, nothing herein shall prevent the Wisconsin Tort Claimants from pursuing recovery for their Claims against the Debtors arising prior to the Petition Date from any applicable insurance or their Claims against third-parties whether or not covered by insurance.” Confirmation Order, p. 53 of 143.

⁶ Notice of Motion and Motion to Dismiss Plaintiffs' Negligence Per Se and Strict Liability Claims, Trempealeau Co. Wis. Case No. 19-CV-63, Dkt. 12; Case No. 19-CV-64, Dkt. 12; Case No. 19-CV-65, Dkt. 11; and Case No. 19-CV-66, Dkt. 10.

present Objection as part of an opposition to the Wisconsin Tort Claimants' motion for leave to amend in state court, as well.

1. THE WISCONSIN TORT CLAIMANTS HAVE VIABLE NEGLIGENCE AND NEGLIGENCE PER SE CLAIMS, BECAUSE THE DEBTORS' FAILED TO ACT WITH REASONABLE CARE AND REPEATEDLY VIOLATED LAWS AND REGULATIONS.

33. The Reorganized Debtors assert in their POC Objection (¶13) that “the Wisconsin Tort Claimants cannot establish negligence or negligence per se because the Reorganized Debtors operated their mines with reasonable care and in full compliance with all applicable safety statutes and regulations at all times.” No competent or admissible evidence to support this is provided, and since the state court prebankruptcy already addressed and rejected these arguments before bankruptcy presumably this would extend to this renewed effort too. To the contrary, the Wisconsin Tort Claimants alleged numerous instances in which the Hi-Crush defendants acted with less than reasonable care and numerous instances in which the Hi-Crush defendants repeatedly flouted laws that otherwise would have helped protect the Tort Claimants from harm. *See, e.g.*, the four Amended Complaints pending in the state court by which the Debtors apparently determined to run from state court and come to this Court for relief after failing on the extinguishment argument, attached hereto as **Exhibits 3 through 6**.

34. In their state court complaints, the Wisconsin Tort Claimants alleged that Hi-Crush has owed them a duty to act with reasonable care, so as not to jeopardize their rights, property values, health and welfare. (*See, e.g.*, Trempealeau Co. Case No. 19-CV-63, Sylla Complaint, Dkt. 1, ¶41.) The Wisconsin Tort Claimants further alleged that Hi-Crush breached its duty of care by creating and/or failing to mitigate the creation of the following: (1) offensive airborne pollution (both gaseous and solid, including crystalline silica dust); (2) water pollution (both surface and groundwater); (3) soil and water pollution by releasing 10-million gallons of mine sludge from a

holding pond, some of which ran over property owned or leased by one or more of the Plaintiffs; (4) damaging shockwaves and vibrations due to blasting and other operations; (5) noise and light pollution; (6) destruction of landscape and viewshed; and (7) severe reduction of property values. Hi-Crush also breached its duty of care to the Plaintiffs by failing to adequately supervise and train employees. Hi-Crush has failed to properly train and supervise employees and contractors performing ultra-hazardous activities while working at the facility; failed to exercise reasonable care to contain silica dust and other toxins once Hi-Crush knew it had polluted a large area in and about Plaintiffs' properties and knew the harmful silica dust and toxins which permeated air, groundwater, and/or soil in and about of the area of Plaintiffs' properties, created a substantial health risk to Plaintiffs and others; failed to warn the residents of the neighborhood, including the Plaintiffs, of health hazards associated with the crystalline silica dust and other toxins, and failed to take appropriate measures to prevent the spread of silica dust and other toxins; failed to notify authorities in a timely fashion of the full gravity and nature of fugitive dust emissions and ground and surface water contamination; failed to prevent or mitigate health hazards and damage to the value of the property in and about the neighborhood, including the real property owned by Plaintiffs; failed to timely and effectively remediate the spill of 10-million gallons of mine sludge; and failed to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards. (Id. ¶42.)

35. The Wisconsin Tort Claimants alleged that the Hi-Crush defendants are liable for damages by operating their frac sand facility in violation of "federal, state, and local rules, regulations, statutes and ordinances," that along with duty and injury, constitutes negligence *per se*. The violation of a statute does not automatically impose civil liability. *Antwaun A. v. Heritage Mut. Ins. Co.*, 228 Wis. 2d 44, 66, 596 N.W.2d 456 (1999). To show a statute supplants traditional

negligence “three questions must be answered affirmatively...the plaintiff must show (1) the harm inflicted was the type the statute was designed to prevent; (2) the person injured was within the class of persons sought to be protected; and (3) there is some expression of legislative intent that the statute become a basis for the imposition of civil liability.” *Raymaker v. American Family Mutual Ins. Co.*, 2006 WI App 117, ¶ 20, 293 Wis. 2d 392, 718 N.W.2d 154. To sufficiently plead negligence *per se* the complaint thus must generally allege facts showing the existence and violation of such a statute, and harms to the plaintiffs.

36. The Wisconsin Tort Claimants’ complaints set out specific and general well pleaded allegations showing they are entitled to relief under a theory of negligence *per se*. The complaints specifically allege, among other things:

- “According to Mine Safety and Health Administration reports, Hi-Crush had 7 citations or orders for violations in 2015, 7 in 2016, and 5 in 2017, for a total of 19 citations or orders for violations” (Compl. ¶13.)
- “In the [WDNR] Preliminary Determination on the [CAA] permit for the Hi-Crush facility, the DNR AERMOD analysis found that the facility was expected to add 8.6 ug/m³ PM_{2.5} pollution, resulting in a level of 98% of the CAA NAAQS of 35 ug/m³. Upon information and belief, the Hi-Crush Whitehall has exceeded said standard.” (Compl. ¶ 14.)
- “Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible silica fugitive dust emissions repeatedly have left/crossed the Hi-Crush property boundary and created air pollution on and around adjacent properties, including the properties of the plaintiffs, in violation of NR 415.03 and/or NR 415.04, in that Hi-Crush has caused...particulate matter to be emitted into the ambient air which substantially contributes to the exceeding of an air standard ... and caused ... silica-containing materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.” (Compl. ¶ 16.)

These well pleaded allegations cannot be summarily dismissed based on the perfunctory declaration attached to the POC Objection, which casually recites some clearly inadequate reference to the Debtors’ files as allegedly not containing any documents reflecting any basis for these claims. As seen by Exhibit 1 attached in the earlier failed effort made by Hi Crush in state

court to dismiss the claims, the Debtors' files clearly have in them the numerous notices of violations from the state DNR showing the claims have a basis in Hi Crush's actual violation of law! Other allegations support reasonable inferences that statutes imposing civil liability have been violated. Hi-Crush is specifically alleged to have operated in a way that resulted in heavy metal contamination of private, residential wells in excess of EPA standards for water pollution. (Sylla Compl. ¶17); that resulted in the contamination of the Trempealeau River (Id. ¶18); and that their continuous operations violate DNR guidance and administrative rules for controlling toxic silica dust. (Id. ¶15.) It is reasonably inferred that the Plaintiffs are within the class of people protected by operational regulations of non-metallic mine, as civilians unfortunate enough to live close to one. The complaint contains specific factual allegations regarding Hi-Crush's Mine Safety and Health Administration (MSHA) violations, violations of State regulations and federal legislation, as well as allegations regarding Plaintiffs' resulting health issues and property damage. At the time that is appropriate, the Wisconsin Tort Claimants will provide other evidence to support the claims. But to the extent helpful to the Court, they do point to the fulsome evidence and proof included in connection with the prior lift stay proceedings in this Court. *See, e.g., Wisconsin Tort Claimants' Motion for Relief from the Automatic Stay to Continue State Court Litigation* at Dkt. 293. When assumed to be true, these factual allegations and inferences are a clear showing that the Wisconsin Tort Claimants are entitled to relief for Hi-Crush's violations, and the complaint is therefore sufficient.

37. The Reorganized Debtors state in their Objection (¶13) that they "operated their mines" "in full compliance with all applicable safety statutes and regulations at all times." They purport to support this with a declaration. Nothing could be further from the truth, and it strains credulity to wonder what records search was made by the declarant of the Debtors' records since

surely he would have found numerous violations of state law in how the Debtors' operated their facilities.

38. For example, according to documents from the Wisconsin Department of Natural Resources disclosed in response to a FOIA request, Hi-Crush Whitehall, LLC received its original Air Pollution Control Permit in July of 2014. Less than a year later, the facility received a Letter of Noncompliance on May 11, 2015, which stated the following:

“Based on this information, the department has reason to believe that Hi-Crush Whitehall LLC is not operating in compliance with conditions A.5.c.(2), 1.8.5.c.(2), I.C.5.c.(2), I.E.2.a.(2), I.E.3.a.(2), I.F.2.a.(2), I.F.3.a.(2), I.G.2.a.(2), I.G.3 .a.(2), I.G.1.a.(1)(a), I.G.2.a.(1), I.G.3 .a.(1), I.G. 1 .a.(2), I.G.1.6.(1), I.G.3 .b.(1), I.G .1.6(2), I.G.2.6.(1), I.H.3.c.(1), I.ZZZ.4.a.(4) and I.ZZZ.4.a.(8) of air pollution control construction permit #13-POY-133. The department requests that you submit a written response within 30 days of receipt of this letter. Your response should include the reasons the violations occurred and actions you intend to implement to alleviate the violations.”

This was followed by a Notice of Violation on September 4, 2015, which stated the following:

“The Department of Natural Resources has reason to believe that Hi-Crush Whitehall LLC (Hi-Crush) is in violation of state air pollution control laws ch. 285, Wisconsin Statutes, ch. 406 and 440, Wisconsin Administrative Code, and conditions of Air Permit #13-POY-133 at property located at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin. These violations were documented through onsite inspection and failed stack test results.”

Following the conference to discuss these violations, the Wisconsin Department of Natural Resources (WDNR) issued a Notice of Violation and Enforcement Conference Follow-up letter on December 8, 2015, which stated the following regarding the violations detailed in the September Notice of Violation (emphasis theirs):

*“First, the Department would like to clarify that, based on the fact that this facility was permitted as a SM80 source (Permit 13-POY-133), the following violations are considered to be High Priority Violations (HPV). **Please keep in mind that the violations listed are associated specifically with actions or failure to act during the time that Permit 13-POY-133 was in effect.**”*

A follow-up letter goes on to detail the following four violations, which are deemed “high priority”:

Results of stack testing conducted on March 10 and 11, 2015, respectively showed the pounds of particulate matter (PM) emitted exceed the permit limit of 0.0061 pound per hour.

Results of stack testing conducted on March 11, 2015 showed the grains / dscf exceeded the permit limit of 0.014 grain per dry standard cubic foot.

*Operating outside of permit conditions - the filter control device shall be in line and shall be operated at all times when the processes are in operation.”
Failure to perform initial stack testing of cartridge collectors as required under the New Source Performance Standards (NSPS) and failure to perform testing within the specified timeframe of 180 days.*

39. Based on these various communications between the WDNR and the Hi-Crush Whitehall facility, it is clear that the facility was in violation of its permit.

40. Hi-Crush Blair, LLC has a similarly poor track record of complying with its Air Pollution Control Permit, which was issued on September 22, 2016. On January 12, 2018, Hi-Crush was sent a Letter of Noncompliance, which stated the following:

This letter is to inform you that the Department of Natural Resources (department) believes that Hi-Crush Blair LLC at W11262 South River Road, Blair, Wisconsin may not be in compliance with Wisconsin’s air pollution control rules and with the conditions set forth in air pollution control permit #662070970-F02, issued to Hi-Crush Blair LLC on September 22, 2016.

The department requests a written response by February 1, 2018. The response should include reasons the noncompliance occurred as well as actions intended to alleviate the noncompliance.

41. The DNR’s Letter of Noncompliance to Hi-Crush Blair goes on to assert that since April 2016, the DNR received 6 dust-related complaints from separate neighbors about fine sand covering outside property and surfaces inside the homes. On November 30, 2017 WDNR inspected Hi-Crush to show dust samples to staff who agreed to investigate and provide a plan of action. Hi-

Crush had not responded to the DNR in the previous 6 weeks, so the WDNR requested a response by February 1, 2018.

42. On or about February 20, 2018, the DNR sent Hi-Crush Blair a second Letter of Noncompliance for air permit violations. The letter asserts that the DNR received a complaint on February 13, 2018, about dust and sand blowing across South River Road. “Nelson of the department drove down approximately two hours after and observed sand being blown off the large stockpile east of the dry plant. Particulate matter was observed on a large area of snow across South River Road from the Hi-Crush Blair stockpile.” DNR asked the plant to amend its Fugitive Dust Control Plan by March 9, 2019. This suggests that Hi-Crush Blair’s air pollution control permit and Fugitive Dust Control Plan were inadequate to ensure compliance with the law or protection of air quality and neighboring property owners.

43. Hi-Crush Blair also had water pollution violations. On or about November 17, 2016, the Wisconsin DNR gave Hi-Crush Blair a Notice of Violation (Tier 2 Public Notification) regarding high arsenic levels in water (DNR Case Track No. 2017-WCEE-007). Public Notification Required due to Violation of Maximum Contaminant Level (MCL) - Tier 2 Public Notification. Hi-Crush Blair violated the Arsenic maximum contaminant level (MCL) based on samples collected on 8/10/2016 of 28.7 ug/l and 10/24/2016 of 39.5 ug/l. The running annual average of 17.05 ug/l exceeds the Arsenic MCL of 10 ug/l as specified in ch. NR 809, Wis. Adm. Code.

44. On or about September 26, 2017, the DNR sent a letter to Attorney Mark Skolos, General Counsel of Hi-Crush, with a signed copy of a Consent Order #2017-WCEE-007, which required Hi-Crush Blair, LLC to come into compliance with the State of Wisconsin’s arsenic maximum contaminant level (MCL). Hi-Crush stipulated in writing to the issuance of said Consent

Order, signing the same on 9/5/2017. The Consent Order made the following Findings of Fact (among others):

7. Samples collected from HI-Crush, and analyzed for arsenic, exceeded the annual average MCL for arsenic (0.010 mg/L). The first compliance sample, collected on August 10, 2016, had an arsenic concentration of 0.0287 mg/L. Samples collected on October 24, 2016 and February 8, 2017 had arsenic concentrations of 0.0395 and 0.0358 mg/L, respectively, yielding a running annual average of 0.026 mg/L which exceeds the arsenic MCL.

10. On March 1, 2017, the department sent a Notice of Violation notifying Hi-Crush that the MCL for arsenic had been exceeded.

45. It is obvious that the Debtors' assertion that they "operated their mines" "in full compliance with all applicable safety statutes and regulations at all times" does not hold true. Given that the Debtors assert a defense to the negligence and negligence per se claims on the basis of being in compliance with laws and regulations, this defense evaporates.

46. The state court agreed that the Wisconsin Tort Claimants properly pled claims of negligence and negligence *per se* and denied Hi-Crush's motions to dismiss.⁷ Similarly, the POC Objection should be denied.

2. THE WISCONSIN TORT CLAIMANTS HAVE VIABLE NUISANCE CLAIMS, BECAUSE THE DEBTORS ENGAGED IN NEGLIGENCE, NEGLIGENCE PER SE, AND TRESPASS THAT UNDULY INTERFERE WITH THE TORT CLAIMANTS' PROPERTY RIGHTS.

47. The Reorganized Debtors assert in their POC Objection (¶13) that the nuisance claims fail because, under Wisconsin law, liability for a nuisance requires an underlying tort, which the Wisconsin Tort Claimants cannot establish. The Reorganized Debtors have asserted the identical argument in state court. *See, e.g.*, Hi-Crush Brief, Trempealeau Co. Case No. 19-CV-63, Dkt 56, p. 17. The Hi-Crush defendants, in their state court brief, go on to recite, "[l]iability for

⁷ Trempealeau Co. Wis. Case No. 19-CV-63, Dkt. 34; Case No. 19-CV-64, Dkt. 34; Case No. 19-CV-65, Dkt. 36; and Case No. 19-CV-66, Dkt. 36.

nuisance depends upon the existence of underlying tortious acts that cause the harm.” (*Id.*, pp. 17-18.)

48. The tortious conduct of Hi-Crush is set forth in the state court complaints and outlined in the sections above and below. The same analysis applies here as it does in sections D1 and D3 herein. For these reasons, the POC Objection should be denied.

3. THE WISCONSIN TORT CLAIMANTS HAVE VIABLE TRESPASS CLAIMS, BECAUSE THE DEBTORS ENGAGED IN NEGLIGENCE AND/OR HAD THE INTENT TO INVADE THE TORT CLAIMANTS’ PROPERTY INTERESTS.

49. The Reorganized Debtors argue in their POC Objection (¶13) that they are not liable for any trespass claims because trespass claims require intent to bring about the intrusion or negligence, and the Wisconsin Tort Claimants cannot establish either. The Reorganized Debtors further argue that claims of trespass as a result of particulate matter fail as a matter of law. The Debtors are wrong on both counts.

50. In their state court complaints, the Wisconsin Tort Claimants alleged, among other things, that “Hi-Crush intentionally and/or recklessly committed the wrongful act of trespass by causing hazardous crystalline silica dust and/or other hazardous substances or toxins to invade the real and personal property of the landowner and/or lessee Plaintiffs through the air, groundwater, surface water, and/or soil,” and that “Hi-Crush’s breach of its holding pond and the resulting 10-million-gallon spill caused mine sludge to trespass and run over and onto neighboring properties,” including lands owned or leased by some of the Plaintiffs. (See, e.g., Trempealeau Co. Case No. 19-CV-63, Sylla Complaint, Dkt. 1, ¶¶ 61-62.) These allegations provide an ample basis for pursuing a trespass claim under Wisconsin state law.

51. Regarding the Reorganized Debtors’ argument that claims of trespass as a result of particulate matter fail as a matter of law, they fail to cite to a single Wisconsin case in support of

this proposition and, instead, rely on cases without any precedential value and that deal with an unrelated factual issue: smoke and odors. *See, e.g., Johnson v. Paynesville Farmers Union Co-op. Oil Co.*, 817 N.W.2d 693 (Minn. 2012).

52. The Reorganized Debtors attempt to minimize the characterization of what is a massive onslaught of toxic substances leaving their properties and invading the properties of the Wisconsin Tort Claimants by relying on cases involving allegations of odors, smoke or gasses entering a party's property. The Reorganized Debtors seem to imply that the Tort Claimants' trespass claims are premised on intangible "odors" and "smoke" when nothing could be further from the truth. In reality, the crystalline silica dust and other particulate matter from the Hi-Crush frac sand facilities amounts to literally tons of offending and toxic material each and every year. According to the May 23, 2014 construction permit submitted by Hi-Crush Whitehall to the DNR, the estimated particulate matter pollution emissions from the facility is 44.56 tons/year of total PM10. This equals approximately 244 pounds per day. (Sylla proposed Amended Complaint, ¶34.) It is alleged that the Hi-Crush Blair mine and sand piles can emit nearly 500 pounds of PM10 into the air per day (181,920 pounds per year). (Berg proposed Amended Complaint, ¶41.)

53. Not only are the out-of-state cases cited by the Debtors distinguishable on the facts from the present case, they appear to be contrary to established precedent in Wisconsin. For example, in *Brenner v. New Richmond Regional Airport*, 2012 WI 98, ¶24, 816 N.W.2d 291 (2012), the landowner plaintiffs objected to diminution of their property value and 'inconvenience, nuisance, annoyance, discomfort and emotional distress from the lights, smoke, noise, disruption, vibration, smell, trespass onto private property....' They asserted claims for inverse condemnation, nuisance, and trespass. *Id.* at ¶14. The circuit court "dismissed the landowners' trespass and nuisance claims," but the court of appeals reversed, and the Wisconsin supreme court

affirmed. *Id.* at ¶¶ 31, 32, and 34. *Cf. Peace ex rel. Lerner v. Northwestern Nat'l Ins. Co.*, 228 Wis. 2d 106, 125, 596 N.W.2d 429 (1999) (Wisconsin supreme court concluded that lead paint dust, fumes, and chips are irritants and contaminants, and therefore pollutants).

54. For these reasons, the Debtors' POC Objection to the trespass claims should be denied.

4. THE WISCONSIN TORT CLAIMANTS HAVE VIABLE CLAIMS FOR STRICT LIABILITY FOR ULTRA-HAZAROUS ACTIVITIES, BECAUSE THE DEBTORS ENGAGED IN BLASTING AND STORAGE OF MASSIVE QUANTITIES OF TOXIC MATERIALS NEXT TO THE WISCONSIN TORT CLAIMANTS' HOMES.

55. The Reorganized Debtors argue in their POC Objection (¶13) that the Wisconsin Tort Claimants cannot establish strict liability for the Reorganized Debtors engaging in an ultra-hazardous activity because the Reorganized Debtors' activities were made safe through the exercise of reasonable care in compliance with state and federal statutes as well as industry standards.

56. In section 1, above, the Wisconsin Tort Claimants demonstrated the factual bases for asserting that the Reorganized Debtors failed to exercise reasonable care and repeatedly flaunted environmental laws that otherwise would have served to protect the Tort Claimants from some of these harms. The fact that Hi-Crush Whitehall, LLC spilled 10 million gallons of contaminated mine sludge that ran across and directly polluted some of the Tort Claimants' properties is a rather strong demonstration that the Reorganized Debtors' activities were *not* "made safe" and that the Tort Claimants are entitled to relief.

57. A Wisconsin defendant is subject to strict liability if it is found to be carrying out an abnormally dangerous or ultra-hazardous activity. *Fortier v. Flambeau Plastics Co.*, 164 Wis. 2d 639, 667, 476 N.W.2d 593 (Ct. App. 1991). Wisconsin has adopted the Restatement (Second)

of Torts formulation of the doctrine,⁸ where a court determines if the activity is abnormally dangerous or ultra-hazardous by looking to the following six factors:

- (a) Existence of a high degree of risk or some harm to the person, land or chattels, of others;
- (b) Likelihood that the harm that results will be great;
- (c) Inability to eliminate the risk by the exercise of reasonable care;
- (d) Extent to which the activity is not a matter of common usage;
- (e) Inappropriateness of the activity to the place where it is carried on; and
- (f) Extent to which its value to the community is outweighs by its dangerous attributes.

Notably, these are “factors” the court may consider when making that determination—as Hi-Crush correctly states in the sentence preceding this list in their brief—not “required elements” as they incorrectly label them in the sentence immediately after. *Fortier* refers to them as “guidelines” to be used in determining the legal status of the activity. Furthermore, “these factors are interrelated and should be considered as a whole, with weight being apportioned by the court in accordance with the facts in evidence.” *Grube v. Daun*, 213 Wis. 2d 533, 545, 570 N.W.2d 851 (1997). Thus, determining if an activity is ultra-hazardous such that it imposes strict liability is a judicial balancing test considering both types and weight of evidence, which at this stage requires Plaintiffs only to allege facts showing such a finding is possible.

58. The Tort Claimants’ complaints again contain sufficient well-pleaded allegations to show that the Hi-Crush defendants are engaged in ultra-hazardous activities by operating their facilities. The air the Tort Claimants breathe is regularly contaminated by toxic respirable silica that blows off the massive on-site sand piles. (*See* Sylla Complaint ¶¶16, 24.) Their drinking water has been contaminated with arsenic, other heavy metals, and sediment, and Hi-Crush caused a spill of 10 million gallons of mine sludge from a holding pond that ran across adjacent properties. (*Id.* ¶¶ 17, 18, 25.) Hi-Crush has frequently blasted as part of the mining operation, which not only

⁸ Explicitly adopted as codified at §§ 519-520 in *Bennett v. Larsen Co.*, 118 Wis. 2d 681, 348 N.W.2d 593 (1984).

throws clouds of silica dust into the air, but also vibrates through the ground to such an extent it damages the nearby residential and agricultural properties. (Id. ¶¶ 7, 12.) In short, the complaints allege that Hi-Crush's operations have released high doses of toxic contaminants into the air and water and caused excessive noise in an otherwise rural and quiet area, and physically damaged the residential properties in the process. The complaints show a high risk of severe harm, the probable, in some aspects actual, realization of that harm, that the harm results from the standard operation of the facility, conducted in a place where it will, by its nature, severely impair the properties, waterways, and aquifers around it. This is a clearly sufficient showing, for purposes of the complaint that the Hi-Crush defendants engage in an ultra-hazardous activity. Blasting which Hi-Crush has done has been well recognized as an ultra-hazardous activity leading to strict liability.

59. For these reasons, the Debtors' POC Objection to the strict liability for ultra-hazardous activities claim should be denied.

CONCLUSION

Wherefore, the Wisconsin Tort Claimants respectfully request that the Court: (i) sustain the POCs as filed, since there is no merit to the POC Objection and the claims should be deemed liquidated and allowed as filed, leaving them as to Debtors only entitled to the consideration provided under the Plan but otherwise free to pursue other liable parties, (ii) overrule the Reorganized Debtors' POC Objection, and (iii) grant the Wisconsin Tort Claimants such further and other relief as the Court deems just and proper.

Respectfully submitted,

Dated: May 6, 2021

HAYNES AND BOONE, LLP

By: /s/ Patrick L. Hughes

Patrick L. Hughes

Texas Bar No. 10227300

David Trausch

Texas Bar No. 24113513

1221 McKinney Street, Suite 4000

Houston, Texas 77010

Telephone: (713) 547-2000

Facsimile: (713) 547-2600

Email: patrick.hughes@haynesboone.com

Email: david.trausch@haynesboone.com

-and-

FITZPATRICK, SKEMP & BUTLER, LLC

Timothy S. Jacobson (admitted pro hac vice)

1123 Riders Club Road

Onalaska, WI 54650

Telephone: (608) 784-4370

Facsimile: (608) 784-4908

Email: tim@fitzpatrickskemp.com

ATTORNEYS FOR WISCONSIN TORT CLAIMANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by electronic transmission via the Court's ECF system to all parties authorized to receive electronic notice in this case on May 6, 2021.

/s/ Patrick L. Hughes _____

Patrick L. Hughes

EXHIBIT 1

(Page 2, emphasis added.)

3. The Plaintiffs have had no opportunity to take discovery from Hi-Crush, due to the discovery stay that was automatically imposed upon Hi-Crush filing its Motion to Dismiss. Because the Plaintiffs have not had the benefit of discovery, it is more challenging to respond to, and refute, the assertions being made by Hi-Crush in its motion.

4. However, Plaintiffs' counsel, after a five-month wait for a response from the Wisconsin Department of Natural Resources, recently has been able to secure documents from the Wisconsin DNR through an open records request about multiple violations and noncompliance by Hi-Crush Whitehall, LLC.

5. On or about May 11, 2015, the Wisconsin Department of Natural Resources issued to Hi-Crush Whitehall a Letter of Noncompliance for Permit 13-POY-133, which identified the following issues of noncompliance by Hi-Crush:

- A. DNR inspection on March 30, 2015 found plans and specs for the dryer fuel usage were not onsite.
- B.1. DNR inspection on March 30, 2015 found the height of Stacks S0A-E on the sand silos were 128 ft 8 in, which is less than the 131 ft required in the permit.
- B.2. DNR inspection on March 30, 2015 found that stack parameter specs were not onsite for 6 permit conditions.
- C. Compliance tests required in Permit 13-POY-133 for P05A and P05C-F has not been completed. Hi Crush had contacted EPA to suggest only the two representative stacks be tested. April 6, 2015 compliance test results on P05B and P05G showed violations of the emission limits.
- D. DNR inspection on March 30, 2015 found that 7 cartridge collectors were not being used to control dust from return conveyor. Collectors on P05A-G did not operate for 48 days from startup on September 1, 2014 to December 31, 2014.

- E. DNR inspection on March 30, 2015 found there were no onsite records of the type and formulation of explosives used for blasting as required by Permit 13-POY-133.
- F. DNR received a complaint on April 16, 2015 with pictures and videos showing excessive fugitive emissions. Hi-Crush verified there were visible emissions on all 7 transfer points on the overland return conveyor and the spray nozzle was clogged until the next morning. There were no records of this malfunction or staff response. On April 24, 2015 Hi-Crush reported to the WDNR there were again visible emissions due to a malfunctioning dust collector. There were no records of this malfunction or staff response. The WDNR cited Hi-Crush in violation of the general fugitive dust rule NR 415.04 and 20 conditions in Permit 13-POY-133.

A true and correct copy of the DNR's Letter of Noncompliance to Hi-Crush Whitehall, dated 5/11/2015, is attached hereto as Exhibit "A" and incorporated herein by reference.

6. On or about September 4, 2015, the DNR sent Hi-Crush Whitehall a Notice of Violation for air permit violations. The correspondence between DNR and Hi-Crush asserts the following issues:

- A. Failure of P05B and G to meet 0.0061 lbs/hr limit: March 10, 2015 stack tests on P05B and G stack showed violation of 0.0061 lbs/hr limit in Permit 13-POY-133. Hi-Crush requested changes to the baghouse permit limit and created an alternative compliance method using water sprays in Permit 15-KB-028. March 24, 2015 stack tests also showed a violation, so Hi-Crush eliminated the use of baghouses, used water sprays, thus making the operations treated as fugitive sources so that they no longer had an enforceable emissions limit.
- B. Failure of P05G to meet 0.014 gr/dscf: March 11, 2015 stack test on P05G showed violation of 0.014 gr/dscf emissions limit in Permit 13-POY-133. As described under Item 6.A. above, Hi-Crush received new Permit 15-POY-123, no longer used the baghouse, but instead used water sprays so that the emissions limit no longer applied.
- C. Failure to have a filter control device in line and operated. Hi Crush failed to use filter control device. As described under Item 6.A. above, Hi-Crush received new Permit 15-POY-123, no longer used the baghouse, but instead used water sprays so that the filter control device was no longer required.
- D. Failure to conduct require compliance tests within deadline: Failure to perform the stack test within the 180-day deadline. Hi Crush pursued an extension from the EPA and DNR and ultimately removed the baghouse so no test was required.

A true and correct copy of the DNR's Notice of Violation to Hi-Crush Whitehall, dated 9/4/2015, is attached hereto as Exhibit "B" and incorporated herein by reference.

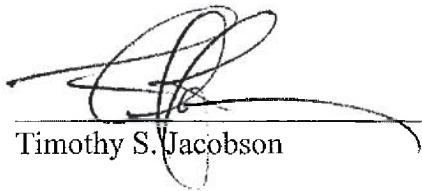
7. On or about May 17, 2017, the DNR sent Hi-Crush Whitehall a Notice of Noncompliance for violation of Nitrate Maximum Contaminant Level in water (Case Track No. 2017-WCEE-036). 5/3/2017 Nitrate MCL violation. Initial sample collected on 4/20/2017 was 11.0 mg/L nitrate and a check sample on 5/3/2017 was 10 mg/L nitrate. Average of the two samples is 10.5 mg/L and triggered violation. The maximum contaminant level (MCL) for nitrate (as nitrogen) is 10 mg/L. A true and correct copy of said Notice of Noncompliance is attached hereto as Exhibit "C" and incorporated herein by reference.

8. According to a combination of news reports and DNR records, on or about May 21, 2018, Hi-Crush breached a frac sand mine holding pond at its Whitehall facility, estimating that about 10 million gallons of liquid mine sludge were spilled. Mine sludge exited the Hi-Crush property and ran across various parcels, including land leased by William and Angela Sylla for farming, and it entered Poker Creek, which carried sludge into the Trempealeau River. Hi-Crush environmental compliance manager Jeff Johnson publicly stated the mine sludge could contain trace elements of polyacrylamide. Tests reported in the media showed lead concentrations of more than 10 times allowable levels in water sampled near where the spill entered Poker Creek, and aluminum was measured at more than 1,000 times the limit. There also were high levels of beryllium, cadmium, chromium, copper, magnesium, nickel and other contaminants according to those reports. A true and correct copy of a report documenting the 10-million-gallon spill from the DNR's Bureau for Remediation and Redevelopment Tracking System (BRRTS) is attached hereto as Exhibit "D" and incorporated herein by reference.

9. A search of the United States Environmental Protection Agency Enforcement and Compliance History Online website (<https://echo.epa.gov/>) reveals “violations” and “serious violations” by the Hi-Crush Whitehall Dry Plant in eight out of thirteen quarters (three-month periods) during the Three-Year Compliance History by Quarter report, which means that Hi-Crush was in a violation status, apparently relating to federal Safe Drinking Water Act violation(s) for nitrates, for a two-year period. A true and correct copy of said report is attached hereto as Exhibit “E” and incorporated herein by reference.

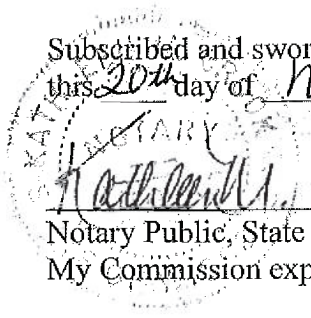
10. According to a search of the online database of the United States Department of Labor Mine Safety and Health Administration (MSHA) at <https://arlweb.msha.gov/drs/drshome.htm>, Hi-Crush Whitehall LLC, which has operated that mine since 2/10/2014, had seven (7) citations or orders for violations in 2015, seven (7) in 2016, five (5) in 2017, and two (2) YTD 2019, for a total of 21 citations or orders for violations in those years. In 2017, the Hi-Crush Whitehall mine had 8 operator injuries with an incident rate of 10.96, compared to a national rate of 1.38, which is about 8 times the national rate. Additional injuries occurred in 2014, 2015, 2018, and 2019.

11. The information obtained from the Wisconsin DNR, U.S. EPA, and MSHA about Notices of Violation, Letters of Noncompliance, citations, accidents, and a catastrophic spill of contaminated mine sludge with regard to Hi-Crush Whitehall, LLC seems to contradict the assertion by Hi-Crush in its brief that “Hi-Crush is ... in good standing with federal and state permitting authorities.”



Timothy S. Jacobson

Subscribed and sworn to before me
this 20th day of Nov., 2019.



Kathleen M. Cook
Notary Public, State of Wisconsin
My Commission expires: 2/15/2022

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
3550 Mormon Coulee Rd.
La Crosse WI 54601

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



May 11, 2015

Jay Alston
3 Riverway
Ste 1550
Houston TX 770561916

FID #: 662067560

Subject: Letter of Noncompliance

Dear Mr. Alston:

This letter is to inform you that the Department of Natural Resources (Department) has obtained information which indicates that Hi Crush Whitehall, LLC at W20757 County Road Q, Whitehall, Wisconsin, may not be in compliance with the following Wisconsin Administrative Code and provisions of air pollution control permit #13-POY-133, issued to Hi-Crush Whitehall LLC, on July 8, 2014.

I. Section NR 439.04(1)(d), Wisconsin Adm. Code, and Conditions I.A.5.c.(2), I.B.5.c.(2) and I.C.5.c.(2) of permit 13-POY-133 state:

The permittee shall retain on site, plans and specifications that indicate the dryer's fuel usage design capabilities.

During the inspection performed on March 30, 2015, Smith was unable to observe operating conditions of equipment located in the Dry Plant building because access required respirator fitting. During the records review portion of the inspection Smith requested documentation of dryer's fuel usage design capabilities. According to Hi-Crush's permit these plans and specifications shall be kept on site. Hi-Crush was not able to produce said documents at the time the request was made. On April 7, 2015, Richard Reesman(Hi-Crush) submitted documentation that showed that the fuel usage capabilities for dryers P01A and P01B exceeded permit conditions. On April 23, 2015, Jeff Johnson(Hi-Crush) submitted photos that he stated were from the boiler plates of dryers P01A and P01B that verified that fuel usage design capabilities were built as permitted.

II. Sections 285.65(3), Stats., NR 406.10, Wis. Adm. Code., and:

a. Conditions I.E.2.a.(2) and I.E.3.a.(2) of permit 13-POY-133 state:

Stack Parameters: These requirements are included because the source was reviewed with these stack parameters and it was determined that no increments or ambient air quality standards will be violated when constructed as proposed.

(a) Stack height of each of S03A, S03B, S03C, S03D and S03E shall be at least 131 feet above ground level.

(b) The stack outlet diameter may not be greater than 1 foot.

b. Conditions I.F.2.a.(2) and I.F.3.a.(2) of permit 13-POY-133 state:

Stack Parameters: These requirements are included because the source was reviewed with these stack parameters and it was determined that no increments or ambient air quality standards will be violated when constructed as proposed.

(a) Stack height shall be at least 29 feet above ground level.

(b) The stack outlet diameter may not be greater than 1.3 feet.

c. **Conditions I.G.2.a.(2) and I.G.3.a.(2) of permit 13-POY-133 state:**

Stack Parameters: These requirements are included because the source was reviewed with these stack parameters and it was determined that no increments or ambient air quality standards will be violated when constructed as proposed.

(a)(i) Stack height for S05A, S05I and S05J shall be at least 25 feet above ground level.

(a)(ii) Stack height for S05B, S05C, S05D, S05E, S05F, S05G and S05H shall be at least 9 feet above ground level.

(b) The stack outlet diameter may not be greater than 1.0 foot.

During the inspection performed on March 30, 2015, upon request the Hi-Crush produced drawings for stacks S03A thru E with heights of 129'-8" for the sand storage silos (P03A-E) which is 1'-4" shorter than permit conditions I.E.2.a.(2)(a) and I.E.2.a.(3)(a) that require stack heights to be at least 131 feet above ground level. Hi-Crush was also unable to produce any drawings showing that stack diameters for S03A thru E was $\leq 1'$ as required by permit conditions I.E.2.a.(2)(b) and I.E.2.a.(3)(b). Additionally the source was unable to produce documentation to so that stack parameters for permit conditions I.F.2.a.(2), I.F.3.a.(2), I.G.2.a.(2) and I.G.3.a.(2) could be verified.

III.

a. **Sections 285.65(7), Wis. Stats., NR 404.08(2), Wis. Adm. Code and Conditions I.G.1.a.(1)(a), I.G.2.a.(1) and I.G.3.a.(1) of permit 13-POY-133 state:**

Emissions from each cartridge collector stack may not exceed 0.0061 pound per hour.

b. **Section 285.65(13), Wis. Stats., and Condition I.G.1.a.(2) of permit 13-POY-133 states:**

Emissions from each cartridge collector stack may not exceed 0.032 gram per dry standard cubic meter (0.014 grain per dry standard cubic foot)

c. **Section NR440.688(6)(b)1, Wis. Adm. Code, and Condition I.G.1.b.(1) of permit 13-POY-133 states:**

To demonstrate compliance with I.G.1.a.(2), the permittee shall conduct a compliance emission test within 90 days after the start of initial operation using USEPA Methods 5. The sampling volume for each test run shall be at least 1.70 dscm.

On October 30, 2015 Hi-Crush submitted request a for stack test extension of 90 days for six (6) of seven (7) cartridge collectors associated with processes P05A-G.

On November 10, 2014 the Department granted Hi-Crush's request to extend compliance emission testing 90 days (February 28, 2015) for processes P05A-G (specifically 6 of 7 cartridge collectors), which would be consistent with the NSPS initial emission compliance testing timeframe/deadline requirements of no later than 180 days from the start of initial operations (September 1, 2014).

On November 25, 2014 the Department received and granted Hi-Crush's request for a 90 day extension from initial compliance emission testing for the remaining process associated with P05; thereby extending compliance testing for the remaining processes until February 28, 2015 (which is the 180-day deadline, matching the NSPS initial test time frame allowance).

On January 20, 2015, the Department received a stack test plan from Badger Laboratory outlining Hi-Crush's intent to only test 2 of the 7 controlled conveyor drop points, stating that "...since all 7 of them are identical in technology and filters utilized; having to test all of them seems over burdensome on the facility. Upon completion of the test and results are obtained, Hi-Crush will communicate further with the EPA on our options for having to test or waive the tests on the remaining controlled drop points (cartridge collectors)."

On January 29, 2015, the Department sent a response to the Stack Test Plan Submittal to Hi-Crush requesting that the source submit a response addressing the deficiencies in the submitted stack test plan,

specifically the exclusion of five(5) of the seven(7) cartridge collectors along the dried waste sand used reclamation return conveyor (associated with P05).

On February 4, 2015, the Departments received a response to its request (dated January 29, 2015) stating that based upon the initial compliance testing results for two(2) of the seven (7) cartridge collectors "*Hi-Crush intends to work with the EPA on utilizing identical emission unit testing to be used for waiving testing requirements of the untested five (5) conveyor collectors.*" Hi-Crush stated that the reason for this approach was twofold:

1. The construction of temporary stacks and equipment/structures requiring modification to allow for proper testing methods are additional operational and financial burdensome activities.
2. Testing of identical equipment is technically an unnecessary repetitive action, and when not waived, produces an unwarranted burden upon Hi-Crush financially.

Furthermore, stating that "*If EPA does not agree in waiving such testing based on this strategy and/or results, Hi-Crush is situated to immediately arrange proper testing in accordance with permit requirements.*"

On March 10 & 11, 2015, initial compliance testing was completed for processes P05B and P05G, respectively.

On April 17, 2015, the Department received the stack test results (dated April 6, 2015) which showed the following results:

Process	Permit Limit	Test Results	Permit Limit	Test Results
P05B	0.0061 #/hr	0.0064 #/hr	0.014 gr/dscf	0.0012 gr/dscf
P05G		0.230 #/hr		0.0400 gr/dscf

On March 30, 2015, the Department received a stack test plan (dated March 30, 2015) which included testing of the facilities Wet Plant process and retesting of dryers (P01B and P01C). To date Hi-Crush has only been able to show compliance with the gr/dscf limit in its permit for processes P05B. Note the other testing required for processes P05A and P05C-F has not been performed as required by its current permit 13-POY-133.

IV.

- a. **Sections NR 406.10, NR 407.09(4)(a)1., Wis. Adm. Code and Condition I.G.3.b.(1) of permit 13-POY-133 states:**
The filter control device shall be in line and shall be operated at all times when the processes are in operation.
- b. **Sections 285.65(3), Stats., NR 406.10, Wis. Adm. Code and Conditions I.G.1.b(2) I.G.2.b.(1) of permit 13-POY-133 state:**
As required in I.G.1.b.(2) through (6).

During the inspection performed on March 30, 2015, Hi-Crush was operating the overland return conveyor that returns waste sand to the Wet Plant area for reclamation without the use of the seven (7) cartridge collectors at each transfer point but instead was applying water and using a pug mill as measures for controlling emissions. Note according to the Monitoring/Deviation report submitted to the Department on February 13, 2015, the cartridge collectors (P05A thru G) did not run for a total of 48 days from September 1, 2014(startup date) thru December 31, 2014(end of annual reporting period).

V. **Sections 285.65(3), Wis. Stats., NR 406.10 and NR 439.04, Wis. Adm. Code and Condition I.H.3.c.(1) of permit 13-POY-133 states:**

The permittee shall keep and maintain records of the type or formulation (ingredients) of the explosives used for blasting at the mine, for each blast.

During the inspection performed on March 30, 2015, Hi-Crush was unable to produce records of the type of explosives used for blasting.

VI.

a. **Sections NR 415.04, Wis. Adm. Code states:**

No person may cause, allow or permit any materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne. Nor may a person allow a structure, a parking lot, or a road to be used, constructed, altered, repaired, sand blasted or demolished without taking such precautions.

b. **Section 285.65(3), Wis. Stats. states:**

Requirements necessary to assure compliance with s. 285.63.

On April 16, 2015 the Department received a complaint (via email containing videos and pictures) alleging excessive fugitive emissions were coming from the return waste sand overland conveyor. The Department followed up on said complaint, via email, on April 21, 2015 asking Hi-Crush if any events had occurred at the facility that could be attributed to the emissions seen in the video and/or pictures. Hi-Crush responded on April 22, 2015, confirming that fugitive emissions had been witnessed from all seven (7) transfer point on the overland return conveyor. Hi-Crush stated that the spray nozzle used to apply water to the return waste sand had been clogged, which was not discovered until the following morning (April 17, 2015) upon inspection of the spray nozzles. Brian Fox (Hi-Crush) stated that *"Hi-Crush personnel at the dry plant confirmed that water was still flowing to the dust suppression spray nozzles on the belt, while wet plant personnel began applying water near the receiving end of the belt to further reduce fugitive emissions."* Fox also stated that *corrective actions were not documented*, as the responses were coordinated verbally rather than in writing.

On April 24, 2015 the Department received an email from Hi-Crush reporting that again emissions were observed (from three(3) transfer points and the wet plant at 11:45 AM), which lasted about 20 minutes. Hi-Crush stated that the emissions were attributed to the valve on the dust collector being stuck in the open position, which caused the dust collector to purge all of its collected material at one time and overwhelmed the water application system (pug mill). Again the source stated that there were *no paper records documenting this event*, because the response to this event and the corrective actions taken were coordinated verbally.

Based on this information, the department has reason to believe that Hi-Crush Whitehall LLC is not operating in compliance with conditions A.5.c.(2), I.B.5.c.(2), I.C.5.c.(2), I.E.2.a.(2), I.E.3.a.(2), I.F.2.a.(2), I.F.3.a.(2), I.G.2.a.(2), I.G.3.a.(2), I.G.1.a.(1)(a), I.G.2.a.(1), I.G.3.a.(1), I.G.1.a.(2), I.G.1.b.(1), I.G.3.b.(1), I.G.1.b(2), I.G.2.b.(1), I.H.3.c.(1), I.ZZZ.4.a.(4) and I.ZZZ.4.a.(8) of air pollution control construction permit #13-POY-133.

The department requests that you submit a written response within 30 days of receipt of this letter. Your response should include the reasons the violations occurred and actions you intend to implement to alleviate the violations.

Enclosed with this letter is a copy of the inspection report for your facility. Please read through it making special note of the Recommendations/Conclusions section on pages 110-112.

If you have any questions on this matter, please contact me at (608) 785-9170.

Sincerely,
WEST CENTRAL REGION

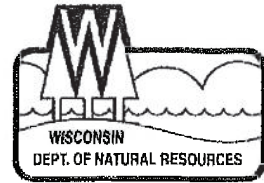
Myron Smith 
Air Management Engineer

cc: Jay Alston, Hi-Crush

WCR File, Wausau
Rick Wulk-Green Bay (e-copy)
Brad Johnson-Wausau (e-copy)
Bureau of Air Management, AM/7 – ENF (e-copy)
Jeffery Johnson, Hi-Crush (e-copy)
Richard Reesman, Hi-Crush (e-copy)
Brian Fox, Hi-Crush (e-copy)

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Wisconsin Rapids Service Center
473 Griffith Avenue
Wisconsin Rapids WI 54494

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



September 4, 2015

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Jay Alston, Chief Operations Officer
Hi-Crush Whitehall LLC
3 Riverway, Suite 1550
Houston, TX 77056-1916

Casetrack #2015-WCEE-054
Permit #13-POY-133
Trempealeau County

Subj: **NOTICE OF VIOLATION**

Dear Mr. Alston:

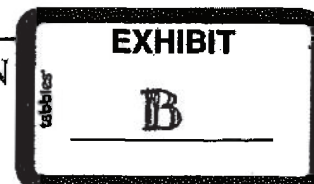
The Department of Natural Resources has reason to believe that Hi-Crush Whitehall LLC (Hi-Crush) is in violation of state air pollution control laws ch. 285, Wisconsin Statutes, ch. 406 and 440, Wisconsin Administrative Code, and conditions of Air Permit #13-POY-133 at property located at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin. These violations were documented through on-site inspection and failed stack test results. The Department alleges the following violations:

- s. 285.65(7), Wis. Stats. and permit 13-POY-133 condition # G.1.a.(1)(a) – Failure to meet a pounds (lbs) / hour limit (P05 B and G). Results of stack testing conducted on March 10 and 11, 2015, respectively showed the particulate matter pounds per hour limit exceeded the permit limit of 0.0061 pound per hour.
- s. 285.65(13), Wis. Stats and permit 13-POY-133 condition # G.1.a.(2) – Failure to meet a grains / dry standard cubic feet (dscf) limit (P05 G). Results of stack testing conducted on March 11, 2015 showed the grains / dscf exceeded the permit limit of 0.014 grain per dry standard cubic foot.
- s. NR 406.10, Wis. Adm. Code and permit 13-POY-133 condition # G.1.b.(2) - Operating outside of permit conditions – “the filter control device shall be in line and shall be operated at all times when the processes are in operation.”
- s. NR 440.08(1), Wis. Adm. Code and permit 13-POY-133 condition # G.1.b.(1) - Failure to perform initial stack testing of cartridge collectors within New Source Performance Standards (NSPS) timeframe of 180 days on dust collectors being utilized. (Note: The original permit condition required testing within 90 days which is not consistent with the NSPS testing requirement. Based on that, the Department extended the deadline to 180 days to be consistent with the NSPS requirements).

We have scheduled the following Enforcement Conference to discuss this matter in more detail:

Date: September 24, 2015
Time: 9:00 a.m.
Location: Wisconsin Department of Natural Resources
910 Hwy 54 East
Black River Falls, WI 54615

This office is not open at this time however you will be met at the front door to obtain access to the building.



Hi-Crush Whitehall LLC

September 4, 2015

2

We request you attend the Enforcement Conference as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that in an effort to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violation.

The Department's enforcement decision will be based upon available information if you do not attend the Enforcement Conference.

Please be advised that violations of chapter 285, Wis. Stats., may be referred to the Department of Justice to obtain court ordered compliance and penalties up to \$25,000 per day of violation.

If you have questions or need to reschedule the conference, please contact me at 715/421-7809 or through e-mail at deb.dix@wisconsin.gov.

Sincerely,



Deborah S. Dix
Environmental Enforcement Specialist

Enclosure – What is an enforcement conference information sheet

c: Myron Smith, LaCrosse
Susan Lindem, Fitchburg
Mike Szabo, LS/8
Martha Makholm, AM/7
Richard Reesman, Environmental Compliance Supervisor, Hi-Crush Whitehall LLC,
S11011 County Road M, August, WI 54722

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
1300 W. Clairmont Avenue
Eau Claire WI 54701

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 808-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



May 17, 2017

PWSID: 66207075
NN - Trempealeau County

HI-CRUSH WHITEHALL LLC
HI-CRUSH WHITEHALL DRY PLANT
W20757 CTY RD Q
WHITEHALL WI 54773

SUBJECT: Notice of Noncompliance – Violation of Nitrate Maximum Contaminant Level (MCL)

Dear Hi-Crush Whitehall Llc:

Wisconsin Department of Natural Resources (Department) records indicate that Hi-Crush Whitehall Dry Plant has violated the nitrate maximum contaminant level (MCL) based on samples collected on 4/20/2017 (result: 11mg/L) and 5/3/2017 (result: 10mg/L). The average of these two samples exceeds the 10 milligram per liter (mg/L) MCL for nitrate as specified in chapter NR 809, Wis. Adm. Code.

This limit was established to protect infants less than 6 months of age from developing health problems related to the consumption of water containing nitrate. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age. Symptoms include shortness of breath and blueness of the skin and can develop rapidly. Additionally, recent scientific studies have found some evidence of an association between exposure to high nitrate levels in drinking water during the first weeks of pregnancy and certain birth defects. As a result, it is recommended that any female who is or may become pregnant should not consume this water. (Consumption means drinking the water or eating foods prepared with the water, such as soups, juices, and coffee.)

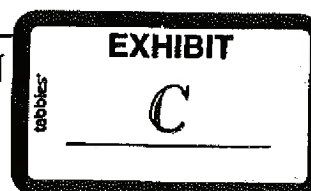
Follow-up Corrective Action:

Action must be initiated to correct the high nitrate violation. Therefore, within 60 days of the date of this letter, you must notify the Department of the actions you intend to take to meet the nitrate standard for your water supply. The plan should include the expected time frame for completion. I recommend that you work with a licensed well driller who can help you determine the best option for obtaining a low nitrate water supply. Possible alternatives for correction may include: removing the well from service, blending water with uncontaminated wells, reconstruction of the existing well, or constructing a new low nitrate water supply well. Please consult with me before undertaking any action.

Public Notification Requirements:

Notification must be made available to all persons served by your system by one or more of the following methods: posting, mail, or direct delivery. You can either use the attached notice or develop your own.

The attached notice meets all the public notification content requirements and is suitable for hand delivery or posting. If you develop your own notice it must include the information required in NR 809.954 Wis. Adm. Code as well as the signed and dated certification statement attached.



If 5% or more of the population served by your system consists of non-English speaking consumers, the public notice must contain information in the appropriate language(s).

Deliver the notice as soon as possible but in no case more than 24 hours after becoming aware of the violation. Send one copy of the notice you delivered to our office within 10 days of the date you issued the notice. Remember to sign and date the copy.

Using the Attached Notice:

If you use the attached notice you should not change any of the text in the notice but you can add additional information or change the formatting.

1. Fill in all the blanks with the appropriate information. Hand deliver and/or post to reach all of your customers for as long as the violation or situation exists. If posting is your method of delivery it should remain in place for as long as the violation or situation persists.
2. You must deliver the notice within 24 hours of becoming aware of the violation.
3. Send one copy of the notice you issued to our office within 10 days of the date you issued the notice. Remember to sign and date the copy.

Please keep in mind that failure to complete the required actions will result in addition violations and enforcement action. Contact Anna Mares at 715-839-3798 if you need additional assistance. I appreciate your cooperation in maintaining and providing a safe water supply.

Sincerely,

A handwritten signature in cursive script that reads "Sara Fry". The signature is written in black ink and is positioned above the typed name and title.

Sara Fry
Environmental Program Associate – WDNR

CC: Anna Mares

Encl.

Wisconsin Department of Natural Resources

Environmental Cleanup & Brownfields Redevelopment

BRRTS on the Web

Click the Location Name below to view the Location Details page for this Activity. Other Activities, if present, may be viewed from that page.

< [Basic Search](#)

04-62-582495 HI-CRUSH WHITEHALL LLC SPILL						
CLOSED SPILL						
Location Name (Click Location Name to View Location Details)				County	WDNR Region	
HI-CRUSH WHITEHALL LLC				TREMPEALEAU	WEST CNTRL	
Address				Municipality		
W20757 CTH Q				WHITEHALL		
PLSS Description		Latitude	Google Maps	RR Sites Map		
Additional Location Description		Longitude	Facility ID	Size (Acres)		
			662067560	UNKNOWN		
Jurisdiction	PECFA No.	EPA Cerclis ID	Start Date	End Date	Last Action	
DNR RR			2018-05-21	2018-11-01	2018-11-01	
Comments						
*** AUTO-POPULATED FROM SERTS ID: 20180525WC62-1 *** THIS SPILL CLEANUP IS BEING MANAGED UNDER ERP 02-62-581651						
Characteristics						
PECFA Tracked?	EPA NPL Site?	Eligible for PECFA Funds?	Above Ground Storage Tank?	Drycleaner?	Co-Contamination?	Continuing Obligations Apply?
No	No	No	No	No	No	No
Actions						
Place Cursor Over Action Code to View Description						
Date	Code	Name	Comment			
2018-05-21	1	Spill Incident Occurred				
2018-05-25	5	Spill Reported to DNR				
2018-11-01	11	Spill Closed				
Relationships to Other Activities						
Click Activity Below to View Details						
Relationship Type		Activity No and Name				
Spill to ERP		02-62-581651 HI-CRUSH WHITEHALL WET PLANT				
Impacts						
Type	Comment					
Off-Site Contamination	-					
Soil Contamination	-					
Surface Water Contamination	TREMPEALEAU RIVER					
Spill Information						
Incident Date	Reported Date	Investigator	Source			
05/21/2018	05/25/2018	P COLLINS	Quarry/Pit/Mine (Limestone or Other/Sand/Gravel Pits)			
Cause: See Comments						
Comment: Cause Desc: BULL DOZER SLID INTO A RETENTION POND WITH THE OPERATOR STILL IN THE SEAT OF THE DOZER. IN ORDER TO SAVE THE OPERATORS LIFE THEY HAD TO RELEASE THE WATER BY TAKING OUT THE EARTHEN BERM. APPROXIMATELY 10 MILLION GALLON OF PROCESS WATER WAS RELEASED AND TRAVELLED DOWN UNNAMED TRIBUTARY TO THE TREMPPEALEAU RIVER NOTE- RELEASED						

EXHIBIT

tabbles

D

QUANTITY 10 MILLION GALLONS. RP THINKS THE TREMPPEALEAU CO SHERIFFS OFFICE REPORTED THIS EARLIER IN THE WEEK. THIS IS RELATED TO DELETED SERTS 20180521WC62-1 THIS SITE HAS BEEN TRANSFERRED TO BRRTS AS AN ERP SITE 02-62-581651 *IMPACT DESCRIPTION: WATER FOUND ITS WAY TO A NEARBY POKER COULEE CREEK WHICH THEN RELEASES INTO THE TREMPPEALEAU RIVER.

Spiller Actions			
Action	Comment		
Cleanup Method - Excavation			
Debris Removed			
Flow Stopped			
Samples Collected			
Substances			
Substance	Type	Est Amt Released	Units
Other Substance Not Listed (SANDMINE PROCESSING WATER)	Other	10,000,000	Gal
Who			
Role	Name/Address		
Project Manager	PATRICK COLLINS 890 SPRUCE ST BALDWIN, WI 54002		

BRRTS data comes from various sources, both internal and external to DNR. There may be omissions and errors in the data and delays in updating new information. Please see the [disclaimers page](#) for more information. We welcome your [Feedback](#).

The Official Internet site for the Wisconsin Department of Natural Resources
 101 S. Webster Street . PO Box 7921 . Madison, Wisconsin 53707-7921 . 608.266.2621



Detailed Facility Report

Facility Summary

HI-CRUSH WHITEHALL DRY PLANT
, WI

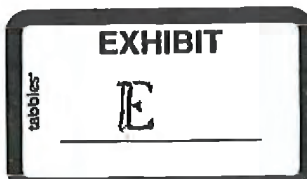
FRS (Facility Registry Service) ID: 110063348471
 EPA Region: 05
 Latitude:
 Longitude:
 Locational Data Source:
 Industry: No description found
 Indian Country: N

Enforcement and Compliance Summary

Statute	SDWA
Insp (5 Years)	--
Date of Last Inspection	--
Current Compliance Status	No Violation Identified
Qtrs with NC (of 12)	8
Qtrs with Significant Violation	2
Informal Enforcement Actions (5 years)	10
Formal Enforcement Actions (5 years)	1
Penalties from Formal Enforcement Actions (5 years)	\$0
EPA Cases (5 years)	--
Penalties from EPA Cases (5 years)	--

Regulatory Information

Clean Air Act (CAA): No Information
 Clean Water Act (CWA): No Information
 Resource Conservation and Recovery Act (RCRA): No Information
 Safe Drinking Water Act (SDWA): OWNER: Private, SOURCE: Ground water, TYPE: Non-Transient non-community system, Permit Active (WI6620707)



Other Regulatory Reports

Air Emissions Inventory (EIS): No Information
 Greenhouse Gas Emissions (eGGRT): No Information
 Toxic Releases (TRI): No Information
 Compliance and Emissions Data Reporting Interface (CEDRI): No Information

Known Data Problems

Facility/System Characteristics

Facility/System Characteristics

System	Statute	Identifier	Universe	Status	Areas	Permit Expiration Date	Indian Country	Latitude	Longitude
FRS		I10063348471					N		
SDWIS	SDWA	W16620707	OWNER: Private, SOURCE: Ground water, TYPE: Non-Transient non-community system	Active	Population Served: 35		N		

Facility Address

System	Statute	Identifier	Facility Name	Facility Address
FRS		I10063348471	HL-CRUSH WHITEHALL DRY PLANT	WI
SDWIS	SDWA	W16620707	HL-CRUSH WHITEHALL DRY PLANT	WI

Facility SIC (Standard Industrial Classification) Codes

System	Identifier	SIC Code	SIC Description
No data records returned			

Facility NAICS (North American Industry Classification System) Codes

System	Identifier	NAICS Code	NAICS Description
No data records returned			

Facility Tribe Information

Reservation Name	Tribe Name	EPA Tribal ID	Distance to Tribe (miles)
No data records returned			

Enforcement and Compliance

Compliance Monitoring History (5 years)

Statute	Source ID	System	Activity Type	Compliance Monitoring Type	Lead Agency	Date	Finding (if applicable)
SDWA	W16620707	SDWIS		<i>Capacity Development Assessment</i>	State	07/18/2016	
SDWA	W16620707	SDWIS		<i>Sanitary Survey, Complete</i>	State	11/06/2014	

Entries in italics are not counted in EPA compliance monitoring strategies or annual results.

SDWA (Safe Drinking Water Act) Sanitary Survey Results (5 Years)

Date	Type	Agency	Sanitary Survey Results										
			Data Verification	Distribution	Management Operation	Finished Water Storage	Operator Compliance	Other Evaluation	Pumps	Security	Source	Financial	Treatment
11/06/2014	Sanitary Survey, Complete	State	N	N	N	N	N		N		N		N

M = Minor Deficiencies N = No Deficiencies or Recommendations Z = Not Applicable

Compliance Summary Data

Statute	Source ID	Current SNC (Significant Noncompliance)/HPV (High Priority Violation)	Current As Of	Qtrs with NC (Noncompliance) (of 12)	Data Last Refreshed
SDWA	WI6620707	No	09/01/2019	8	09/01/2019

Three-Year Compliance History by Quarter

Statute	Program/Pollutant/Violation Type	QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6	QTR 7	QTR 8	QTR 9	QTR 10	QTR 11	QTR 12	QTR 13*
SDWA (Source ID: WI6620707)		No Violation	No Violation	Violation	Violation	Violation	Violation	Violation	Violation	Section Violation	Section Violation	No Violation	No Violation	No Violation
SDWA	Nitrates			01/01/2017	→	→	→	→	→	09/24/2018				

*Quarter 13 data is voluntarily entered and/or incomplete, and may not form a complete picture for that quarter. [Read more](#)

Informal Enforcement Actions (5 Years)

Statute	System	Source ID	Type of Action	Lead Agency	Date
SDWA	SDWIS	WI6620707	State Public Notification received	State	08/09/2018
SDWA	SDWIS	WI6620707	State Public Notification received	State	06/04/2018
SDWA	SDWIS	WI6620707	State Public Notification received	State	01/16/2018
SDWA	SDWIS	WI6620707	State Public Notification received	State	11/06/2017
SDWA	SDWIS	WI6620707	State Public Notification received	State	08/04/2017
SDWA	SDWIS	WI6620707	State Compliance Meeting conducted	State	07/11/2017
SDWA	SDWIS	WI6620707	State Formal Notice of Violation issued	State	06/26/2017
SDWA	SDWIS	WI6620707	State Public Notification received	State	05/17/2017
SDWA	SDWIS	WI6620707	State Public Notification requested	State	05/17/2017
SDWA	SDWIS	WI6620707	State Violation/Reminder Notice	State	05/17/2017

Formal Enforcement Actions (5 Years)

Statute	System	Law/Section	Source ID	Action Type	Case No.	Lead Agency	Case Name	Issued/Filed Date	Settlements/Actions	Settlement/Action Date	Federal Penalty/State/Local Penalty	SEP Cost	Comp Action Cost
SDWA	SDWIS		SFDW/WI6620707	State Administrative/Compliance Order without penalty issued		State			1	11/27/2017			

SDWA (Safe Drinking Water Act) Violations and Enforcement Actions (5 Years)

Source ID	Compliance Period	Violation ID	Federal Rule	Contaminant/Category	Violations					Status	Enforcement Actions			
					Description	Measured Value	State MCL (Maximum Contaminant Level)	Federal MCL (Maximum Contaminant Level)	Date		Category	Description	Agency	
WI6620707	01/01/2017 - 12/31/2017	1700001	Nitrates	Nitrate	MCL	Maximum Contaminant Level Violation	10.5 MG/L	10.5 MG/L	10 mg/L	Resolved	09/24/2018	Resolving	State Compliance achieved	State
											08/08/2018	Informal	State Public Notification received	State
											06/04/2018	Informal	State Public Notification received	State
											01/16/2018	Informal	State Public Notification received	State
											11/27/2017	Formal	State Administrative/Compliance Order without penalty issued	State
											11/06/2017	Informal	State Public Notification received	State
											08/04/2017	Informal	State Public Notification received	State
											07/11/2017	Informal	State Compliance Meeting conducted	State
											06/26/2017	Informal	State Formal Notice of Violation issued	State
											05/17/2017	Informal	State Public Notification received	State
											05/17/2017	Informal	State Public Notification requested	State
											05/17/2017	Informal	State Violation/Reminder Notice	State

Environmental Conditions

Water Quality

Permit ID	Combined Sewer System?	Number of CSO (Combined Sewer Overflow) Outfalls	12-Digit WBD (Watershed Boundary Dataset) HUC (RAD (Reach Address Database))	WBD (Watershed Boundary Dataset) Subwatershed Name (RAD (Reach Address Database))	State Water Body Name (ICIS (Integrated Compliance Information System))	Impaired Waters	Impaired Class	Causes of Impairment(s) by Group(s)	Watershed with ESA (Endangered Species Act)-listed Aquatic Species?
No data records returned									

Water Body Designated Uses

Reach Code	Water Body Name	Exceptional Use	Recreational Use	Aquatic Life Use	Shellfish Use	Beach Closure Within Last Year	Beach Closure Within Last Two Years
No data records returned							

Air Quality

Nonattainment Area?	Pollutant(s)	Applicable Nonattainment Standard(s)
No	Ozone	
No	Lead	
No	Particulate Matter	
No	Carbon Monoxide	
No	Nitrogen Dioxide	
No	Sulfur Dioxide	

Pollutants

Toxics Release Inventory History of Reported Chemicals Released in Pounds per Year at Site

TRI Facility ID	Year	Total Air Emissions	Surface Water Discharges	Off-Site Transfers to POTWs (Publicly Owned Treatment Works)	Underground Injections	Releases to Land	Total On-site Releases	Total Off-site Transfers
No data records returned								

Toxics Release Inventory Total Releases and Transfers in Pounds by Chemical and Year

Chemical Name
No data records returned

SDWA (Safe Drinking Water Act) Lead and Copper (Last 5 years)

Source ID	Contaminant	Sample Dates	90th Percentile Sample Concentrations	Action Level	Number of Open Health-Based Violations
No data records returned					

Demographic Profile

EJSCREEN EJ Indexes

Eleven primary environmental justice (EJ) indexes of EJSCREEN, EPA's screening tool for EJ concerns. EPA uses these indexes to identify geographic areas that may warrant further consideration or analysis for potential EJ concerns. Note that use of these indexes does not designate an area as an "EJ community" or "EJ facility." EJSCREEN provides screening level indicators, not a determination of the existence or absence of EJ concerns. For more information, see the [EJSCREEN home page](#).

No valid Spatial Coordinate is available for this facility

Demographic Profile of Surrounding Area (3 Miles)

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2010 US Census and American Community Survey data, and are accurate to the extent that the facility latitude and longitude listed below are correct. The latitude and longitude are obtained from the EPA Locational Reference Table (LRT) when available.

Please Wait. Loading... 

EXHIBIT 2

3. The Plaintiffs have had no opportunity to take discovery from Hi-Crush, due to the discovery stay that was automatically imposed upon Hi-Crush filing its Motion to Dismiss. Because the Plaintiffs have not had the benefit of discovery, it is more challenging to respond to, and refute, the assertions being made by Hi-Crush in its motion.

4. However, Plaintiffs' counsel, after a five-month wait for a response from the Wisconsin Department of Natural Resources, recently has been able to secure documents from the Wisconsin DNR through an open records request about multiple violations and noncompliance by Hi-Crush Blair, LLC.

5. The Hi-Crush Blair facility air pollution control permit was issued on September 22, 2016. As one example of the apparent failure of Hi-Crush Blair to comply with air pollution regulations and/or the conditions in Hi-Crush's air pollution control permit, on January 12, 2018, the DNR sent Hi-Crush Blair a Letter of Noncompliance, which stated the following:

This letter is to inform you that the Department of Natural Resources (department) believes that Hi-Crush Blair LLC at W11262 South River Road, Blair, Wisconsin may not be in compliance with Wisconsin's air pollution control rules and with the conditions set forth in air pollution control permit #662070970-F02, issued to Hi-Crush Blair LLC on September 22, 2016."
"The department requests a written response by February 1, 2018. The response should include reasons the noncompliance occurred as well as actions intended to alleviate the noncompliance.

6. The DNR's Letter of Noncompliance to Hi-Crush Blair goes on to assert that since April 2016, the DNR received 6 dust-related complaints from separate neighbors about fine sand covering outside property and surfaces inside the homes. On November 30, 2017 WDNR inspected Hi-Crush to show dust samples to staff who agreed to investigate and provide a plan of action. Hi-Crush had not responded to the DNR in the previous 6 weeks, so the WDNR requested a response by February 1st. A true and correct copy of the DNR's Letter of

Noncompliance to Hi-Crush Blair, dated 1/12/2018, is attached hereto as Exhibit "A" and incorporated herein by reference.

7. On or about February 20, 2018, the DNR sent Hi-Crush Blair a second Letter of Noncompliance for air permit violations. The letter asserts that the DNR received a complaint on February 13, 2018, about dust and sand blowing across South River Road. "Nelson of the department drove down approximately two hours after and observed sand being blown off the large stockpile east of the dry plant. Particulate matter was observed on a large area of snow across South River Road from the Hi-Crush Blair stockpile." DNR asked the plant to amend its Fugitive Dust Control Plan by March 9, 2019. This suggests that Hi-Crush Blair's air pollution control permit and Fugitive Dust Control Plan were inadequate to ensure compliance with the law or protection of air quality and neighboring property owners. A true and correct copy of the DNR's Letter of Noncompliance to Hi-Crush Blair, dated 2/20/2018, is attached hereto as Exhibit "B" and incorporated herein by reference.

8. On or about November 17, 2016, the DNR gave Hi-Crush Blair a Notice of Violation (Tier 2 Public Notification) regarding high arsenic levels in water (DNR Case Track No. 2017-WCEE-007). Public Notification Required due to Violation of Maximum Contaminant Level (MCL) - Tier 2 Public Notification. Hi Crush Blair has violated the Arsenic maximum contaminant level (MCL) based on samples collected on 8/10/2016 of 28.7 ug/l and 10/24/2016 of 39.5 ug/l. the running annual average of 17.05 ug/l exceeds the Arsenic MCL of 10 ug/l as specified in ch. NR 809, Wis. Adm. Code.

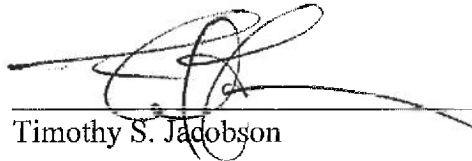
9. On or about September 26, 2017, the DNR sent a letter to Attorney Mark Skolos, General Counsel of Hi-Crush, with a signed copy of a Consent Order #2017-WCEE-007, which required Hi-Crush Blair, LLC to come into compliance with the State of Wisconsin's arsenic

maximum contaminant level (MCL). A true and correct copy of said letter and Consent Order is attached hereto as Exhibit "C" and incorporated herein by reference.

10. A search of the United States Environmental Protection Agency Enforcement and Compliance History Online website (<https://echo.epa.gov/>) reveals "violations" and "serious violations" by Hi-Crush Blair in nine out of thirteen quarters (three-month periods) during the Three-Year Compliance History by Quarter report, which means that Hi-Crush was in a violation status, apparently relating to federal Safe Drinking Water Act violation(s), for more than a two-year period. A true and correct copy of said report is attached hereto as Exhibit "D" and incorporated herein by reference.

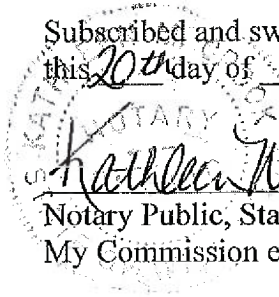
11. According to a search of the online database of the United States Department of Labor Mine Safety and Health Administration (MSHA) at <https://arlweb.msha.gov/drs/drshome.htm>, Hi-Crush Blair LLC, which has operated that mine since 6/4/2015, had four (4) citations or orders in 2015, five (5) in 2016, eight (8) in 2017, seven (7) in 2018, and five (5) YTD in 2019, for a total of 29 citations or orders by MSHA. In 2017, Hi-Crush Blair had 3 operator injuries with an incident rate of 3.83, compared to a national rate of 1.38. Thus, the accident rate at Blair was nearly three times the national average for that time period. An additional three operator injuries occurred between 2018 and YTD 2019.

12. The information obtained from the Wisconsin DNR, U.S. EPA, and MSHA about multiple Notices of Violation, Letters of Noncompliance, citations, and accidents with regard to Hi-Crush Blair, LLC seems to contradict the assertion by Hi-Crush in its brief that "Hi-Crush is ... in good standing with federal and state permitting authorities."



Timothy S. Jacobson

Subscribed and sworn to before me
this 20th day of Nov., 2019.


Kathleen M. Cook
Notary Public, State of Wisconsin
My Commission expires: 2/15/2022

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
1300 W. Clairemont Ave.
Eau Claire, WI 54701

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



FID: 662070970

January 12, 2018

Mr. Jeff Johnson
Hi-Crush Blair LLC
Director, Environmental Compliance
S11011 County Road M
Augusta, WI 54722-7608

Subject: Letter of Noncompliance

Dear Mr. Johnson,

This letter is to inform you that the Department of Natural Resources (department) believes that Hi-Crush Blair LLC at W11262 South River Road, Blair, Wisconsin may not be in compliance with Wisconsin's air pollution control rules and with the conditions set forth in air pollution control permit #662070970-F02, issued to Hi-Crush Blair LLC on September 22, 2016.

I. Sections NR 415.04(1)(b) and 415.075(2)(a)(1), Wisconsin Administrative Code, and conditions I.Z.b.(1) and II.C.2.b.(2) of permit #667070970-F02 state:

Application of asphalt, water or suitable chemicals on unpaved roads or other areas used by haul trucks which can create airborne dust, provided the application does not create a hydrocarbon, odor or water pollution problem.

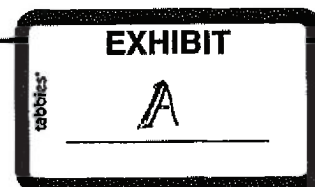
II. Section NR 415.075(2)(a)(6), Wisconsin Administrative Code, and condition I.Z.a.(1) of permit #667070970-F02 state:

Any precautions proposed by the owner or operator and accepted by the department in a permit or fugitive dust control plan.

Since April 2016, the department has received six dust-related complaints, all from separate neighbors surrounding Hi-Crush Blair LLC. All complaints reported fine sand covering property left outside as well as fine sand on surfaces inside the houses. In response to the complaint received on November 30, 2017, department Air Management Engineer Nelson visited the complainant's residence and collected a sample of the material from the windshield of the complainant's vehicle that had been reported.

After this, Nelson stopped by the Hi-Crush Blair office and spoke with both Tad Moats and Jake Budish, showing them both the collected sample. Mr. Budish indicated he would look into the matter and contact the department with a plan of action. As of the date of this letter, the department has not received communication from Hi-Crush Blair LLC regarding the complaints.

The department requests a written response by February 1, 2018. The response should include reasons the noncompliance occurred as well as actions intended to alleviate the noncompliance. In the response, please address the following items:

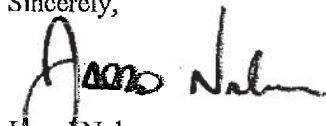


- The specific item(s) that likely caused fugitive dust and fine sand to leave Hi-Crush property
- All actions taken by Hi-Crush Blair LLC to address the alleged noncompliance
- Action(s) that Hi-Crush Blair LLC will take to prevent fugitive dust and fine sand from leaving Hi-Crush property

While the department appreciates all information by this date, please be aware that the facility may be in noncompliance until you fulfill all requirements of air control permit #662070970-F01, and that additional information may be needed depending upon Hi-Crush's response.

Should you have any questions or wish to discuss the matter, please contact me at 715-450-0708 or via email at jarrod.nelson@wisconsin.gov.

Sincerely,



Jarrod Nelson
Air Management Engineer

Cc: WCR File, Eau Claire
Susan Lindem, WDNR Supervisor (e-copy)
Bureau of Air Management, AM/7 (e-copy)

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
1300 W. Clairemont Ave.
Eau Claire, WI 54701

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



FID: 662070970

February 20, 2018

Mr. Jeff Johnson
Hi-Crush Blair LLC
Director, Environmental Compliance
S11011 County Road M
Augusta, WI 54722-7608

Subject: Letter of Noncompliance

Dear Mr. Johnson,

This letter is to inform you that the Department of Natural Resources (department) believes that Hi-Crush Blair LLC at W11262 South River Road, Blair, Wisconsin may not be in compliance with Wisconsin's air pollution control rules and with the conditions set forth in air pollution control permit #662070970-F02, issued to Hi-Crush Blair LLC on September 22, 2016.

The department received a complaint on February 13th, 2018 about dust and sand blowing across South River Road. Nelson of the department drove down approximately two hours after and observed sand being blown off the large stockpile east of the dry plant. Particulate matter was observed on a large area of snow across South River Road from the Hi-Crush Blair stockpile.

I. Sections NR 415.04(1)(b), Wisconsin Administrative Code, and conditions I.H.1. of permit #667070970-F02 state:

No person may cause, allow, or permit any materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

II. Sections 415.075(6)(b), Wisconsin Administrative Code, and conditions I.Z.1. of permit #667070970-F02 state:

The department may request any owner or operator to amend the plan if deemed necessary for malfunction prevention or the reduction of excess emissions.

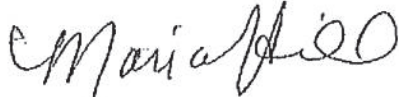
The fugitive dust control plan dated 13APR2017 fails to prevent particulate matter from becoming airborne. The department requests Hi-Crush Blair to amend its fugitive dust control plan by March 9, 2018. The response should also include reasons the alleged noncompliance occurred as well as actions intended to prevent similar particulate matter events in the future. In this response, please address specific action items that will be used to prevent, identify, and address particulate matter and fine sand from leaving Hi-Crush property.

While the department appreciates all information by this date, please be aware that the facility may be in noncompliance until you fulfill all requirements of air control permit #662070970-F02, and that additional information may be needed depending upon Hi-Crush's response.



Should you have any questions or wish to discuss the matter, please contact me at 608-216-3179 or via email at Maria.Hill@wisconsin.gov .

Sincerely,



Maria Hill
Compliance, Enforcement & Emission Inventory Section Chief

Cc: WCR File, Eau Claire
Susan Lindem, WDNR Supervisor (e-copy)
James Bonar-Bridges, WNDR Legal (e-copy)
Jarrod Nelson, WDNR Air Management Engineer (e-copy)
Bureau of Air Management, AM/7 (e-copy)

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



September 26, 2017

Attorney Mark Skolos, General Counsel
HI-Crush Proppants
Three Riverway, Suite 1550
Houston, TX 77056

Casetrack #2017-WCEE-007
PWSID # 62702860
Trempealeau County

SUBJECT: Consent Order 2017-WCEE-007 – HI-Crush Blair, LLC
Taylor, Trempealeau County, WI

Dear Attorney Skolos:

Enclosed is one original signed copy of Consent Order #2017-WCEE-007 (the Order), which requires HI-Crush Blair, LLC (HI-Crush) to come into compliance with the State of Wisconsin's arsenic maximum contaminant level (MCL). Please note the requirements and timelines of the Order for achieving compliance.

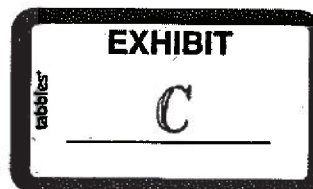
The Consent Order is now in effect and enforceable. The Department looks forward to working with you to meet the compliance commitments established in this agreement.

If you have questions concerning this summary or Consent Order, please contact Environmental Enforcement Specialist Deb Dix at 715/421-9914 or by e-mail at deb.dix@wi.gov. Any technical questions concerning this case can be directed to Anna Mares at 715/839-3798 or by e-mail at anna.mares@wisconsin.gov.

Sincerely,

Steven L. Sisbach
Steven L. Sisbach, Section Chief
Environmental Enforcement & Emergency Management
Bureau of Law Enforcement

cc: A. Mares – Eau Claire
T. Stapelmann – Eau Claire
D. Dix – Wisconsin Rapids
A. DeWeese / B. Goldowitz – DG/5
J. Mills – LS/8



BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Exceedance of the Arsenic Maximum) PWSID # 62702860
Contaminant Level at HI-Crush Blair, LLC, 11203 South River Road,) Casetrack # 2017-WCEE-007
Taylor, Trempealeau County, Wisconsin) Consent Order No. 2017-WCEE-007

FINDINGS OF FACT, CONCLUSIONS OF LAW AND CONSENT ORDER

FINDINGS OF FACT

1. HI-Crush Blair, LLC (HI-Crush) located at 11203 South River Road, Taylor, Trempealeau County, Wisconsin is a non-transient non-community water system (NTNCWS), as defined in s. NR 809.04(5B), Wis. Adm. Code, because HI-Crush regularly serves at least 25 of the same persons over 6 months per year.
2. In the interest of protecting public health and safety, the federal Safe Drinking Water Act (SDWA) and ch. NR 809, Wis. Adm. Code require NTNCWSs such as HI-Crush to submit routine drinking water compliance samples for various parameters, including arsenic.
3. Section NR 809.04(51), Wis. Adm. Code, defines the Maximum Contaminant Level (MCL) as the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.
4. The MCL for arsenic is 0.010 mg/L (milligrams per liter), as described in s. NR 809.11(2), Wis. Adm. Code.
5. For public water systems that are monitored more frequently than annually, compliance with the arsenic MCL is determined by a running annual average, as described in s. NR 809.117(1)(b). If any one or more samples would cause the annual average to exceed the MCL, the public water system is out of compliance immediately.
6. HI-Crush installed a new well to supply the facility with drinking water in July 2015, Wisconsin Unique Well Number (WUWN) WY698, and began service as a public water supply system on February 3, 2016.
7. Samples collected from HI-Crush, and analyzed for arsenic, exceeded the annual average MCL for arsenic (0.010 mg/L). The first compliance sample, collected on August 10, 2016, had an arsenic concentration of 0.0287 mg/L. Samples collected on October 24, 2016 and February 8, 2017 had arsenic concentrations of 0.0395 and 0.0358 mg/L, respectively, yielding a running annual average of 0.026 mg/L, which exceeds the arsenic MCL.
8. In a Notice of Noncompliance sent on November 17, 2016, the Department of Natural Resources (department) notified HI-Crush that the arsenic MCL had been exceeded and outlined public notification posting and follow-up corrective action requirements needed to return to compliance.
9. On November 22, 2016, HI-Crush posted and distributed a Tier 2 public notice as required by s. NR 809.952, Wis. Adm. Code.

10. On March 1, 2017, the department sent a Notice of Violation notifying HI-Crush that the MCL for arsenic had been exceeded.
11. The department held an enforcement conference with HI-Crush on March 14, 2017 to discuss HI-Crush's return to compliance options.
12. Treatment for control of contaminant levels in excess of primary drinking water standards in a non-community water system shall be considered only after the department determines that the options of constructing a new well or reconstructing an existing well in accordance with criteria specified by the department staff or connecting to an alternative safe water system, per s. NR 812.37(2)(e), Wls. Adm. Code, are not available.

CONCLUSIONS OF LAW

1. The department has the authority under s. 281.17(8), Wls. Stats., to establish and administer a Safe Drinking Water Program, including issuance of rules. Such rules are contained in ch. NR 809, Wls. Adm. Code.
2. Non-transient non-community public water systems are required under s. NR 809.11(1)(c) to comply with the MCL for arsenic listed in s. NR 809.11(2), Wls. Adm. Code.
3. With specified exceptions, none of which apply here, s. 281.98(1), Wls. Stats., establishes that any person who fails to comply with an order pursuant to ch. 281, Wls. Stats., may be required to forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.
4. The department has authority under ss. 281.19(2) and 280.13(1)(c), Wls. Stats., to issue this order.
5. This Order is reasonable and necessary to accomplish the purposes set forth in ch. 281, Wls. Stats., and is enforceable under ss. 299.95 and 299.97, Wls. Stats.

CONSENT ORDER

The department orders and HI-Crush agrees to meet the following schedule of action:

1. HI-Crush shall post or distribute a tier 2 public notice per s. NR 809.952(2)(b), Wls. Adm. Code for exceeding the arsenic MCL until results of the arsenic samples are reliably and consistently less than the MCL. HI-Crush shall notify the department on a quarterly basis that the public notice is in place or that it has been redistributed, and update the notice quarterly if the results of arsenic sampling change.
2. During the enforcement conference on March 14, 2017, HI-Crush provided the department with written documentation of their preferred choice for corrective action. HI-Crush evaluated all potential options for consideration.
3. The department shall review the documentation provided and approve with conditions or reject within 60 days of receipt.
4. If the department determines it is feasible to obtain a water source that complies with the arsenic MCL by reconstructing WUWN WY698, or constructing a replacement well in another location on the

property, HI-Crush shall construct a replacement well, or reconstruct the existing well no later than September 1, 2017.

5. If the department determines an alternative safe water source is not available and it is not feasible for HI-Crush to reconstruct WUWN WY698, or construct a replacement well, within 60 days of receiving the department's determination, HI-Crush shall submit plans and specifications for point of entry treatment for arsenic reduction to the Department of Safety and Professional Services (DSPS) for approval.
6. HI-Crush shall not install any treatment device to achieve compliance with the arsenic MCL without obtaining necessary written approval from DSPS and the department.
7. HI-Crush shall complete installation of the treatment system within 60 days after receiving written approval from DSPS and the department, but no later than December 1, 2017.
8. Sampling after corrective action:
 - a. Installation of Treatment: HI-Crush shall collect an annual raw water (before treatment) sample and its first quarterly point of entry (after treatment) routine compliance arsenic sample within 15 days of completing corrective action. HI-Crush shall then collect point of entry compliance samples for three consecutive calendar quarters. HI-Crush shall return to compliance with the arsenic MCL after implementation of the corrective action when the results of four consecutive quarterly entry point samples do not exceed the arsenic MCL (0.010 mg/L). Full return to compliance shall be achieved no later than 13 months after complete installation of the treatment system, but no later than December 31, 2018.
9. The department shall determine effectiveness of corrective action(s) taken and may require additional steps to return to compliance with the arsenic MCL.
10. Consistent with department rules, the department shall establish a routine schedule for compliance monitoring following completion of corrective action(s).
11. If treatment is installed, HI-Crush must enter into a maintenance agreement to operate and maintain the equipment in compliance with manufacturer specifications.
12. The Department may impose penalties for failing to comply with the terms of this Order, pursuant to ss. 299.95 and 299.97, Wis. Stats.
13. This Consent Order may be amended in writing upon mutual agreement of the parties.
14. Fulfilling the requirements of this Order will resolve liability for the violations that give rise to the Order, and the department will issue a close out letter to that effect.

Consent Order No. 2017-WCEE-007

Page 4

WAIVER AND STIPULATION

HI-Crush stipulates to the issuance of this Consent Order and hereby waives further notice and statutory rights to demand a hearing before the Department of Natural Resources regarding the foregoing Findings of Fact, Conclusions of Law and Consent Order under ss. 227.42, 281.19(8), Wis. Stats., or under any other provision of law and waives its rights to challenge this Consent Order in circuit court under ss. 227.52 and 227.53, Wis. Stats., or any other provision of law. HI-Crush further stipulates and agrees that the Consent Order is effective and enforceable after being signed by the parties and may be enforced in accordance with ss. 299.95 and 299.97, Wis. Stats.

The undersigned certify that they are authorized to execute such Consent Order, Waiver, and Stipulation.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES
For the Secretary

BY: Steven L. Sisbach/mm
Steven L. Sisbach, Section Chief
Environmental Enforcement & Emergency Management
Bureau of Law Enforcement

Date: 09/26/17

For HI-Crush Blot, LLC

BY: [Signature]
Attorney Mark Skolas, General Counsel
HI-Crush Proppants

Date: 9/5/17



Detailed Facility Report

Facility Summary

HI-CRUSH BLAIR

FRS (Facility Registry Service) ID: 110069304434
 EPA Region:
 Latitude:
 Longitude:
 Locational Data Source:
 Industry: No description found
 Indian Country: N

Enforcement and Compliance Summary

Statute	SDWA
Insp (5 Years)	--
Date of Last Inspection	--
Current Compliance Status	No Violation Identified
Qtrs with NC (of 12)	9
Qtrs with Significant Violation	5
Informal Enforcement Actions (5 years)	29
Formal Enforcement Actions (5 years)	8
Penalties from Formal Enforcement Actions (5 years)	\$0
EPA Cases (5 years)	--
Penalties from EPA Cases (5 years)	--

Regulatory Information

Clean Air Act (CAA): No Information
 Clean Water Act (CWA): No Information
 Resource Conservation and Recovery Act (RCRA): No Information
 Safe Drinking Water Act (SDWA): OWNER: Private, SOURCE: Ground water, TYPE: Non-Transient non-community system, Permit Active (WI6270286)

Other Regulatory Reports



Air Emissions Inventory (EIS): No Information
 Greenhouse Gas Emissions (eGGRT): No Information
 Toxic Releases (TRI): No Information
 Compliance and Emissions Data Reporting Interface (CEDRI): No Information

Known Data Problems

Facility/System Characteristics

Facility/System Characteristics

System	Statute	Identifier	Universe	Status	Areas	Permit Expiration Date	Indian Country	Latitude	Longitude
FRS		110069304434					N		
SDWIS	SDWA	W16270286	OWNER: Private, SOURCE: Ground water, TYPE: Non-Transient non-community system	Active	Population Served: 35		N		

Facility Address

System	Statute	Identifier	Facility Name	Facility Address
FRS		110069304434	HI-CRUSH BLAIR	null
SDWIS	SDWA	W16270286	HI-CRUSH BLAIR	WI

Facility SIC (Standard Industrial Classification) Codes

System	Identifier	SIC Code	SIC Description
No data records returned			

Facility NAICS (North American Industry Classification System) Codes

System	Identifier	NAICS Code	NAICS Description
No data records returned			

Facility Tribe Information

Reservation Name	Tribe Name	EPA Tribal ID	Distance to Tribe (miles)
No data records returned			

Enforcement and Compliance

Compliance Monitoring History (5 years)

Statute	Source ID	System	Activity Type	Compliance Monitoring Type	Lead Agency	Date	Finding (if applicable)
SDWA	W16270286	SDWIS		Capacity Development Assessment	State	07/18/2016	
SDWA	W16270286	SDWIS		Sanitary Survey, Complete	State	02/08/2016	

Entries in italics are not counted in EPA compliance monitoring strategies or annual results.

SDWA (Safe Drinking Water Act) Sanitary Survey Results (5 Years)

Date	Type	Agency	Sanitary Survey Results										
			Data Verification	Distribution	Management Operation	Finished Water Storage	Operator Compliance	Other Evaluation	Pumps	Security	Source	Financial	Treatment
02/08/2016	Sanitary Survey, Complete	State	N	N	N	N	N		N		N		N

Sanitary survey result codes: S = Significant Deficiencies R = Recommendations Made X = Not Evaluated - = Not Reported to EPA

M = Minor Deficiencies N = No Deficiencies or Recommendations Z = Not Applicable

Compliance Summary Data

Statute	Source ID	Current SNC (Significant Noncompliance)/HPV (High Priority Violation)	Current As Of	Qtrs with NC (Noncompliance) (of 12)	Data Last Refreshed
SDWA	WI6270286	No	09/01/2019	9	09/01/2019

Three-Year Compliance History by Quarter

Statute	Program/Pollutant/Violation Type	QTR 1	QTR 2	QTR 3	QTR 4	QTR 5	QTR 6	QTR 7	QTR 8	QTR 9	QTR 10	QTR 11	QTR 12	QTR 13*
SDWA (Source ID: WI6270286)		10/01-09/30/16	10/01-12/31/16	01-01-03/31/17	04/01-06/30/17	07/01-09/30/17	10/01-12/31/17	01/01-03/31/18	04/01-06/30/18	07/01-09/30/18	10/01-12/31/18	01/01-03/31/19	04/01-06/30/19	07/01-09/30/19
	Facility-Level Status	No Violation	Violation	Serious Violator	Serious Violator	Violation	Serious Violator	Serious Violator	Serious Violator	Violation	Violation	No Violation	No Violation	No Violation
SDWA	Arsenic		10/01/2016	→	→	→	→	→	→	→	10/02/2018			

*Quarter 13 data is voluntarily entered and/or incomplete, and may not form a complete picture for that quarter. [Read more](#)

Informal Enforcement Actions (5 Years)

Statute	System	Source ID	Type of Action	Lead Agency	Date
SDWA	SDWIS	WI6270286	State Public Notification received	State	07/19/2018
SDWA	SDWIS	WI6270286	State Public Notification requested	State	07/17/2018
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	07/17/2018
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	07/17/2018
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	05/11/2018
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	05/11/2018
SDWA	SDWIS	WI6270286	State Public Notification requested	State	05/11/2018
SDWA	SDWIS	WI6270286	State Public Notification received	State	05/11/2018
SDWA	SDWIS	WI6270286	State Public Notification received	State	02/14/2018
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	02/07/2018
SDWA	SDWIS	WI6270286	State Public Notification requested	State	02/07/2018
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	02/07/2018
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	10/16/2017
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	10/16/2017
SDWA	SDWIS	WI6270286	State Public Notification received	State	10/16/2017
SDWA	SDWIS	WI6270286	State Public Notification received	State	08/10/2017
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	08/10/2017
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	08/10/2017
SDWA	SDWIS	WI6270286	State Public Notification received	State	05/03/2017
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	04/28/2017
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	04/28/2017
SDWA	SDWIS	WI6270286	State Public Notification received	State	04/03/2017
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	03/14/2017
SDWA	SDWIS	WI6270286	State Compliance Meeting conducted	State	03/14/2017
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	03/01/2017
SDWA	SDWIS	WI6270286	State Formal Notice of Violation issued	State	03/01/2017
SDWA	SDWIS	WI6270286	State Public Notification received	State	11/23/2016
SDWA	SDWIS	WI6270286	State Public Notification requested	State	11/17/2016
SDWA	SDWIS	WI6270286	State Violation/Reminder Notice	State	11/17/2016

Formal Enforcement Actions (5 Years)

Statute	System	Law/Section	Source ID	Action Type	Case No.	Lead Agency	Case Name	Issued/Filed Date	Settlements/Actions	Settlement/Action Date	Federal Penalty	State/Local Penalty	SEP Cost	Comp Action Cost
SDWA	SDWIS		SPDW-WI6270286	State Administrative/Compliance Order without penalty issued		State			1	07/17/2018				

Source ID	Compliance Period	Violation ID	Federal Rule	Contaminant	Category	Description	Measured Value	State MCL (Maximum Contaminant Level)	Federal MCL (Maximum Contaminant Level)	Status	Date	Category	Description	Agency
WI6270286	10/01/2016 - 12/31/2016	1700001	Arsenic	Arsenic	MCL	Maximum Contaminant Level Violation	.01705 MG/L	.0105 MG/L	0.010 mg/L	Resolved	10/02/2018	Resolving	State Compliance achieved	State
											09/26/2017	Formal	State Administrative Compliance Order without penalty issued	State
											03/14/2017	Informal	State Compliance Meeting conducted	State
											03/01/2017	Informal	State Formal Notice of Violation issued	State
											11/22/2016	Informal	State Public Notification received	State
											11/17/2016	Informal	State Public Notification requested	State
											11/17/2016	Informal	State Violation/Reminder Notice	State

Environmental Conditions

Water Quality

Permit ID	Combined Sewer System?	Number of CSO (Combined Sewer Overflow) Outfalls	12-Digit WBD (Watershed Boundary Dataset) HUC (RAD (Reach Address Database))	WBD (Watershed Boundary Dataset) Subwatershed Name (RAD (Reach Address Database))	State Water Body Name (ICIS (Integrated Compliance Information System))	Impaired Waters	Impaired Class	Causes of Impairment(s) by Group(s)	Watershed with ESA (Endangered Species Act)-listed Aquatic Species?
No data records returned									

Water Body Designated Uses

Reach Code	Water Body Name	Exceptional Use	Recreational Use	Aquatic Life Use	Shellfish Use	Beach Closure Within Last Year	Beach Closure Within Last Two Years
No data records returned							

Air Quality

Nonattainment Area?	Pollutant(s)	Applicable Nonattainment Standard(s)
No	Ozone	
No	Lead	
No	Particulate Matter	
No	Carbon Monoxide	
No	Nitrogen Dioxide	
No	Sulfur Dioxide	

Pollutants

Toxics Release Inventory History of Reported Chemicals Released in Pounds per Year at Site

TRI Facility ID	Year	Total Air Emissions	Surface Water Discharges	Off-Site Transfers to POTWs (Publicly Owned Treatment Works)	Underground Injections	Releases to Land	Total On-site Releases	Total Off-site Transfers
No data records returned								

Toxics Release Inventory Total Releases and Transfers in Pounds by Chemical and Year

Chemical Name
No data records returned

SDWA (Safe Drinking Water Act) Lead and Copper (Last 5 years)

Source ID	Contaminant	Sample Dates	90th Percentile Sample Concentrations	Action Level	Number of Open Health-Based Violations
No data records returned					

Demographic Profile

EJSCREEN EJ Indexes

Eleven primary environmental justice (EJ) indexes of EJSCREEN, EPA's screening tool for EJ concerns. EPA uses these indexes to identify geographic areas that may warrant further consideration or analysis for potential EJ concerns. Note that use of these indexes does not designate an area as an "EJ community" or "EJ facility." EJSCREEN provides screening level indicators, not a determination of the existence or absence of EJ concerns. For more information, see the [EJSCREEN home page](#).

No Valid Spatial Coordinate is available for this facility

Demographic Profile of Surrounding Area (3 Miles)

This section provides demographic information regarding the community surrounding the facility. ECHO compliance data alone are not sufficient to determine whether violations at a particular facility had negative impacts on public health or the environment. Statistics are based upon the 2010 US Census and American Community Survey data, and are accurate to the extent that the facility latitude and longitude listed below are correct. The latitude and longitude are obtained from the EPA Locational Reference Table (LRT) when available.

Please Wait. Loading... 000

EXHIBIT 3

STATE OF WISCONSIN CIRCUIT COURT TREMPPEALEAU COUNTY

MICHAEL J. SYLLA, STACY L. SYLLA, CHASE SYLLA,
and MACY SYLLA, a minor by her natural parents and
guardians, Michael and Stacy Sylla,
W19890 Manka Stuve Lane
Whitehall, WI 54773,

WILLIAM J. SYLLA, ANGELA M. SYLLA, and
WILL SYLLA and ZAK SYLLA, minors by their
natural parents and guardians William and Angela Sylla,
W20353 County Road Q
Whitehall, WI 54773,

ANN SYLLA
W20353 County Road Q
Whitehall, WI 54773,

Plaintiffs,

vs.

HI-CRUSH WHITEHALL, LLC
W20757 County Road Q
Whitehall, WI 54773,

STARR SURPLUS LINES INSURANCE COMPANY,
399 Park Avenue, 8th Fl.
New York, NY 10022,

IRONSHORE SPECIALTY INSURANCE COMPANY
75 Federal Street, 5th Fl.
Boston, MA 02110,

ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
840 W. Sam Houston Pkwy N., Suite 420
Houston, TX 77024,

AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,
d/b/a Zurich North America,
1299 Zurich Way
Schaumburg, IL 60196-1056,

AMENDED COMPLAINT

Case No. 19-CV-63

Case Codes: 30201, 30106, 30107

GERKE EXCAVATING, INC.
15341 State Hwy 131
Tomah, WI 54660,

RST INSURANCE COMPANY,

AHLGRIMM EXPLOSIVES INC.
2999 W. Spencer St. Suite 2050
Appleton, WI 54914,

UVW INSURANCE COMPANY,

EXPLOSIVE CONTRACTORS INC.
131 Industrial Park Drive, Suite 3
Hollister, MO 65672,

and

XYZ INSURANCE COMPANY,

Defendants.

Plaintiffs, by their attorneys, Fitzpatrick, Skemp & Butler, LLC, allege the following Amended Complaint against the above-named defendants:

1. Plaintiffs, Michael J. Sylla and Stacy L. Sylla, are adult residents of W19890 Manka Stuve Lane, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that two-acre property and home located thereon. They built their home in 2008-2009 and reside there with their two children, Chase Sylla and minor Macy Sylla.

2. Michael and Stacy Sylla also jointly own twenty acres and a barn, located at W20370 County Road Q, Whitehall, Trempealeau County, Wisconsin, where they raise chickens under contract with Pilgrim's Pride f/k/a Gold'n Plump.

3. Plaintiffs, William J. Sylla and Angela M. Sylla, are adult residents of W20353 County Road Q, Whitehall, Trempealeau County, Wisconsin, and at all times relevant hereto have been husband and wife and joint fourth generational owners of a 133-acre farm where they reside with their minor children, Will Sylla and Zak Sylla. William and Angela Sylla also jointly own a poultry operation consisting of two buildings located on their farm where they raise chickens under contract with Pilgrim's Pride f/k/a Gold'n Plump.

4. William J. Sylla, Michael J. Sylla, and Stacy L. Sylla also jointly own a parcel of land of approximately 56 acres, and William J. Sylla, Angela M. Sylla, Michael J. Sylla, and Stacy L. Sylla jointly own another parcel of approximately 25 acres in Trempealeau County, Wisconsin.

5. Plaintiff, Ann Sylla, is an adult resident of W20353 County Road Q, Whitehall, Trempealeau County, Wisconsin. Ann Sylla retains a life estate interest in real estate conveyed to William and Angela Sylla. In addition, Ann Sylla owns and operates the Sylla's Acres Strawberry Patch business at said address.

6. Defendant, Hi-Crush Whitehall LLC (hereinafter "Hi-Crush") is a foreign limited liability company with its principal place of business at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin. Defendant Hi-Crush Whitehall is engaged in the business of frac-sand mining and processing on an approximately a 1,447-acre site at and around said address. To the extent Plaintiffs' damages arose prior to the Petition Date (i.e., July 12, 2020) of Hi-Crush's Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), Plaintiffs' liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs' recoveries against Hi-Crush are and remain subject to the terms of the Hi-Crush

confirmed Plan. Because such rights are preserved pursuant to the Findings of Fact, Conclusions of Law and Order Confirming Joint Plan of Reorganization of Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Case No. 20-33495, Doc. No. 420], Plaintiffs do seek recovery from Hi-Crush's liability insurers and the other Defendants for damages that arose prior to the Petition Date.

7. The Hi-Crush site is located in close proximity to the homes of each of the Plaintiffs and in close proximity to Syllas' poultry operations and jointly-owned lands.

8. Upon information and belief, the Defendant, Starr Surplus Lines Insurance Company ("Starr"), is a foreign insurance corporation with its principal place of business at 399 Park Avenue, 8th Floor, New York, NY 10022, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

9. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Starr, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

10. By virtue of the terms and conditions of said Hi-Crush's insurance policies and the statutes of the State of Wisconsin, the Defendant Starr is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

11. Upon information and belief, the Defendant, Ironshore Specialty Insurance Company ("Ironshore"), is a foreign insurance corporation with its principal place of business at 75 Federal St., 5th Fl., Boston, MA 02110, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

12. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Ironshore, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

13. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Ironshore is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

14. Upon information and belief, the Defendant, Aspen Specialty Insurance Company ("Aspen"), is a foreign insurance corporation with its principal place of business at 840 W. Sam Houston Pkwy N., Suite 420, Houston, TX 77024, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

15. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Aspen, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

16. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Aspen is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

17. Upon information and belief, the Defendant, American Guarantee and Liability Insurance Company, d/b/a Zurich North America ("AGLIC"), is a foreign insurance corporation with its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196-1056, and is

engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

18. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, AGLIC, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

19. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant AGLIC is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

20. Upon information and belief, the Defendant, Gerke Excavating Inc. ("Gerke"), is a domestic corporation with its principal place of business at 15341 State Hwy 131, Tomah, WI 54660, and is engaged in the business of frac-sand mining and processing on an approximately a 1,447-acre site at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush Whitehall.

21. Upon information and belief, the Defendant, RST Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant ABC Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Gerke at all times relevant hereto.

22. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, RST Insurance Company issued and delivered to the Defendant, Gerke, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on

behalf of Gerke any and all sums which Gerke should become legally obligated to pay by reason of liability imposed upon it arising out of its actions.

23. By virtue of the terms and conditions of said Gerke's insurance policy and the statutes of the State of Wisconsin, the Defendant RST Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

24. Upon information and belief, the Defendant, Ahlgrimm Explosives Inc. ("Ahlgrimm"), is a domestic corporation with its principal place of business at 2999 W. Spencer St. Suite 2050, Appleton, WI 54914, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush Whitehall.

25. Upon information and belief, the Defendant, UVW Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant UVW Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Ahlgrimm at all times relevant hereto.

26. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, UVW Insurance Company issued and delivered to the Defendant, Ahlgrimm, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Ahlgrimm any and all sums which Ahlgrimm should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

27. By virtue of the terms and conditions of said Ahlgrimm's insurance policy and the statutes of the State of Wisconsin, the Defendant UVW Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

28. Upon information and belief, the Defendant, Explosive Contractors Inc. ("ECI"), is a foreign corporation with its principal place of business at 131 Industrial Park Drive, Suite 3, Hollister, MO 65672, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush Whitehall.

29. Upon information and belief, the Defendant, XYZ Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant XYZ Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to ECI at all times relevant hereto.

30. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, XYZ Insurance Company issued and delivered to the Defendant, ECI, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of ECI any and all sums which ECI should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

31. By virtue of the terms and conditions of said ECI's insurance policy and the statutes of the State of Wisconsin, the Defendant XYZ Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

FACTUAL BACKGROUND ALLEGATIONS

32. Upon information and belief, the Hi-Crush frac sand facility is capable of producing 2,860,000 tons per year of 20/100 frac sand. The processing facility is located on 1,447 acres with coarse-grade Northern White sand reserves. The facility is located on a mainline of the North American rail network of the Canadian National Railway, with an on-site rail yard that contains approximately 30,000 feet of track and has storage capacity for approximately 500 rail cars. During entire seasons of the year, Hi-Crush conducts processing of sand seven days per week, 24 hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property runs around the clock, seven days per week. Blasting operations occur between 10:00 AM and 3:00 PM. Even during winter months, typically mid-November to mid-March, the dry plant continues processing and loading rail cars. With processing and loading of sand around the clock and every day of the year and extraction of minerals and related hauling of extracted material within the mine property seven days per week, nearby residents get no respite from the intolerable noise from the Hi-Crush facility and its related activity.

33. According to Mine Safety and Health Administration reports, Hi-Crush had seven (7) citations or orders for violations in 2015, seven (7) in 2016, five (5) in 2017, and two (2) in 2019 for a total of 21 citations or orders for violations in those three years.

34. In the Wisconsin Department of Natural Resources Preliminary Determination on the Clean Air Act permit for the Hi-Crush facility, the DNR AERMOD analysis found that the facility was expected to add 8.6 ug/m³ PM^{2.5} pollution, resulting in a level of 98% of the Clean Air Act NAAQS standard of 35 ug/m³. Upon information and belief, the Hi-Crush Whitehall facility has exceeded said standard, thereby polluting the air which the plaintiffs of necessity

breathe. Based on the May 23, 2014 construction permit submitted by Hi-Crush Whitehall, the estimated particulate matter pollution emissions from the facility (blasting, trucking, processing, transfer, and storage piles) is 44.56 tons/year of total PM10. This equals approximately 244 pounds per day.

35. Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible dust emissions have not been suppressed on multiple occasions, in violation of the standard set forth in the Wisconsin DNR Template Best Management Practices of Fugitive Dust Control Plans for the Industrial Sand Mining Industries: “The standard for fugitive dust emission quantification is by visual observation. If visible dust emissions are observed they need to be suppressed.”

36. Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible silica fugitive dust emissions repeatedly have left/crossed the Hi-Crush property boundary and created air pollution on and around adjacent properties, including the properties of all of the Plaintiffs, in violation of NR 415.03 and/or NR 415.04, in that Defendants have caused, allowed and permitted particulate matter to be emitted into the ambient air which substantially contributes to exceeding of an air standard, and creates air pollution, and has caused, allowed and permitted silica-containing materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

37. Upon information and belief, the Hi-Crush Whitehall facility has been operated in a manner such that neighboring well water supplies of certain of the Plaintiffs have been polluted and rendered undrinkable due to dangerous and harmful levels of iron, arsenic (which has tested as high as approximately ten times EPA safety standards), and excessive turbidity.

38. On or about May 21, 2018, Hi-Crush and/or Gerke breached a negligently constructed frac sand mine holding pond at its Whitehall facility following negligent operation of earth-moving equipment by Gerke. Hi-Crush officials estimated that about 10 million gallons of liquid mine sludge were spilled, a volume that would fill a 10-foot deep space larger than two football fields. Mine sludge exited the Hi-Crush property and ran across various parcels, including land leased by William and Angela Sylla for farming, and it entered Poker Creek, which carried sludge into the Trempealeau River, turning it orange for days. Hi-Crush environmental compliance manager Jeff Johnson publicly stated the mine sludge could contain trace elements of polyacrylamide. Tests showed lead concentrations of more than 10 times allowable levels in water sampled near where the spill entered Poker Creek, and aluminum was measured at more than 1,000 times the limit. There also were high levels of beryllium, cadmium, chromium, copper, magnesium, nickel and other contaminants.

39. Upon information and belief, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, conducted their frac-sand mining, processing, transload and/or blasting operations in a manner that is negligent, negligent *per se*, and/or reckless by virtue of its violation of statutes, administrative regulations, permit conditions, and/or local ordinances, and has furthermore created, and failed to mitigate the creation of, airborne pollution (both gaseous and solid, including crystalline silica dust), water pollution (both surface and groundwater), soil and water pollution by releasing 10-million gallons of mine sludge from a holding pond, some of which ran over property owned and/or leased by one or more of the Plaintiffs, harmful shockwaves and vibrations due to blasting and other operations, noise pollution, light pollution, destruction of landscape and viewshed, and severe reduction of property values.

40. As a result of groundwater contamination, fugitive crystalline silica dust emissions (including PM^{2.5}), noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and damage to the viewshed, the stigma associated with owning property in and about the area of the subject frac facility has severely impaired the value of the Plaintiffs' properties, both as to the properties' marketability and the ability to use the property in order to secure by mortgage any present or future financial obligations of the Plaintiffs, and has substantially and adversely affected the ability of the Plaintiffs to use and enjoy their properties, including their homes.

41. On or about August 21, 2020, Plaintiffs filed Proofs of Claim for liquidated damages to the Plaintiffs in excess of \$14 million in Hi-Crush's Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), and Plaintiffs' liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim.

**CLAIM I
NEGLIGENCE AND NEGLIGENCE *PER SE***

As for their first claim for relief, the Plaintiffs allege:

42. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

43. At all times relevant hereto, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, owed Plaintiffs a duty to act with reasonable care, so as not to jeopardize the Plaintiffs' rights, property values, health and welfare.

44. Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, breached their duty of care by creating and/or failing to mitigate the creation of the following: (1) offensive airborne pollution (both gaseous and solid, including crystalline silica dust); (2) water

pollution (both surface and groundwater); (3) soil and water pollution by releasing 10-million gallons of mine sludge from a holding pond, some of which ran over property owned or leased by one or more of the Plaintiffs; (4) damaging shockwaves and vibrations due to blasting and other operations; (5) noise and light pollution; (6) destruction of landscape and viewshed; and (7) severe reduction of property values. Said Defendants also breached their duty of care to the Plaintiffs by failing to adequately supervise and train employees. Hi-Crush has failed to properly train and supervise employees and contractors performing ultra-hazardous activities while working at the facility; failed to exercise reasonable care to contain silica dust and other toxins once Hi-Crush knew it had polluted a large area in and about Plaintiffs' properties and knew the harmful silica dust and toxins which permeated air, groundwater, and/or soil in and about of the area of Plaintiffs' properties, created a substantial health risk to Plaintiffs and others; failed to warn the residents of the neighborhood, including the Plaintiffs, of health hazards associated with the crystalline silica dust and other toxins, and failed to take appropriate measures to prevent the spread of silica dust and other toxins; failed to notify authorities in a timely fashion of the full gravity and nature of fugitive dust emissions and ground and surface water contamination; failed to prevent or mitigate health hazards and damage to the value of the property in and about the neighborhood, including the real property owned by Plaintiffs; failed to timely and effectively remediate the spill of 10-million gallons of mine sludge; and failed to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards.

45. The acts of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute negligence and negligence *per se* as a result of Hi-Crush's violations of state, federal and local rules, regulations, statutes and ordinances. The acts of negligence are a

substantial factor in causing Plaintiffs to suffer damages, as set forth more particularly below, including without limitation, actual or imminent damage to their residential and business water supplies, permanent severe diminution of property values, the need for modifications to the quiet and peaceful use and enjoyment of their homes and property, annoyance, inconvenience and discomfort and harm to their home and business property, persons and livestock. The negligently created environmental harms and property value reductions have been a substantial factor in creating personal fear, worry, anxiety, marital discord, inconvenience, discomfort, harassment, and harm and destruction of Plaintiffs' right to enjoy their properties in a reasonably quiet and peaceful manner and further forcing Plaintiffs to incur expenses for monitoring the supply and control of water and air, and expert consultants' fees, all to Plaintiffs' damage.

46. The Plaintiffs have been damaged as a result of a decrease in the value of their properties and businesses and through a loss of enjoyment of their properties due to the nuisances set forth above, loss of neighborhood aesthetics; personal fear, anxiety, inconvenience and discomfort; and other and further damages as the evidence may establish.

**CLAIM II
PUBLIC NUISANCE**

As and for their second claim for relief, the Plaintiffs allege:

47. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

48. Plaintiffs are members of the public and the rural community surrounding the Hi-Crush facility. The Plaintiffs regularly use public roadways which have been unreasonably interfered with and blocked by Defendants' operation more than the general public's use of public roadways because the public roads in the vicinity of Plaintiffs' homes are closer to the railroad crossings being blocked between their homes and the rail operations servicing the frac

sand facility. Plaintiffs further use and benefit from public waterways, groundwater, and air in the vicinity of the frac sand facility.

49. The conduct and activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute a public nuisance in that such activities substantially or unduly interfere with the use of public places, including public roadways between the Plaintiffs' homes and rail facilities servicing the frac sand facility (including an unreasonable risk of impeding emergency vehicles that may need to reach the Plaintiffs' properties, and impeding Plaintiffs traveling to and from work), public waterways including Poker Creek and the Trempealeau River, and the air and groundwater in common use by the Plaintiffs.

50. The activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, further substantially or unduly interfere with the activities of the entire community, and are specially injurious to the health and offensive to the senses of Plaintiffs and specially interferes with and disturbs their comfortable enjoyment of their life and of their property, which is different in kind from the injury suffered by the general public.

51. As a direct and proximate result of the public nuisance created and perpetuated by Defendants' tortious conduct, Plaintiffs have suffered, and will in the future continue to suffer, interference with their use and enjoyment of public places, including public roadways, waterways, air and groundwater, and their own private property, diminution in property value, present and future remediation costs, past and future loss of earning capacity, and present and future personal injury and emotional distress.

52. Unless the public nuisance caused by the tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, is abated, the use and enjoyment of public spaces, including public roadways and waterways, air and groundwater, and Plaintiffs'

property and rights of enjoyment therein will be progressively further diminished in value and their health will be further jeopardized.

53. As a direct and proximate result of the public nuisance caused by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged herein, Plaintiffs were injured and suffered damages as more fully described below.

**CLAIM III
PRIVATE NUISANCE**

As and for their third claim for relief, the plaintiffs allege:

54. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

55. Plaintiffs have proprietary interests in certain real and personal property in the areas adversely affected by Defendants' frac sand mining, processing and transload operations, fugitive crystalline silica dust, and the spill of mine sludge. Plaintiffs also have the right to the exclusive use and quiet enjoyment of their property.

56. The tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitutes a private nuisance in that it has caused substantial injury and significant harm to, invasion and/or interference with, the comfortable enjoyment and private use by Plaintiffs of their private real and personal property, and their rights to use in the customary manner their property and residences without being exposed to the dangers of airborne crystalline silica dust, water pollution, shockwaves, vibrations, and noise pollution from blasting and other operations, destruction of the viewshed, and diminution/damage to property values.

57. The interference and invasion by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, exposing the Plaintiffs to the aforementioned dangers is substantially offensive and intolerable.

58. The aforementioned conduct by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, causing said interference and invasion has occurred because said Defendants have been and continue to be negligent and have failed to exercise ordinary care to prevent their activities from causing significant harm to the Plaintiffs' rights and interests in the private use and enjoyment of their property.

59. Unless the nuisance is abated, Plaintiffs' property and their right to enjoy their property will be progressively further diminished in value and their health will be further jeopardized.

60. As a direct and proximate result of the nuisance created by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, Plaintiffs have suffered, and continue to suffer, substantial interference with their normal use and enjoyment of their own private property and rights incidental thereto, diminution in property value, personal injuries, severe emotional distress, and damages as more fully described herein.

**CLAIM IV
TRESPASS**

As and for their fourth claim for relief, the Plaintiffs allege:

61. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

62. At all times relevant to this Complaint, landowner and/or lessee Plaintiffs were in lawful possession of certain real and personal property in the areas affected by Hi-Crush's frac sand mining, processing and transload operations, as set forth above.

63. Defendants intentionally and/or recklessly committed the wrongful act of trespass by causing hazardous crystalline silica dust and/or other hazardous substances or toxins to invade

the real and personal property of the landowner and/or lessee Plaintiffs through the air, groundwater, surface water, and/or soil.

64. Hi-Crush's and/or Gerke's breach of the holding pond and the resulting 10-million-gallon spill caused mine sludge to trespass and run over and onto neighboring properties, including the land that had been leased for agricultural use by William and Angela Sylla in the Town of Lincoln, County of Trempealeau, Wisconsin.

65. Upon information and belief, the well water of Michael Sylla and Stacy Sylla at W19890 Manka Stuve Lane, in the Town of Lincoln, County of Trempealeau, Wisconsin, was contaminated with high levels of arsenic due to the trespassory actions of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination.

66. Vehicles from the Hi-Crush facility have trespassed on the property of one or more of the Plaintiffs, including that of William and Angela Sylla, and employees or agents of Hi-Crush have trespassed into agricultural buildings labeled "Biosecure Area."

67. As a direct and proximate result of Defendants' acts of trespass, landowner and lessee Plaintiffs were injured, and continue to be injured, in that they suffered damage to their real and personal property and to their health and wellbeing, including hazardous crystalline silica dust leaving the Hi-Crush property which was, and is, deposited on Plaintiffs' properties, along with contamination of groundwater and/or surface water moving from the subject frac sand facility property onto one or more of Plaintiffs' properties, and mine sludge running onto land owned and/or leased by one or more of the Plaintiffs, and such actions constitute a trespass on properties owned or lawfully possessed by Plaintiffs, and has been and still is a substantial factor in causing past and future damages to the Plaintiffs.

CLAIM V
STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITY

As and for their fifth claim for relief, the Plaintiffs allege:

68. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

69. The blasting, crushing, mining, processing, movement and storage of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and heavy metals in holding ponds, and the operation of a railroad loading station adjacent to residential and family farm properties by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute ultra-hazardous activities in that:

(a) there exists a high degree of risk of serious harm to the environment, persons, land and chattels of others, including Plaintiffs, which cannot be eliminated by the exercise of reasonable care;

(b) there is a strong likelihood that the harm resulting from an escape of fugitive crystalline silica dust and mine sludge, along with the effects of repeated blasting, will be great;

(c) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting adjacent to a residential and family farm properties is not a matter of common usage such as would be carried on by the great mass of mankind or by many people in the community.

(d) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to residential and family farm properties is inappropriate, especially as conducted by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination; and

(e) the value to society and to the Defendants of the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to a residential and family farm properties is outweighed by the dangerous attributes and the likelihood of harm resulting therefrom.

70. As a direct and proximate result of the Defendants' actions, Plaintiffs were, and remain, injured, and will continue to suffer injuries and damages as more fully described herein.

DAMAGES

71. As a direct and proximate result of the aforementioned acts and omissions of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged above, Plaintiffs suffered the following damages:

(a) Serious annoyance, intolerable inconvenience and loss of enjoyment of legal rights as a result of the fugitive crystalline silica dust emissions (including PM^{2.5}), groundwater contamination, noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and destruction of the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility;

(b) The adult landowner plaintiffs have suffered a substantial loss of the value of real property and rights incidental thereto;

(c) Bodily physical injuries and/or an unreasonable risk of future injuries due to exposure to fugitive crystalline silica dust (including PM^{2.5}) and/or exposure to contaminated groundwater;

(d) Severe emotional pain and suffering, emotional distress and anxiety resulting from exposure to hazardous respirable crystalline silica dust and/or other hazardous substances

invading their bodies and/or property, and polluted water, all of which has caused physical injuries and the possibility of severe future health problems;

(e) Severe emotional pain and suffering, emotional distress and anxiety over the loss of the quiet enjoyment of their land and the loss, and prospective loss, of economic opportunities and ways of life;

(f) Physical injuries to and/or loss of use and enjoyment of real and personal property;

(g) Costs for clean-up and protection of property, property rights and equipment, and the purchase and transportation of clean water;

(h) Medical expenses and/or future medical monitoring expenses for the Plaintiffs; and

(i) Other damages to be proven at trial.

**CLAIM VI
INJUNCTIVE AND/OR DECLARATORY RELIEF**

As and for their sixth claim for relief, the plaintiffs allege:

72. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

73. As a direct and proximate result of the above-described conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, and the injuries and damages described herein, Plaintiffs request the following equitable relief:

A. That a judicial determination and declaration be made of the rights of the Plaintiffs and the responsibilities of the Defendants with regard to the damages and injuries caused by said Defendants to the fullest extent allowed by law;

B. That the Defendants be required, to the fullest extent allowed by law, to establish a fund, in at least the amounts as set forth in the Proofs of Claim filed in the Bankruptcy Court, or in an amount to be determined by the Court, for the purpose of establishing and maintaining a testing and treatment program whereby Plaintiffs will receive on-going medical testing and monitoring and if necessary, medical treatment until it can be determined that their exposure to fugitive crystalline silica dust (including PM^{2.5}), groundwater pollution, and the 10-million gallon spill of mine sludge and its contents and by-products, is no longer and will not be a threat to their health.

C. That the Defendants be required, to the fullest extent allowed by law, to restore Plaintiffs' property and the frac sand facility property to the condition it was in prior to being contaminated by crystalline silica dust, arsenic, and/or other contaminants, and/or the diminution/loss of viewshed.

WHEREFORE, Plaintiffs demand judgment as follows:

A. For the time period prior to the 7/12/2020 Petition Date of Hi-Crush's bankruptcy, compensatory damages against Hi-Crush's insurers and Gerke, Ahlgrimm, and ECI, jointly and severally, in an amount to be determined by verdict, together with interest on said sum; and Plaintiffs' minimum liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs' recoveries solely as against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan;

B. For the time period on and after the Effective Date of Hi-Crush's bankruptcy case, compensatory damages against the Defendants, jointly and severally, in an amount to be determined by verdict, together with interest on said sum;

C. Punitive and exemplary damages against the Defendants in an amount sufficient to punish said Defendants and to deter them and others similarly situated from engaging in similar wrongdoing, together with interest on said sum;

D. For their costs and disbursements;

E. Equitable and injunctive relief as specified herein; and

F. Such other and further relief as this Court deems just and equitable.

Dated this ____ day of _____, 2021.

FITZPATRICK, SKEMP & BUTLER, LLC
Attorneys for Plaintiffs

By: _____

Timothy S. Jacobson, WI# 1018162
Thomas M. Fitzpatrick, WI# 1012651
1123 Riders Club Rd
Onalaska, WI 54650
608-784-4370

PLAINTIFFS HEREBY DEMAND TRIAL BY A JURY OF TWELVE (12).

EXHIBIT 4

STATE OF WISCONSIN CIRCUIT COURT TREMPPEALEAU COUNTY

DARRELL BORK, MARY JO BORK,
DAKOTAH BORK and COLTON BORK
N34724 Poker Coulee Rd
Whitehall, WI 54773,

ROBERT GUZA, LISA GUZA,
EMILY GUZA and KAITIE GUZA
W22153 Hughes Filla Rd.
Independence, WI 54747,

TODD KULIG, AMY KULIG,
HAYDEN KULIG, a minor by his natural parents
and guardians, Todd and Amy Kulig,
N36584 Gierok Rd.
Independence, WI 54747,

BRONEY MANKA
W20244 Manka-Stuve Ln
Whitehall, WI 54773,

JARED MANKA
W19938 Manka Stuve Ln
Whitehall, WI 54773,

JOHN MANKA and MARY MANKA
W20243 Pine View Ln
Whitehall, WI 54773, and

JOHN WEGMAN
N26776 State Road 93
Arcadia, WI 54612,

Plaintiffs,

vs.

HI-CRUSH WHITEHALL, LLC
W20757 County Road Q
Whitehall, WI 54773

AMENDED COMPLAINT

Case No. 19-CV-64

Case Codes: 30201, 30106, 30107

STARR SURPLUS LINES INSURANCE COMPANY,
399 Park Avenue, 8th Fl.
New York, NY 10022,

IRONSHORE SPECIALTY INSURANCE COMPANY
75 Federal Street, 5th Fl.
Boston, MA 02110,

ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
840 W. Sam Houston Pkwy N., Suite 420
Houston, TX 77024,

AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,
d/b/a Zurich North America,
1299 Zurich Way
Schaumburg, IL 60196-1056,

GERKE EXCAVATING, INC.
15341 State Hwy 131
Tomah, WI 54660,

RST INSURANCE COMPANY,

AHLGRIMM EXPLOSIVES INC.
2999 W. Spencer St. Suite 2050
Appleton, WI 54914,

UVW INSURANCE COMPANY,

EXPLOSIVE CONTRACTORS INC.
131 Industrial Park Drive, Suite 3
Hollister, MO 65672,

and

XYZ INSURANCE COMPANY,

Defendants.

Plaintiffs, by their attorneys, Fitzpatrick, Skemp & Butler, LLC, allege the following
Amended Complaint against the above-named defendants:

1. Plaintiffs, Darrell Bork and Mary Jo Bork, are adult residents of N34724 Poker Coulee Rd, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 29.5-acre property and home located thereon. They reside there with their two adult children, the Plaintiffs Dakotah Bork and Colton Bork.

2. Plaintiffs, Robert Guza and Lisa Guza, are adult residents of W22153 Hughes Filla Rd, Independence, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 250-acre property and home located thereon. They reside there with their two adult children, the Plaintiffs Emily Guza and Kaitie Guza.

3. Plaintiffs, Todd Kulig and Amy Kulig, are adult residents of N36584 Gierok Rd, Independence, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 10.4-acre property and home located thereon. They reside there with their minor child, Hayden Kulig.

4. Plaintiff, Broney Manka, is an adult resident of W20244 Manka Stuve Ln, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto has been an owner of that 198-acre organic farm property and home located thereon.

5. Plaintiff, Jared Manka, is an adult resident of W19938 Manka Stuve Ln, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all times relevant hereto has been an owner of that 20-acre property and home located thereon.

6. Plaintiffs, John Manka and Mary Manka, are adult residents of W20243 Pine View Ln, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin, and at all

times relevant hereto have been husband and wife and joint owners of that 20-acre property and home located thereon.

7. Plaintiff, John Wegman, is an adult resident of N26776 State Road 93, Arcadia, and at all times relevant hereto has been an owner of 18 acres of recreational land in the Town of Lincoln, County of Trempealeau, Wisconsin.

8. Defendant, Hi-Crush Whitehall LLC (hereinafter “Hi-Crush”) is a foreign limited liability company with its principal place of business at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin. Defendant Hi-Crush Whitehall is engaged in the business of frac-sand mining and processing on an approximately a 1,447-acre site at and around said address. To the extent Plaintiffs’ damages arose prior to the Petition Date (i.e., July 12, 2020) of Hi-Crush’s Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), Plaintiffs’ liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs’ recoveries against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan. Because such rights are preserved pursuant to the Findings of Fact, Conclusions of Law and Order Confirming Joint Plan of Reorganization of Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Case No. 20-33495, Doc. No. 420], Plaintiffs do seek recovery from Hi-Crush’s liability insurers and the other Defendants for damages that arose prior to the Petition Date.

9. The Hi-Crush site is located in close proximity to the homes of each of the Plaintiffs.

10. Upon information and belief, the Defendant, Starr Surplus Lines Insurance Company (“Starr”), is a foreign insurance corporation with its principal place of business at 399

Park Avenue, 8th Floor, New York, NY 10022, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

11. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Starr, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

12. By virtue of the terms and conditions of said Hi-Crush's insurance policies and the statutes of the State of Wisconsin, the Defendant Starr is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

13. Upon information and belief, the Defendant, Ironshore Specialty Insurance Company ("Ironshore"), is a foreign insurance corporation with its principal place of business at 75 Federal St., 5th Fl., Boston, MA 02110, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

14. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Ironshore, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

15. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Ironshore is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

16. Upon information and belief, the Defendant, Aspen Specialty Insurance Company

(“Aspen”), is a foreign insurance corporation with its principal place of business at 840 W. Sam Houston Pkwy N., Suite 420, Houston, TX 77024, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

17. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Aspen, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

18. By virtue of the terms and conditions of said Hi-Crush’s insurance policy and the statutes of the State of Wisconsin, the Defendant Aspen is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

19. Upon information and belief, the Defendant, American Guarantee and Liability Insurance Company, d/b/a Zurich North America (“AGLIC”), is a foreign insurance corporation with its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196-1056, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

20. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, AGLIC, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

21. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant AGLIC is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

22. Upon information and belief, the Defendant, Gerke Excavating Inc. ("Gerke"), is a domestic corporation with its principal place of business at 15341 State Hwy 131, Tomah, WI 54660, and is engaged in the business of frac-sand mining and processing on an approximately a 1,447-acre site at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush Whitehall.

23. Upon information and belief, the Defendant, RST Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant ABC Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Gerke at all times relevant hereto.

24. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, RST Insurance Company issued and delivered to the Defendant, Gerke, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Gerke any and all sums which Gerke should become legally obligated to pay by reason of liability imposed upon it arising out of its actions.

25. By virtue of the terms and conditions of said Gerke's insurance policy and the statutes of the State of Wisconsin, the Defendant RST Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

26. Upon information and belief, the Defendant, Ahlgrimm Explosives Inc. ("Ahlgrimm"), is a domestic corporation with its principal place of business at 2999 W. Spencer

St. Suite 2050, Appleton, WI 54914, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush Whitehall.

27. Upon information and belief, the Defendant, UVW Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant UVW Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Ahlgrimm at all times relevant hereto.

28. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, UVW Insurance Company issued and delivered to the Defendant, Ahlgrimm, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Ahlgrimm any and all sums which Ahlgrimm should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

29. By virtue of the terms and conditions of said Ahlgrimm's insurance policy and the statutes of the State of Wisconsin, the Defendant UVW Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

30. Upon information and belief, the Defendant, Explosive Contractors Inc. ("ECI"), is a foreign corporation with its principal place of business at 131 Industrial Park Drive, Suite 3, Hollister, MO 65672, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at W20757 County Road Q, Whitehall, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush Whitehall.

31. Upon information and belief, the Defendant, XYZ Insurance Company is a

foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant XYZ Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to ECI at all times relevant hereto.

32. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, XYZ Insurance Company issued and delivered to the Defendant, ECI, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of ECI any and all sums which ECI should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

33. By virtue of the terms and conditions of said ECI's insurance policy and the statutes of the State of Wisconsin, the Defendant XYZ Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

FACTUAL BACKGROUND ALLEGATIONS

34. Upon information and belief, the Hi-Crush frac sand facility is capable of producing 2,860,000 tons per year of 20/100 frac sand. The processing facility is located on 1,447 acres with coarse-grade Northern White sand reserves. The facility is located on a mainline of the North American rail network of the Canadian National Railway, with an on-site rail yard that contains approximately 30,000 feet of track and has storage capacity for approximately 500 rail cars. During entire seasons of the year, Hi-Crush conducts processing of sand seven days per week, 24 hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property runs around the clock, seven days per week. Blasting operations occur between 10:00 AM and 3:00 PM. Even during winter months, typically mid-November to mid-March, the dry plant continues processing and loading rail cars. With

processing and loading of sand around the clock and every day of the year and extraction of minerals and related hauling of extracted material within the mine property seven days per week, nearby residents get no respite from the intolerable noise from the Hi-Crush facility and its related activity.

35. According to Mine Safety and Health Administration reports, Hi-Crush had seven (7) citations or orders for violations in 2015, seven (7) in 2016, five (5) in 2017, and two (2) in 2019 for a total of 21 citations or orders for violations in those three years.

36. In the Wisconsin Department of Natural Resources Preliminary Determination on the Clean Air Act permit for the Hi-Crush facility, the DNR AERMOD analysis found that the facility was expected to add 8.6 ug/m³ PM^{2.5} pollution, resulting in a level of 98% of the Clean Air Act NAAQS standard of 35 ug/m³. Upon information and belief, the Hi-Crush Whitehall facility has exceeded said standard, thereby polluting the air which the plaintiffs of necessity breathe. Based on the May 23, 2014 construction permit submitted by Hi-Crush Whitehall, the estimated particulate matter pollution emissions from the facility (blasting, trucking, processing, transfer, and storage piles) is 44.56 tons/year of total PM₁₀. This equals approximately 244 pounds per day.

37. Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible dust emissions have not been suppressed on multiple occasions, in violation of the standard set forth in the Wisconsin DNR Template Best Management Practices of Fugitive Dust Control Plans for the Industrial Sand Mining Industries: “The standard for fugitive dust emission quantification is by visual observation. If visible dust emissions are observed they need to be suppressed.”

38. Upon information and belief, the Hi-Crush facility has been operated in a manner such that visible silica fugitive dust emissions repeatedly have left/crossed the Hi-Crush property boundary and created air pollution on and around adjacent properties, including the properties of all of the Plaintiffs, in violation of NR 415.03 and/or NR 415.04, in that Defendants have caused, allowed and permitted particulate matter to be emitted into the ambient air which substantially contributes to exceeding of an air standard, and creates air pollution, and has caused, allowed and permitted silica-containing materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

39. Upon information and belief, the Hi-Crush Whitehall facility has been operated in a manner such that neighboring well water supplies of certain of the Plaintiffs have been polluted and rendered undrinkable due to dangerous and harmful levels of iron, arsenic (which has tested as high as approximately ten times EPA safety standards), and excessive turbidity.

40. On or about May 21, 2018, Hi-Crush and/or Gerke breached a negligently constructed frac sand mine holding pond at its Whitehall facility following negligent operation of earth-moving equipment by Gerke. Hi-Crush officials estimated that about 10 million gallons of liquid mine sludge were spilled, a volume that would fill a 10-foot deep space larger than two football fields. Mine sludge exited the Hi-Crush property and ran across various parcels, including land leased by William and Angela Sylla for farming, and it entered Poker Creek, which carried sludge into the Trempealeau River, turning it orange for days. Hi-Crush environmental compliance manager Jeff Johnson publicly stated the mine sludge could contain trace elements of polyacrylamide. Tests showed lead concentrations of more than 10 times allowable levels in water sampled near where the spill entered Poker Creek, and aluminum was

measured at more than 1,000 times the limit. There also were high levels of beryllium, cadmium, chromium, copper, magnesium, nickel and other contaminants.

41. Upon information and belief, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, conducted their frac-sand mining, processing, transload and/or blasting operations in a manner that is negligent, negligent *per se*, and/or reckless by virtue of their violation of statutes, administrative regulations, permit conditions, and/or local ordinances, and has furthermore created, and failed to mitigate the creation of, airborne pollution (both gaseous and solid, including crystalline silica dust), water pollution (both surface and groundwater), soil and water pollution by releasing 10-million gallons of mine sludge from a holding pond, some of which ran over property owned and/or leased by one or more of the Plaintiffs, harmful shockwaves and vibrations due to blasting and other operations, noise pollution, light pollution, destruction of landscape and viewshed, and severe reduction of property values.

42. As a result of groundwater contamination, fugitive crystalline silica dust emissions (including PM^{2.5}), noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and damage to the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility has severely impaired the value of the Plaintiffs' properties, both as to the properties' marketability and the ability to use the property in order to secure by mortgage any present or future financial obligations of the Plaintiffs, and has substantially and adversely affected the ability of the Plaintiffs to use and enjoy their properties, including their homes.

43. On or about August 21, 2020, Plaintiffs filed Proofs of Claim for liquidated damages to the Plaintiffs in excess of \$28 million in Hi-Crush's Chapter 11 bankruptcy cases (In

re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), and Plaintiffs' liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim.

CLAIM I
NEGLIGENCE AND NEGLIGENCE *PER SE*

As for their first claim for relief, the Plaintiffs allege:

44. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

45. At all times relevant hereto, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, owed Plaintiffs a duty to act with reasonable care, so as not to jeopardize the Plaintiffs' rights, property values, health and welfare.

46. Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, breached their duty of care by creating and/or failing to mitigate the creation of the following: (1) offensive airborne pollution (both gaseous and solid, including crystalline silica dust); (2) water pollution (both surface and groundwater); (3) soil and water pollution by releasing 10-million gallons of mine sludge from a holding pond, some of which ran over property owned or leased by one or more of the Plaintiffs; (4) damaging shockwaves and vibrations due to blasting and other operations; (5) noise and light pollution; (6) destruction of landscape and viewshed; and (7) severe reduction of property values. Said Defendants also breached their duty of care to the Plaintiffs by failing to adequately supervise and train employees. Hi-Crush has failed to properly train and supervise employees and contractors performing ultra-hazardous activities while working at the facility; failed to exercise reasonable care to contain silica dust and other toxins once Hi-Crush knew it had polluted a large area in and about Plaintiffs' properties and knew the harmful silica dust and toxins which permeated air, groundwater, and/or soil in and about of the

area of Plaintiffs' properties, created a substantial health risk to Plaintiffs and others; failed to warn the residents of the neighborhood, including the Plaintiffs, of health hazards associated with the crystalline silica dust and other toxins, and failed to take appropriate measures to prevent the spread of silica dust and other toxins; failed to notify authorities in a timely fashion of the full gravity and nature of fugitive dust emissions and ground and surface water contamination; failed to prevent or mitigate health hazards and damage to the value of the property in and about the neighborhood, including the real property owned by Plaintiffs; failed to timely and effectively remediate the spill of 10-million gallons of mine sludge; and failed to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards.

47. The acts of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute negligence and negligence *per se* as a result of violations of state, federal and local rules, regulations, statutes and ordinances. The acts of negligence are a substantial factor in causing Plaintiffs to suffer damages, as set forth more particularly below, including without limitation, actual or imminent damage to their residential and business water supplies, permanent severe diminution of property values, the need for modifications to the quiet and peaceful use and enjoyment of their homes and property, annoyance, inconvenience and discomfort and harm to their home and business property, persons and livestock. The negligently created environmental harms and property value reductions have been a substantial factor in creating personal fear, worry, anxiety, marital discord, inconvenience, discomfort, harassment, and harm and destruction of Plaintiffs' right to enjoy their properties in a reasonably quiet and peaceful manner and further forcing Plaintiffs to incur expenses for monitoring the supply and control of water and air, and expert consultants' fees, all to Plaintiffs' damage.

48. The Plaintiffs have been damaged as a result of a decrease in the value of their properties and businesses and through a loss of enjoyment of their properties due to the nuisances set forth above, loss of neighborhood aesthetics; personal fear, anxiety, inconvenience and discomfort; and other and further damages as the evidence may establish.

**CLAIM II
PUBLIC NUISANCE**

As and for their second claim for relief, the Plaintiffs allege:

49. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

50. Plaintiffs are members of the public and the rural community surrounding the Hi-Crush facility. The Plaintiffs regularly use public roadways which have been unreasonably interfered with and blocked by Defendants' operation more than the general public's use of public roadways because the public roads in the vicinity of Plaintiffs' homes are closer to the railroad crossings being blocked between their homes and the rail operations servicing the frac sand facility. Plaintiffs further use and benefit from public waterways, groundwater, and air in the vicinity of the frac sand facility.

51. The conduct and activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute a public nuisance in that such activities substantially or unduly interfere with the use of public places, including public roadways between the Plaintiffs' homes and rail facilities servicing the frac sand facility (including an unreasonable risk of impeding emergency vehicles that may need to reach the Plaintiffs' properties, and impeding Plaintiffs traveling to and from work), public waterways including Poker Creek and the Trempealeau River, and the air and groundwater in common use by the Plaintiffs.

52. The activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, further substantially or unduly interfere with the activities of the entire community, and are specially injurious to the health and offensive to the senses of Plaintiffs and specially interferes with and disturbs their comfortable enjoyment of their life and of their property, which is different in kind from the injury suffered by the general public.

53. As a direct and proximate result of the public nuisance created and perpetuated by Defendants' tortious conduct, Plaintiffs have suffered, and will in the future continue to suffer, interference with their use and enjoyment of public places, including public roadways, waterways, air and groundwater, and their own private property, diminution in property value, present and future remediation costs, past and future loss of earning capacity, and present and future personal injury and emotional distress.

54. Unless the public nuisance caused by the tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, is abated, the use and enjoyment of public spaces, including public roadways and waterways, air and groundwater, and Plaintiffs' property and rights of enjoyment therein will be progressively further diminished in value and their health will be further jeopardized.

55. As a direct and proximate result of the public nuisance caused by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged herein, Plaintiffs were injured and suffered damages as more fully described below.

**CLAIM III
PRIVATE NUISANCE**

As and for their third claim for relief, the plaintiffs allege:

56. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

57. Plaintiffs have proprietary interests in certain real and personal property in the areas adversely affected by Defendants' frac sand mining, processing and transload operations, fugitive crystalline silica dust, and the spill of mine sludge. Plaintiffs also have the right to the exclusive use and quiet enjoyment of their property.

58. The tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitutes a private nuisance in that it has caused substantial injury and significant harm to, invasion and/or interference with, the comfortable enjoyment and private use by Plaintiffs of their private real and personal property, and their rights to use in the customary manner their property and residences without being exposed to the dangers of airborne crystalline silica dust, water pollution, shockwaves, vibrations, and noise pollution from blasting and other operations, destruction of the viewshed, and diminution/damage to property values.

59. The interference and invasion by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, exposing the Plaintiffs to the aforementioned dangers is substantially offensive and intolerable.

60. The aforementioned conduct by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, causing said interference and invasion has occurred because said Defendants have been and continue to be negligent and have failed to exercise ordinary care to prevent their activities from causing significant harm to the Plaintiffs' rights and interests in the private use and enjoyment of their property.

61. Unless the nuisance is abated, Plaintiffs' property and their right to enjoy their property will be progressively further diminished in value and their health will be further jeopardized.

62. As a direct and proximate result of the nuisance created by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, Plaintiffs have suffered, and continue to suffer, substantial interference with their normal use and enjoyment of their own private property and rights incidental thereto, diminution in property value, personal injuries, severe emotional distress, and damages as more fully described herein.

**CLAIM IV
TRESPASS**

As and for their fourth claim for relief, the Plaintiffs allege:

63. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

64. At all times relevant to this Complaint, landowner and/or lessee Plaintiffs, Darrell Bork and Mary Jo Bork, Robert Guza and Lisa Guza, Todd Kulig and Amy Kulig, Broney Manka, Jared Manka, John Manka and Mary Manka, and John Wegman were in lawful possession of certain real and personal property in the areas affected by Hi-Crush's frac sand mining, processing and transload operations, as set forth above.

65. Defendants intentionally and/or recklessly committed the wrongful act of trespass by causing hazardous crystalline silica dust and/or other hazardous substances or toxins to invade the real and personal property of the landowner and/or lessee Plaintiffs through the air, groundwater, surface water, and/or soil.

66. Hi-Crush's and/or Gerke's breach of the holding pond and the resulting 10-million-gallon spill caused mine sludge to trespass and run over and onto neighboring properties, including the land owned by Darrell Bork and Mary Jo Bork at N34724 Poker Coulee Rd, Whitehall, in the Town of Lincoln, County of Trempealeau, Wisconsin.

67. Upon information and belief, the well water of at least one family in the Town of Lincoln, County of Trempealeau, Wisconsin, was contaminated with high levels of arsenic due to the trespassory actions of Hi-Crush.

68. As a direct and proximate result of Defendants' acts of trespass, landowner and lessee Plaintiffs were injured, and continue to be injured, in that they suffered damage to their real and personal property and to their health and wellbeing, including hazardous crystalline silica dust leaving the Hi-Crush property which was, and is, deposited on Plaintiffs' properties, along with contamination of groundwater and/or surface water moving from the subject frac sand facility property onto one or more of Plaintiffs' properties, and mine sludge running onto land owned by one or more of the Plaintiffs, and such actions constitute a trespass on properties owned or lawfully possessed by Plaintiffs, and has been and still is a substantial factor in causing past and future damages to the Plaintiffs.

**CLAIM V
STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITY**

As and for their fifth claim for relief, the Plaintiffs allege:

69. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

70. The blasting, crushing, mining, processing, movement and storage of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and heavy metals in holding ponds, and the operation of a railroad loading station adjacent to residential and family farm properties by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute ultra-hazardous activities in that:

(a) there exists a high degree of risk of serious harm to the environment, persons, land and chattels of others, including Plaintiffs, which cannot be eliminated by the exercise of reasonable care;

(b) there is a strong likelihood that the harm resulting from an escape of fugitive crystalline silica dust and mine sludge, along with the effects of repeated blasting, will be great;

(c) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting adjacent to a residential and family farm properties is not a matter of common usage such as would be carried on by the great mass of mankind or by many people in the community.

(d) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to residential and family farm properties is inappropriate, especially as conducted by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination; and

(e) the value to society and to the Defendants of the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to a residential and family farm properties is outweighed by the dangerous attributes and the likelihood of harm resulting therefrom.

71. As a direct and proximate result of the Defendants' actions, Plaintiffs were, and remain, injured, and will continue to suffer injuries and damages as more fully described herein.

DAMAGES

72. As a direct and proximate result of the aforementioned acts and omissions of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged above, Plaintiffs suffered the following damages:

(a) Serious annoyance, intolerable inconvenience and loss of enjoyment of legal rights as a result of the fugitive crystalline silica dust emissions (including PM^{2.5}), groundwater contamination, noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and destruction of the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility;

(b) The adult landowner plaintiffs have suffered a substantial loss of the value of real property and rights incidental thereto;

(c) Bodily physical injuries and/or an unreasonable risk of future injuries due to exposure to fugitive crystalline silica dust (including PM^{2.5}) and/or exposure to contaminated groundwater;

(d) Severe emotional pain and suffering, emotional distress and anxiety resulting from exposure to hazardous respirable crystalline silica dust and/or other hazardous substances invading their bodies and/or property, and polluted water, all of which has caused physical injuries and the possibility of severe future health problems;

(e) Severe emotional pain and suffering, emotional distress and anxiety over the loss of the quiet enjoyment of their land and the loss, and prospective loss, of economic opportunities and ways of life;

(f) Physical injuries to and/or loss of use and enjoyment of real and personal property;

(g) Costs for clean-up and protection of property, property rights and equipment, and the purchase and transportation of clean water;

(h) Medical expenses and/or future medical monitoring expenses for the Plaintiffs; and

(i) Other damages to be proven at trial.

**CLAIM VI
INJUNCTIVE AND/OR DECLARATORY RELIEF**

As and for their sixth claim for relief, the plaintiffs allege:

73. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

74. As a direct and proximate result of the above-described conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, and the injuries and damages described herein, Plaintiffs request the following equitable relief:

A. That a judicial determination and declaration be made of the rights of the Plaintiffs and the responsibilities of the Defendants with regard to the damages and injuries caused by said Defendants to the fullest extent allowed by law;

B. That the Defendants be required, to the fullest extent allowed by law, to establish a fund, in at least the amounts as set forth in the Proofs of Claim filed in the Bankruptcy Court, or in an amount to be determined by the Court, for the purpose of establishing and maintaining a testing and treatment program whereby Plaintiffs will receive on-going medical testing and monitoring and if necessary, medical treatment until it can be determined that their exposure to fugitive crystalline silica dust (including PM^{2.5}), groundwater pollution, and the 10-million gallon spill of mine sludge and its contents and by-products, is no longer and will not be a threat to their health.

C. That the Defendants be required, to the fullest extent allowed by law, to restore Plaintiffs' property and the frac sand facility property to the condition it was in prior to being contaminated by crystalline silica dust, arsenic, and/or other contaminants, and/or the diminution/loss of viewshed.

WHEREFORE, Plaintiffs demand judgment as follows:

A. For the time period prior to the 7/12/2020 Petition Date of Hi-Crush's bankruptcy, compensatory damages against Hi-Crush's insurers and Gerke, Ahlgrimm, and ECI, jointly and severally, in an amount to be determined by verdict, together with interest on said sum; and Plaintiffs' minimum liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs' recoveries solely as against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan;

B. For the time period on and after the Effective Date of Hi-Crush's bankruptcy case, compensatory damages against the Defendants, jointly and severally, in an amount to be determined by verdict, together with interest on said sum;

C. Punitive and exemplary damages against the Defendants in an amount sufficient to punish said Defendants and to deter them and others similarly situated from engaging in similar wrongdoing, together with interest on said sum;

D. For their costs and disbursements;

E. Equitable and injunctive relief as specified herein; and

F. Such other and further relief as this Court deems just and equitable.

Dated this _____ day of _____, 2021.

FITZPATRICK, SKEMP & BUTLER, LLC
Attorneys for Plaintiffs

By: _____

Timothy S. Jacobson, WI# 1018162
Thomas M. Fitzpatrick, WI# 1012651
1123 Riders Club Rd
Onalaska, WI 54650
608-784-4370

PLAINTIFFS HEREBY DEMAND TRIAL BY A JURY OF TWELVE (12).

EXHIBIT 5

STATE OF WISCONSIN CIRCUIT COURT TREMPPEALEAU COUNTY

CORY BERG and JULIE BERG
W16926 Rabbit Run Rd
Taylor, WI 54659,

DANIELLE HOLSTAD
N43937 County Rd E
Osseo, WI 54758,

GREG BLUEM and LORRAINE BLUEM
N30516 N Trump Coulee Rd
Taylor, WI 54659,

DIANNA BROWN
N30924 N. Trump Coulee Rd
Taylor, WI 54659,

MICHAEL JOHNSON and PAULA KNUTSON
W16803 Rabbit Run Rd
Taylor, WI 54659,

PATRICK MATHSON and DEBORAH CLARE
W16937 Rabbit Run Rd
Taylor, WI 54659,

RANDY ROSE and CARA ROSE, and
SARA STEFFENSON, a minor by her natural
parent and guardian, Cara Rose,
W16980 Rabbit Run Rd
Taylor, WI 54659,

JAMES SYVERSON and KIMBERLY SYVERSON
250 Pine Ave.
Taylor, WI 54659,

KATE CONNELL
N5700 N Trump Coulee Rd
Taylor, WI 54659,

SCOTT DYKSTRA
N30644 Trump Coulee Rd
Taylor, WI 54659,

AMENDED COMPLAINT

Case No. 19-CV-65

Case Codes: 30201, 30106, 30107

and

GLENN WILLERS and BETH WILLERS
W16710 Rabbit Run Rd
Taylor, WI 54659,

Plaintiffs,

vs.

HI-CRUSH BLAIR, LLC
11203 S River Rd,
Taylor, WI 54659,

STARR SURPLUS LINES INSURANCE COMPANY,
399 Park Avenue, 8th Fl.
New York, NY 10022,

IRONSHORE SPECIALTY INSURANCE COMPANY
75 Federal Street, 5th Fl.
Boston, MA 02110,

ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
840 W. Sam Houston Pkwy N., Suite 420
Houston, TX 77024,

AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,
d/b/a Zurich North America,
1299 Zurich Way
Schaumburg, IL 60196-1056,

GERKE EXCAVATING, INC.
15341 State Hwy 131
Tomah, WI 54660,

RST INSURANCE COMPANY,

AHLGRIMM EXPLOSIVES INC.
2999 W. Spencer St. Suite 2050
Appleton, WI 54914,

UVW INSURANCE COMPANY,

EXPLOSIVE CONTRACTORS INC.
131 Industrial Park Drive, Suite 3
Hollister, MO 65672,

and

XYZ INSURANCE COMPANY,

Defendants.

Plaintiffs, by their attorneys, Fitzpatrick, Skemp & Butler, LLC, allege the following Amended Complaint against the above-named defendants:

1. Plaintiffs, Cory Berg and Julie Berg, are adult individuals residing at W16926 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin, and are husband and wife and joint owners of that 1.55-acre property and home located thereon.

2. Plaintiff, Danielle Holstad, is an adult individual currently residing at N43937 County Rd E, Osseo, WI 54758. During times relevant hereto, she resided with Cory and Julie Berg at W16926 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin.

3. Plaintiffs, Greg Bluem and Lorraine Bluem, are adult individuals residing at N30516 N Trump Coulee Rd, Taylor, Trempealeau County, Wisconsin, and at all times relevant hereto have been husband and wife and joint owners of that 18.4-acre property and home located thereon.

4. Plaintiff, Dianna Brown, is an adult individual residing at N30924 N. Trump Coulee Rd, Taylor, Trempealeau County, Wisconsin, and owns that 10-acre property and home located thereon.

5. Plaintiffs, Michael Johnson and Paula Knutson, are adult individuals residing at W16803 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin. Michael Johnson is owner of that 1-acre property and home located thereon.

6. Plaintiffs, Patrick Mathson and Deborah Clare, are adult individuals residing at W16937 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin, and are joint owners of that 4.38-acre property and home located thereon.

7. Plaintiffs, Randy and Cara Rose, are adult individuals residing at W16980 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin, and are husband and wife and joint owners of that 1.3-acre property and home located thereon.

8. Plaintiff, Sara Steffenson (D.O.B. 12/9/2005), is a minor child residing with her natural parent and guardian, Cara Rose, at W16980 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin.

9. Plaintiffs, James and Kimberly Syverson, are adult individuals residing at 250 Pine Ave., Taylor, WI 54659, and owning 22.15 acres of land at W16954 Rabbit Run Rd., Taylor, County of Jackson, Wisconsin, which they lease for various purposes.

10. Plaintiff, Kate Connell, is an adult individual residing at N5700 N Trump Coulee Rd, Taylor, Trempealeau County, Wisconsin, and owns that 3.55-acre property and home located thereon.

11. Plaintiff, Scott Dykstra, is an adult individual residing at N30644 Trump Coulee Rd, Taylor, Trempealeau County, Wisconsin, and owns that 6.64-acre property and home located thereon.

12. Plaintiffs, Glenn Willers and Beth Willers, are adult individuals residing at W16710 Rabbit Run Rd, Taylor, County of Jackson, Wisconsin, and are husband and wife and joint owners of that 13-acre property and home located thereon.

13. Upon information and belief, Defendant, Hi-Crush Blair, LLC (“Hi-Crush”) is a foreign limited liability company with its principal place of business at 11203 S River Rd,

Taylor, Wisconsin. Defendant Hi-Crush is engaged in the business of frac-sand mining and processing on an approximately 1,285-acre site at and around said address. To the extent Plaintiffs' damages arose prior to the Petition Date (i.e., July 12, 2020) of Hi-Crush's Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), Plaintiffs' liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs' recoveries against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan. Because such rights are preserved pursuant to the Findings of Fact, Conclusions of Law and Order Confirming Joint Plan of Reorganization of Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Case No. 20-33495, Doc. No. 420], Plaintiffs do seek recovery from Hi-Crush's liability insurers and the other Defendants for damages that arose prior to the Petition Date.

14. The Hi-Crush site is located in close proximity to the properties of each of the landowner Plaintiffs and the homes of all of the Plaintiffs except James and Kimberly Syverson, and Danielle Holstad who no longer resides on Rabbit Run Road.

15. Upon information and belief, the Defendant, Starr Surplus Lines Insurance Company ("Starr"), is a foreign insurance corporation with its principal place of business at 399 Park Avenue, 8th Floor, New York, NY 10022, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

16. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Starr, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally

obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

17. By virtue of the terms and conditions of said Hi-Crush's insurance policies and the statutes of the State of Wisconsin, the Defendant Starr is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

18. Upon information and belief, the Defendant, Ironshore Specialty Insurance Company ("Ironshore"), is a foreign insurance corporation with its principal place of business at 75 Federal St., 5th Fl., Boston, MA 02110, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

19. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Ironshore, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

20. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Ironshore is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

21. Upon information and belief, the Defendant, Aspen Specialty Insurance Company ("Aspen"), is a foreign insurance corporation with its principal place of business at 840 W. Sam Houston Pkwy N., Suite 420, Houston, TX 77024, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

22. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Aspen, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it

agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

23. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Aspen is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

24. Upon information and belief, the Defendant, American Guarantee and Liability Insurance Company, d/b/a Zurich North America ("AGLIC"), is a foreign insurance corporation with its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196-1056, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

25. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, AGLIC, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

26. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant AGLIC is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

27. Upon information and belief, the Defendant, Gerke Excavating Inc. ("Gerke"), is a domestic corporation with its principal place of business at 15341 State Hwy 131, Tomah, WI 54660, and is engaged in the business of frac-sand mining and processing on an approximately 1,285-acre site at 11203 S River Rd, Taylor, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush.

28. Upon information and belief, the Defendant, RST Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant ABC Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Gerke at all times relevant hereto.

29. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, RST Insurance Company issued and delivered to the Defendant, Gerke, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Gerke any and all sums which Gerke should become legally obligated to pay by reason of liability imposed upon it arising out of its actions.

30. By virtue of the terms and conditions of said Gerke's insurance policy and the statutes of the State of Wisconsin, the Defendant RST Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

31. Upon information and belief, the Defendant, Ahlgrimm Explosives Inc. ("Ahlgrimm"), is a domestic corporation with its principal place of business at 2999 W. Spencer St. Suite 2050, Appleton, WI 54914, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at 11203 S River Rd, Taylor, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush.

32. Upon information and belief, the Defendant, UVW Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant UVW Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Ahlgrimm at all times relevant hereto.

33. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, UVW Insurance Company issued and delivered to the Defendant, Ahlgrimm, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Ahlgrimm any and all sums which Ahlgrimm should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

34. By virtue of the terms and conditions of said Ahlgrimm's insurance policy and the statutes of the State of Wisconsin, the Defendant UVW Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

35. Upon information and belief, the Defendant, Explosive Contractors Inc. ("ECI"), is a foreign corporation with its principal place of business at 131 Industrial Park Drive, Suite 3, Hollister, MO 65672, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at 11203 S River Rd, Taylor, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush.

36. Upon information and belief, the Defendant, XYZ Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant XYZ Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to ECI at all times relevant hereto.

37. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, XYZ Insurance Company issued and delivered to the Defendant, ECI, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of ECI any and all sums which ECI should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

38. By virtue of the terms and conditions of said ECI's insurance policy and the statutes of the State of Wisconsin, the Defendant XYZ Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

FACTUAL BACKGROUND ALLEGATIONS

39. Upon information and belief, the Hi-Crush frac sand facility is capable of producing 2,860,000 tons per year of 20/100 frac sand. The processing facility is located on about 1,285 acres with coarse-grade Northern White sand reserves. The facility is located on a mainline of the North American rail network of the Canadian National Railway, with an on-site rail yard that contains approximately 43,000 feet of track and has storage capacity for approximately 500 rail cars. Hi-Crush Blair conducts processing of sand seven days per week, 24 hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property starts as early as 6:00 AM, running to 10:00 PM, seven days per week. Even during winter months, typically Mid-November to Mid-March, the dry plant continues processing and loading rail cars. With processing and loading of sand 24/7/365 and extraction of minerals and related hauling of extracted material within the mine property starting as early as 6:00 AM, running to 10:00 PM, seven days per week, nearby residents get no respite from the intolerable noise from the Hi-Crush facility and its related activity.

40. According to Mine Safety and Health Administration reports, Hi-Crush had four (4) citations or orders in 2015, five (5) in 2016, eight (8) in 2017, seven (7) in 2018, and five (5) in 2019 for a total of 29 citations.

41. In the Wisconsin Department of Natural Resources Preliminary Determination on the Clean Air Act permit for the Hi-Crush Blair facility, the DNR AERMOD analysis found that the facility was expected to add 5.8 ug/m³ PM_{2.5} pollution, resulting in a level of 73.1% of the

Clean Air Act NAAQS standard of 35 ug/m³. Upon information and belief, the Hi-Crush facility has exceeded said standard, thereby polluting the air which the plaintiffs of necessity breathe. Furthermore, Wisconsin Admin. Code NR439.11 requires operators emit who emit more than 15 pounds in any day or 3 pounds in any hour of particulate matter to prepare a Malfunction, Prevention, and Abatement Plan. The plan is to document how the operator will prevent, detect and correct malfunctions or equipment failures which may cause applicable air emission limitations to be violated or which may cause air pollution. Using emission factors published by the EPA (AP-42) it is estimated that the Hi-Crush mine and sand piles can emit nearly 500 pounds of PM¹⁰ into the air per day (181,920 pounds per year). The piles of silica sand in Hi-Crush's processing areas are up to 13 acres in size, up to approximately 50 feet high, and as little as 750 feet from neighboring property owners' homes.

42. Upon information and belief, the Hi-Crush frac sand facility has been operated in a manner such that visible dust emissions have not been suppressed on multiple occasions, in violation of the standard set forth in the Wisconsin DNR Template Best Management Practices of Fugitive Dust Control Plans for the Industrial Sand Mining Industries: "The standard for fugitive dust emission quantification is by visual observation. If visible dust emissions are observed they need to be suppressed." Stockpiles must be observed daily and whenever there is a potential for fugitive dust generation, the piles must be watered, and equipment to apply water shall be onsite. However, Hi-Crush has no equipment onsite that is capable of reaching the extent of the piles to apply water, and there is little effective control of fugitive dust from the piles.

43. Upon information and belief, the Hi-Crush Blair facility has been operated in a manner such that visible silica fugitive dust emissions repeatedly have left/crossed the Hi-Crush property boundary and created air pollution on and around adjacent properties, including the

properties of the Plaintiffs, in violation of NR 415.03 and/or NR 415.04, in that Hi-Crush has caused, allowed or permitted particulate matter to be emitted into the ambient air which substantially contributes to exceeding of an air standard, or creates air pollution, and has caused, allowed or permitted silica-containing materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

44. Upon information and belief, the Hi-Crush Blair facility has been operated in a manner such that the company received a notice of violation from the Wisconsin DNR for exceedance of arsenic starting in or about November 2016, with exceedance at least through 10/16/2017. Groundwater contamination reached a point of being as high as four times the acceptable limit of arsenic, without any notice to neighbors regarding potential impact to their drinking water wells. Hi-Crush Blair kept information about the serious arsenic contamination secret from the neighboring public until the matter became subject to a building permit for a pump house, which happened to get disclosed in the local newspaper. Neighboring well water supplies of one or more of the Plaintiffs have experienced excessive turbidity and/or sediment since the mine began operations and blasting.

45. Upon information and belief, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, have conducted the aforementioned frac-sand mining, processing and transload operations in a manner that is negligent *per se* and/or reckless in that said Defendants have conducted said operation in violation of mandatory state, local and federal laws, rules, ordinances and regulations governing the safe methods of operation of said mine, and Defendants furthermore negligently created and failed to mitigate the creation of airborne pollution (both gaseous and solid), water pollution (both surface and groundwater), excessive

noise, dust, nighttime light, caused vibrations due to blasting, destruction of landscape and viewshed, and reduced property values.

46. As a result of groundwater contamination with toxic arsenic, fugitive crystalline silica dust emissions (including PM2.5), noise pollution, light pollution, blasting shockwaves and vibrations, and damage to the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility has severely damaged or destroyed the value of the Plaintiffs' properties, both as to the properties' marketability and the ability to use the property in order to secure by mortgage any present or future financial obligations of the Plaintiffs, and has substantially and adversely affected the ability of the Plaintiffs to use and enjoy their properties, including their homes.

47. On or about August 21, 2020, Plaintiffs filed Proofs of Claim for liquidated damages to the Plaintiffs in excess of \$34 million in Hi-Crush's Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), and Plaintiffs' liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim.

**CLAIM I
NEGLIGENCE AND NEGLIGENCE *PER SE***

As for their first claim for relief, the Plaintiffs allege:

48. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

49. At all times relevant hereto, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, owed Plaintiffs a duty to act with reasonable care, so as not to jeopardize the Plaintiffs' rights, property values, health and welfare.

50. Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, breached their duty of care by creating and/or failing to mitigate the creation of the following: (1) offensive airborne pollution (both gaseous and solid, including crystalline silica dust); (2) water pollution (surface and/or groundwater); (3) damaging shockwaves and vibrations due to blasting and other operations; (4) noise and light pollution; (5) destruction of landscape and viewshed; and (6) severe reduction of property values. Hi-Crush also breached its duty of care to the Plaintiffs by failing to adequately supervise and train employees. Hi-Crush has failed to properly train and supervise employees and contractors performing ultra-hazardous activities while working at the facility; failed to exercise reasonable care to contain silica dust and other toxins once Hi-Crush knew it had polluted a large area in and about Plaintiffs' properties and knew the harmful silica dust and toxins which permeated air, groundwater, and/or soil in and about of the area of Plaintiffs' properties, created a substantial health risk to Plaintiffs and others; failed to warn the residents of the neighborhood, including the Plaintiffs, of health hazards associated with the crystalline silica dust and other toxins, and failed to take appropriate measures to prevent the spread of silica dust and other toxins; failed to notify authorities in a timely fashion of the full gravity and nature of fugitive dust emissions and ground and/or surface water contamination; failed to prevent or mitigate health hazards and damage to the value of the property in and about the neighborhood, including the real property owned by Plaintiffs; and failed to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards.

51. The acts of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute negligence and negligence *per se* as a result of violations of state, federal and local rules, regulations, statutes and ordinances. The acts of negligence are a substantial

factor in causing Plaintiffs to suffer damages, as set forth more particularly below, including without limitation, actual or imminent damage to their residential and business water supplies, permanent severe diminution of property values, the need for modifications to the quiet and peaceful use and enjoyment of their homes and property, annoyance, inconvenience and discomfort and harm to their home property and persons. The negligently created environmental harms and property value reductions have been a substantial factor in creating personal fear, worry, anxiety, marital discord, inconvenience, discomfort, harassment, and harm and destruction of Plaintiffs' right to enjoy their properties in a reasonably quiet and peaceful manner and further forcing Plaintiffs to incur expenses for monitoring the supply and control of water and air, and expert consultants' fees, all to Plaintiffs' damage.

52. The Plaintiffs have been damaged as a result of a decrease in the value of their properties and through a loss of enjoyment of their properties due to the nuisances set forth above, loss of neighborhood aesthetics; personal fear, anxiety, inconvenience and discomfort; and other and further damages as the evidence may establish.

**CLAIM II
PUBLIC NUISANCE**

As and for their second claim for relief, the Plaintiffs allege:

53. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

54. Plaintiffs are members of the public and the rural community surrounding the Hi-Crush frac sand facility. The Plaintiffs regularly use public roadways which have been unreasonably interfered with and blocked by Hi-Crush's operation more than the general public's use of public roadways because the public roads in the vicinity of Plaintiffs' homes are closer to the railroad crossings being blocked between their homes and the rail operations servicing the

Hi-Crush facility. Plaintiffs further use and benefit from public waterways, groundwater, and air in the vicinity of the Hi-Crush facility.

55. The conduct and activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute a public nuisance in that such activities substantially or unduly interfere with the use of public places, including public roadways between the Plaintiffs' homes and rail facilities servicing the Hi-Crush facility (including an unreasonable risk of impeding emergency vehicles that may need to reach the Plaintiffs' properties, and impeding Plaintiffs traveling to and from work), public waterways including the Trempealeau River, and the air and groundwater in common use by the Plaintiffs.

56. The activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, further substantially or unduly interfere with the activities of the entire community, and are specially injurious to the health and offensive to the senses of Plaintiffs and specially interferes with and disturbs their comfortable enjoyment of their life and of their property, which is different in kind from the injury suffered by the general public.

57. As a direct and proximate result of the public nuisance created and perpetuated by Defendants' tortious conduct, Plaintiffs have suffered, and will in the future continue to suffer, interference with their use and enjoyment of public places, including public roadways, waterways, air and groundwater, and their own private property, diminution in property value, present and future remediation costs, past and future loss of earning capacity, and present and future personal injury and emotional distress.

58. Unless the public nuisance caused by the tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, is abated, the use and enjoyment of public spaces, including public roadways and waterways, air and groundwater, and Plaintiffs'

property and rights of enjoyment therein will be progressively further diminished in value and their health will be further jeopardized.

59. As a direct and proximate result of the public nuisance caused by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged herein, Plaintiffs were injured and suffered damages as more fully described below.

**CLAIM III
PRIVATE NUISANCE**

As and for their third claim for relief, the plaintiffs allege:

60. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

61. Plaintiffs have proprietary interests in certain real and personal property in the areas adversely affected by Defendants' frac sand mining, processing and transload operations, and fugitive crystalline silica dust. Plaintiffs also have the right to the exclusive use and quiet enjoyment of their property.

62. The tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitutes a private nuisance in that it has caused substantial injury and significant harm to, invasion and/or interference with, the comfortable enjoyment and private use by Plaintiffs of their private real and personal property, and their rights to use in the customary manner their property and residences without being exposed to the dangers of airborne crystalline silica dust, water pollution, shockwaves, vibrations, and noise pollution from blasting and other operations, destruction of the viewshed, and diminution/damage to property values.

63. The interference and invasion by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, exposing the Plaintiffs to the aforementioned dangers is substantially offensive and intolerable.

64. The aforementioned conduct by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, causing said interference and invasion has occurred because Defendants have been and continue to be negligent and has failed to exercise ordinary care to prevent their activities from causing significant harm to the Plaintiffs' rights and interests in the private use and enjoyment of their property.

65. Unless the nuisance is abated, Plaintiffs' property and their right to enjoy their property will be progressively further diminished in value and their health will be further jeopardized.

66. As a direct and proximate result of the nuisance created by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, Plaintiffs have suffered, and continue to suffer, substantial interference with their normal use and enjoyment of their own private property and rights incidental thereto, diminution in property value, personal injuries, severe emotional distress, and damages as more fully described herein.

**CLAIM IV
TRESPASS**

As and for their fourth claim for relief, the Plaintiffs allege:

67. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

68. At all times relevant to this Complaint, landowner Plaintiffs, Cory Berg and Julie Berg, Greg Bluem and Lorraine Bluem, Dianna Brown, Michael Johnson, Patrick Mathson and Deborah Clare, Randy and Cara Rose, James and Kimberly Syverson, Kate Connell, Scott Dykstra, and Glenn Willers and Beth Willers, were in lawful possession of certain real and personal property in the areas affected by the frac sand mining, processing and transload operations, as a result of fugitive silica dust and/or groundwater pollution.

69. Defendants intentionally and/or recklessly committed the wrongful act of trespass by causing hazardous crystalline silica dust and/or other hazardous substances or toxins to invade the real and personal property of the landowner Plaintiffs through the air, groundwater, surface water, and/or soil.

70. As a direct and proximate result of Defendants' acts of trespass, landowner Plaintiffs were injured, and continue to be injured, in that they suffered damage to their real and personal property and to their health and wellbeing, including hazardous crystalline silica dust leaving the Hi-Crush property which was, and is, deposited on Plaintiffs' properties, along with contamination of groundwater and/or surface water moving from the Hi-Crush property onto one or more of Plaintiffs' properties, and such actions constitute a trespass on properties owned or lawfully possessed by Plaintiffs, and has been and still is a substantial factor in causing past and future damages to the Plaintiffs.

**CLAIM V
STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITY**

As and for their fifth claim for relief, the Plaintiffs allege:

71. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

72. The blasting, crushing, mining, and storage of large quantities of crystalline silica sand and dust, the storage of mine sludge with chemical additives and heavy metals in holding ponds, and the operation of a railroad loading station adjacent to residential and family farm properties by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute ultra-hazardous activities in that:

(a) There exists a high degree of risk of serious harm to the environment, persons, land and chattels of others, including Plaintiffs, which cannot be eliminated by the exercise of reasonable care;

(b) there is a strong likelihood that the harm resulting from an escape of fugitive crystalline silica dust and mine sludge, along with the effects of repeated blasting, will be great;

(c) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage large quantities of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting adjacent to a residential properties is not a matter of common usage such as would be carried on by the great mass of mankind or many people in the community.

(d) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of large quantities of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to a residential properties is inappropriate, especially as conducted by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination; and

(e) the value to society and to Defendants of the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to a residential properties is outweighed by the dangerous attributes and the likelihood of harm resulting therefrom.

73. As a direct and proximate result of Defendants' actions, Plaintiffs were, and remain, injured, and continue to suffer injuries and damages as more fully described herein.

DAMAGES

74. As a direct and proximate result the aforementioned acts and omissions of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged above, Plaintiffs suffered the following damages:

(a) Serious annoyance, intolerable inconvenience and loss of enjoyment of legal rights as a result of the fugitive crystalline silica dust emissions (including $PM^{2.5}$), groundwater contamination, noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and destruction of the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility;

(b) The adult landowner plaintiffs have suffered a substantial loss of the value of real property and rights incidental thereto;

(c) Bodily physical injuries and/or an unreasonable risk of future injuries due to exposure to fugitive crystalline silica dust (including $PM^{2.5}$) and/or exposure to contaminated groundwater;

(d) Severe emotional pain and suffering, emotional distress and anxiety resulting from exposure to hazardous respirable crystalline silica dust and/or other hazardous substances invading their bodies and/or property, and polluted water, all of which has caused physical injuries and the possibility of severe future health problems;

(e) Severe emotional pain and suffering, emotional distress and anxiety over the loss of the quiet enjoyment of their land and the loss, and prospective loss, of economic opportunities and ways of life;

(f) Physical injuries to and/or loss of use and enjoyment of real and personal property;

(g) Costs for clean-up and protection of property, property rights and equipment, and the purchase and transportation of clean water;

(h) Medical expenses and/or future medical monitoring expenses for the Plaintiffs; and

(i) Other damages to be proven at trial.

**CLAIM VI
INJUNCTIVE AND/OR DECLARATORY RELIEF**

As and for their sixth claim for relief, the plaintiffs allege:

75. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

76. As a direct and proximate result of the above-described conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, and the injuries and damages described herein, Plaintiffs request the following equitable relief:

A. That a judicial determination and declaration be made of the rights of the Plaintiffs and the responsibilities of the Defendants with respect to the damages and injuries caused by said Defendants to the fullest extent allowed by law;

B. That the Defendants be required, to the fullest extent allowed by law, to establish a fund, in at least the amounts as set forth in the Proofs of Claim filed in the Bankruptcy Court, or in an amount to be determined by the Court, for the purpose of establishing and maintaining a testing and treatment program whereby Plaintiffs will receive on-going medical testing and monitoring and if necessary, medical treatment until it can be determined that their exposure to fugitive crystalline silica dust (including PM^{2.5}) and groundwater pollution is no longer and will not be a threat to their health.

C. That the Defendants be required, to the fullest extent allowed by law, to restore Plaintiffs' property and the frac sand facility property to the condition it was in prior to being contaminated by crystalline silica dust, arsenic, and/or other contaminants, and/or the diminution/loss of viewshed.

WHEREFORE, Plaintiffs demand judgment as follows:

A. For the time period prior to the 7/12/2020 Petition Date of Hi-Crush's bankruptcy, compensatory damages against Hi-Crush's insurers and Gerke, Ahlgrimm, and ECI, jointly and severally, in an amount to be determined by verdict, together with interest on said sum; and Plaintiffs' minimum liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs' recoveries solely as against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan;

B. For the time period on and after the Effective Date of Hi-Crush's bankruptcy case, compensatory damages against the Defendants, jointly and severally, in an amount to be determined by verdict, together with interest on said sum;

C. Punitive and exemplary damages against the Defendants in an amount sufficient to punish said Defendants and to deter them and others similarly situated from engaging in similar wrongdoing, together with interest on said sum;

D. For their costs and disbursements;

E. Equitable and injunctive relief as specified herein; and

F. Such other and further relief as this Court deems just and equitable.

Dated this _____ day of _____, 2021.

FITZPATRICK, SKEMP & BUTLER, LLC
Attorneys for Plaintiffs

By: _____
Timothy S. Jacobson, WI# 1018162
Thomas M. Fitzpatrick, WI# 1012651
1123 Riders Club Rd
Onalaska, WI 54650
608-784-4370

PLAINTIFFS HEREBY DEMAND TRIAL BY A JURY OF TWELVE (12).

EXHIBIT 6

STATE OF WISCONSIN CIRCUIT COURT TREMPPEALEAU COUNTY

LELAND DRANGSTVEIT and
MARY DRANGSTVEIT
W11477 S River Rd
Taylor, WI 54659,

Plaintiffs,

vs.

HI-CRUSH BLAIR, LLC
11203 S River Rd,
Taylor, WI 54659,

STARR SURPLUS LINES INSURANCE COMPANY,
399 Park Avenue, 8th Fl.
New York, NY 10022,

IRONSHORE SPECIALTY INSURANCE COMPANY
75 Federal Street, 5th Fl.
Boston, MA 02110,

ASPEN SPECIALTY INSURANCE COMPANY
c/o Aspen Specialty Insurance Management, Inc.
840 W. Sam Houston Pkwy N., Suite 420
Houston, TX 77024,

AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,
d/b/a Zurich North America,
1299 Zurich Way
Schaumburg, IL 60196-1056,

GERKE EXCAVATING, INC.
15341 State Hwy 131
Tomah, WI 54660,

RST INSURANCE COMPANY,

AHLGRIMM EXPLOSIVES INC.
2999 W. Spencer St. Suite 2050
Appleton, WI 54914,

UVW INSURANCE COMPANY,

AMENDED COMPLAINT

Case No. 19-CV-66

Case Codes: 30201, 30106, 30107

EXPLOSIVE CONTRACTORS INC.
131 Industrial Park Drive, Suite 3
Hollister, MO 65672,

and

XYZ INSURANCE COMPANY,

Defendants.

Plaintiffs, by their attorneys, Fitzpatrick, Skemp & Butler, LLC, allege the following Amended Complaint against the above-named defendants:

1. Plaintiffs, Mary Drangstveit and Leland Drangstveit, are adult individuals residing at W11477 S River Rd, Taylor, County of Trempealeau, Wisconsin, and at all times relevant hereto have been husband and wife. Mary Drangstveit is the owner of that 120-acre property and home located thereon.

2. Upon information and belief, Defendant, Hi-Crush Blair, LLC (“Hi-Crush”) is a foreign limited liability company with its principal place of business at 11203 S River Rd, Taylor, Wisconsin. Defendant Hi-Crush is engaged in the business of frac-sand mining and processing on an approximately 1,285-acre site at and around said address. To the extent Plaintiffs’ damages arose prior to the Petition Date (i.e., July 12, 2020) of Hi-Crush’s Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), Plaintiffs’ liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim filed in the bankruptcy case, and Plaintiffs’ recoveries against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan. Because such rights are preserved pursuant to the Findings of Fact, Conclusions of Law and Order Confirming Joint Plan of Reorganization of Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Case No. 20-33495, Doc. No. 420], Plaintiffs do seek

recovery from Hi-Crush's liability insurers and the other Defendants for damages that arose prior to the Petition Date.

3. The Hi-Crush site is located in close proximity to the property and home of the Plaintiffs.

4. Upon information and belief, the Defendant, Starr Surplus Lines Insurance Company ("Starr"), is a foreign insurance corporation with its principal place of business at 399 Park Avenue, 8th Floor, New York, NY 10022, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

5. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Starr, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

6. By virtue of the terms and conditions of said Hi-Crush's insurance policies and the statutes of the State of Wisconsin, the Defendant Starr is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

7. Upon information and belief, the Defendant, Ironshore Specialty Insurance Company ("Ironshore"), is a foreign insurance corporation with its principal place of business at 75 Federal St., 5th Fl., Boston, MA 02110, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

8. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Ironshore, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it

agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

9. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Ironshore is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

10. Upon information and belief, the Defendant, Aspen Specialty Insurance Company ("Aspen"), is a foreign insurance corporation with its principal place of business at 840 W. Sam Houston Pkwy N., Suite 420, Houston, TX 77024, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

11. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, Aspen, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

12. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant Aspen is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

13. Upon information and belief, the Defendant, American Guarantee and Liability Insurance Company, d/b/a Zurich North America ("AGLIC"), is a foreign insurance corporation with its principal place of business at 1299 Zurich Way, Schaumburg, IL 60196-1056, and is engaged in and is authorized to conduct the business of selling and administering policies of liability insurance in the State of Wisconsin.

14. Upon information and belief, on a date prior to the events and injuries hereinafter

alleged, the Defendant, AGLIC, issued and delivered to the Defendant, Hi-Crush, its policies of liability and/or excess and/or umbrella insurance under and by virtue of the terms of which it agreed to pay on behalf of Hi-Crush any and all sums which Hi-Crush should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

15. By virtue of the terms and conditions of said Hi-Crush's insurance policy and the statutes of the State of Wisconsin, the Defendant AGLIC is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

16. Upon information and belief, the Defendant, Gerke Excavating Inc. ("Gerke"), is a domestic corporation with its principal place of business at 15341 State Hwy 131, Tomah, WI 54660, and is engaged in the business of frac-sand mining and processing on an approximately a 1,285-acre site at 11203 S River Rd, Taylor, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush.

17. Upon information and belief, the Defendant, RST Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant ABC Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Gerke at all times relevant hereto.

18. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, RST Insurance Company issued and delivered to the Defendant, Gerke, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Gerke any and all sums which Gerke should become legally obligated to pay by reason of liability imposed upon it arising out of its actions.

19. By virtue of the terms and conditions of said Gerke's insurance policy and the statutes of the State of Wisconsin, the Defendant RST Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

20. Upon information and belief, the Defendant, Ahlgrimm Explosives Inc. ("Ahlgrimm"), is a domestic corporation with its principal place of business at 2999 W. Spencer St. Suite 2050, Appleton, WI 54914, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at 11203 S River Rd, Taylor, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush.

21. Upon information and belief, the Defendant, UVW Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant UVW Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to Ahlgrimm at all times relevant hereto.

22. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, UVW Insurance Company issued and delivered to the Defendant, Ahlgrimm, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of Ahlgrimm any and all sums which Ahlgrimm should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

23. By virtue of the terms and conditions of said Ahlgrimm's insurance policy and the statutes of the State of Wisconsin, the Defendant UVW Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

24. Upon information and belief, the Defendant, Explosive Contractors Inc. ("ECI"), is a foreign corporation with its principal place of business at 131 Industrial Park Drive, Suite 3,

Hollister, MO 65672, and is engaged in the business of employing explosives for blasting as part of frac-sand mining operations at 11203 S River Rd, Taylor, Trempealeau County, Wisconsin, as a contractor, agent, and/or partner of Defendant Hi-Crush.

25. Upon information and belief, the Defendant, XYZ Insurance Company is a foreign or domestic corporation doing business in the State of Wisconsin, and the Defendant XYZ Insurance Company is a fictitious name for the actual Defendant whose name is unknown to the Plaintiffs but is made a party to this action pursuant to §807.12, Stats., and by virtue of having provided liability insurance to ECI at all times relevant hereto.

26. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, XYZ Insurance Company issued and delivered to the Defendant, ECI, its policy of liability insurance under and by virtue of the terms of which it agreed to pay on behalf of ECI any and all sums which ECI should become legally obligated to pay by reason of liability imposed upon it arising out of its tortious actions.

27. By virtue of the terms and conditions of said ECI's insurance policy and the statutes of the State of Wisconsin, the Defendant XYZ Insurance Company is directly liable to the Plaintiffs for any injuries or damages sustained by them as hereinafter alleged.

FACTUAL BACKGROUND ALLEGATIONS

28. Upon information and belief, the Hi-Crush frac sand facility is capable of producing 2,860,000 tons per year of 20/100 frac sand. The processing facility is located on about 1,285 acres with coarse-grade Northern White sand reserves. The facility is located on a mainline of the North American rail network of the Canadian National Railway, with an on-site rail yard that contains approximately 43,000 feet of track and has storage capacity for approximately 500 rail cars. Hi-Crush Blair conducts processing of sand seven days per week, 24

hours per day. The extraction of non-metallic minerals and related hauling of extracted material within the mine property starts as early as 6:00 AM, running to 10:00 PM, seven days per week. Even during winter months, typically Mid-November to Mid-March, the dry plant continues processing and loading rail cars. With processing and loading of sand 24/7/365 and extraction of minerals and related hauling of extracted material within the mine property starting as early as 6:00 AM, running to 10:00 PM, seven days per week, nearby residents get no respite from the intolerable noise from the Hi-Crush facility and its related activity.

29. According to Mine Safety and Health Administration reports, Hi-Crush had four (4) citations or orders in 2015, five (5) in 2016, eight (8) in 2017, seven (7) in 2018, and five (5) in 2019 for a total of 29 citations.

30. In the Wisconsin Department of Natural Resources Preliminary Determination on the Clean Air Act permit for the Hi-Crush Blair facility, the DNR AERMOD analysis found that the facility was expected to add 5.8 ug/m³ PM_{2.5} pollution, resulting in a level of 73.1% of the Clean Air Act NAAQS standard of 35 ug/m³. Upon information and belief, the Hi-Crush facility has exceeded said standard, thereby polluting the air which the plaintiffs of necessity breathe. Furthermore, Wisconsin Admin. Code NR439.11 requires operators emit who emit more than 15 pounds in any day or 3 pounds in any hour of particulate matter to prepare a Malfunction, Prevention, and Abatement Plan. The plan is to document how the operator will prevent, detect and correct malfunctions or equipment failures which may cause applicable air emission limitations to be violated or which may cause air pollution. Using emission factors published by the EPA (AP-42) it is estimated that the Hi-Crush mine and sand piles can emit nearly 500 pounds of PM¹⁰ into the air per day (181,920 pounds per year). The piles of silica sand in Hi-

Crush's processing areas are up to 13 acres in size, up to approximately 50 feet high, and as little as 750 feet from neighboring property owners' homes.

31. Upon information and belief, the Hi-Crush frac sand facility has been operated in a manner such that visible dust emissions have not been suppressed on multiple occasions, in violation of the standard set forth in the Wisconsin DNR Template Best Management Practices of Fugitive Dust Control Plans for the Industrial Sand Mining Industries: "The standard for fugitive dust emission quantification is by visual observation. If visible dust emissions are observed they need to be suppressed." Stockpiles must be observed daily and whenever there is a potential for fugitive dust generation, the piles must be watered, and equipment to apply water shall be onsite. However, Hi-Crush has no equipment onsite that is capable of reaching the extent of the piles to apply water, and there is little effective control of fugitive dust from the piles.

32. Upon information and belief, the Hi-Crush Blair facility has been operated in a manner such that visible silica fugitive dust emissions repeatedly have left/crossed the Hi-Crush property boundary and created air pollution on and around adjacent properties, including the properties of the Plaintiffs, in violation of NR 415.03 and/or NR 415.04, in that Hi-Crush has caused, allowed or permitted particulate matter to be emitted into the ambient air which substantially contributes to exceeding of an air standard, or creates air pollution, and has caused, allowed or permitted silica-containing materials to be handled, transported or stored without taking precautions to prevent particulate matter from becoming airborne.

33. Upon information and belief, the Hi-Crush Blair facility has been operated in a manner such that the company received a notice of violation from the Wisconsin DNR for exceedance of arsenic starting in or about November 2016, with exceedance at least through 10/16/2017. Groundwater contamination reached a point of being as high as four times the

acceptable limit of arsenic, without any notice to neighbors regarding potential impact to their drinking water wells. Hi-Crush Blair kept information about the serious arsenic contamination secret from the neighboring public until the matter became subject to a building permit for a pump house, which happened to get disclosed in the local newspaper. Neighboring well water supplies of one or more of the Plaintiffs have experienced excessive turbidity and/or sediment since the mine began operations and blasting.

34. Upon information and belief, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, have conducted the aforementioned frac-sand mining, processing and transload operations in a manner that is negligent *per se* and/or reckless in that said Defendants have conducted said operation in violation of mandatory state, local and federal laws, rules, ordinances and regulations governing the safe methods of operation of said mine, and Defendants furthermore negligently created and failed to mitigate the creation of airborne pollution (both gaseous and solid), water pollution (both surface and groundwater), excessive noise, dust, nighttime light, caused vibrations due to blasting, destruction of landscape and viewshed, and reduced property values.

35. As a result of groundwater contamination with toxic arsenic, fugitive crystalline silica dust emissions (including PM2.5), noise pollution, light pollution, blasting shockwaves and vibrations, and damage to the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility has severely damaged or destroyed the value of the Plaintiffs' properties, both as to the properties' marketability and the ability to use the property in order to secure by mortgage any present or future financial obligations of the Plaintiffs, and has substantially and adversely affected the ability of the Plaintiffs to use and enjoy their properties, including their homes.

36. On or about August 21, 2020, Plaintiffs filed Proofs of Claim for liquidated damages to the Plaintiffs in excess of \$6 million in Hi-Crush's Chapter 11 bankruptcy cases (In re Hi-Crush Inc., et al., jointly administered under Case No. 20-33495 (Bankr. S.D. Tex. 2020)), and Plaintiffs' liquidated damages against Hi-Crush for said time period are as set forth in the Proofs of Claim.

**CLAIM I
NEGLIGENCE AND NEGLIGENCE *PER SE***

As for their first claim for relief, the Plaintiffs allege:

37. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

38. At all times relevant hereto, Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, owed Plaintiffs a duty to act with reasonable care, so as not to jeopardize the Plaintiffs' rights, property values, health and welfare.

39. Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, breached their duty of care by creating and/or failing to mitigate the creation of the following: (1) offensive airborne pollution (both gaseous and solid, including crystalline silica dust); (2) water pollution (surface and/or groundwater); (3) damaging shockwaves and vibrations due to blasting and other operations; (4) noise and light pollution; (5) destruction of landscape and viewshed; and (6) severe reduction of property values. Hi-Crush also breached its duty of care to the Plaintiffs by failing to adequately supervise and train employees. Hi-Crush has failed to properly train and supervise employees and contractors performing ultra-hazardous activities while working at the facility; failed to exercise reasonable care to contain silica dust and other toxins once Hi-Crush knew it had polluted a large area in and about Plaintiffs' properties and knew the harmful silica dust and toxins which permeated air, groundwater, and/or soil in and about of the

area of Plaintiffs' properties, created a substantial health risk to Plaintiffs and others; failed to warn the residents of the neighborhood, including the Plaintiffs, of health hazards associated with the crystalline silica dust and other toxins, and failed to take appropriate measures to prevent the spread of silica dust and other toxins; failed to notify authorities in a timely fashion of the full gravity and nature of fugitive dust emissions and ground and/or surface water contamination; failed to prevent or mitigate health hazards and damage to the value of the property in and about the neighborhood, including the real property owned by Plaintiffs; and failed to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations and standards.

40. The acts of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute negligence and negligence *per se* as a result of violations of state, federal and local rules, regulations, statutes and ordinances. The acts of negligence are a substantial factor in causing Plaintiffs to suffer damages, as set forth more particularly below, including without limitation, actual or imminent damage to their residential and business water supplies, permanent severe diminution of property values, the need for modifications to the quiet and peaceful use and enjoyment of their homes and property, annoyance, inconvenience and discomfort and harm to their home property and persons. The negligently created environmental harms and property value reductions have been a substantial factor in creating personal fear, worry, anxiety, marital discord, inconvenience, discomfort, harassment, and harm and destruction of Plaintiffs' right to enjoy their properties in a reasonably quiet and peaceful manner and further forcing Plaintiffs to incur expenses for monitoring the supply and control of water and air, and expert consultants' fees, all to Plaintiffs' damage.

41. The Plaintiffs have been damaged as a result of a decrease in the value of their property and through a loss of enjoyment of their property due to the nuisances set forth above, loss of neighborhood aesthetics; personal fear, anxiety, inconvenience and discomfort; and other and further damages as the evidence may establish.

**CLAIM II
PUBLIC NUISANCE**

As and for their second claim for relief, the Plaintiffs allege:

42. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

43. Plaintiffs are members of the public and the rural community surrounding the Hi-Crush frac sand facility. The Plaintiffs regularly use public roadways which have been unreasonably interfered with and blocked by Hi-Crush's operation more than the general public's use of public roadways because the public roads in the vicinity of Plaintiffs' home are closer to the railroad crossings being blocked between their home and the rail operations servicing the Hi-Crush facility. Plaintiffs further use and benefit from public waterways, groundwater, and air in the vicinity of the Hi-Crush facility.

44. The conduct and activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute a public nuisance in that such activities substantially or unduly interfere with the use of public places, including public roadways between the Plaintiffs' homes and rail facilities servicing the Hi-Crush facility (including an unreasonable risk of impeding emergency vehicles that may need to reach the Plaintiffs' property, and impeding Plaintiffs traveling to and from their home), public waterways including the Trempealeau River, and the air and groundwater in common use by the Plaintiffs.

45. The activities of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, further substantially or unduly interfere with the activities of the entire community, and are specially injurious to the health and offensive to the senses of Plaintiffs and specially interferes with and disturbs their comfortable enjoyment of their life and of their property, which is different in kind from the injury suffered by the general public.

46. As a direct and proximate result of the public nuisance created and perpetuated by Defendants' tortious conduct, Plaintiffs have suffered, and will in the future continue to suffer, interference with their use and enjoyment of public places, including public roadways, waterways, air and groundwater, and their own private property, diminution in property value, present and future remediation costs, past and future loss of earning capacity, and present and future personal injury and emotional distress.

47. Unless the public nuisance caused by the tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, is abated, the use and enjoyment of public spaces, including public roadways and waterways, air and groundwater, and Plaintiffs' property and rights of enjoyment therein will be progressively further diminished in value and their health will be further jeopardized.

48. As a direct and proximate result of the public nuisance caused by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged herein, Plaintiffs were injured and suffered damages as more fully described below.

**CLAIM III
PRIVATE NUISANCE**

As and for their third claim for relief, the plaintiffs allege:

49. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

50. Plaintiffs have proprietary interests in certain real and personal property in the areas adversely affected by Hi-Crush's frac sand mining, processing and transload operations, and fugitive crystalline silica dust. Plaintiffs also have the right to the exclusive use and quiet enjoyment of their property.

51. The tortious conduct of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitutes a private nuisance in that it has caused substantial injury and significant harm to, invasion and/or interference with, the comfortable enjoyment and private use by Plaintiffs of their private real and personal property, and their rights to use in the customary manner their property and residences without being exposed to the dangers of airborne crystalline silica dust, water pollution, shockwaves, vibrations, and noise pollution from blasting and other operations, destruction of the viewshed, and diminution/damage to property values.

52. The interference and invasion by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, exposing the Plaintiffs to the aforementioned dangers is substantially offensive and intolerable.

53. The aforementioned conduct by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, causing said interference and invasion has occurred because Defendants have been and continue to be negligent and have failed to exercise ordinary care to prevent their activities from causing significant harm to the Plaintiffs' rights and interests in the private use and enjoyment of their property.

54. Unless the nuisance is abated, Plaintiffs' property and their right to enjoy their property will be progressively further diminished in value and their health will be further jeopardized.

55. As a direct and proximate result of the nuisance created by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, Plaintiffs have suffered, and continue to suffer, substantial interference with their normal use and enjoyment of their own private property and rights incidental thereto, diminution in property value, personal injuries, severe emotional distress, and damages as more fully described herein.

**CLAIM IV
TRESPASS**

As and for their fourth claim for relief, the Plaintiffs allege:

56. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

57. At all times relevant to this Complaint, landowner Plaintiff, Mary Drangstveit, was in lawful possession of certain real and personal property in the areas affected by the frac sand mining, processing and transload operations, as a result of fugitive silica dust and/or groundwater pollution.

58. Defendants intentionally and/or recklessly committed the wrongful act of trespass by causing hazardous crystalline silica dust and/or other hazardous substances or toxins to invade the real and personal property of the landowner Plaintiffs through the air, groundwater, surface water, and/or soil.

59. As a direct and proximate result of Defendants' acts of trespass, Mary Drangstveit was injured, and continues to be injured, in that she suffered damage to her real and personal property and to her health and wellbeing, including hazardous crystalline silica dust leaving the Hi-Crush property which was, and is, deposited on Plaintiff's property, along with, upon information and belief, contamination of groundwater and/or surface water moving from the Hi-Crush property onto Plaintiff's property, and such actions constitute a trespass on property

owned or lawfully possessed by Plaintiffs, and has been and still is a substantial factor in causing past and future damages to the Plaintiffs.

**CLAIM V
STRICT LIABILITY FOR ULTRA-HAZARDOUS ACTIVITY**

As and for their fifth claim for relief, the Plaintiffs allege:

60. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

61. The blasting, crushing, mining, and storage of large quantities of crystalline silica sand and dust, the storage of mine sludge with chemical additives and heavy metals in holding ponds, and the operation of a railroad loading station adjacent to residential and family farm properties by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, constitute ultra-hazardous activities in that:

(a) There exists a high degree of risk of serious harm to the environment, persons, land and chattels of others, including Plaintiffs, which cannot be eliminated by the exercise of reasonable care;

(b) there is a strong likelihood that the harm resulting from an escape of fugitive crystalline silica dust and mine sludge, along with the effects of repeated blasting, will be great;

(c) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage large quantities of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting adjacent to a residential and family farm properties is not a matter of common usage such as would be carried on by the great mass of mankind or many people in the community.

(d) the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of large quantities of mine sludge with chemical additives and/or heavy

metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to a residential and family farm properties is inappropriate, especially as conducted by Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination; and

(e) the value to society and to Defendants of the creation, transport, storage and use of large quantities of crystalline silica sand and dust, the storage of millions of gallons of mine sludge with chemical additives and/or heavy metals in holding ponds, and repeated blasting of bedrock with explosives adjacent to a residential and family farm properties is outweighed by the dangerous attributes and the likelihood of harm resulting therefrom.

62. As a direct and proximate result of Defendants' actions, Plaintiffs were, and remain, injured, and continue to suffer injuries and damages as more fully described herein.

DAMAGES

63. As a direct and proximate result the aforementioned acts and omissions of Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, as alleged above, Plaintiffs suffered the following damages:

(a) Serious annoyance, intolerable inconvenience and loss of enjoyment of legal rights as a result of the fugitive crystalline silica dust emissions (including PM^{2.5}), groundwater contamination, noise pollution, light pollution, blasting shockwaves and vibrations, the 10-million gallon toxic spill of mine sludge from the holding pond, and destruction of the viewshed, the stigma associated with owning property in and about the area of the Hi-Crush facility;

(b) The landowner plaintiff has suffered a substantial loss of the value of real property and rights incidental thereto;

(c) Bodily physical injuries and/or an unreasonable risk of future injuries due to exposure to fugitive crystalline silica dust (including PM^{2.5}) and/or exposure to contaminated groundwater;

(d) Severe emotional pain and suffering, emotional distress and anxiety resulting from exposure to hazardous respirable crystalline silica dust and/or other hazardous substances invading their bodies and/or property, and polluted water, all of which has caused physical injuries and the possibility of severe future health problems;

(e) Severe emotional pain and suffering, emotional distress and anxiety over the loss of the quiet enjoyment of their land and the loss, and prospective loss, of economic opportunities and ways of life;

(f) Physical injuries to and/or loss of use and enjoyment of real and personal property;

(g) Costs for clean-up and protection of property, property rights and equipment, and the purchase and transportation of clean water;

(h) Medical expenses and/or future medical monitoring expenses for the Plaintiffs;
and

(i) Other damages to be proven at trial.

**CLAIM VI
INJUNCTIVE AND/OR DECLARATORY RELIEF**

As and for their sixth claim for relief, the plaintiffs allege:

64. Re-allege and incorporate by reference as if fully set forth herein all of the preceding allegations of the Complaint.

65. As a direct and proximate result of the above-described conduct Hi-Crush, Gerke, Ahlgrimm, and/or ECI, individually and in combination, and the injuries and damages described herein, Plaintiffs request the following equitable relief:

A. That a judicial determination and declaration be made of the rights of the Plaintiffs and the responsibilities of the Defendants with respect to the damages and injuries caused by said Defendants to the fullest extent allowed by law;

B. That the Defendants be required, to the fullest extent allowed by law, to establish a fund, in at least the amounts as set forth in the Proofs of Claim filed in the Bankruptcy Court, or in an amount to be determined by the Court, for the purpose of establishing and maintaining a testing and treatment program whereby Plaintiffs will receive on-going medical testing and monitoring and if necessary, medical treatment until it can be determined that their exposure to fugitive crystalline silica dust (including PM^{2.5}) and groundwater pollution is no longer and will not be a threat to their health.

C. That the Defendants be required, to the fullest extent allowed by law, to restore Plaintiffs' property and the frac sand facility property to the condition it was in prior to being contaminated by crystalline silica dust, arsenic, and/or other contaminants, and/or the diminution/loss of viewshed.

WHEREFORE, plaintiffs demand judgment as follows:

A. For the time period prior to the 7/12/2020 Petition Date of Hi-Crush's bankruptcy, compensatory damages against Hi-Crush's insurers and Gerke, Ahlgrimm, and ECI, jointly and severally, in an amount to be determined by verdict, together with interest on said sum; and Plaintiffs' minimum liquidated damages against Hi-Crush for said time period are as set forth in

the Proofs of Claim filed in the bankruptcy case, and Plaintiffs' recoveries solely as against Hi-Crush are and remain subject to the terms of the Hi-Crush confirmed Plan;

B. For the time period on and after the Effective Date of Hi-Crush's bankruptcy case, compensatory damages against the Defendants, jointly and severally, in an amount to be determined by verdict, together with interest on said sum;

C. Punitive and exemplary damages against the Defendants in an amount sufficient to punish said Defendants and to deter them and others similarly situated from engaging in similar wrongdoing, together with interest on said sum;

D. For their costs and disbursements;

E. Equitable and injunctive relief as specified herein; and

F. Such other and further relief as this Court deems just and equitable.

Dated this _____ day of _____, 2021.

FITZPATRICK, SKEMP & BUTLER, LLC
Attorneys for Plaintiffs

By: _____
Timothy S. Jacobson, WI# 1018162
Thomas M. Fitzpatrick, WI# 1012651
1123 Riders Club Rd
Onalaska, WI 54650
608-784-4370

PLAINTIFFS HEREBY DEMAND TRIAL BY A JURY OF TWELVE (12).

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

----- X
In re: : **Chapter 11**
:
HI-CRUSH PERMIAN SAND LLC, et al.,¹ : **Case No. 20-33505 (DRJ)**
: **(Jointly Administered)**
Reorganized Debtors, : **(Formerly Jointly Administered under Lead**
: **Case: Hi-Crush Inc., Case No. 20-33495)²**
----- X

**ORDER GRANTING WISCONSIN TORT CLAIMANTS’ RESPONSE TO
REORGANIZED DEBTORS’ FOURTEENTH OMNIBUS OBJECTION TO
CERTAIN CLAIMS (WISCONSIN TORT CLAIMS)**

The Court has considered the *Wisconsin Tort Claimants’ Response to Reorganized Debtors’ Fourteenth Omnibus Objection to Certain Claims (Wisconsin Tort Claims)* (the “Response”).³ The Court determines that the Response should be sustained, and the POC Objection should be overruled.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Wisconsin Tort Claimants’ Claims are **ALLOWED** as set forth herein.

¹ The Reorganized Debtors in these cases, along with the last four digits of each Reorganized Debtor’s federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC, Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Reorganized Debtors’ address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

² On December 11, 2020, the Court entered the *Final Decree Closing Certain of the Chapter 11 Cases* [Case No. 20-33495, Docket No. 505], which closed each Reorganized Debtor’s case except for Hi-Crush Permian Sand LLC, Case No. 20-33505, and directed that all further filings be made in that case.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Response.

2. The Wisconsin Tort Claimants' Claims on account of prepetition damages are allowed in the amount of \$80 million which as to the Debtors shall be accorded the treatment allowed under the Plan and as to Debtors' insurers shall comprise an award payable in full from insurance available to the Debtors, as applicable.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE