

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

**Superior Court Department
No. _____**

BERKSHIRE CONCRETE CORP.

Plaintiff-Appellant,

v.

THE TOWN OF DALTON and THE
DALTON BOARD OF HEALTH, ,

Defendant-Respondents,

COMES NOW Plaintiff-Appellant Berkshire Concrete Corp. (“BCC”) (i) appealing to this Court the decision of the Town of Dalton Board of Health dated April 30, 2026 (the “Decision”) (a certified copy is attached as **Ex. A**) affirming the imposition of fees against BCC and (ii) seeking declaratory relief with respect to the Town of Dalton and The Dalton Board of Health, as follows.

PARTIES AND JURISDICTION

1. Plaintiff-Appellant BCC is a corporation existing and organized pursuant to the laws of the Commonwealth of Massachusetts with a principal place of business of 550 Cheshire Road, Pittsfield, Massachusetts.

2. Defendant-Respondent the Town of Dalton (“the Town”) is a municipality located in Berkshire County, Massachusetts.

3. Defendant-Respondent The Dalton Board of Health (the “BoH”) is a duly constituted municipal board of health established pursuant to M.G.L. ch. 41, with a usual place of business at 462 Main Street, Dalton, Massachusetts, 01226.

4. Venue and jurisdiction are proper in this Court pursuant to M.G.L. ch. 212, §§ 3 & 4, M.G.L. ch. 231A, and M.G.L. ch. 249 § 4.

FACTUAL BACKGROUND

5. BCC or its predecessors in interest (collectively referred to hereafter as “BCC”) have been continuously engaged in gravel extraction and processing operations, including processing of gravel brought in from other locations, (the “Operations”) on certain parcels of land within the Town of Dalton (“the Property”) within the Town since at least 1947.

6. The Operations have, since that time, involved a certain amount of dust particles leaving the Property and settling on surrounding properties.

7. Starting in the mid-1960s, the surrounding properties were developed and houses were built upon them. The houses nearest to the Property (the owners of two of which are the complainants regarding BCC’s Operations) were built between 1986 and the mid-1990s.

8. From late 2024 through about March 2025, an elevated level of dust and sand particles left the Property (the “Event”) due to an error in the angle at which a face was cut on the parcel of the property identified as Assessor’s Map 105, Lot 16 – Parcel D: 105-16 (the “Parcel”). The error has since been corrected by reclamation of the relevant portion of the Parcel.

9. Thereafter, by letter dated March 12, 2025 (**Ex. B**), BCC received notice from the BoH to cease and desist its Operations on the Parcel and to “immediately implement measures to abate the nuisance conditions by preventing dust and sand from leaving” the Parcel.

10. While BCC does not agree that the elevated levels of dust and sand constituted a nuisance, BCC complied and, on May 2, 2025, BCC delivered an initial dust mitigation plan to the Town (**Ex. C**).

Reclamation

11. BCC reclaimed the portion of the Parcel in question in conjunction and cooperation with the BoH and the Town Building Inspector, who participated in site visits at the Property

together with BCC's principals before the reclamation began and after it was completed in June 2025.

12. Despite several discussions between Town personnel and counsel for BCC throughout this period and in the following months, BCC received no notice from any Town representative that the reclamation was in any respect considered inadequate until months later in October 15, 2025 when the Town's Building Commissioner delivered a letter stating BCC was required "to restore parcel 105-16 in its entirety to the design standards found in section 350-61 (E)." **Ex.D.**

13. The purported basis for this demand was a claim by the Town that BCC had "voluntarily" ceased its operations on the Parcel, allegedly triggering the duty to reclaim it under the current bylaws. However, (i) BCC had not "voluntarily" ceased operations, but had been ordered to cease them by the Board of Health.

14. Accordingly, the Building Commissioner and the Town lacked the authority to require such a reclamation.

Dust Mitigation Plan

15. On October 23, 2025, the BoH issued a letter to BCC claiming that the Dust Mitigation Plan submitted by BCC was insufficient based upon a review thereof by a consultant, Berkshire Environmental Consultants ("BEC"). It ordered a new dust mitigation plan be submitted.

16. The criticisms raised in BEC's report are minor and technical rather and do not establish BCC's dust mitigation plan was insufficient to achieve the intended purpose or commercially or environmentally unreasonable.

17. BCC's dust mitigation plan *was* sufficient and in keeping with the letter and the spirit of the directives of the BoH.

18. Nevertheless, in response, BCC provided a topographical survey and its standard operating procedures addressing dust mitigation measures in conjunction with its own environmental consultant.

19. On December 30, 2025, the BoH sent an additional letter to BCC in which it stated: "In response, BCC developed and implemented a dust mitigation plan, and had a Topographic Survey prepared by Foresight Land Services. Berkshire Environmental Consultants, Inc. reviewed the Dust Mitigation Plan submitted from BCC. Berkshire Environmental found that the dust mitigation plan did not sufficiently address the BOH order to implement a Dust Mitigation Plan."

Ex. E.

20. The December 30 letter did not specify in what respect BCC's development and implementation of its dust mitigation plan did not "sufficiently address the BoH order to implement a dust mitigation plan."

21. By letter of January 8, 2026, BCC submitted a Plan entitled "Topographic Survey Prepared for Berkshire Concrete Bridle Road Dalton, MA" dated July 2, 2025, prepared by Foresight Land Services, Inc.; and 2. BCC's Standard Operating Procedures, which include dust mitigation measures and practices. **Ex. F.**

Declaration of Nuisance

22. Nevertheless, on March 2, 2026, the BoH declared that BCC had created a public nuisance, issued \$5,000 fine, and demanded a further dust mitigation plan be submitted. **Ex. G.**

23. Following the reclamation and remediation on the Parcel following the Event, which was completed in June 2025, the claim of a public nuisance appears to be premised upon

complaints by two households in the Town of Dalton, both located in direct proximity to the Property, the owners of which are involved as leaders as the self-titled “Dalton Clean Air Coalition.”¹

24. On March 18, 2026, the Town’s Planning Board improperly denied BCC’s application for the renewal of its Special Permit, for which BCC had voluntarily agreed to apply beginning in 1992.

25. On March 19, 2026, the BoH issued a second letter and fine of an additional \$10,000. **Ex. H.**

26. The March 2 and March 19 fines and orders were issued to BCC based upon the Board of Health’s authority pursuant to M.G.L. ch. 111, Section 31C, but without following the statutory procedures required under that law, including that:

- a. “Before the board of health or other legal authority submits such rules and regulations to the department for approval, such board or other legal authority shall hold a public hearing thereon, of which notice shall be given by publication for one day in each of two successive weeks in a newspaper published in the town, the first publication to be at least fourteen days prior to the date of the hearing, or if no newspaper is published in such town, by posting a copy of such notice in a public place therein.”

27. On April 2, 2026 BCC requested a hearing to challenge the issuance of the fines to the Board of Health, noting the absence of any public nuisance and the BoH’s failure to comply with the statutory prerequisites for issuing a fine. **Ex. I.**

28. A hearing took place before the BoH on April 28, 2026 (the “Proceeding”).

29. Thereafter, on April 30, 2026, BoH upheld the issuance of the fines (**Ex. A**), making numerous erroneous findings of fact and law in the process, including that:

¹ Not to be confused with the “Clean Air Committee,” which is an administrative committee of the Town of Dalton.

- a. BCC “unlawfully operated” on the Parcel “without approval from the Town’s Planning Board during the latter part of 2024/beginning of 2025.” **Ex. A** at 2;
- b. BCC “submitted an inadequate dust mitigation plan.” *Id.*;
- c. BCC’s mitigation efforts “were intermittent, incomplete, and ineffective at preventing off-site dust mitigation.” *Id.* at 3;
- d. That “nuisance conditions persisted” and “continue to adversely impact the abutting neighborhood” “based on recent complaints.” *Id.*;

30. The Decision did not address BCC’s arguments regarding the procedural insufficiency of the BoH rulings under M.G.L. ch. 111, Section 31C.

31. Since the Decision, additional improper fines have been imposed on BCC.

FOR A FIRST CAUSE OF ACTION
(Appeal of Decision - BoH)

32. All facts previously alleged are incorporated as if fully restated herein.

33. The BoH Order affirming the fines issued to BCC was patently erroneous because,
inter alia:

- a. No public nuisance existed relating to BCC’s Operations at the times the fines were issued;
- b. The entire evidentiary basis before the BoH for the allegation of an ongoing public nuisance appears to be dubious complaints by two households;
- c. The Town and its Building Commissioner ordered reclamation of the Parcel based upon the erroneous contention that BCC had “voluntary” ceased Operations thereon when in fact the cessation was ordered by the Town;
- d. BCC’s Operations predate the construction of the two residences complaining of dust migration and have always resulted in a certain volume of dust particles leaving the Property, including at the time the complainants’ homes were constructed;
- e. There is no evidence or finding that the volume of dust particles leaving the Property is higher today than it has been at any time since 1947;
- f. Reclamation to the standard set forth in Chapter 350-61 of the Town of Dalton Zoning Bylaws, as ordered by the Town, is not applicable to the Operations.

34. The Decision was arbitrary and capricious, unsupported by substantial evidence, or otherwise an error of law as evidenced by (i) the lack of an ongoing nuisance and (ii) the contemporaneous approval by the Town, the BoH, and the Building Inspector of BCC's mitigation and reclamation efforts.

35. The Decision has caused and will continue to cause measurable injury to BCC.

36. Upon information and belief, the decisions and orders of the BoH are part of a larger effort by the Town to create leverage to impose conditions upon BCC's gravel Operations, further rendering the denial arbitrary and capricious.

37. The Decision should be annulled, and the fines issued by the BoH and the Building Inspector should be rescinded.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment – All Defendants)

38. All facts previously alleged are incorporated as if fully restated herein.

39. BCC asks that the Court consider the merits of the allegations herein and declare:

- a. The BoH fines are improper because:
 - i. There is, and at all times after June 2025 has been, no ongoing public nuisance from BCC's Operations.
 - ii. The dust mitigation plan submitted by BCC complied with the letter and the spirit of the BoH directives regarding dust mitigation following the Event;
- b. BCC is not required to reclaim the entirety of the Parcel;
- c. BCC is not subject to the requirements of Chapter 350-61 of the Town of Dalton Zoning Bylaws.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the reversal and rescission of the Decision and the fines issued to BCC by the Building Inspector and for a declaration that BCC's Operations are lawful

and do not constitute a public or private nuisance.

Respectfully submitted,

BERKSHIRE CONCRETE CORP.

Plaintiff,

By its attorney

This 26th day of June, 2026
Pittsfield, MA

/s/ Jaan Rannik
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