



November 6, 2020

Via Certified Mail, Return Receipt Requested:

Mr. Radaslov Slavov, Plant Manager
Hercules Cement Company, LP d/b/a Buzzi Unicem USA
Stockertown Quarry
501 Hercules Dr.
Stockertown, PA 18083

Re: Notice of Citizen Suit Pursuant to the Noncoal Surface Mining Conservation and Reclamation Act and the Clean Streams Law

Dear Mr. Slavov:

This letter provides notice that the Delaware Riverkeeper Network ("DRN"), on behalf of itself, its members, and the Delaware Riverkeeper, intends to file suit against your company/quarry. Please immediately share this letter with your attorney.

By failing to comply with the environmental law as described below, Hercules Cement/Buzzi Unicem has harmed the health, safety, environmental, and/or the aesthetic interests of Delaware Riverkeeper Network, Maya van Rossum in her role as the Delaware Riverkeeper, and Delaware Riverkeeper Network members.

As a result of your mining activity and the dewatering of your quarry, you have caused or substantially contributed to the formation of sinkholes and/or swallets in or near Stockertown, Pennsylvania, and dewatering of the Bushkill Creek. The impacted area of the Bushkill Creek includes, but is not limited to, the approximately two miles from the quarry discharge to the Bushkill Street Bridge. The aforementioned mining activities, sinkholes, and/or swallets capture the surface waters and eliminate the stream flow and/or water quantity to the Bushkill Creek, impact water quality in the stream, and impact the ecological and biological integrity of the Creek and aquatic life. The recent 2020 Tracer Study Preliminary Results are consistent with significant evidence of a direct hydrologic connection between the Bushkill Creek losses and the West Quarry Inflow Zone. 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 the 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 Bushkill Creek, whereby the lower

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discharge rate was insufficient and could not sustain an adequate flow of water downstream of Outfall #007C, thereby creating pollution.” Due to the unnatural impact upon the hydrologic balance by your 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 shut downs since 1999 resulting in the dewatering of the stream each time and directly resulting in substantial fish kills, including the killing of “wild” brown trout. These actions and outcomes violate the Noncoal Surface Mining Conservation and Reclamation Act, 52 P.S. §3301et seq. (“Noncoal Act”) 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 Noncoal 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 your Noncoal Surface Mining Permit. Impairment of the Bushkill Creek due to your actions, inactions, activities and/or dewatering events also constitutes a violation of the Pennsylvania Clean Streams Law because diminishment of water quantity is water pollution under the Act, and your actions, inactions and activities have also 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). While the Department of Environmental Protection has previously in January 2011 noted such a violation, DRN has seen no evidence of the Department’s diligent prosecution of the repeated, and egregious violations that are damaging and inflicting repeated harms upon the Bushkill Creek, its aquatic life, habitats and ecosystems.

The Bushkill Creek is a High Quality, Cold Water Fishery Creek entitled to anti-degradation protections. Section 93.4a(b) states that “*Existing 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 its designated 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.

This notice is submitted on behalf of the Delaware Riverkeeper Network and Maya van Rossum in her role as the Delaware Riverkeeper, with main offices at 925 Canal Street, 7th Floor, Suite 3701 Bristol, PA 19007. The Delaware Riverkeeper Network can be reached by telephone at (215) 369 -1188. The Delaware Riverkeeper Network is a public interest organization that champions the rights of our communities to a Delaware River and tributary streams that are free-flowing, clean, healthy, and abundant with a diversity of life.

Delaware Riverkeeper Network members reside in areas near to the Bushkill Creek and/or use the Creek for recreational activities, including fishing, bird watching, and nature observation and are adversely affected by your company’s disturbance of the hydrologic balance, capture of the Bushkill Creek’s waters, failure of the company to maintain its pumps, and/or by the dewatering of the Bushkill Creek with the resulting degradation of aquatic life, stream flows, water quality and the ecosystem. By way of example, on June 5, 2020, there was a dewatering event that lasted for 15 hours, causing the death of brown wild trout and other species including Slimy Sculpin and Longnose Dace minnows. The area of creek that was dewatered is home to a Class A Wild Trout Fishery, a vital area where trout are born and grow. This pattern and practice of dewatering and inflicting adverse and lethal impacts to aquatic life was repeated as recently as October 15, 2020, during a planned maintenance activity. As we are presently in a time period in which the Brown

Trout are nesting and hatching, you are put on specific notice that additional dewatering events during this period will have particularly devastating impacts on the already harmed and diminished fish populations.

Upon information and belief, 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.

Although the cause of the pump failure may be related to both maintenance and/or electrical supply failures, the resulting harm is created, perpetuated and/or exacerbated by the failure of Hercules to have backup emergency pumps and systems in place that are sufficient to assure an adequate and uninterrupted flow of water to protect the stream. Pump failures are both predictable and preventable with appropriate technology.

This serious and grievous situation is subject to abatement pursuant to the NonCoal Act, 52 P.S. § 3320 and the Clean Streams Law 35 P.S. §691.601 and given that it is foreseeable and anticipated that this event will be repeated it constitutes an ongoing and continuing violation under the law. Your unlawful activities have caused pollution and/or diminished the water quantity in the Bushkill Creek to the detriment of aquatic life, the existing uses of the stream, and the use and enjoyment by residents and visitors in the area of the Bushkill Creek, including the membership of the Delaware Riverkeeper Network.

This letter serves as the notice required by the NonCoal Act and the Clean Streams Law of the Delaware Riverkeeper Network's, and that of Maya van Rossum in her capacity as the Delaware Riverkeeper, intention to file a civil action pursuant to the NonCoal Act and the Clean Streams Law, to include your liability for the creation of a public nuisance, to seek and secure compliance with state law, including securing abatement of harms to the Bushkill Creek, appropriate penalties and other remedies as allowed by law. In terms of relief requested, you will be required to come into full compliance with the law, including but not limited to, providing a consistent and appropriate volume of water discharge to the Bushkill Creek and/or to establish a plan to shut down your quarry with a proper plan for restoration of the hydrologic balance to the Creek. In addition, no expansion and/or deepening of the Quarry should even be considered unless and until these violations have been fully remedied and the Quarry can demonstrate that they will not be repeated.

If you have any questions regarding the described legal violations, please feel free to contact us. If you wish to pursue discussions to avoid litigation, please also contact us so that negotiations may be completed before the end of the sixty-day notice period. Please be advised that the Delaware Riverkeeper Network intends to seek all its attorney and expert fees associated with the litigation under the fee shifting provision of the Clean Stream Law.

Very truly yours,



Maya K. van Rossum
the Delaware Riverkeeper



Deanna Kaplan Tanner, Esq.
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cc: **Via First Class U.S. Mail to**

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