Washington, DC, and by publishing the notice in the **Federal Register** on June 4, 2018 (83 FR 25715). The hearing was held in Washington, DC, on August 2, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission subsequently issued its final affirmative determination regarding dumped imports of forged steel fittings from Taiwan on September 14, 2018 (83 FR 47640, September 20, 2018). Following notification of final determinations by Commerce that imports of forged steel fittings from Italy and China were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)),[3] and subsidized by the government of China within meaning of section 705(a) of the Act (19 U.S.C. 1671d(a)),[4] notice of the supplemental schedule of the final phase of the Commission's antidumping and countervailing duty investigations with respect to China and Italy was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 22, 2018 (83 FR 53295).

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on November 19, 2018. The views of the Commission are contained in USITC Publication 4850 (November 2018), entitled *Forged Steel Fittings from China and Italy: Investigation Nos. 701–TA–589 and 731–TA–1394–1395 (Final).*

By order of the Commission.

Issued: November 19, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–25612 Filed 11–23–18; 8:45 am]

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[3] *Forged Steel Fittings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 50339, October 5, 2018 and *Forged Steel Fittings from Italy: Final Determination of Sales at Less Than Fair Value,* 83 FR 50345, October 5, 2018.

[4] *Forged Steel Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 83 FR 50342, October 5, 2018.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *CRH plc, et al.;* Response to Public Comment

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that one comment was received concerning the proposed Final Judgment in this case, and that comment together with the Response of the United States to Public Comment have been filed with the United States District Court for the District of Columbia in *United States of America* v. *CRH plc, et al.,* Civil Action No. 1:18–cv–1473. Copies of the comment and the United States' Response are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *CRH PLC, CRH Americas Materials, Inc.*, and *Pounding Mill Quarry Corporation,* Defendants.

Case No. 18–cv–1473–DLF
Judge: Dabney L. Friedrich

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. §§ 16(b)–(h), the United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. After careful consideration of the submitted comment, the United States continues to believe that the divestiture required by the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violation alleged in the Complaint. In addition, the divestiture has the effect of increasing competitive choices for some customers. As a result of the divestiture, two quarries that previously did not compete—because they were under common ownership—now do. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

Defendants CRH plc and CRH Americas Materials, Inc. (collectively, ''CRH'') agreed to acquire the assets of Defendant Pounding Mill Quarry Corporation (''Pounding Mill''), which primarily consisted of four aggregate quarries located in West Virginia and Virginia. The United States filed a civil antitrust Complaint on June 22, 2018, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of this acquisition would be to lessen competition substantially in the markets for aggregate and asphalt concrete that are used in West Virginia Department of Transportation (''WVDOT'') road projects in southern West Virginia. This loss of competition likely would result in increased prices and decreased service in these markets. Therefore, the Complaint alleged that the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Stipulation signed by Plaintiff and Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 16 U.S.C. § 16, and a Competitive Impact Statement (''CIS'') describing the transaction and the proposed Final Judgment. The United States published the proposed Final Judgment and the CIS in the **Federal Register** on July 2, 2018, *see* 83 Fed. Reg. 30956 (July 2, 2018), and caused summaries of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in the *Washington Post* and *Bluefield Daily Telegraph* from July 2, 2018, through July 10, 2018. The 60-day public comment period ended on September 10, 2018. The United States received one public comment. *See* Tunney Act Comments of the State of West Virginia on the Proposed Final Judgment (''WV Comment''), attached hereto as Exhibit A.

II. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are

ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting United States* v. *Western Elec. Co.,* 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As a court in this district confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973)

[1] *See also BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

(statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76. *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

III. THE INVESTIGATION AND PROPOSED FINAL JUDGMENT

The Department of Justice conducted an extensive investigation into the proposed acquisition and the proposed divestiture. The Department reviewed business documents, conducted economic analysis, and interviewed a substantial number of customers and actual and potential competitors in the aggregate and asphalt-concrete markets to ascertain whether the acquisition would be anticompetitive. The Department also worked extensively with the State of West Virginia and, in particular, the agency most familiar with the markets at issue, WVDOT, which sets quality standards for aggregate used in road construction and repair and qualifies suppliers of aggregate to bid on WVDOT road projects. Later, the Department thoroughly vetted the potential divestiture over the course of several months, a process that included re-interviewing customers, competitors, and the proposed divestiture buyer, document and data requests, and the retention of an expert geologist. Throughout this process, the Department worked in cooperation with the WVDOT to ensure it was satisfied that the divestiture would eliminate any concerns about the acquisition.[3]

In the Complaint, the United States alleged that CRH supplies aggregate in Wyoming, Raleigh, Mercer, and Summers Counties in West Virginia (these counties are referred to in the Complaint as ''Southern West Virginia''). Before being acquired by CRH, Pounding Mill owned two quarries that also supplied aggregate in Southern West Virginia. Without the divestiture, the proposed acquisition would have resulted in CRH owning nearly all of the aggregate quarries that supply Southern West Virginia and would have eliminated the horizontal, head-to-head competition between CRH and Pounding Mill in the supply of aggregate.

The Complaint also alleged that the acquisition would raise vertical competition concerns. In addition to aggregate, CRH produces and sells asphalt concrete. Aggregate is an essential input in asphalt concrete. AAA Paving and Sealing, Inc. (''AAA Paving''), a recent entrant, is the only company that competes with CRH to supply asphalt concrete in Southern West Virginia. Before the acquisition, AAA Paving relied on Pounding Mill to supply the aggregate it needs to manufacture asphalt concrete. The acquisition therefore would have put the quarries that are AAA Paving's only economically viable sources of aggregate under the ownership of CRH, its competitor in the sale of asphalt concrete. According to the Complaint, if CRH were to acquire its rival's only economically viable source of aggregate, it would have the incentive and ability to disadvantage AAA Paving by withholding this essential input or supplying it on less favorable terms, resulting in higher prices for the sale of asphalt concrete in Southern West Virginia.

Under the proposed Final Judgment, CRH is required to divest Pounding Mill's Rocky Gap quarry located in Rocky Gap, Virginia (hereinafter, the ''Rocky Gap Quarry'') and related assets to Salem Stone Corporation (''Salem Stone''). *See* Figure 1, below. After a thorough evaluation of Salem Stone, the United States approved Salem Stone as the buyer. Salem Stone is a strong aggregate competitor in markets near Southern West Virginia. Salem Stone has extensive experience producing and selling aggregate, and is familiar with both WVDOT's approval process and with the surrounding area. As a result, Salem Stone is well-positioned to operate the divestiture assets and provide meaningful competition.

The divestiture required by the proposed Final Judgment therefore will preserve, and indeed in some respects increase, competition in the markets for WVDOT aggregate and WVDOT asphalt concrete by establishing a new, independent, and economically viable WVDOT aggregate supplier in Southern West Virginia. The divestiture also will ensure that AAA Paving, CRH's sole competitor in the supply of asphalt concrete, has an independent aggregate supplier to which it could economically turn.

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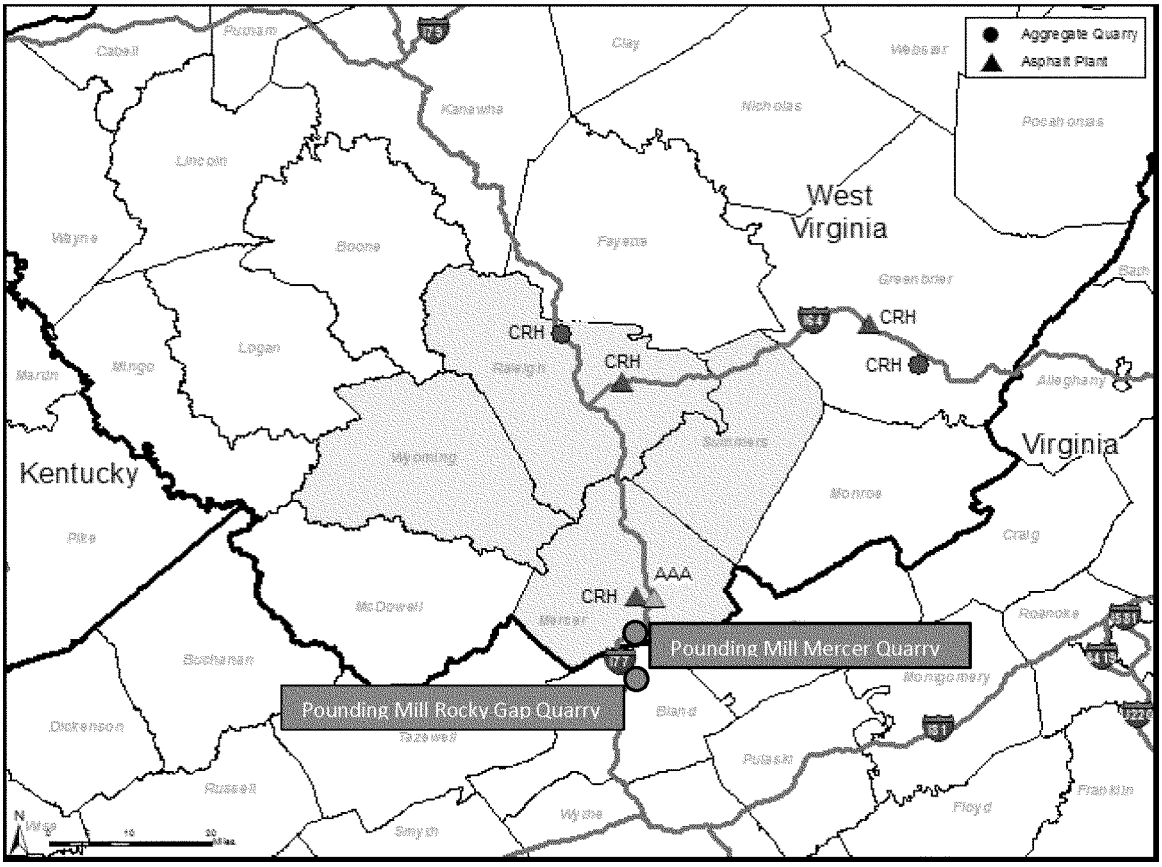
[3] The Department's cooperation with WVDOT included seeking and obtaining comments and revisions to the proposed Final Judgment.

Figure 1: Asphalt-Concrete Plants and Aggregate Quarries



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IV. SUMMARY OF COMMENT AND THE UNITED STATES' RESPONSE

A. Summary of WVAGO Comment

The State of West Virginia through its Office of the Attorney General (''WVAGO'') submitted the only comment received in this matter. The comment contends that the proposed settlement will not resolve the competitive concerns the United States alleged in its Complaint because the settlement will not preserve AAA Paving's ability to compete in the sale of asphalt concrete.[4] The comment contends that two companies—CRH and AAA Paving—supply asphalt concrete in the southern part of West Virginia and that if CRH were to acquire Pounding Mill's quarries, AAA Paving would not have an independent source of supply for the aggregate it needs to manufacture asphalt concrete. (WV Comment, ¶ 1.) The comment also contends that the Mercer Quarry, which CRH acquired from Pounding Mill, is the closest source of aggregate to the southern part of West Virginia.[5] (*Id.* at ¶ 2.) The comment claims that AAA Paving's next-closest alternative, the Rocky Gap Quarry, is not a viable option for AAA Paving because that quarry is 17 miles away from AAA Paving. (*Id.* at ¶¶ 5, 10.) The comment further claims that purchasing from the Rocky Gap Quarry would require AAA Paving to incur higher costs for its aggregate, which would make AAA Paving's asphalt concrete less competitive. (*Id.* at ¶ 7.)

WVAGO's comment also expresses the following concerns. First, the comment contends that CRH has refused to supply AAA Paving with aggregate on several occasions since it acquired the Mercer Quarry. (*Id.* at ¶ 4.) Second, the comment claims that when CRH refused to supply AAA Paving with aggregate from the Mercer Quarry, CRH provided AAA Paving with monetary credits to account for the additional trucking costs AAA Paving would incur by having to purchase aggregate from the Rocky Gap Quarry, but that ''CRH will not provide those trucking credits forever.'' (*Id.* at ¶ 6.) Finally, the comment contends that AAA Paving's costs for aggregate have already increased since CRH acquired Pounding Mill. (*Id.* at ¶ 10.)

B. The United States' Response

The United States evaluated WVAGO's comment, investigated the basis for the claims in the comment, and continues to believe that the divestiture of the Rocky Gap Quarry completely remedies the anticompetitive harm alleged in the Complaint. The proposed Final Judgment secures a structural remedy that fully addresses both the horizontal harm alleged in the aggregate market and the vertical harm alleged in the asphalt-concrete market. The divestiture of Pounding Mill's Rocky Gap Quarry to Salem Stone creates a new competitor in Southern West Virginia and therefore preserves the competition that would have been lost

[4] The State of West Virginia currently is litigating an antitrust action against CRH and others in the Circuit Court of Kanawha County, West Virginia. That lawsuit alleged, across the entire state of West Virginia, ''monopolization of the markets for aggregates, asphalt, and asphalt paving as well as unreasonable restraints of trade in those markets.'' (WV Comment, p. 1.) The United States' proposed Final Judgment is not intended to resolve these much broader claims, but instead is designed to remedy the anticompetitive effects in a four-county area that would otherwise result from the combination of CRH and Pounding Mill.

[5] The comment does not define the geographic area it refers to as the ''southern part of the State of West Virginia.'' The geographic area described in the comment may differ from the four-county area defined in the United States' Complaint as ''Southern West Virginia.''

absent the divestiture. Indeed, as discussed in more detail below, AAA Paving views the divestiture as leaving it with more alternative sources of aggregate than it had before the acquisition, because the Rocky Gap Quarry now is a nearby alternative to CRH's Mercer Quarry.

Terry Parks, Vice President of AAA Paving, believes that the Rocky Gap Quarry is a viable alternative to the Mercer Quarry for AAA Paving's aggregate needs. *See* Declaration of Terry Parks (''Parks Decl.''), attached hereto as Exhibit B, at ¶ 6. The comment incorrectly claims that AAA Paving would need to truck aggregate 17 miles from the Rocky Gap Quarry. The Rocky Gap Quarry is 14 miles away from AAA Paving, and only 7.5 miles further away from AAA Paving than the Mercer Quarry. (*Id.*) Mr. Parks' declaration directly refutes WVAGO's claim that AAA Paving would not be competitive in the asphalt-concrete market if it had to purchase aggregate from the Rocky Gap Quarry. (*Id.* at ¶ 8 (''The Rocky Gap Quarry is a viable alternative to the Mercer Quarry for AAA Paving's aggregate requirements. To obtain aggregate from the Rocky Gap Quarry, AAA Paving would need to truck aggregate an additional 7.5 miles beyond the distance from AAA Paving's plant to the Mercer Quarry. I do not anticipate that that additional distance would significantly raise my costs.'').)

Moreover, the allegations upon which WVAGO bases its comment are unsupported and factually incorrect. For example, the comment states that CRH refused to supply AAA Paving with aggregate on several occasions since CRH acquired the Mercer Quarry. (WV Comment, ¶ 4). Mr. Parks, however, confirmed that CRH has never refused to provide AAA Paving with aggregate. (Parks Decl., ¶ 7.) Indeed, according to Mr. Parks, AAA Paving continues to purchase aggregate from the Mercer Quarry and the prices CRH charges AAA Paving have not increased since CRH acquired the quarry. (*Id.*) Further, while WVAGO alleged that AAA Paving's costs for aggregate have increased since CRH acquired Pounding Mill, Mr. Parks states that AAA Paving's costs for aggregate have not in fact increased. (*Id.*)

In addition, the comment states that CRH provided AAA Paving with credits when it refused to supply AAA Paving with aggregate from the Mercer Quarry to account for the additional trucking costs that AAA Paving would incur by having to purchase from the Rocky Gap Quarry, but ''CRH will not provide those trucking credits forever.'' (WV Comment, ¶ 6.) Mr. Parks, however, explained that while CRH has supplied AAA Paving with discounts (or credits), it was not because CRH refused to supply AAA Paving with aggregate. (Parks Decl., ¶ 10.) Rather, the discounts were a goodwill gesture by CRH, because a major road construction project near the Mercer Quarry was causing significant traffic delays. (*Id.*) CRH offered to supply AAA Paving from a CRH quarry that is further away and provide AAA Paving with discounts to make up for the additional trucking costs. (*Id.*) At this point, AAA Paving has not purchased any aggregate from the Rocky Gap Quarry. (*Id.* at ¶ 9.)

Further, AAA Paving and other aggregate customers stand to benefit from the divestiture of the Rocky Gap Quarry to Salem Stone. The divestiture creates competition between the Rocky Gap Quarry and the Mercer Quarry, which previously did not compete because both were owned by Pounding Mill. Prior to the acquisition, the closest competing aggregate suppliers for customers near the Mercer Quarry were located in Lewisburg, West Virginia—over 60 miles to the northeast. Due to the high cost of trucking aggregate, prices for aggregate are often disciplined by the total cost to the purchaser of obtaining aggregate from the *next* closest quarry, which includes the additional trucking costs of transporting aggregate from a farther quarry. The closer quarry can price aggregate just below the amount the customer would pay to obtain aggregate from the next closest quarry. So, prior to the acquisition, the Mercer Quarry should have set its prices to AAA Paving just below what the Lewisburg, West Virginia quarries would charge, based on their likely transportation costs. After the divestiture, the next closest competitor to the Mercer Quarry is now the Rocky Gap Quarry, which is over 50 miles closer; AAA Paving will need to travel only about 7.5 additional miles to obtain aggregate from the Rocky Gap Quarry. (*Id.* at ¶ 6). Consequently, the price of aggregate quoted to AAA Paving and other customers from the Rocky Gap Quarry is likely to be lower following the divestiture than it would have been prior to the acquisition. In sum, the divestiture ensures that CRH's acquisition of Pounding Mill will not result in less competition or fewer alternatives for AAA Paving or other nearby customers.

V. CONCLUSION

After careful consideration of the public comment, the Department continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The Department will move this Court to enter the proposed Final Judgment after the comment and this response are published pursuant to 15 U.S.C. § 16(d).

Dated: November 16, 2018

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

Christine A. Hill
Attorney, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530, (202) 305–2738, christine.hill@usdoj.gov

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EXHIBIT A
TO RESPONSE

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August 21, 2018

Maribeth Petrizzi
Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

Re: Tunney Act Comments in *United States v. CRH plc, et al.*, Civil Action No. 1:18-cv-01473 (D.D.C.)

Dear Ms. Petrizzi:

Attached please find comments of the State of West Virginia in *United States v. CRH plc, et al.*, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (Tunney Act).

Sincerely,

Douglas L. Davis
Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
United States Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

Plaintiff,

v.

CRH PLC
Belgard Castle
Dublin, Ireland 22,

CRH AMERICAS MATERIALS, INC.
900 Ashwood Parkway
Suite 600
Atlanta, Georgia 30338

and

POUNDING MILL QUARRY CORPORATION
171 Saint Clair Crossing
Bluefield, Virginia 24605

Defendants.

TUNNEY ACT COMMENTS OF THE STATE OF WEST VIRGINIA
ON THE PROPOSED FINAL JUDGMENT

The State of West Virginia is aggressively prosecuting an antitrust action seeking injunctive relief and damages against CRH plc, CRH Americas Materials, Inc (formerly known as Oldcastle, Inc. and Oldcastle Materials, Inc.) and others arising from the monopolization of the markets for aggregates, asphalt, and asphalt paving as well as unreasonable restraints of trade in those markets.

The aims of this litigation include restoration of competition in the asphalt manufacturing and paving industries, maintenance of a competitive market for aggregates that supply the asphalt manufacturing industry in West Virginia, and recovery of overcharges paid by the State of West Virginia as a result of the defendants' unlawful conduct. Ex. A, Complaint. Without waiving any rights to a hearing on any part of the State's complaint, either in West Virginia Circuit Court or in these proceedings, the State of West Virginia offers the following:

1. In the southern part of the State of West Virginia, there are two primary entities engaged in the production of asphalt and the provision of asphalt paving services for West Virginia Department of Transportation Division of Highways paving projects: AAA Paving and CRH, plc and its wholly-owned subsidiaries ("CRH").

2. In these proceedings, CRH is seeking approval for its acquisition of the Mercer County quarry which is the closest supply of aggregates used in the manufacture of asphalt in this area.

3. While this acquisition was under review, CRH threatened that, if it were permitted to buy the Mercer County quarry, AAA Paving would not be able to buy aggregate from CRH for the manufacture of AAA's asphalt. Ex. B, Dep. of Terry Parks, at 37:17-38:19 (March 18, 2018).

4. Since the acquisition closed, CRH has already refused to supply AAA Paving with aggregate from the Mercer County quarry on several occasions, claiming that the quarry's production is being entirely consumed by CRH's own asphalt manufacturing.

5. When AAA Paving is unable to obtain aggregate from the Mercer County quarry, AAA's next closest supply is from the Rocky Gap quarry which is 17 miles away, almost entirely uphill, on a route that requires 30 to 60 minutes of trucking time, depending on traffic.

6. For the time being, CRH has agreed to provide AAA Paving with trucking credits so that this travel time does not render Rocky Gap stone less competitive. CRH will not provide those trucking credits forever.

7. Without trucking credits, Rocky Gap aggregate would require AAA Paving to incur higher costs for its aggregate, which would in turn render AAA's asphalt and asphalt paving services less competitive in a market which is already dominated by CRH.

8. Because the asphalt manufacturing and paving markets will be adversely affected by CRH's acquisition of Pounding Mill, the State of West Virginia requests that the Department of Justice withdraw its consent to the Proposed Final Judgment.

9. The State of West Virginia believes the Proposed Final Judgment will have an adverse effect on the asphalt manufacturing and paving markets in West Virginia and that it fails to adequately address the anticompetitive effects of the acquisition by CRH on the asphalt manufacturing and asphalt paving markets. The proposed Final Judgment simply will not remedy the effects of the acquisition on these markets. Neither the proposed Final Judgment nor the Competitive Impact Statement address the adverse impacts already being experienced by CRH's most significant competitor in Southern West Virginia.

10. The Proposed Final Judgment will actually exacerbate the competitive climate for aggregates, asphalt manufacturing and asphalt paving in Southern West Virginia. Pounding Mill Quarry Corporation, the seller of the Mercer County quarry was independent of CRH and AAA Paving. Now the quarry is operated by CRH or its subsidiaries. The Rocky Gap quarry sold to Salem Stone does not alleviate the problems because it is too far away to allow AAA Paving to be competitive in the asphalt manufacturing and asphalt paving markets. The costs for AAA

Paving have increased and it has no economically viable alternative. The Proposed Final Judgment does not address this at all.

11. If the Department chooses not to withdraw its consent, the State of West Virginia requests that the Proposed Final Judgment be disapproved by the Court because it is not in the public interest and fails to meet the standards in 15 U.S.C. § 16(e).

Sincerely,

Douglas L. Davis (WV Bar No. 5502)
Assistant Attorney General
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, WV 25326-1789

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2017 JAN 11 AM 10:24

STATE OF WEST VIRGINIA, ex rel. PATRICK MORRISEY, ATTORNEY GENERAL, and PAUL A. MATTOX, JR. IN HIS OFFICIAL CAPACITY AS SECRETARY OF TRANSPORATION AND COMMISSIONER OF HIGHWAYS, WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,

Plaintiffs,

v.

CIVIL ACTION NO. 17-C-41

CRH, PLC; OLDCASTLE, INC.; OLDCASTLE MATERIALS, INC.; WEST VIRGINIA PAVING, INC.; SOUTHERN WEST VIRGINIA PAVING, INC.; SOUTHERN WEST VIRGINIA ASPHALT, INC.; KELLY PAVING, INC.; CAMDEN MATERIALS, LLC; AMERICAN ASPHALT & AGGREGATE, INC.; AMERICAN ASPHALT OF WEST VIRGINIA, LLC; BLACKTOP INDUSTRIES AND EQUIPMENT COMPANY,

Defendants.

COMPLAINT

1. Plaintiffs, the State of West Virginia, by and through its duly elected Attorney General, Patrick Morrisey ("Attorney General"), and the Paul A. Mattox, Jr. in his official capacity as Secretary of Transportation and Commissioner of Highways, West Virginia Department of Transportation ("DOH") (collectively, the "State"), bring this action under the West Virginia Antitrust Act against CRH, plc; Oldcastle, Inc.; Oldcastle Materials, Inc.; West Virginia Paving, Inc.; Southern West Virginia Paving, Inc.; Southern West Virginia Asphalt, Inc.; Kelly Paving, Inc.; Camden Materials, LLC; American Asphalt & Aggregate, Inc.; American Asphalt of West Virginia, LLC; and Blacktop Industries and Equipment Company (collectively, "Defendants").

EXHIBIT A

JURISDICTION AND VENUE

2. The Circuit Court of Kanawha County, West Virginia, is authorized to hear this matter under Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 56–3–33, W. Va. Code § 51–2–2, W. Va. Code §§ 47–18–8, 9 and 15.

3. Defendants transact business in Kanawha County. Venue thus properly lies in the Circuit Court of Kanawha County, West Virginia. *See* W. Va. Code § 56–1–1; *see also id.* § 47–18–15.

PARTIES

4. Plaintiff, the State of West Virginia, by and through its duly elected Attorney General, Patrick Morrisey, is authorized, in its sovereign capacity, to bring this action under West Virginia Code §§ 47–18–8, –9, and –15.

5. Plaintiff, Paul A. Mattox, Jr., in his official capacity as Secretary of Transportation and Commissioner of Highways, West Virginia Department of Transportation ("DOH"), is authorized to bring this action under W. Va. Code § 47–18–9 and W. Va. Code § 17–2A–8.

6. The West Virginia Division of Highways is responsible for the construction and maintenance of more than 38,000 miles of publicly owned roads and bridges throughout West Virginia.

7. Annual paving contracts awarded by DOH in the state averaged more than $130 million per year between 2010 and 2014, totaling more than $665 million.

8. Defendant CRH, plc is a corporation organized under the laws of Ireland and is headquartered in Dublin, Ireland. CRH, plc is the ultimate owner of its subsidiaries, which include Oldcastle, Inc.; Oldcastle Materials, Inc.; West Virginia Paving, Inc.; Southern West Virginia Paving, Inc.; and Southern West Virginia Asphalt, Inc. Upon information and belief, CRH, plc

exercises dominion and control over its subsidiaries and reports all earnings from each of these entities in its consolidated reports filed with public agencies.

9. Upon information and belief, CRH, plc is the largest building materials company in North America, operating in all fifty U.S. states and six Canadian provinces.

10. Upon information and belief, CRH, plc is the largest producer of asphalt and the third largest producer of aggregates and readymixed concrete in the United States.

11. CRH, plc's business is vertically integrated from primary resource quarries into aggregates, asphalt and readymixed concrete products. CRH, plc's business is further integrated into asphalt paving services through which it is the leading supplier of product to highway repair and maintenance demand in the United States.

12. Defendant Oldcastle, Inc. is a principal subsidiary of CRH, plc; is incorporated in Delaware; and is headquartered in Atlanta, Georgia. Oldcastle, Inc.'s actions are controlled and dominated by CRH, plc. Upon information and belief, Oldcastle, Inc. is responsible for CRH, plc's operations in North America.

13. Defendant Oldcastle Materials, Inc. is a principal subsidiary of CRH, plc; is incorporated in Delaware; and is headquartered in Atlanta, Georgia. Oldcastle Materials, Inc.'s actions are controlled and dominated by CRH, plc. Upon information and belief, Oldcastle Materials owns West Virginia Paving, Inc.

14. Defendant West Virginia Paving, Inc. ("WV Paving") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Dunbar, West Virginia. WV Paving is a principal subsidiary of CRH, plc. WV Paving engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products in West Virginia markets.

15. Defendant Southern West Virginia Paving, Inc. ("Southern WV Paving") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Sprague, West Virginia. Southern WV Paving's officers are the same as WV Paving's officers and its "local office" listing is the same as WV Paving. Southern WV Paving engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products in West Virginia markets.

16. Defendant Southern West Virginia Asphalt, Inc. ("Southern WV Asphalt") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Sprague, West Virginia. Southern WV Asphalt's officers are the same as WV Paving's officers and its "local office" listing is the same as WV Paving. Southern WV Asphalt engages in the business of manufacturing, selling, and/or applying asphalt and asphalt related products in West Virginia markets.

17. Upon information and belief, CRH, plc acquired Southern WV Paving and Southern WV Asphalt through its subsidiary WV Paving.

18. Because all operations of CRH, plc subsidiaries are ultimately controlled and directed by CRH, plc, CRH, plc; Oldcastle, Inc.; Oldcastle Materials, Inc.; WV Paving; Southern WV Paving; and Southern WV Asphalt are collectively referred to herein as "CRH."

19. Defendant Kelly Paving, Inc. ("Kelly Paving") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia. Kelly Paving is a wholly owned subsidiary of Shelly and Sands, Inc., an Ohio corporation. Kelly Paving engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products in West Virginia markets. Kelly Paving is a partner in a joint venture with WV Paving in Camden Materials LLC.

20. Camden Materials, LLC ("Camden Materials") is a West Virginia limited-liability company duly authorized to conduct business in the State of West Virginia, with its

principal place of business located in Dunbar, West Virginia. Camden Materials is a joint venture between WV Paving and Kelly Paving. Upon information and belief, Camden Materials is owned in equal parts by WV Paving and Kelly Paving. Camden Materials engages in the business of manufacturing and selling asphalt. Camden Materials is operated by WV Paving.

21. Defendant American Asphalt & Aggregate, Inc. ("American Asphalt & Aggregate") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Kenova, West Virginia. American Asphalt & Aggregate engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products. Upon information and belief, American Asphalt & Aggregate is owned in whole or in part by Daron Dean.

22. Defendant American Asphalt of West Virginia, LLC ("American Asphalt") is a Delaware limited-liability company formed in June 2012. American Asphalt is authorized to conduct business in the State of West Virginia and its principal place of business is located in Kenova, West Virginia. American Asphalt's members are Southern WV Asphalt and American Asphalt & Aggregate. Upon information and belief, American Asphalt is owned in equal parts by Southern WV Asphalt and American Asphalt & Aggregate. American Asphalt engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products. Upon information and belief, Daron Dean operates American Asphalt.

23. Defendant Blacktop Industries and Equipment Company ("Blacktop Industries") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Kenova, West Virginia. Blacktop Industries engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products. Upon information and belief, Blacktop Industries is a subsidiary of American Asphalt & Aggregate, and owned in whole or in part by Daron Dean.

DEFINITIONS

24. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and readymix concrete.

25. "Stone product" refers to any product produced at an aggregate quarry.

26. "Asphalt concrete" or "asphalt" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

27. "Hot-mix plant" means a plant that produces asphalt concrete.

TRADE AND COMMERCE

The Relevant Product Markets

Aggregate

28. Aggregate is a stone product used to manufacture asphalt.

29. Aggregate is a low-priced commodity that is very heavy and bulky.

30. Transportation costs comprise a substantial portion of the price per ton of aggregate and, accordingly, transportation costs limit the areas to which aggregate can be shipped economically.

31. As a result, the geographic location of aggregate quarries, mines, and gravel pits, along with the associated transportation costs of aggregate, create regional markets for the sale of aggregate suitable for manufacturing asphalt.

32. Establishing a new, successful aggregate production facility in or in close proximity to southern West Virginia is difficult, time-consuming, and costly.

33. To be cost competitive, an aggregate production facility must be able to produce large amounts of consistent quality aggregate in close proximity to the hot-mix plants where the aggregate will be used.

34. Environmental and zoning permits must be obtained to operate an aggregate-production facility.

35. State and local zoning provisions make it very difficult to open an aggregate production facility in southern West Virginia or southwest Virginia in close proximity to southern West Virginia.

36. Aggregate differs from all other types of stone products in its physical composition, functional characteristics, customary uses, and pricing.

37. Other stone products are not acceptable substitutes for manufacturing asphalt.

38. Manufacturers of asphalt recognize aggregate as a distinct product.

39. Aggregate used for paving roads under DOH contracts must possess specific qualities and characteristics.

40. Not all aggregates are suitable for manufacturing asphalt that meets DOH specifications.

41. DOH must inspect and certify aggregate producers and suppliers before the aggregate can be used to manufacture asphalt for DOH paving contracts.

42. A current list of approved aggregate suppliers for DOH paving contracts is attached hereto as Exhibit A.

43. The production and sale of DOH approved aggregate used to manufacture DOH approved asphalt concrete constitutes a line of commerce and a relevant market for antitrust purposes.

Asphalt concrete

44. The production and sale of asphalt concrete that meets DOH specifications for DOH-contract paving projects is a separate product market.

45. Establishing a new, successful hot-mix plant in or in close proximity to southern West Virginia is difficult, time-consuming, and costly.

46. To be cost competitive, the hot-mix plant must be able to obtain large amounts of consistent quality aggregate in close proximity to the hot-mix plant and be in close proximity to DOH paving projects requiring asphalt concrete.

47. Environmental and zoning permits must be obtained to operate a hot-mix plant.

48. State and local zoning provisions make it very difficult to open a hot-mix plant in southern West Virginia or southwest Virginia in close proximity to southern West Virginia.

49. DOH must inspect and certify producers of asphalt concrete before the asphalt concrete can be used for DOH paving contracts.

50. A current list of approved asphalt concrete manufacturing plants for DOH paving contracts is attached hereto as Exhibit B.

51. Asphalt concrete is composed of about 95 percent aggregate and 5 percent liquid asphalt.

52. Because asphalt is composed primarily of aggregate, asphalt is heavy and cannot be trucked large distances because it is prohibitively expensive to do so.

53. Similarly, heat is required to manufacture asphalt, and the finished product must be applied while it is hot.

54. For that reason, the extent to which manufactured asphalt can be transported is limited by the distance and time it takes to deliver the product.

Asphalt Paving

55. Asphalt paving is a separate product market because contractors can acquire paving equipment to apply asphalt manufactured for a DOH paving project without owning or controlling a hot-mix plant or an aggregate producing facility.

56. Some of the Defendants occasionally win DOH paving or road construction contract bids, and then purchase asphalt from an independent manufacturer.

57. Occasionally, when Defendants lose bids, they in turn supply asphalt to the winning bidder.

The Relevant Geographic Markets

58. For antitrust purposes and due to terrain and transportation options and costs, West Virginia is divided into different geographic markets for the asphalt and asphalt paving markets.

59. The geographic markets include the North Asphalt Market, which is comprised of the following counties: Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, and Pleasants.

60. The West Central Asphalt Market is comprised of the following counties: Wood, Ritchie, Wirt, Calhoun, Roane, Jackson, and Mason.

61. The Southwest Asphalt Market is comprised of the following counties: Putnam, Kanawha, Cabell, Wayne, Lincoln, Boone, Logan, and Mingo.

62. The South Asphalt Market is comprised of the following counties: Raleigh, Wyoming, Summers, Monroe, Mercer and McDowell.

63. The Northeast Asphalt Market is comprised of the following counties: Jefferson, Berkeley, Morgan, Mineral, Hampshire Hardy, and Grant.

64. The East Central Asphalt Market is comprised of the following counties: Tucker, Barbour, Upshur, Randolph, Pendleton, Gilmer, Braxton, Webster, Pocahontas, Clay, Nicholas, Greenbrier, and Fayette.

65. The North Central Asphalt Market is compromised of the following counties: Monongalia, Marion, Preston, Doddridge, Harrison, Taylor, and Lewis.

66. CRH, through its subsidiaries, is the successful bidder on the vast majority of all DOH paving contracts in the Southwest and South Asphalt Markets.

67. Kelly Paving is the successful bidder on the majority of all DOH paving contracts in the North Paving Market.

68. Together, CRH, through its subsidiaries, and Kelly Paving are the successful bidders on the vast majority of all DOH asphalt paving contracts in the West Central Asphalt Market.

69. CRH, through its subsidiaries or joint ventures, owns or controls all of the DOH approved asphalt manufacturing plants serving the Southwest Asphalt Market.

70. CRH, through its subsidiaries or joint ventures, owns or controls all except one of the DOH approved asphalt manufacturing plants serving the South Asphalt Market.

71. CRH, through its subsidiaries or joint ventures, owns or controls all of the DOH approved asphalt manufacturing plants serving the West Central Asphalt Market.

72. Through the ownership or control of the hot-mix plants, CRH has obtained market power that allows it to exclude competitors and/or raise prices in the Southwest and South Asphalt markets.

73. Through the ownership or control of hot-mix plants, CRH and Kelly Paving have obtained market power that allows them to exclude competitors and/or raise prices in the West Central Asphalt market.

74. The relevant geographic area for the purposes of this complaint is made up of the South, Southwest and West Central Asphalt Markets.

FACTUAL BACKGROUND

The Defendants' Acquisition History

75. CRH has engaged in an ongoing series of anticompetitive combinations, acquisitions, agreements, and practices since 2000.

76. Defendants have thereby acquired, maintained, and enhanced market power in the market for the sale and production of DOH-approved asphalt in the relevant geographic markets.

77. CRH has the ability to control asphalt prices and exclude competitors throughout the relevant geographic markets in West Virginia.

78. In 2000, CRH began its quest to control the asphalt manufacture and sale and asphalt paving markets in West Virginia through the acquisition of WV Paving via one or more of its subsidiaries.

79. Through its subsidiary, WV Paving, CRH acquired Southern WV Paving and Southern WV Asphalt.

80. The Shelly Company, which is based in Ohio, was acquired by CRH through one or more of its subsidiaries in 2000.

81. The Shelly Company also is engaged in the manufacture of asphalt, paving, and aggregates production.

82. The Shelly Company owns asphalt manufacturing plants along the Ohio River that are or have been DOH certified suppliers of asphalt.

83. As recently as 2011, The Shelly Company had two DOH approved hot-mix plants.

84. As of 2014, The Shelly Company has just one hot-mix plant near Gallipolis, Ohio.

85. In a press release issued by CRH in 2000, it announced its $362 million acquisition of The Shelly Company and identified West Virginia as one of its three "main market positions."

86. Since the acquisition, the Shelly Company has disappeared from the North Paving Market, although it owns several aggregate facilities along the Ohio River and aggregate terminals in West Virginia.

87. CRH competed with Kelly Paving for DOH paving projects until 2006.

88. In 2006, CRH, through one if its subsidiaries (WV Paving), entered into a joint venture with Kelly Paving to form Camden Materials.

89. Camden Materials is operated by WV Paving and manufactures DOH-approved asphalt in Parkersburg, Wood County.

90. Since the formation of Camden Materials, CRH has not bid on any DOH paving projects in the North Asphalt Market, though it easily could with the hot-mix plant in Parkersburg, and several hot-mix plants owned by its subsidiary, The Shelly Company, in Ohio across the Ohio River.

91. Kelly Paving was the successful bidder on 62 percent of the DOH paving projects by dollar amount from 2010 through 2014 in the North Asphalt Market.

92. After the formation of Camden Materials, Kelly Paving continued to bid on DOH asphalt paving projects in the West Central Asphalt Market, but it has essentially split the market with CRH.

93. Upon information and belief, Kelly Paving has not bid on DOH projects in Mason County since 2006, even though it did so before forming Camden Materials.

94. In the West Central Asphalt market, CRH won 41 percent of the DOH paving contracts by dollar volume while Kelly Paving won 37 percent from 2010 through 2014.

95. Together, CRH and Kelly Paving account for nearly 80 percent of the West Central Asphalt Market.

96. Before June 2012, American Asphalt & Aggregates and Blacktop competed against CRH for DOH asphalt paving projects.

97. In June of 2012, American Asphalt—a CRH-owned joint venture between American Asphalt & Aggregate and Southern WV Asphalt—was formed.

98. Since the formation of the American Asphalt joint venture, American Asphalt & Aggregates and Blacktop Industries have stopped competing with CRH in the West Central Asphalt Market for DOH asphalt paving projects.

99. Since 2013, Blacktop Industries has failed to win a bid in the Southwest Asphalt Market, although it won bids in this market before the formation of American Asphalt.

100. Upon information and belief, as a part of the joint venture agreement, American Asphalt & Aggregate shuttered two of its asphalt plants that had previously competed against CRH and also agreed not to compete, through Blacktop Industries.

101. From 2010 through 2014, CRH's market share for DOH asphalt paving projects in the Southwest Asphalt Market has increased from about 60 percent to about 93 percent by dollar volume.

102. Appalachian Paving & Aggregate, LLC, an asphalt-and-paving business located in Lenore, West Virginia, won a $3.6 million contract to pave an airport in Mingo County in 2009.

103. Shortly after winning the Mingo County airport project, Appalachian Paving & Aggregate, LLC was acquired by CRH in 2010.

104. Upon information and belief, after the acquisition, Appalachian Paving & Aggregates LLC stopped bidding on DOH paving projects.

105. CRH formerly competed with Mountain Companies, a group of commonly owned Kentucky corporations, for DOH paving projects in the Southwest and West Central Asphalt Markets.

106. In 2006 CRH acquired Mountain Companies, through its Oldcastle Materials subsidiary and others.

107. Mountain Enterprises, one of the Mountain Companies, dominated WV Paving in the southern counties of the Southwest Asphalt Market for years.

108. Rather than compete against Mountain Enterprises, CRH simply acquired it.

109. As part of that acquisition, CRH also acquired W-L Construction & Paving, Inc., a Kentucky company owned by Mountain Companies owners, and entered into a joint venture with Bizzack, Inc., another company previously owned entirely by Mountain Companies' owners.

110. Upon information and belief, CRH also acquired the assets of Orders & Haynes Paving Co., Inc.

111. Orders & Haynes had previously provided asphalt paving services in the Southwest Asphalt Market in competition to CRH.

112. Upon information and belief, CRH later acquired the assets of Yellowstar Materials, Inc. in Ivydale, West Virginia.

113. Upon information and belief, Yellowstar, which owned two asphalt plants, was formed by a former Vice President of WV Paving, Harry Dunmire.

114. Upon information and belief, Yellowstar had the potential to compete with CRH within West Virginia for DOH asphalt paving projects.

115. Upon information and belief, CRH recognized the competition posed by Yellowstar and threatened the company, by, among other things, claiming it would put an asphalt plant directly next to Yellowstar.

116. Upon information and belief, CRH also threatened trucking companies to not haul for Yellowstar or they would lose CRH business.

117. Upon information and belief, CRH's threats worked.

118. Upon information and belief, Yellowstar finally submitted and sold its assets to CRH.

119. Upon information and belief, Yellowstar's hot-mix plants were then torn down.

120. Upon information and belief,, Yellowstar's owner, Harry Dunmire, was forced to sign a 10-year non-compete clause with CRH when the assets were sold to CRH.

121. MAC Construction & Excavating, Inc., a company headquartered in Indiana, entered the West Virginia asphalt paving market, providing competition to CRH.

122. MAC Construction showed early success in outbidding WV Paving on two large DOH asphalt paving projects in 2014.

123. Upon information and belief, shortly after winning the bids in 2014, CRH acquired the company and MAC Construction requested revocation of a permit to operate a hot-mix plant in St. Albans, West Virginia.

124. CRH purposefully took actions to maintain and enhance its market power in the asphalt manufacturing and sale, and asphalt paving markets through predatory and exclusionary actions.

125. Upon information and belief, CRH:

(a) induced boycotts against its competitors;

(b) expressly threatened to put new competitors out of business;

(c) made aggressive overtures to buy out the few remaining competitors in the market; and

(d) mandated statewide covenants not to compete, for as many as ten years, from its vanquished business rivals.

126. Through its market power in DOH-approved asphalt concrete and asphalt-concrete paving, CRH has created substantial barriers to those who might consider entering the asphalt manufacturing or paving markets.

127. Upon information and belief, CRH has restricted the supply of asphalt concrete to competing paving companies; threatened new entrants in these markets with reprisals unless they ceased operations or sold to CRH; and engaged in other predatory conduct that makes it

economically irrational for anyone to consider launching or expanding asphalt production or paving businesses in the West Central, Southwest and South Asphalt markets.

The Defendants' Market Power

128. CRH has dominant market power for DOH approved asphalt concrete and asphalt paving in the relevant geographic markets, whether measured by DOH contracts won/subcontracted or by total dollar volume of asphalt concrete sold.

South Paving Market

129. CRH operates all the DOH compliant hot-mix plants in the South Asphalt Market.

130. In the South Paving Market from 2010 to 2014, CRH's market share for DOH paving projects increased from 90 percent to nearly 100 percent, as measured in dollars.

131. During the overall time period, CRH averaged 95 percent of the market share, which totaled $35,102,384.00 in contracts.

132. During the same time period, four competitors to CRH in the South Asphalt market—Teays River Construction, Inc.; Triton Construction Inc.; Ahern & Associates, Inc.; and Pro Contracting Group— stopped bidding on DOH contracts or failed to win any DOH asphalt paving contracts.

133. Upon information and belief, CRH's competitors could no longer acquire DOH-compliant asphalt from CRH at competitive prices.

Southwest Paving Market

134. CRH operates all the DOH compliant hot-mix plants in the Southwest Asphalt Market.

135. In the Southwest Asphalt Market, from 2010 to 2014, CRH's market share for DOH paving projects increased from about 60 percent to about 93 percent, as measured in dollars.

136. During the overall time period, CRH averaged 79 percent of the market share, which totaled $87,292,926.00 in contracts.

137. During the same period of time, three competitors to CRH in the Southwest Asphalt market—MAC Construction & Excavating; Blacktop Industries; and Appalachian Paving & Aggregate— stopped bidding on DOH contracts or failed to win any DOH-asphalt paving contracts.

138. Upon information and belief, CRH acquired MAC Construction and Appalachian Paving & Aggregate.

139. CRH formed a joint venture with Blacktop's owner, Daron Dean.

140. Upon information and belief, a fourth competitor, Alan Stone Co, Inc., could no longer acquire DOH-compliant asphalt from CRH at competitive prices and stopped bidding on DOH paving contracts in the Southwest Asphalt Market.

West Central Asphalt Market

141. CRH and the joint venture it formed with Kelly Paving (Camden Materials) operate all the DOH compliant hot-mix plants in the West Central Asphalt Market.

142. In the West Central Asphalt Market from 2010 to 2014, CRH's market share for DOH paving projects increased from a low of about 15 percent to about 48 percent, as measured in dollars.

143. In the West Central Asphalt Market from 2010 to 2014, Kelly Paving's market share increased from a low of about 18 percent to 42 percent, as measured in dollars.

144. During the overall time period in the West Central Asphalt Market, CRH and Kelly Paving, combined, averaged 78 percent of the market share, which totaled $54,349,055 in contracts.

145. Upon information and belief, after forming Camden Materials, CRH and Kelly Paving effectively quit bidding against each other in the West Central Asphalt Market.

146. During the same period of time, two competitors to CRH in the West Central Asphalt market, Blacktop Industries and Kokosing Construction Company, have stopped bidding on DOH contracts or have failed to win any DOH-asphalt paving contracts.

147. CRH formed a joint venture with Blacktop's owner, Daron Dean in 2012.

148. Upon information and belief, Kokosing could no longer acquire DOH-compliant asphalt from CRH, Kelly Paving, or Camden Materials at competitive prices and stopped bidding on DOH paving contracts.

North Asphalt Market

149. In the North Asphalt Market from 2010 to 2014, Kelly Paving's market share for DOH paving projects increased from a low of about 48 percent to about 72 percent, as measured in dollars.

150. During the overall time period, Kelly Paving, averaged 62 percent of the market share in the North Asphalt Market, which totaled $23,415,125.00 in contracts.

151. During the same time period, two competitors to Kelly Paving in the North Asphalt market—Ohio-West Virginia Excavating and J.F. Allen Company—stopped bidding on DOH contracts or failed to win any DOH asphalt paving contracts.

152. Two other competitors continue to bid and win DOH paving contracts in the North Asphalt Market: Lash Paving, Inc. and Klug Bros, Inc.

153. Lash has about 12 percent of the market while Klug has about 17 percent.

154. CRH does not bid on DOH paving contracts in the North Asphalt Market, although it could successfully through its subsidiary, The Shelly Company.

155. Upon information and belief, CRH has agreed with Kelly Paving not to bid on DOH paving contracts in the North Asphalt Market. CRH owns or controls all of the DOH approved hot-mix plants in the West Central, Southwest and South Asphalt Markets.

156. CRH can control the price of DOH approved asphalt concrete through its hot-mix plants and paving operations.

157. CRH can refuse to sell to competitors or increase the prices to the point where its competitors can't win DOH paving projects.

The Defendants' Conduct Adversely Affects the Markets

158. CRH's' prices for DOH approved asphalt and asphalt paving have not been constrained by competition in the relevant geographic markets.

159. CRH's prices for DOH approved asphalt and asphalt paving have been constrained by DOH bid specifications, but only marginally.

160. DOH engineers estimate what they believe a DOH paving project will cost when they post the project for bids.

161. DOH engineers use past contracts to help determine what future prices might be. These are known as engineering estimates.

162. Thus, if bids for DOH projects come in over the engineering estimates, DOH can reject the bids.

163. DOH does not reject bids very often, and frequently approves bids that exceed the engineering estimates.

164. From 2010 through 2014, DOH only rejected 5 of about 425, paving project contracts in the South, Southwest and West Central Asphalt Markets.

165. DOH frequently must accept the contract bids that exceed engineering estimates due to the exigency of paving projects.

166. Thus, over time, the prices will rise for DOH paving projects unless they are constrained by competition, regardless of the costs of the inputs for the projects such as aggregate, liquid asphalt and labor.

167. Due to the lack of competition, the costs per ton for DOH approved asphalt increased from about $83 to $87 per ton in 2010 to $102 to $110 per ton in 2014 in the South, Southwest and West Central Asphalt Markets.

168. In contrast, in the Northeast Asphalt Market, where the market is divided fairly evenly among five or more competitors—including CRH, which has about 19 percent of the market—from 2010–14, the prices of DOH approved asphalt increased from $73 to $84 per ton.

169. The increase of prices for DOH approved asphalt, thus, was almost double in the South, Southwest and West Central Asphalt Markets as compared to the Northeast Paving Market.

170. The accelerated increase in DOH approved asphalt prices per ton cannot be explained by anything other than the lack of competition.

171. In the South Asphalt Market, from 2010–14, CRH was the sole bidder on 63 of 72 DOH paving contracts.

172. Out of all 72 contracts in the South Asphalt Market, there were one or two bidders on 97 percent of the contracts.

173. By 2013, CRH was winning about 95 percent of all the DOH paving contracts in the South Asphalt Market.

174. In the Southwest Asphalt Market, from 2010–14, CRH was the sole bidder on 113 of 248 DOH paving contracts.

175. Out of all 248 contracts, there were one or two bidders on 95.5 percent of the contracts.

176. By 2013, CRH was winning about 95 percent of all the DOH paving contracts in the Southwest Asphalt Market.

177. In the West Central Asphalt Market, from 2010–14, CRH was the sole bidder on 12 of 105 DOH paving contracts.

178. Out of all 105 contracts, there were one or two bidders on 63.4 percent of the contracts.

179. However, upon information and belief, the West Central Asphalt Market is where CRH and Kelly Paving agreed to split the DOH paving contracts.

180. Thus, in the South, Southwest and West Central Asphalt Markets, CRH has been able to raise the price of DOH approved asphalt and asphalt paving services to supra-competitive levels because it has had virtually no competition in those markets.

181. The State of West Virginia has paid the supra-competitive prices for DOH approved asphalt and asphalt paving to its detriment in the South, Southwest and West Central Asphalt markets.

Anticompetitive Effects and Damages

182. The State has suffered injury to its general welfare and economy due to the unlawful actions of Defendants.

183. The State will be subject to a continuing threat of injury to its general welfare and economy unless Defendants are enjoined from continuing their unlawful conduct.

184. CRH not only has market power but has used it to cause DOH and thus, West Virginia tax payers enormous damage.

185. The DOH asphalt paving contracts were unlawfully inflated and DOH was overcharged on asphalt paving projects in an amount to be determined, from 2010 through 2014 in the South, Southwest and West Central Asphalt Markets.

186. Due to Defendants' unlawful conduct, the cost of DOH approved asphalt and asphalt paving services may have been artificially inflated in the South, Southwest and West Central Asphalt Markets causing the base price used in 2010 to be higher than it would have been in a competitive market.

187. DOH purchased about 2,260,000 tons of asphalt through DOH approved asphalt paving contracts from 2010 through 2014 in the relevant geographic markets.

188. The unnecessarily high prices for asphalt and asphalt paving services in West Virginia has secondary, and perhaps more detrimental, impacts. The State may be forced to either delay road construction repairs or not pursue them at all, causing immeasurable consequential economic damage and unconscionable public safety risks. West Virginia's ability to finance its road construction and maintenance is strained. As the West Virginia Blue Ribbon Commission on Highways observed in May 2016: "To compensate for stagnant state and federal revenues, the ***WVIVH has increased the overall paving cycle to nearly 30 years when a 12-year paving cycle is desired.*** This means that on average a road paved today will not be repaved for 30 years. However, because WVDOH, rightly, considers those roads with the most use to be the highest priority, ***many lower volume local service roads may never get repaved and might have to become unpaved gravel roads."*** West Virginia Blue Ribbon Commission on Highways, *Investing in West Virginia's Future, Phase I* (emphasis added).

COUNT I
Restraints of trade in violation of W. Va. Code § 47–18–3
(Against CRH, Camden Materials, and Kelly Paving)

189. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

190. Before CRH and Kelly Paving began the Camden Materials joint venture, they competed against each other for DOH paving contracts.

191. CRH and Kelly Paving agreed and conspired with each other to form Camden Materials, an asphalt manufacturer and seller.

192. Upon information and belief, as part of the agreement to form Camden Materials, CRH agreed not to bid on DOH paving contracts in the North Asphalt Market and Kelly Paving and CRH agreed not to bid against or to provide complementary bids to each other's in the West Central Asphalt Market.

193. CRH and Kelly Paving, as part of the formation of Camden Materials conspired to divide the North and West Central Asphalt Markets for DOH paving contracts.

194. Upon information and belief Camden Materials has refused to sell DOH approved asphalt to competitors of CRH and Kelly Paving at competitive prices.

195. The foregoing actions taken by CRH, Camden Materials and Kelly Paving have restrained trade in the DOH approved asphalt manufacturing and sale market and the DOH approved asphalt paving market in violation of W.Va. Code § 47–18–3.

196. The conspiracy between CRH, Camden Materials and Kelly Paving had the purpose and effect of raising prices for DOH approved asphalt and DOH approved asphalt paving in the West Central Asphalt Market.

197. The conspiracy between CRH, Camden Materials and Kelly Paving had the purpose and effect of eliminating or excluding competition and thus raising prices for DOH

approved asphalt and DOH approved asphalt paving in the West Central Asphalt Market in violation of W. Va. Code § 47–18–3.

198. As a direct result of the conspiracy between CRH, Camden Materials and Kelly Paving, the prices for DOH approved asphalt and DOH asphalt paving contracts were higher than they otherwise would have been if competition had been unrestrained in the West Central Asphalt Market in violation of W. Va. Code § 47–18–3.

COUNT II
Restraints of trade in violation of W.Va. Code § 47–18–3
(Against CRH, American Asphalt, American Asphalt & Aggregate and Blacktop Industries)

199. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

200. Before CRH and American Asphalt & Aggregate began the American Asphalt joint venture, they competed against each other for DOH paving contracts in the West Central and Southwest Asphalt Markets.

201. CRH and its competitors, American Asphalt & Aggregate and Blacktop Industries (collectively "Dean") agreed and conspired with each other to form American Asphalt, an asphalt manufacturer, seller and paving company.

202. Upon information and belief, as part of the agreement to form American Asphalt, Dean agreed not to bid on DOH paving contracts in the West Central and Southwest Asphalt Markets or to provide uncompetitive bids to those submitted by CRH in the West Central and Southwest Asphalt Markets.

203. CRH and Dean, as part of the formation of American Asphalt conspired to divide the Southwest and West Central Asphalt Markets for DOH paving contracts.

204. The foregoing actions taken by CRH, American Asphalt and Dean have restrained trade in the DOH approved asphalt manufacturing and sale and the DOH approved asphalt paving markets in violation of W. Va. Code § 47–18–3.

205. The conspiracy between CRH, American Asphalt and Dean had the purpose and effect of raising prices for DOH approved asphalt and DOH approved asphalt paving in the Southwest and West Central Asphalt Markets.

206. The conspiracy between CRH, American Asphalt and Dean had the purpose and effect of eliminating or excluding competition and thus raising prices for DOH approved asphalt and DOH approved asphalt paving in the Southwest and West Central Asphalt Markets in violation of W. Va. Code § 47–18–3.

207. As a direct result of the conspiracy between CRH, American Asphalt and Dean, the prices for DOH approved asphalt and DOH asphalt paving contracts were higher than they otherwise would have been if competition had been unrestrained in the relevant geographic markets in West Virginia, in violation of W. Va. Code § 47–18–3.

COUNT III
Monopolization in Violation of W. Va. Code § 47–18–4
(Against CRH)

208. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

209. At all times relevant herein, CRH did knowingly and unlawfully monopolize, maintain its monopoly, or attempt to monopolize a part of the trade or commerce in the manufacture and sale of asphalt of DOH approved asphalt concrete in the relevant geographic markets in West Virginia, in violation of W. Va. Code § 47–18–4.

210. It was a part of the unlawful monopoly and the purpose thereof to accomplish the following:

(a) To create and maintain a monopoly in the sale of DOH approved asphalt in West Virginia;

(b) To control and affect the price of DOH approved asphalt;

(c) To establish and maintain unreasonably high, excessive, supra-competitive prices for DOH approved asphalt in West Virginia; and

(d) To prevent, suppress and eliminate competition in the manufacture and sale of DOH approved asphalt in West Virginia.

211. As part of the unlawful monopoly and in furtherance and maintenance thereof, CRH did:

(a) Acquire competitors in the asphalt industry in or near West Virginia;

(b) Acquire competing asphalt plants in or near West Virginia;

(c) Entered into joint ventures with competitors in the DOH approved asphalt manufacturing industry within West Virginia;

(d) Enter into joint ventures with competitors in the DOH approved asphalt paving industry in West Virginia; and

(e) Threaten potential competitors and entrants into the DOH approved asphalt manufacturing and sale market.

212. As a result of the foregoing, the State has been damaged and will continue to be damaged because it is compelled to purchase DOH approved asphalt at non-competitive prices because CRH has been able to unlawfully maintain supra-competitive prices for DOH approved asphalt, all in violation of W. Va. Code § 47–18–4.

COUNT IV
Monopolization in Violation of W. Va. Code § 47–18–4
(Against CRH)

213. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

214. At all times relevant herein, CRH did knowingly and unlawfully monopolize, maintain its monopoly, or attempt to monopolize the market for DOH approved asphalt paving services in the relevant geographic markets in West Virginia, in violation of W. Va. Code § 47–18–4.

215. It was a part of the unlawful monopoly and the purpose thereof to accomplish the following:

(a) To create and maintain a monopoly in market for DOH approved asphalt paving services in West Virginia;

(b) To control and affect the price of DOH approved asphalt paving services in West Virginia;

(c) To establish and maintain unreasonably high, excessive, supra-competitive prices for DOH approved asphalt paving in West Virginia; and

(d) To prevent, suppress and eliminate competition in the market for DOH approved asphalt paving in West Virginia.

216. As part of the unlawful monopoly and in furtherance and maintenance thereof, CRH did:

(a) Acquire competitors in the asphalt industry in or near West Virginia;

(b) Acquire competing asphalt pavers in or near West Virginia;

(c) Entered into joint ventures with competitors in the asphalt manufacturing and paving industry within West Virginia; and

(d) Threaten potential competitors and entrants into the market for DOH approved asphalt paving services in West Virginia.

217. As a result of the foregoing, the State has been damaged and will continue to be damaged because it is compelled to purchase DOH approved asphalt paving services at non-competitive prices because CRH has been able to maintain supra-competitive prices for DOH approved asphalt paving services in the relevant geographic markets in West Virginia, all in violation of W. Va. Code § 47-18-4.

COUNT V
Attempt to Monopolize in Violation of W. Va. Code § 47–18–4
(Against CRH)

218. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

219. CRH acquired a controlling interest in an aggregate producer, Boxley Aggregates of WV, Inc. in 2002 by forming a joint venture between Boxley Materials Company and and Southern WV Paving named Boxley Aggregates of West Virginia, LLC. CRH changed the name of the joint venture to Appalachian Aggregates, LLC in 2016 ("CRH Aggregates").

220. CRH Aggregates operates three quarries.

221. Four other quarries produce aggregate suitable for DOH approved asphalt for DOH asphalt paving projects in the South and Southwest Asphalt Markets.

222. Three of the quarries are owned by Pounding Mill Quarry Corporation. The fourth is owned by a company unrelated to CRH or Pounding Mill.

223. Two of the CRH quarries produce limestone suitable for use in DOH approved asphalt for DOH asphalt paving projects. One of these two quarries is close enough to the South Asphalt Market to competitively supply aggregate to DOH approved hot-mix plants.

224. The third CRH quarry produces sandstone which is not suitable for DOH approved asphalt paving projects.

225. Upon information and belief, CRH is attempting to acquire three more quarries serving the Southwest and South Asphalt Markets, the Pounding Mill quarries, which would give it ownership or control over four of the five limestone quarries capable of supplying DOH approved aggregate to hot-mix plants serving the South and Southwest Asphalt Markets.

226. After the acquisition, CRH would possess sufficient market power to increase the price of DOH approved aggregate and maintain its market power for DOH approved asphalt in the Southwest and South Asphalt Markets.

227. After the acquisition, CRH could further refuse to supply DOH approved aggregate and asphalt to competing asphalt manufacturers and asphalt pavers.

228. Ultimately, the acquisition would nearly guarantee the foreclosure of new entrants to supply DOH approved aggregate or asphalt in the South and Southwest Asphalt markets, and allow CRH to exercise and maintain its market power.

229. If CRH acquires the Pounding Mill quarries, it will own or control at least 4 of 5 quarries that can produce DOH approved aggregate for use in DOH approved asphalt concrete in the South and Southwest Asphalt Markets.

230. The acquisition of the three quarries by CRH would create a dominant aggregate company in the Southwest and South Asphalt Markets.

231. The acquisition would reduce the number of significant competitors operating aggregate facilities in these markets from three to two, for DOH paving projects, and from two to one for DOH paving projects for the West Virginia Parkways Authority which operates the West Virginia Turnpike.

232. This would allow CRH to cement its hold on DOH asphalt paving projects in the Southwest and South Asphalt Markets.

233. Because of the nature of aggregate and the costs for transportation, it is unlikely that any new quarry producing aggregate suitable for DOH asphalt paving projects will be commenced in or in close proximity to the South or Southwest Asphalt Markets.

234. With control of four of of the five approved sources for DOH approved aggregate, CRH will be able to exercise market power to control the prices of aggregate and exclude

competition in the market for DOH approved aggregate in the South and Southwest Asphalt Markets in violation of W. Va. Code § 47–18–4.

235. With control of the DOH approved aggregate market, CRH will further maintain and cement its monopoly over DOH approved asphalt and asphalt paving projects in the South and Southwest Asphalt Markets in violation of West Virginia Code § 47–18–4.

236. CRH must be enjoined from acquiring the Pounding Mill quarries to prevent the unlawful monopolization of DOH approved aggregate in the South and Southwest Asphalt Markets pursuant to W.Va. Code § 47–18–8.

COUNT VI
Unjust Enrichment
(Against All Defendants)

237. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

238. Defendants' conduct was undertaken with the specific purpose of increasing prices for asphalt and asphalt paving services and maintaining prices for each at supra-competitive levels.

239. As a proximate result of Defendants' restraint of trade and monopolization they have been unjustly enriched by their willful violations of West Virginia laws.

240. The State conferred a benefit upon Defendants by paying supra-competitive prices for asphalt and asphalt paving services in the relevant geographic markets.

241. Defendants' conduct conferred a benefit upon themselves at the expense of the State. Defendants were aware of the benefits conferred by the State on them, and those conferred by Defendants upon themselves. Those benefits came at the expense of the State. Defendants have retained this benefit without compensating the State.

242. It would be inequitable to allow Defendants to retain those benefits considering Defendants' behavior in creating the environment that allowed them to obtain those benefits.

PRAYER FOR RELIEF

WHEREFORE, , Plaintiffs, State of West Virginia, by and through its Attorney General, Patrick Morrisey, and the Department of Transportation Division of Highways pray that this Court grant them the following relief on behalf of the State, its agencies and its citizens:

1. That the Court adjudge and decree that CRH, plc, Old Castle, Inc., Old Castle Materials, Inc., West Virginia Paving, Inc., Southern West Virginia Paving, Inc., Southern West Virginia Asphalt, Inc., Camden Materials, Inc. ("CRH Defendants") Defendants have monopolized trade and commerce in the market for DOH approved asphalt in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

2. That the Court adjudge and decree that CRH Defendants have maintained their monopoly in the market for DOH approved asphalt in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

4. That the Court adjudge and decree that CRH Defendants have attempted to monopolize the market for DOH approved asphalt in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

5. That the Court adjudge and decree that CRH Defendants have monopolized trade and commerce in the market for DOH approved asphalt paving services in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

6. That the Court adjudge and decree that CRH Defendants have maintained their monopoly in the market for DOH approved asphalt paving services in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

7. That the Court adjudge and decree that CRH Defendants have attempted to monopolize the market for DOH approved asphalt paving services in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

8. That the Court adjudge and decree that CRH Defendants and Kelly Paving have conspired to restrain trade in the market for DOH approved asphalt in the West Central and North Asphalt Markets in violation of W.Va. Code § 47–18–3;

9. That the Court adjudge and decree that CRH Defendants and Kelly Paving have conspired to restrain trade in the market for DOH approved asphalt paving

services in the West Central and North Asphalt Markets in violation of W.Va. Code § 47–18–3;

10. That the Court adjudge and decree that CRH Defendants and American Asphalt & Aggregate, Inc., American Asphalt of West Virginia, LLC, Blacktop Industries and Equipment Company ("Dean Defendants') have conspired to restrain trade in the market for DOH approved asphalt in the West Central and Southwest Asphalt Market in violation of W.Va. Code § 47–18–3;

11. That the Court adjudge and decree that CRH Defendants and Dean Defendants have conspired to restrain trade in the market for DOH approved asphalt paving services in the West Central and Southwest Asphalt Markets in violation of W.Va. Code § 47–18–3;

12. That the Court order that all Defendants be permanently enjoined from any activity in violation of the West Virginia Antitrust Act;

13. Enter an Order pursuant to W. Va. Code § 47–18–8 enjoining and restraining all Defendants and their agents, employees, heirs, successors, assigns, officers, and directors from acquiring, maintaining, increasing, or using any market power to suppress, eliminate, or exclude competition or to fix, control, maintain, increase, decrease, or stabilize prices, rates, or fees for any commodity or service, or otherwise attempting (either independently or jointly with any other person) or conspiring with any other person to achieve the same result;

14. Enter an Order restraining and preventing CRH Defendants or any of their affiliates from acquiring any interest in the Pounding Mill quarries;

15. That the Court enter judgment against the Defendants, jointly and severally, for three times the amount of damages suffered by the State as a result of Defendants' violations of the West Virginia Antitrust Act. W. Va. Code §§ 47–18–1 *et seq.*;

16. Enter an Order in favor of the State and against all Defendants granting all equitable relief including but not limited to disgorgement and restitution, and divestiture of all assets necessary to restore competition to the DOH approved asphalt manufacturing and sale, and asphalt paving markets in the relevant geographic markets in West Virginia;

17. Enter an Order pursuant to W. Va. Code § 47–18–8 requiring all Defendants to each pay maximum penalties provided under the West Virginia Antitrust Act;

18. Enter an Order pursuant to W. Va. Code §§ 47–18–8 and –9 requiring all Defendants to pay all of the State's costs relating to the investigation, prosecution, and, if necessary, the appeal of this action, including attorneys' fees and the costs of testifying and consulting experts; and

19. Grant the State such other and further relief that the Court deems necessary or appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL
and
PAUL A. MATTOX, JR. IN HIS OFFICIAL
CAPACITYAS SECRERETARY OF
TRANSPORTATION AND
COMMISSIONER OF HIGHWAYS,
WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION

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EXHIBIT A

Aggregate Sources Rated "A-1" by WVDOT

10-1-2016

The following sources have been rated "A-1" in accordance with MP 700.00.52. This list is published monthly, and if necessary, amended as additional information becomes available.

Company	Source
AAC1.01.704 - Allegheny Aggregates	Short Gap, WV
BAC1.01.704 - Appalachian Aggregates	Beckley, WV
BAC1.02.704 - Appalachian Aggregates	Lewisburg, WV
BAC1.03.704 - Appalachian Aggregates	Mill Point, WV
CLC1.03.704 - Carmeuse Lime	Maysville, KY
FMC1.01.704 - Fairfax Materials	Arthur, WV
FMC1.02.704 - Fairfax Materials	Scherr, WV
GIC1.01.704 - Greer Industries	Germany Valley, WV
IQC1.01.704 - Inwood Quarry	Inwood, WV
JFA2.01.704 - J F Allen Company	Mashey Gap Quarry, WV
JFA2.02.704 - J F Allen Company	Elkins, WV
MMA1.02.704 - Martin Marietta Aggregates	Petroleum, WV
MMA1.08.704 - Martin Marietta Aggregates	Parkersburg, WV
MSP1.01.704 - Meadows Stone & Paving	Monterville, WV
MCS1.01.704 - Mercer Crushed Stone	Princeton, WV
PMQ1.01.704 - Pounding Mills Quarry	Bluefield, WV
PMQ1.02.704 - Pounding Mills Quarry	Pounding Mills, WV
RBS1.01.704 - RBS (Greystone Quarry)	Lewisburg, WV
SWV1.01.704 - Southern WV Asphalt	Elkins, WV

For additional information and instructions concerning this list, see MP 700.00.52.

EXHIBIT B

West Virginia Division of Highways

Approved (Inspected) Asphaltic Concrete Plants

2014

Standard Specifications Section 401.9 AASHTO M156

DIST#	Ultimate_Owner	Operating_Subsidiary	City	State	SM Code	Latest Inspection
1	Old Castle Materials/Mid Atlantic Division	West Virginia Paving	Poca	WV	WVP1.03.400	4/9/2014
1	Old Castle Materials/American Asphalt of WV	American Asphalt of West Virginia	St. Albans	WV	AAA1.01.400	3/14/2014
1	Old Castle Materials/Central Division	Shelly Materials	Kanauga	OH	SMC1.01.400	4/1/2014
2	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Huntington	WV	SWV1.02.400	4/10/2014
2	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Wilkinson	WV	SWV1.03.400	4/3/2014
2	Old Castle Materials/American Asphalt of WV	American Asphalt of West Virginia	Kenova	WV	AAA1.02.400	3/13/2014
2		Mountain Enterprises	Ashland	KY	MEC1.01.400	3/25/2014
3	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Ripley	WV	SWV1.11.400	4/2/2014
3	Old Castle Materials/Mid Atlantic Division	Carmen Materials	Parkersburg	WV	CMC2.01.400	4/17/2014
3	Shelly & Sands, Inc.	Kelly Paving	St. Marys/Bens Run	WV	KPC1.01.400	4/14/2014
4	Greer Industries, Inc.	Clarksburg Asphalt	Bridgeport	WV	CAC1.01.400	3/14/2014
4	Greer Industries, Inc.	Greer Asphalt	Greer	WV	GAC1.01.400	3/16/2014
4	J. F. Allen Company		Bridgeport/Salem	WV	JFA1.01.400	4/14/2014
5	Jefferson Asphalt Products, Co., Inc.		Inwood	WV	JAP1.02.400	3/18/2014
5	Jefferson Asphalt Products, Co., Inc.		White Quarry	WV	JAP1.03.400	3/18/2014
5	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Scheer	WV	SWV1.01.400	4/2/2014
5	Old Castle Materials/Mid Atlantic Division	Mt. Construction & Paving	Cleatbrook	VA	MLC1.02.400	4/21/2014
5	Old Castle Materials/Mid Atlantic Division	Mt. Construction & Paving	Strasburg	VA	MLC1.01.400	4/4/2014
5	New Enterprise Lime & Stone		Everett	PA	NES1.01.400	3/21/2014
5	New Enterprise Lime & Stone	Valley Quarries #1	Chambersburg	PA	VQC1.01.400	3/21/2014
5	New Enterprise Lime & Stone	Valley Quarries #2	Chambersburg	PA	VQC1.01.400	3/21/2014
5	PRW Excavating		Warfordsburg	PA	PWE1.01.400	4/17/2014
6	Klug Brothers, Inc.		Moundsville	WV	KBC1.01.400	4/21/2014
6	Klug Brothers, Inc.		New Martinsville	WV	KBC1.02.400	4/21/2014
6	Shelly & Sands, Inc.	Kelly Paving	Weirton	WV	KPC1.02.400	4/22/2014
6	Shelly & Sands, Inc.	Kelly Paving	Burnwood	WV	KPC1.04.400	4/16/2014
6	Lane Construction		Bridgeville	PA	LCC1.01.400	3/14/2014
6	Lane Construction		McKees Rocks	PA	LCC1.02.400	3/14/2014
6	Nolan Line & Stone	Lash Paving, Inc.	Marine Ferry	OH	LPC1.02.400	4/22/2014
7	J. F. Allen Company		Buckhannon/Lorentz	WV	JFA1.02.400	3/19/2014
7	Meadows Stone & Paving, Inc.		Gassaway	WV	MMC1.01.400	3/28/2014
8	J. F. Allen Company		Elkins	WV	JFA1.03.400	4/2/2014
8	Meadows Stone & Paving, Inc.		Valley Head	WV	MMC1.02.400	3/31/2014
8	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Elkins	WV	SWV1.05.400	4/1/2014
8	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Hillsboro/Midpoint	WV	SWV1.06.400	4/10/2014
9	Greenbrier Excavating		Lewisburg	WV	GEC1.01.400	3/6/2014
9	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Lewisburg/Kiza	WV	SWV1.07.400	4/10/2014
9	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Summersville	WV	SWV1.08.400	5/13/2014
10	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Beaver	WV	SWV1.10.400	4/1/2014
10	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Princeton/Ingleside	WV	SWV1.09.400	4/11/2014

STATE OF WEST VIRGINIA, ET AL v.
OLDCASTLE, INC., ET AL.

TERRY PARKS
03/14/2018

1 IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
2 *
STATE OF WEST VIRGINIA, ex rel,
3 PATRICK MORRISEY, ATTORNEY
GENERAL, and THOMAS J. SMITH IN
4 HIS OFFICIAL CAPACITY AS SECRETARY
OF TRANSPORTATION AND COMMISSIONER
5 OF HIGHWAYS, WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION,
6
Plaintiffs,
7
v. Civil Action No. 17-C-41
8
CRH, PLC; OLDCASTLE, INC.; OLDCASTLE
9 MATERIALS, INC.; WEST VIRGINIA
PAVING, INC.; SOUTHERN WEST VIRGINIA
10 PAVING, INC.; SOUTHERN WEST VIRGINIA
ASPHALT, INC.; KELLY PAVING, INC.;
11 CAMDEN MATERIALS, LLC; AMERICAN
ASPHALT & AGGREGATE, INC.; AMERICAN
12 ASPHALT OF WEST VIRGINIA, LLC;
BLACKTOP INDUSTRIES AND EQUIPMENT
13 COMPANY,
14 Defendants.
15 *
16 The videotaped deposition of TERRY PARKS,
taken by the Plaintiffs under the West
17 Virginia Rules of Civil Procedure in the
above-entitled action, pursuant to written
18 notice, before Teresa L. Harvey, a Registered
Diplomate Reporter and Notary Public within
19 and for the State of West Virginia, held at
the Country Inn & Suites, 111 Halls Ridge
20 Road, Princeton, West Virginia, on the 14th
day of March, 2018.
21
22 REALTIME REPORTERS, LLC
Teresa L. Harvey, RDR, CRR
23 713 Lee Street
Charleston, WV 25301
24 304-344-8463

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I N D E X
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Witness: Terry Parks
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5 Examination by Mr. Ritchie.....Page 4
Examination by Mr. Goodwin.....Page 34
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[No exhibits marked during this
8 deposition.]
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Page 2

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22 Virginia, LLC; and Blacktop Industries
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1 P R O C E E D I N G S
2 VIDEOGRAPHER: This is the videotaped
3 deposition of Terry Parks taken by the plaintiffs in
4 the matter of the State of West Virginia, et al. versus
5 CRH, plc, Oldcastle, Inc., et al., being Civil Action
6 No. 17-C-41, in the Circuit Court of Kanawha County,
7 West Virginia, held at the Country Inn and Suites in
8 Princeton, West Virginia, on this 14th day of March,
9 2018.
10 My name is Chris Leigh and I'm the legal video
11 specialist. The court reporter is Teresa Harvey.
12 The time is approximately 1:58 p.m.
13 Would the court reporter please swear the witness.
14 [Witness sworn.]
15 T E R R Y P A R K S
16 was called as a witness by Plaintiffs, pursuant to
17 written notice, and having been first duly sworn,
18 testified as follows:
19 EXAMINATION
20 BY MR. RITCHIE:
21 **Q. Terry, again, my name is Zak Ritchie. We just**
22 **met for the first time out in the lobby, and I represent**
23 **the plaintiffs, along with several of my colleagues from**
24 **the Bailey & Glasser law firm in Charleston.**

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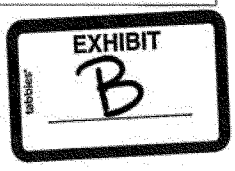

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1 You can actually go down and look at those records.
2 **Q. All right. Very good. I'll do that.**
3 **Have you been interviewed by anyone about what --**
4 **you know, what transpired about -- you know, anything**
5 **with respect to West Virginia Paving?**
6 A. No. No. I talked to these guys a couple times
7 when they first come and started talking to me. Once I
8 give them -- I talked to them about the information I
9 have give you-all today, and that's the only thing we've
10 discussed with them.
11 **Q. Did you talk to the United States Department of**
12 **Justice --**
13 A. I actually talked to the Department of Justice
14 about the quarry buyout.
15 **Q. Okay. When was that and what was the context**
16 **of that?**
17 A. That was up till last year, just where we were
18 getting threatened to not be able to buy stone if they
19 got the quarries.
20 **Q. Okay. You said you were threatened. Who**
21 **threatened you?**
22 A. Chris Hollifield has told me two or three times
23 that if they got the quarries that they were going to
24 cut me off on stone.

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1 **Q. Okay. If they got which quarries?**
2 A. The Pounding Mill quarries.
3 **Q. Okay. Have you actually had any problems**
4 **getting stone?**
5 A. Not up to this point, no, sir.
6 **Q. Okay.**
7 A. They haven't acquired the quarries yet. I
8 think it comes effective April 1st.
9 **Q. What is your understanding about that**
10 **acquisition?**
11 A. Well, from my understanding from the DOJ, the
12 DOJ told me last year that the deal had been made. They
13 had to sell the Rocky Gap Quarry on the Virginia side.
14 They were going to sell that quarry to an outside person
15 so we would be guaranteed to get stone.
16 **Q. Okay.**
17 A. Told us if we had any problems just to -- just
18 to contact them and they would make sure that we were
19 able to get stone is what they're saying.
20 **Q. All right. You said that you bought the older**
21 **plant down there at Rocky Gap --**
22 A. Yes, sir.
23 **Q. -- for, like, $30,000?**
24 A. Uh-huh.

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1 **Q. Where did you buy the plant that you now have?**
2 A. I bought it in St. Louis, Missouri.
3 **Q. How much did you pay for that?**
4 A. I'm thinking $175,000 is what the purchase
5 price was on it.
6 **Q. Okay. Did you have to finance any of that?**
7 A. Yes. It's still financed.
8 **Q. Okay. Did you finance the whole purchase**
9 **price?**
10 A. Yes.
11 **Q. Okay. Did you have any additional costs that**
12 **you had to put in moving it, putting it up, and is any**
13 **of that financed?**
14 A. Yes, there was some of it financed. We ended
15 up like $1.2 million in the whole plant set.
16 **Q. Does that include the property that you**
17 **bought?**
18 A. Yes.
19 **Q. Where do you get the components of your**
20 **asphalt?**
21 A. The stone comes from Pounding Mill and the
22 liquid comes from Associated Asphalt in Roanoke,
23 Virginia.
24 **Q. Is that pretty much your only source?**

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1 A. Yes.
2 **Q. You don't go to Ashland to get it?**
3 A. We -- we get tack from Ashland is the only
4 thing we get from Ashland is just our tack. That's the
5 tar you put down on the road before you pave.
6 **Q. Okay. Do you do work for the Department of**
7 **Transportation -- West Virginia Department of**
8 **Transportation?**
9 A. Yes, sir.
10 **Q. When did you start doing that work?**
11 A. Last year.
12 **Q. How many bids do you think you've won with the**
13 **Department of Transportation?**
14 A. Last year probably five or six. This year we
15 won the P-card bid and the lay-down bids. We've won two
16 this year.
17 **Q. Okay. So, have things been going fairly well?**
18 A. They've been decent, but the -- how should I
19 put this? The overall money, where we're down so far on
20 pricing, you know, we're at a bare minimum trying to get
21 by, just trying to make a living, because the prices
22 where West Virginia Paving, where we've butting heads
23 trying to -- just trying to survive.
24 You get what I'm saying? I mean, our -- our profit

EXHIBIT B
TO RESPONSE

DECLARATION OF TERRY PARKS
AAA PAVING & SEALING, INC.

1. My name is Terry Parks and I am the Vice President of AAA Paving & Sealing, Inc. ("AAA Paving"). AAA Paving operates out of one asphalt-concrete plant (located at 560 Turnpike Industrial Park Road, Princeton, West Virginia) that serves industrial, commercial, and residential customers in the southern area of West Virginia and the southwest area of Virginia.

2. For many of its customers, AAA Paving must purchase aggregate that meets the specifications set by the West Virginia Department of Transportation ("WVDOT aggregate").

3. The distance from AAA Paving to a quarry is an important factor in my decision where to purchase WVDOT aggregate.

4. Historically, Pounding Mill supplied nearly all of AAA Paving's WVDOT aggregate from its Mercer Quarry (located at 1111 Blake Hollow Road, Princeton, West Virginia). The Mercer Quarry is approximately 6.5 miles from AAA Paving's asphalt-concrete plant. Pounding Mill also owned all of the other quarries near AAA Paving, including the Rocky Gap quarry, which is located at 707 Quarry Drive, Rocky Gap, Virginia. The nearest quarry that was not owned by Pounding Mill was located in Lewisburg, West Virginia, about 60 miles away from AAA Paving.

5. I understand that in July 2018, CRH acquired Pounding Mill, including the Mercer Quarry. I also understand that the Department of Justice required that Pounding Mill's Rocky Gap Quarry be sold to an independent purchaser—Salem Stone—as a condition of allowing that acquisition.

6. The sale of the Rocky Gap Quarry to Salem Stone gave AAA Paving a much closer and more cost-competitive second aggregate supplier than it had before CRH acquired Pounding Mill. Before that acquisition, the Mercer Quarry and the Rocky Gap Quarry were both

owned by Pounding Mill, so they did not compete. Instead, the next best alternative to the Mercer Quarry not owned by Pounding Mill was in Lewisburg, West Virginia, about 60 miles away from AAA Paving's asphalt-concrete plant. As a result of the sale of the Rocky Gap Quarry, the Rocky Gap Quarry now is AAA Paving's next best alternative to the Mercer Quarry. The Rocky Gap Quarry is only 7.5 miles farther away from AAA Paving than the Mercer Quarry. This means that AAA Paving's next best alternative to the Mercer Quarry is now 14 miles away from AAA Paving, while before the acquisition it was about 60 miles away.

7. Since CRH acquired Pounding Mill in July 2018, AAA Paving has been purchasing WVDOT aggregate from the Mercer Quarry, now owned by CRH. AAA Paving's prices for WVDOT aggregate from the Mercer Quarry have not increased since CRH acquired the Mercer Quarry. CRH has never refused to supply AAA Paving with WVDOT aggregate. AAA Paving's costs for WVDOT aggregate have not increased since CRH acquired the Mercer Quarry.

8. The Rocky Gap Quarry is a viable alternative to the Mercer Quarry for AAA Paving's aggregate requirements. To obtain aggregate from the Rocky Gap Quarry, AAA Paving would need to truck the aggregate an additional 7.5 miles beyond the distance from AAA Paving's plant to the Mercer Quarry. I do not anticipate that that additional distance would significantly raise my costs.

9. Salem Stone recently reached out to let me know that it is interested in selling aggregate to AAA Paving once it completes preparing the equipment at the Rocky Gap Quarry to produce WVDOT aggregate. AAA Paving has not yet purchased any aggregate from the Rocky Gap Quarry.

10. In the summer of 2018, CRH provided AAA Paving discounted prices (like account credits) for aggregate. These discounts were provided when a major road construction project on I-77 in West Virginia delayed the movement of AAA Paving's trucks in and out of the Mercer Quarry. Because of these delays, CRH offered to supply AAA Paving with aggregate from its more distant quarry in Bluefield, Virginia. This supply was offered at discounted prices during the construction period, which would make up for the additional cost of trucking.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 26, 2018.

Terry Parks
Vice President
AAA Paving & Sealing, Inc.

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[FR Doc. 2018–25593 Filed 11–23–18; 8:45 am]

BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0006]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement, With Change, of a Currently Approved Collection

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30 Day Notice.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until December 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection