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December 16, 2010

Commissioner Robert Martin
State of New Jersey
Department of Environmental Protection
401 E. State Street
7th Floor, East Wing
P.O. Box 402
Trenton, NJ 08625-0402

**Re: Remedial Investigation Report (“RIR”)
Millington Quarry, Inc. (“MQI”) and Tilcon New York,
Inc. (“Tilcon”)
Stonehouse Road, Block 6001, Lot 2 Township
of Bernards (“Bernards”),
County of Somerset, ±190 Acres (the “Property”)
SRP PI No. 005602
Case No. 09-05-01113055**

Dear Commissioner Martin:

I write in my capacity as Mayor of Bernards Township and on behalf of its Township Committee. In May, 2009, J.M. Sorge, Inc. (“JMS”) prepared a Remediation Investigation Work Plan for the Property that provided “a summary of historic fill sampling data and present[ed] a detailed plan to conduct further fill sampling to characterize the quality of the imported fill currently present on the site.” In April, 2010, JMS prepared and submitted a Remedial Investigation Report (RIR) for the Property on behalf of MQI and Tilcon for the Property. The RIR, however, only documents the findings of a portion of the New Jersey Department of Environmental Protection (the “NJDEP”) approved investigation.

In a letter dated July 14, 2009, “Response to Fill Characterization Workplan” in response to the May, 2009, RIW, noted above, the NJDEP directed MQI and Tilcon to increase the number of soil borings, the screening frequency, and the total number of laboratory samples above the numbers originally proposed in the May, 2009, RIW. JMS

chose to implement the July 14, 2009, NJDEP approved investigation in phases and proposed an initial Phase 1 field investigation to NJDEP in a correspondence dated September 28, 2009, which was approved by the NJDEP on October 16, 2009. Accordingly, MQI/Tilcon began implementing the Phase 1 investigation program over the period from October, 2009 through December, 2009.

This letter is a formal request by Bernards to NJDEP to retain jurisdiction of the investigation, monitoring and remediation of the Property and not to permit either MQI or Tilcon to designate JMS or any other Licensed Site Remediation Professional to act in the place of NJDEP.

As the Commissioner is aware, faced with the challenge of ensuring that more than 20,000 contaminated sites in New Jersey are properly redmediated in a timely manner, NJDEP worked closely with the New Jersey Legislature and stakeholders to develop legislation that dramatically changed the process used to conduct environmental investigations and cleanups. On May 7, 2009, former Governor Jon Corzine signed the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq (“SRRA”) into law. The Governor also signed Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq. Executive Order #140, implementing the new law.

SRRA establishes a program for the licensing of Licensed Site Remediation Professionals (“LSRPs”) who now have responsibility for oversight of environmental investigation and cleanup. While the law changes the process of how sites are remediated, it is meant to ensure the same stringent standards required for cleanup remain intact. The NJDEP retains significant authority over the remediation process and is bound to ensure that LSRPs comply with all applicable regulations, but the day-to-day management of the site remediation may be overseen by qualified LSRPs.

Under SRRA, NJDEP approval is no longer required prior to proceeding with remediation. Implementation of SRRA will therefore result in contaminated sites being cleaned up.

The NDEP is required to maintain direct Department oversight in cases in which the remediating party is recalcitrant in conducting timely cleanups and for those sites those pose the greatest risk to human health and the environment. In the matter of the Property owned by MQI, NJDEP has present oversight and, in the public interest involving Bernards Township and its many residents, should continue to exercise direct oversight.

The Act requires the NJDEP to phase in implementation of the use of LSRPs by remediating parties. All parties initiating remediation after November 3, 2009 or who opt into the use of the LSRP paradigm will be required to follow the provisions of SRRA which are codified at N.J.S.A. 58:10B-1.3b1-9, including the requirement to hire a LSRP

to conduct the remediation, and the requirement to remediate the site without prior NJDEP approval. All parties such as MGI and Tilcon who initiated remediation prior to November 3, 2009, will not be required to hire a LSRP to conduct the remediation right away. Remediation of those sites, including the Property herein, will follow the remediation process with traditional NJDEP oversight and approvals until 2012.

Recently, the NJDEP has issued a letter dated October 4, 2010, to MQI and Tilcon concluding:

The limited ground water investigation shows exceedences of the Ground Water Quality Standards in monitoring well #1 for three PAH compounds, plus arsenic and lead, and in monitoring well #2 for arsenic only. Further ground water investigation is proposed by JM Sorge.

The JM Sorge RIR concludes that the Phase 1 soil sampling is adequate to characterize the fill material at areas A, B and C. **The Department does not agree with this conclusion.** As indicated in the Department's October 16, 2009 letter (copy attached), the Phase 1 sampling was approved by the Department based on JM Sorge's expressed need to obtain an initial set of characterization samples before winter. However, upon careful review the Department has determined that the sampling performed at Area B is sufficient to characterize that area only. Fill areas A and C will require further characterization sampling in accordance with the Department's previous recommendations, or through an alternate sampling plan which will provide an adequate body of data. (emphasis added).

In addition, MQI is proposing immediately to commence soil sampling of the entire quarry site by use of an LSRP, JMS, Bernards Township is not aware of any protocols that will be utilized and requests NJDEP oversight, not that of an LSRP.

NJDEP may be considering to transfer oversight of the RIR and environmental remediation to JMS. As set forth in this letter, Bernards is of the strong opinion that NJDEP must continue to exercise direct oversight and retain jurisdiction of the Property to ensure a timely remediation of any contamination. We are available to meet with you further to discuss this letter and the significant issues involved with remediation of the Property.

Very truly yours,

By:


Scott Spitzer, Mayor