

**FILED**  
**04-22-2019**  
**Clerk of Circuit Court**  
**Trempealeau County**  
**2019CV000064**

STATE OF WISCONSIN      CIRCUIT COURT      TREMPEALEAU COUNTY

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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, and

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

Plaintiffs,

vs.

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

and

ABC INSURANCE COMPANY,

Defendants.

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**SUMMONS**

Case No. 19-CV-\_\_\_\_

Case Codes: 30201, 30106, 30107

THE STATE OF WISCONSIN, to each person named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an Answer that does not follow the requirements of the statutes. The Answer must be sent or delivered to the Court whose address is Clerk of Circuit Court, Trempealeau County Courthouse, 36245 Main Street, Whitehall, Wisconsin 54773-0067 and to FITZPATRICK, SKEMP & ASSOCIATES, LLC, plaintiffs' attorneys whose address is 123 Seventh Street South, P.O. Box 519, La Crosse, Wisconsin 54602-0519. You may have an attorney help or represent you.

If you do not provide a proper Answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and may be enforced by garnishment or seizure of property.

Dated this 22nd day of April, 2019.

**FITZPATRICK, SKEMP & ASSOCIATES, LLC**  
**Attorneys for Plaintiffs**

/s/ Timothy S. Jacobson

By: \_\_\_\_\_  
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**COMPLAINT**

Case No. 19-CV-\_\_\_\_

Case Codes: 30201, 30106, 30107

Plaintiffs, by their attorneys, Fitzpatrick, Skemp & Associates, LLC, allege the following 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. Defendant, Hi-Crush Whitehall LLC (hereinafter “Hi-Crush”) is a Wisconsin 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.

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

9. Upon information and belief, the Defendant, ABC 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 Hi-Crush at all times relevant hereto.

10. Upon information and belief, on a date prior to the events and injuries hereinafter alleged, the Defendant, ABC Insurance Company issued and delivered to the Defendant, Hi-Crush, its policy of liability 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 actions.

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

12. Hi-Crush has conducted the aforementioned frac-sand mining operation in a manner that is negligent *per se* in that it has 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 Hi-Crush has furthermore negligently created and failed to mitigate the creation of airborne pollution (both gaseous and solid), excessive noise, dust, nighttime

light, polluted surface and underground water, caused vibrations due to blasting, destruction of landscape and reduced property values.

### **FACTUAL BACKGROUND ALLEGATIONS**

13. 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.

14. According to Mine Safety and Health Administration reports, Hi-Crush had seven (7) citations or orders for violations in 2015, seven (7) in 2016, and five (5) in 2017, for a total of 19 citations or orders for violations in those three years.

15. 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/m<sup>3</sup> PM<sup>2-5</sup> pollution, resulting in a level of 98% of the Clean Air Act NAAQS standard of 35 ug/m<sup>3</sup>. Upon information and belief, the Hi-Crush Whitehall facility has exceeded said standard, thereby polluting the air which the plaintiffs of necessity breathe.

16. 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.”

17. 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 Hi-Crush has 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.

18. 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.

19. On or about May 21, 2018, Hi-Crush breached a negligently constructed frac sand mine holding pond at its Whitehall facility. 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 owned by Darrell and Mary Jo Bork, 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.

20. Upon information and belief, Hi-Crush has conducted its frac-sand mining, processing and transload 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 by Darrell and Mary Jo Bork, 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.

21. As a result of groundwater contamination, fugitive crystalline silica dust emissions (including PM<sup>2.5</sup>), 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.

#### **DESCRIPTION OF HARMS TO THE PLAINTIFFS**

22. During operation of the aforementioned Hi-Crush frac sand facility, the Plaintiffs experience having to see, hear, and feel the mine site and dry plant operation around the clock seven days a week. They hear crushing operations, vehicles beeping, conveyor noise and construction equipment 24 hours a day, and are exposed to constant harmful and/or annoying levels of noise.



23. The Plaintiffs' windows and dishes shake from blasting at the mine, and it frightens their pets.

24. Some of the Plaintiffs have had to put opaque coverings over their windows to block light pollution from the frac sand facility; and some leave their television with the volume up all night in an effort to cancel out the frac sand facility operation's noise.

25. Dust from the frac sand facility operations is visible in the air around the Plaintiffs' homes, and windows and siding have gotten covered with dust, and the Plaintiffs can no longer open their windows due to the dust.

26. Plaintiffs have experienced problems with their well water quality since the commencement of Hi-Crush blasting and high-capacity well operations, including increased turbidity and plugging of water filters, water softeners and/or water heaters. At least one nearby residential well has experienced significantly elevated an harmful arsenic levels since commencement of Hi-Crush operations.

27. The stress caused by the frac sand facility has caused marital discord for married Plaintiffs around the frac sand facility. In addition, some of the Plaintiffs have consulted with physicians and/or psychiatrists for issues such as high blood pressure, anxiety, depression, and/or sleep deprivation believed to be caused by the frac sand facility operations.

28. Due to the frac sand facility, social interactions with friends and other community members at the Plaintiffs' homes have declined dramatically with friends commenting on vibrations and the unpleasant change in the setting.

29. Plaintiffs' view now includes a mine, wash plant, dry plant and/or conveyor system where there used to be beautiful, lush farmland and trees.

30. Noise from the frac sand facility is constant, and is a serious annoyance and has caused loss of concentration, sleep disturbance, and increased stress levels.

31. The Plaintiffs' view of the night sky is diminished due to light and air pollution from the Hi-Crush facility.

32. There is train and rail related noise throughout the day and night due to the loading and hauling of sand from the Hi-Crush facility.

33. Some of the Plaintiffs suffer from difficulty breathing, frequent coughing and bronchitis, and have been under a doctor's care.

34. Wildlife sightings have declined due to the frac sand facility operations, thereby making the Plaintiffs' living environment less attractive and less enjoyable.

35. The Plaintiffs' homes are suffering from structural damage including but not limited to sheetrock cracking and drywall screws protruding because of Hi-Crush's blasting.

36. The value of Plaintiffs' real estate has significantly diminished due to the proximity to the Hi-Crush facility and the manner in which Hi-Crush conducts its operations.

**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 has 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 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 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.

40. The acts of Hi-Crush 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.

41. 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:

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 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.

44. The conduct and activities of Hi-Crush 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 Poker Creek and the Trempealeau River, and the air and groundwater in common use by the Plaintiffs.

45. The activities of Hi-Crush 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 Hi-Crush's 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 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 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, 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.

51. The tortious conduct of Hi-Crush 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 exposing the Plaintiffs to the aforementioned dangers is substantially offensive and intolerable.

53. The aforementioned conduct by Hi-Crush causing said interference and invasion has occurred because Hi-Crush has been and continues 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.

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, 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 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, 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.

58. 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.

59. 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 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.

60. 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.

61. As a direct and proximate result of Hi-Crush's 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 Hi-Crush 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:

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

63. 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, 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; and

(e) the value to society and to Hi-Crush 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.

64. As a direct and proximate result of Hi-Crush's actions, Plaintiffs were, and remain, injured, and will continue to suffer injuries and damages as more fully described herein.

#### **DAMAGES**

65. As a direct and proximate result of Hi-Crush's aforementioned acts and omissions 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<sup>2.5</sup>), 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<sup>2.5</sup>) 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:

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

67. As a direct and proximate result of the above-described conduct by Hi-Crush 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 Hi-Crush with respect to the damages and injuries caused by Hi-Crush;

B. That Hi-Crush be required to establish a fund, 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<sup>2.5</sup>), 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 Hi-Crush be required to restore Plaintiffs' property and its own 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. Compensatory damages in an amount to be determined by verdict, together with interest on said sum;
- B. Punitive and exemplary damages against Hi-Crush in an amount sufficient to punish Hi-Crush and to deter it and others similarly situated from engaging in similar wrongdoing, together with interest on said sum;
- C. For their costs and disbursements;
- D. Equitable and injunctive relief as specified herein; and
- E. Such other and further relief as this Court deems just and equitable.

Dated this 22nd day of April, 2019.

**FITZPATRICK, SKEMP & ASSOCIATES, LLC**  
**Attorneys for Plaintiffs**

/s/ Timothy S. Jacobson

By: \_\_\_\_\_

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