



May 22, 2023

**Respectfully addressed to:**

Regional Director Joseph J. Buczynski, P.E., PADEP Northeast Regional Office,  
[jbuczynski@pa.gov](mailto:jbuczynski@pa.gov)

Executive Director Timothy D. Schaeffer, PA Fish and Boat Commission, [tischaeffe@pa.gov](mailto:tischaeffe@pa.gov)

**cc:**

Acting Secretary Richard Negrin, PADEP, [sberardi@pa.gov](mailto:sberardi@pa.gov)

Regional Administrator Adam Ortiz, U.S. EPA Region 3, [Ortiz.Adam@epa.gov](mailto:Ortiz.Adam@epa.gov)

Dear Regional Director Joseph Buczynski & Executive Director Timothy Schaeffer,

The Buzzi Unicem quarry in Northampton County has caused yet another dewatering event in the Bushkill Creek downstream of their operation, resulting in a fish kill event impacting native brown trout. The Delaware Riverkeeper Network (“DRN”) is urging swift and strong action by the Pennsylvania Department of Environmental Protection and the Pennsylvania Fish & Boat Commission (“PAFBC”) in response to the egregious and repeated dewatering and pollution of the Bushkill Creek and resulting fish kills, due to the actions of Buzzi Unicem’s quarry operations. In addition, given the ongoing fish kills and dewatering of Bushkill Creek due to Buzzi Unicem’s actions, and the company’s failure to even acknowledge its most recent impacts on the Creek despite photographic and eyewitness evidence, it would be wholly inappropriate, and increasingly damaging to grant any present or future requests to expand quarry operations at this Northampton County site.

On Wednesday, May 17th, 2023, and Thursday, May 18th<sup>1</sup>, 2023, Buzzi Unicem had planned outages for the quarry pumping as part of its efforts to install and test backup diesel generators—generators which it agreed to purchase and install to prevent exactly these types of dewatering/fish kill events back in 2021. The two planned outages took place for approximately four and a half hours each, with the first resulting in a dewatering event downstream of the quarry. The second dewatering event resulting from these planned outages caused the deaths of numerous native brown trout and the stranding of others in shallow puddles.<sup>2</sup> These dewatering and fish kill events took place despite Buzzi Unicem informing state agencies and local stakeholders that they would be “monitoring” the stream flow the entire time.

This is just another chapter in the story of Buzzi Unicem’s operation of the Stockertown, PA quarry, which is used for cement manufacturing. As a result of its mining activity and the dewatering of its quarry, sinkholes and/or swallets have formed in or near Stockertown that have contributed to the dewatering of the Bushkill Creek itself. Evidence contained in public files further demonstrates that the Bushkill Creek is “the primary source of artesian inflow into the quarry” (10/2/2017 *Summary Quarry Permit Analysis by Kerry Petrasic, Chief Geotechnical Engineer for PennDOT*). The Quarry’s operations have previously been cited as a violation of Pennsylvania’s Clean Streams Law in January 2011 because the Quarry “altered the physical properties of waters of Bushkill Creek, in that the operator decreased the water discharge rate to

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<sup>1</sup> See USGS Flow Charts in Tables 1 and 2 below for reference.

<sup>2</sup> Photos included below along with a map indicating where the photos were taken—Photo Credit: Vaughn Miller.

Bushkill Creek, whereby the lower discharge rate was insufficient and could not sustain an adequate flow of water downstream of Outfall #007C, thereby creating pollution.”

The Bushkill Creek is a High Quality, Cold Water Fishery Creek entitled to anti-degradation protections. Section 93.4a(b) states that “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” Contrary to these requirements, the dewatering events have killed fish in significant numbers, adversely degraded the stream, impacted water quality and flows, and failed to protect or support the Bushkill Creek’s designated use and/or existing uses. Additionally, the reduction in abundance of different species of fish has caused a cascade of adverse ecological effects on the entire watershed.

Due to the unnatural impact upon the hydrologic balance by the Plant’s mining activities, the Plant has needed to pump approximately 50-65 million gallons of water per day from the quarry back into the stream. The company’s pumps regularly break down with approximately 15 shutdowns since 1999 resulting in the dewatering of the stream each time and directly resulting in substantial fish kills, including the killing of native brown trout, similar to the harms inflicted May 18, 2023. In fact, DRN has documentation and information that leads us to believe, pump failures have adversely impacted the Bushkill Creek on the following dates: 9/26/2002; 9/27/2008; 1/22/2011; 1/23/2011; 6/3/2013; 11/25/2017; 12/9/2017; 7/6/2018; 8/15/2018; 9/13/2018; 11/25/2018; 1/23/2019; 2/7/2019; 6/5/2020, and; 10/15/2020. The impacts of each event is concerning. We highlight that the June 5, 2020, dewatering event lasted for 15 hours, causing significant fish kills – and yet, the accountability demanded by the state was not enough for Buzzi Unicem to take all steps necessary to prevent such harms from ever happening again. Whether the pump failures were related to maintenance and/or electrical supply failures, November of 2022 the Delaware Riverkeeper Network put Buzzi Unicem on notice that the resulting harm is created, perpetuated, and/or exacerbated by the company’s conscious choice not to have in place backup emergency pumps and systems sufficient to assure an adequate and uninterrupted flow of water to protect the stream back in November of 2020.

Shortly after this notice, at a June 2021 public hearing addressing Buzzi Unicem’s request to deepen the quarry, the company announced that it would be purchasing and installing backup diesel generators to prevent ongoing dewatering and fish kill events. The company then failed to take swift action to implement that proposed plan. The fact that Buzzi Unicem did not take action to install the backup generators until almost two full years after first announcing its intent is puzzling. Additionally, the fact that this most recent dewatering event was during a planned outage in which Buzzi Unicem “monitored” the stream flow throughout the duration of the event is just further proof that this company cannot be trusted to protect the stream under its current operation, let alone if it were allowed to move forward with its plan to deepen the quarry and exacerbate the issue.

It is past time for PADEP to provide the antidegradation protections that Bushkill Creek is legally entitled to. The Delaware Riverkeeper Network is once again urging PADEP to deny Buzzi Unicem’s request to deepen its quarry operations. We are also asking PADEP and PAFBC to take the actions necessary to prevent Buzzi Unicem from causing another dewatering event in the future as it works to finalize the installation of its backup generators. It is clear that additional means of oversight and coordination are needed to ensure that the stream and its inhabitants are protected from any further harm. And we are urging swift, robust, significant, and meaningful enforcement action responding to this most recent catastrophic ecological event for the Bushkill Creek and its aquatic life, including wild Brown Trout. It is clearly time for all state agencies to work to ensure that future harm to Bushkill Creek is avoided at all costs, and for Buzzi Unicem to pay for the lengthy and well-documented history of ecological damages they have inflicted on the stream and surrounding area. Impairment of the Bushkill Creek due to Buzzi Unicem’s actions, inactions, activities, and/or dewatering events constitutes a violation of the Pennsylvania Clean Streams Law (“CSL”) because diminishment of water quality is water pollution under the Act, and Buzzi’s actions, inactions, and activities have resulted in water quality, aquatic life, and ecosystem harms. See 35 P.S. § 691.1 (defining pollution as alteration of the physical, chemical, or biological properties of

such waters). Section 601(a) of the CSL specifies that “[a]ny activity or condition declared by [the CSL] to be a nuisance or which is otherwise in violation of [the CSL], shall be abatable in the manner provided by law or equity for the abatement of public nuisances [] . . . in the name of the Commonwealth . . . in [this court].” 35 P.S. § 691.601(a). Accordingly, the Pennsylvania Supreme Court has declared that “pollution of public waterways is” a nuisance *per se*. *Machipongo Land & Coal Co., Inc. v. Commonwealth*, 799 A.2d 751, 774 (Pa. 2002).

The repeated shutdown of the quarry pumps similarly represent a violation of the NonCoal Surface Mining Conservation and Reclamation Act, 52 P.S. § 3301 *et seq.*, and related regulations, including 25 Pa. Code § 77.521(a) which states that “*Non-coal mining activities shall be planned and conducted to minimize disturbances to the prevailing hydrologic balance in the permit and adjacent areas.*” The Act also prohibits hazards to health, safety and welfare. 52 P.S. § 3302. Creation of sinkholes and swallets via mining activities and/or dewatering of a stream is contrary to the purposes of the Act. Impairment of the Bushkill Creek is also a violation of the special conditions of Buzzi Unicem’s Noncoal Surface Mining Permit.

In addition to these applicable legislative and regulatory requirements, Pennsylvania’s Environmental Rights Amendment (“ERA”), Pa. Const. art. I, § 27, demands that the state take meaningful action in order to carry out its trustee obligations and to protect the environmental rights of the people of Pennsylvania. The ERA declares:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all people.

Further,

As trustee, **the Commonwealth has a duty to refrain from permitting or encouraging the degradation, diminution, or depletion of public natural resources**, whether such degradation, diminution, or depletion would occur **through** direct state action or indirectly, *e.g.*, because of the state’s **failure to restrain the actions of private parties**. In this sense, the third clause of the [ERA] is complete because it establishes broad but concrete substantive parameters within which the Commonwealth may act.

*Robinson Twp., Wash. Cnty. v. Commonwealth*, 83 A.3d 901, 957 (Pa. 2013) (emphasis added).

“[T]he public trust provisions of [the ERA] are self-executing[.]” and, therefore, do not require implementing legislation to be effective. *Pa. Env’t Def. Found. v. Commonwealth*, 161 A.3d 911, 937 (Pa. 2017). Therefore, by definition, PADEP and PAFBC are empowered to proceed with affirmative litigation to recover the damages to the trust’s corpus, including pollution to water bodies and loss of wildlife, so that they may be remedied.

It is long past the time that PADEP and PAFBC use their authorities under the above provisions of law and constitution to hold Buzzi Unicem accountable for the egregious and pervasive ecological harm that it has inflicted upon the Bushkill Creek. As a result, DRN and the Delaware Riverkeeper urge swift and decisive action be taken in this matter to address the violations of the past and present, and that PADEP reject any present or future requests for quarry expansion.

Respectfully,



Maya K. van Rossum  
the Delaware Riverkeeper

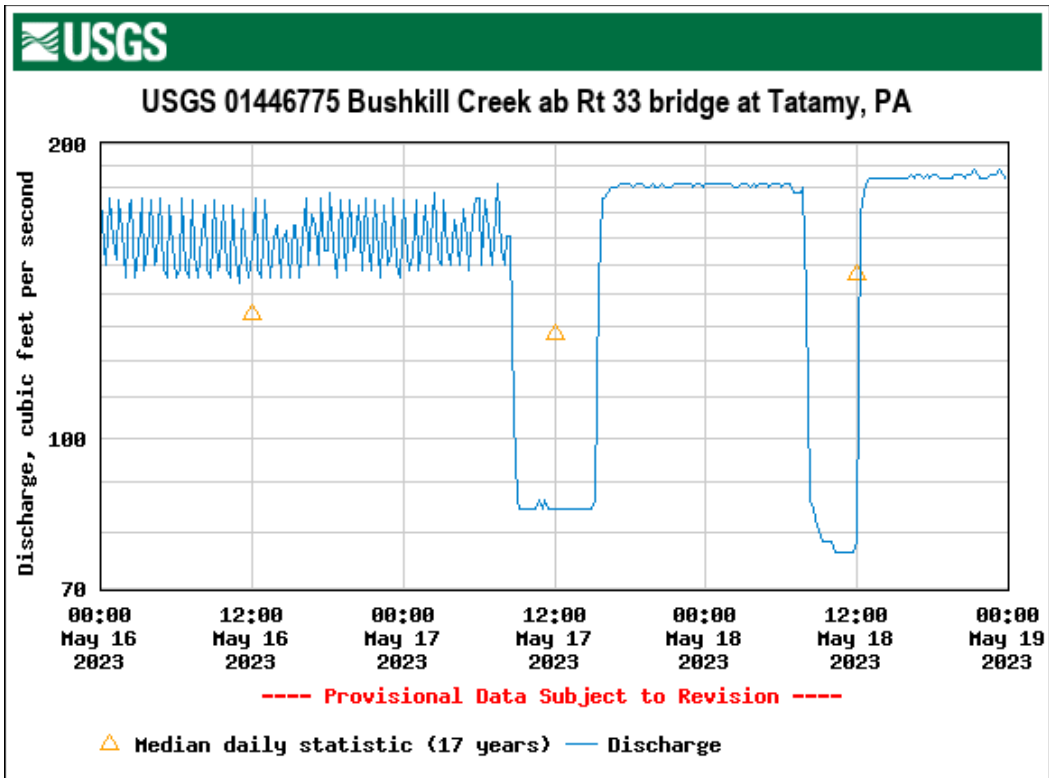


Table 1: USGS Flow Chart for May 16, 2023-May 18, 2023.

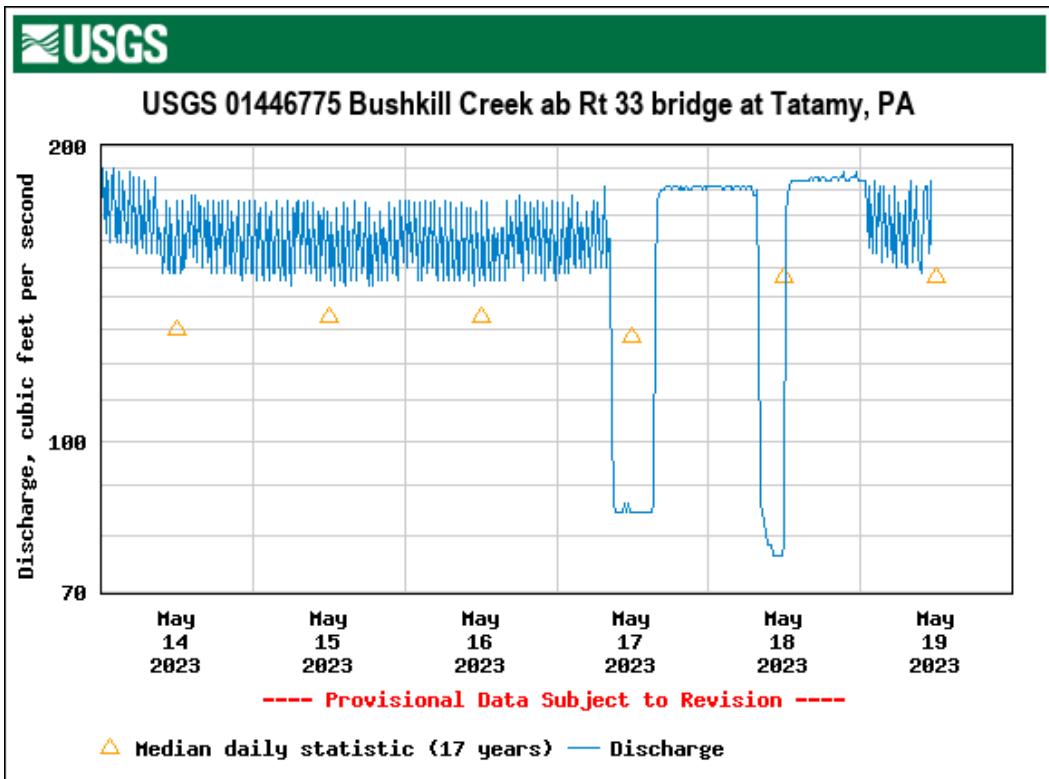


Table 2: USGS Flow Chart from May 14, 2023–May 19, 2023.

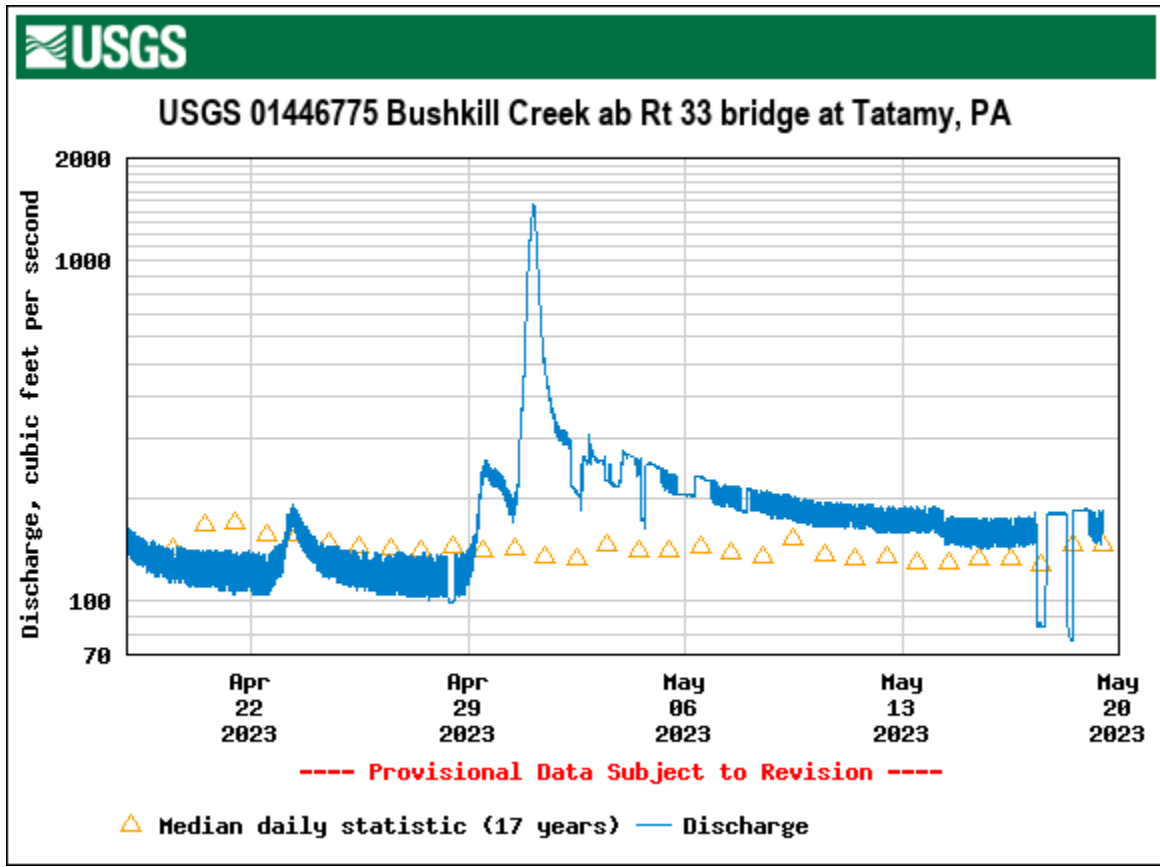


Table 3: USGS Flow Chart from April 2023–May 20, 2023.





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<sup>3</sup> Photo Credit: Vaughn Miller.



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<sup>4</sup> Photo Credit: Vaughn Miller.



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<sup>5</sup> Photo Credit: Vaughn Miller.





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<sup>6</sup> Photo Credit: Vaughn Miller.



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<sup>7</sup> Photo Credit: Vaughn Miller.



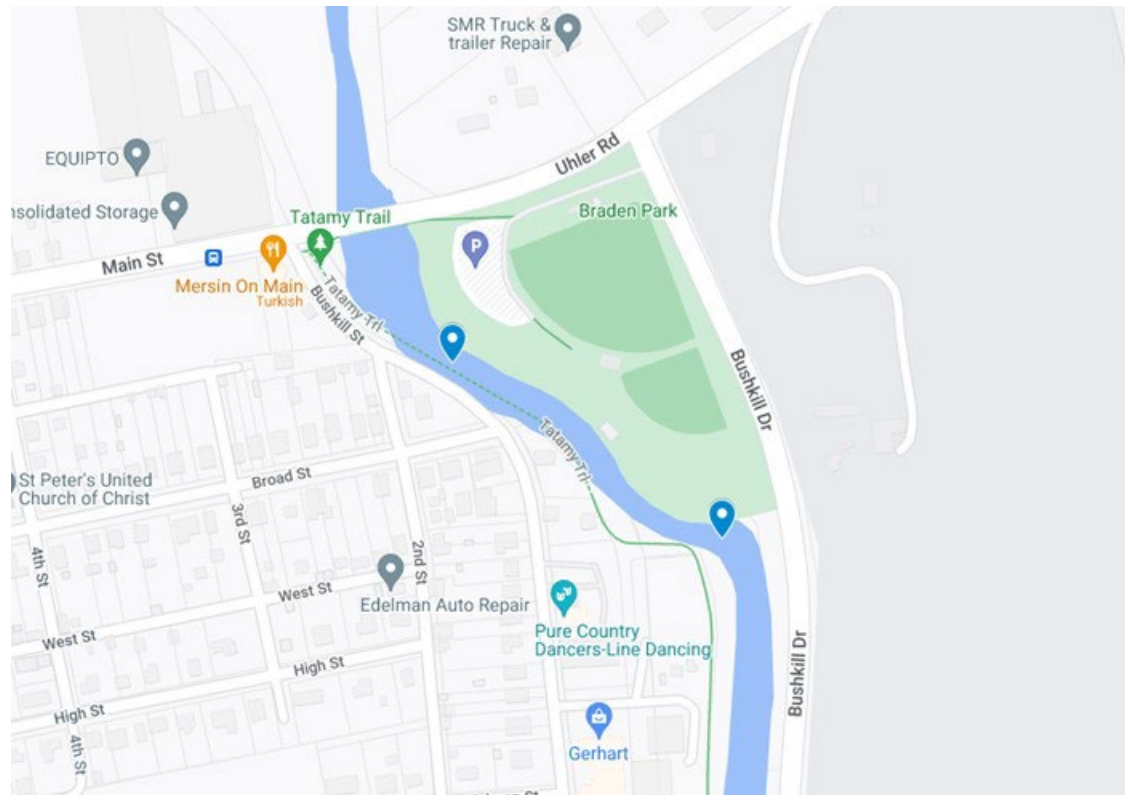






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<sup>8</sup> Photo Credit: Vaughn Miller.



<sup>9</sup> Map of the locations of the photos taken by Vaughn Miller.