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January 12, 2011

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

Governor Chris Christie
Office of the Governor
PO Box 001
Trenton, NJ 08625

Re: Case No. 09-05-01113055; Millington Quarry

Dear Commissioner Martin and Governor Christie:

We write on behalf of Citizens for a Clean and Safe Millington Quarry (“Citizens”)¹ in support of Bernards Township’s request that DEP maintain direct oversight of all inspection and remediation by Millington Quarry Inc. (“MQI” or “the Quarry”) in the above referenced case. Citizens urge the DEP to deny MQI’s designation of JM Sorge as licensed site remediation professional. We share Mayor Scott Spitzer’s concern, as expressed in his December 16 letter, with the slow pace of remediation and the failure of MQI, and Sorge, to comply with NJDEP’s very specific recommendations for inspection. We also wish to highlight Citizens’ concerns that Sorge is already in violation of the Site Remediation Reform Act’s (SRRA) Code of Ethics, C.58:10C-16.

In support of our request, we urge you to consider the facts below, demonstrating that 1) Sorge has not complied with the Code of Ethics; 2) Sorge has a conflict of interest in acting as LSRP; and 3) MQI’s recalcitrance to date precludes DEP from releasing direct oversight to Sorge.

¹ The Citizens group formed in 2008 in response to public concerns about illegal dumping which the Quarry conducted under the guise of quarry rehabilitation/padding steep slopes. The Citizens group has played an active role in Planning Board Quarry Rehabilitation hearings and in litigation, offering evidence of toxic fill brought to the site.

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Sorge Has Not Complied With Its Obligations under the SRRA Code of Ethics

The SRRA in effect outsources a critical government obligation—health and safety—to private firms in NJ who act in the government's stead to assure that site inspection and remediation comply with applicable laws and regulations. Accordingly, a property owner such as MQI may designate and retain a Licensed Site Remediation Professional (LSRP) to conduct inspection and remediation. Because of the obvious conflict of interest posed by the paid consultant—Sorge—opining on both the extent of contamination and the scope of remediation of its client—MQI—the state requires all LSRPs to conform with a strict Code of Ethics to assure objective, honest performance of its quasi-governmental obligations. Unfortunately, Sorge has not complied with the requirements of the Code of Ethics and has aided and abetted MQI misrepresentations made in its initial proposed Memorandum of Agreement submitted in May 2009.

As discussed in our May 28, 2009 letter to NJDEP and in our July 30, 2009 meeting with DEP officials, MQI's original MOA application misrepresented the site as "non-residential." Clearly, MQI and Sorge recognize that the future use of the site is residential, and as stated in Paragraph 1 of Executive Order #140, a site which "may be used as residential housing" requires greater NJDEP oversight, not less.

Secondly, MQI and Sorge misrepresented the use of the quarry. The applicants characterized the site as a quarry, but failed to disclose that the site had been used principally as an unlicensed and illegal dump for the better part of its history. (MQI dump price lists date back to as early as 2001 and voluminous records of such dumping are at Bernards Township engineering department). The application failed to describe the nature and extent of the dumping business and the profits generated from soliciting fill from a three state area, and from locations as far as Jersey City, Weehawken, the Bronx, and Staten Island. Note that approximately 180,000 trucks entered the Quarry from 2006-2009, with each truck paying the Quarry \$225 to dump their fill, and very few inspected. The Sorge application was silent as to the risks posed by a business that prospered enormously from importing uninspected fill into the quarry. Most significantly, Sorge did not disclose what Citizens had discovered—that some sources of fill identified in MQI's records originated from sites listed on the DEP's Known Contaminated Sites List and from other areas of legitimate concern.

Thirdly, the application stated that existing fill that had been dumped into the quarry had been subject to a rigorous compliance and oversight program. As described by our letter and in court filings by Bernards Township, The Great Swamp Watershed Association, and the Citizens group, nothing could be further from the truth. Millions of tons of fill were deposited with little or no oversight.

Fourth, Sorge did not disclose to the DEP that monitoring wells existed, and hence groundwater testing could be conducted as part of Phase 1. Indeed, Citizens

pointed this out in a meeting with DEP agents. If Sorge had been acting as LSRP, groundwater monitoring would not have begun, as there would have been less DEP involvement and opportunity for public input.

While the Code of Ethics may not have applied to Sorge at the time of the MOA application, Sorge's failure to comply with its stringent standards renders it unfit to serve as an LSRP. Under the Code, Sorge's "highest priority" is "the protection of public health and safety and the environment." By its participation in the original filing, and by its failure to correct misstatements in that filing, Sorge has demonstrated that its inherent conflict of interest with MQI makes it unsuitable to serve as a LSRP. Specifically, we believe it has already failed to comply with the following sections of C.58:10C-16 by its:

- b. Failure to exercise reasonable care and diligence in its May 2009 filing and failure to correct misstatements.
- e. Failure to correct deficiencies identified by the department.
- h. Certification/support of documents submitted to the department without directly managing, supervising, performing or reviewing MQI's work;
- i. Failure to make good faith effort to identify and obtain the relevant and material facts, data, reports and other information evidencing conditions at a contaminated site.

While we understand that the DEP may have enjoyed a positive relationship with Sorge in the past, and while we do not question Sorge's credentials or integrity generally, we believe that Sorge has demonstrated that it cannot act objectively and in the public's best interest in this instance.

Conflicts of Interest

Executive Order 140, paragraph 7 expressly recognized the need to insulate an LSRP's professional judgment from economic pressures to the maximum extent practicable. In addition to the inherent conflict of opining on environmental conditions at its client's site, we are concerned that an additional potential conflict renders Sorge unfit to serve as an LSRP. One of its principals, Christopher Daggett, has expressed interest in developing the site. Development depends on a clean bill of health from the LSRP. In no case is there a greater concern than this one that the LSRP's professional judgment is undermined by the economic benefits to the LSRP, or at least one of its principals. At a minimum, DEP must investigate this potential conflict as part of its consideration of Sorge as an LSRP.

MQI's History of Recalcitrant Behavior

The SRRA specifically requires NJDEP to retain oversight where the petitioner has a demonstrated history of "recalcitrant" behavior. Both MQI and its principal seem to engage in recalcitrant behavior as a means of doing business. MQI's recalcitrant behavior has littered the state. The owners of the Quarry, the Mahans, had a reported history of involvement through corporate entities, in hazardous waste sites. The Quarry owners had a litigious relationship with Bernardsville when it owned the Bernardsville Quarry and reportedly defied DEP orders.

MQI's actions seem to follow the same historic pattern. Increasing distrust, MQI refused to testify at Planning Board hearings as to the sources of fill, although a Quarry agent and primary salesperson responsible for procuring fill was present at the hearings. Quarry representatives have repeatedly tried to dupe the public, for example by representing that the DEP monitors discharge from the Quarry and therefore the public need not be concerned about contamination; Citizens researched and revealed that the DEP monitors only for PHs and solids---not contaminants. Additionally, MQI increased its dumping operation at the Quarry under the guise of padding the cliffs for safety, while they failed to use the fill for the intended purpose of fulfilling a 2:1 slope along the cliff face, in violation of the approved Quarry Rehabilitation Plan. Instead, they continued to increase the amount of fill they claimed was needed to pad the cliffs to extend its profitable dumping business.

So great is the Citizens' distrust of MQI that we urged the Township to spend our taxpayer dollars to oversee Sorge's investigation--even in this harsh economic climate in which our school funding has evaporated and our town has experienced other effects of the recession. **Simply, we are advocating what our government expressed in Executive Order 140—our economic prosperity and our health depends on responsible stewardship of our environment; in this instance it requires maximum DEP oversight of the Quarry investigation.**

Citizens submit that Sorge's actions in this matter have been contrary to the public's best interest; the Quarry has a history of recalcitrant behavior in Bernards Township and at other sites; and Sorge has an obvious conflict of interest in this matter. Therefore, we implore the DEP to retain jurisdiction under the MOA and provide the maximum oversight, with input from the public, for the investigation of the Millington Quarry. This will result in greater confidence in the outcome.

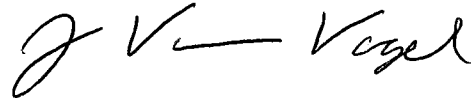
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We remain available to discuss further.

Sincerely,

5/

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cc: Somerset County Freeholders, c/o Peter Palmer
Bernards Township
Dave Oster, DEP
Steve Mason, DEP
Tom Carton, MQI
Great Swamp Watershed Association