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Via Certified Mail – Return Receipt Requested

June 1, 2009

Mr. Stephen Mason
New Jersey Department of Environmental Protection
Site Remediation Program
Bureau of Northern Field Operations
7 Ridgedale Avenue
Cedar Knolls, New Jersey 07927

**Re: Remedial Investigation Workplan; Application for a Memorandum of Agreement
Millington Quarry, Inc. (“MQI”) and Tilcon New York Inc. (“Tilcon”)
Block 6001, Lot 6, 135 Stonehouse Rd, Bernards Township, NJ (the “Site”)
PI No. 005602
Case No. 09-05-011130555**

Dear Mr. Mason:

On behalf of the Township of Bernards in Somerset County (“Township”), Icon Engineering—a Division of CME Associates (ICON/CME) submits this letter to the Department for consideration regarding the proposed remedial investigation at the Millington Quarry Site on Stonehouse Road (Case No. 09-05-011130555). A Remedial Investigation Workplan (RIW; May 2009) prepared by JM Sorge, Inc. on behalf of Millington Quarry, Inc. and Tilcon New York, Inc. was submitted to the NJDEP for approval pursuant to an application for a Memorandum of Agreement (MOA). The MOA application was filed on May 1, 2009, and deemed active on May 11, 2009.

The Township is requesting that the Department require MQI and Tilcon to increase the frequency of proposed borings and analytical samples, increase the acreage of the quarry included in the sampling parameters, expand the parameters analyzed in the samples, conduct continuous screening in soil borings, collect and analyze groundwater and surface water samples, and interact closely with the Township and its professionals to ensure the soil and groundwater at the site is contaminant free. Further, the Township requests the Department consider the issuance of an Administrative Order assessing penalties for illegal operations and environmental impacts, and requests a meeting with the Department to discuss the remediation of this site, pursuant to N.J.A.C. 7:26E-1.4(o)(1)(iii).

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On June 10, 2008, the Township Committee adopted Resolution # 080295, requesting, in part, that the Department determine that the importation of fill material to the Site constituted operation of a solid waste facility, and requesting the Department exercise jurisdiction to oversee and ensure only clean fill is disposed of at the Site (see **Exhibit 1**). The Township met with Commissioner Lisa Jackson of the Department on July 2, 2008, to further discuss the Township's concerns. At the time, MQI and Tilcon vociferously objected to the Township's request for the Department's involvement. While the Township acknowledges that MQI and Tilcon have finally recognized that further testing of fill dumped at the Site must take place, almost a year after they opposed the Township Committee's Resolution requesting the Department's assistance, the Township is very concerned to ensure that adequate testing is performed and the Department does not endorse or accept any perfunctory or inadequate amounts or types of testing suggested by MQI/Tilcon.

The RIW is for investigation of contaminated fill materials imported to the site. MQI (the owner) and Tilcon (the operator) have a long history of unregulated importation of fill to the site and have not been forthcoming with the Township as to how much fill would be required to rehabilitate the site under various Rehabilitation Plans, which has resulted in ongoing litigation between MQI/Tilcon and the Township. Presently, the Honorable Yolanda Ciccone, A.J.S.C., has referred the litigation matters captioned *Millington Quarry, Inc. v. Township of Bernards, et al.*, Docket No. SOM-L-475-08, and *Tilcon New York Inc. v. Township of Bernards, et al.*, Docket No. SOM-L-476-08, for mediation before retired Appellate Division Judge Jack Lintner. The next mediation date is June 10, 2009. Accordingly, the Township has several concerns regarding the fill previously imported to the site and the proposed investigation of that fill. The RIW does not recognize that the fill brought to the site includes material from non-virgin sources and known contaminated sites. The overwhelming majority of fill material was accepted for disposal at the site with only limited review and without a fill acceptance protocol or chemical testing. The Township more recently implemented a limited quality control program for incoming fill, the findings of which indicated elevated concentrations of arsenic, lead, vanadium, dieldrin, and certain PAH compounds exceeding the June 2, 2008 NJDEP Residential Direct Contact Soil Remediation Standards (RDCSRS) in certain samples. **In this light, the scope of the proposed RIW is wholly and utterly inadequate to properly characterize the horizontal and vertical extent of the large volume of fill materials (~3.8 million CY) that, as explained below, were illegally brought to the site by the owner/operator.**

More detailed findings and recommendations concerning the RIW are provided below. The Township respectfully requests that the additional information, findings, and recommendations presented in this letter be considered in the Department's review of the RIW.

BACKGROUND INFORMATION

Chronology

The Millington site comprises approximately 190 acres and is operated as a trap rock quarry by MQI and Tilcon. The site has reportedly been used as a quarry since the 1895. MQI operated the quarry since the 1970's and, in 1999, entered a lease permitting Tilcon to perform mining operations at the quarry.

MQI/Tilcon submitted a rehabilitation plan to the Township Planning Board dated January 2, 2003 ("Proposed 2003 Rehabilitation Plan"). After 16 hearings, the Township Planning Board approved a Rehabilitation Plan in February, 2005, which was subsequently approved by the Township Committee on July 28, 2005 subject to several conditions, including the creation of 2:1 slopes along the cliff face of the Quarry (the "Approved 2005 Rehabilitation Plan"). After litigation, in January 2006, MQI/Tilcon and the Township entered into a Stipulation of Settlement Agreement, which required MQI/Tilcon to submit a revised grading plan showing a 2:1 slope. MQI/Tilcon provided the Township with a revised grading plan, dated January 2006. The Revised Draft (the "Revised 2006 Grading Plan") showed a 2:1 slope along the cliff face of the Quarry. The Revised 2006 Grading Plan called for an estimated 3.7 million cubic yards (CY) of imported fill to re-grade the site. The Planning Board neither reviewed nor approved the Revised 2006 Grading Plan.

MQI/Tilcon submitted a revised rehabilitation plan on January 24, 2008 (the "Proposed 2008 Rehabilitation Plan"), which called for the importation of 5,258,141 CY of fill in addition to the tremendous amount of fill already imported to the site prior to that date. After holding nine public hearings at which the Proposed 2008 Rehabilitation Plan was reviewed and testimony was presented, the Planning Board issued a comprehensive report recommending

the Township Committee reject the Proposed 2008 Rehabilitation Plan. On July 2, 2008, after further public hearings were held, the Township Committee rejected the Proposed 2008 Rehabilitation Plan and prohibited further importation of fill into the Quarry.

MQI/Tilcon and the Township have been involved in litigation in the past few years concerning the adequacy of the proposed Rehabilitation Plans and the Township's ordinance that prohibits further importation of fill. Fill operations were halted in early September 2008 while mediation is pending. From January 2006 through September 2008, it is estimated that more than 3 million CY of fill material were imported and placed at the site.

Imported Fill Volume

The May 2009 RIW indicates that approximately 3.87 million cubic yards (CY) of fill materials have been placed on the site; a majority of this fill was imported to the site from January 2006 through August 2008 in order to re-grade steep slope areas as part of the mine reclamation. **However, fill materials have been imported to the Quarry property since the late 1990s, and, in all likelihood, since acquisition of the Site by MQI from Houdaille in the late 1970's.** It was discovered during the course of the Planning Board review hearings and testimony held on the Proposed 2003 Rehabilitation Plan that, in the late 1990s, MQI had commenced importing fill into Quarry property without notice to the Township, review or authorization of the Township, or testing of the fill material. MQI estimated that 850,000 CY of fill, covering nine to twelve acres, had been imported. This amount of fill is far in excess of the 122,519 CY estimated by MQI/Tilcon in the Proposed 2003 Rehabilitation Plan to be necessary to create a vegetative cover.

The RIW includes a topographic analysis to delineate the physical extent of the fill, and alleges that the imported fill materials have been placed in three (3) primary areas:

- o Area A – approximately 3.14 million CY of fill placed over a 51.64 acre area in the northwest corner of the quarry; fill thickness up to 200 feet
- o Area B – approximately 170,000 CY of stockpiled fill covering 2.65 acres in the northern portion of the site

- Area C – approximately 556,000 CY of older fill material placed over 6.42 acres in the quarry entrance/exit roadways

Fill Sources

Based on the waste manifests accompanying the individual truckloads of fill brought to the site, the Township compiled a list of the fill sources for material deposited from January 2006 through June 2008 (see **Exhibit 2**). The fill accepted at the site was derived from numerous sources throughout the New Jersey-New York region, including various construction, utility, and public works projects at commercial, residential, municipal, and mixed use sites. Based on the review of fill applications, the Township identified at least 33 sources of fill accepted by MQI/Tilcon that are listed as known contaminated sites in New Jersey or New York (see **Exhibit 3**).

Fill Material Quality

The fill acceptance and quality control (QC) measures implemented by MQI/Tilcon to ensure the quality of incoming fill were generally limited and inadequate. Specifically:

- As indicated in the RIW, only limited characterization of the environmental quality of *placed* fill has been conducted to date. After a demand by the Township Planning Board, MQI/Tilcon conducted a limited investigation in 2004 that included 7 soil borings; 9 fill samples were analyzed for volatile and semi-volatile organic compounds and 3 samples were analyzed for TCLP metals. Benzo(a)pyrene was reported in one sample at 0.21 ppm, which exceeds the currently applicable SRS of 0.2 ppm. This limited investigation was conducted prior to the importation of most of the fill on the site.
- Fill providers were required to complete a 1-page “Fill Material Acceptance Certification” indicating that the source location and property use, general fill characteristics, and a statement indicating the material is not known to have come in contact with any hazardous substance or hazardous waste (see **Exhibit 4**). Some of the certifications submitted by fill providers were incomplete and lacked signatures and other significant information.
- The certification form was intended for materials originating from virgin sources. Some accepted fill materials were identified as having hydrocarbon odors or a sheen;

in addition, some accepted fill materials contained bricks, concrete or other demolition debris (see **Exhibit 5**).

- In 2006, the Township implemented a limited QC program for incoming fill, which consisted of spot visual checking on truckloads as they entered the site. Princeton Hydro, LLC performed the fill inspection on behalf of the Township.
- In July 2007, due to increasing concern about the quality of fill being brought to the site, the Township implemented a limited sampling program. Two unannounced site visits were conducted per month, and one composite fill sample was collected per site visit for analysis of priority pollutants (PP+40).
- In February 2008, the sampling program was modified to include one site visit per week with one composite fill sample collected per site visit for PP+40 analysis.
- In April 2008, the sampling program was further modified to include daily site inspection (5 days per week) with one composite fill sample collected per day for PP+40 analysis.
- Initially, MQI/Tilcon did not require source material sampling, however, in May 2008, MQI/Tilcon implemented a fill acceptance protocol that required sampling at the source at a frequency of 1 sample per 5,000 CY.

FINDINGS AND RECOMMENDATIONS

Based on the May 2009 RIW prepared by JM Sorge, Inc., and the additional site background information summarized above, ICON/CME submits for the Department's consideration the following findings and recommendations:

1. The RIW does not recognize that the fill brought to the site includes material from non-virgin sources and known contaminated sites. This fill falls outside the definition of "clean fill" at N.J.A.C. 7:26-1.4. A large majority of the fill imported to the site was accepted without source sampling. The QC inspection and sampling that was performed by the Township's Environmental Consultant at the site was limited. The environmental quality and potential environmental impact of most of the 3.87 million CY of fill placed on the site is not verified.

2. The limited QC sampling that was performed by the Township's Environmental Consultant identified contaminants in the fill material at concentrations exceeding the June 2, 2008 NJDEP RDCSRS. A summary table is presented in **Exhibit 6**, indicating the reported concentrations of arsenic, lead, vanadium, dieldrin, and certain PAH compounds that exceeded the currently applicable RDCSRS in certain samples. Sampled truckloads were stockpiled separately on the site pending the receipt of test results. Contaminated loads reportedly were not removed and remain on the site.
3. The "unclean" fill imported to the site includes non-virgin material containing bricks, concrete or other demolition debris. In addition, fill materials were also obtained from known contaminated sites in New Jersey and New York; some accepted fill materials were identified as having hydrocarbon odors or a sheen.
4. Due to the presence of non-virgin materials including debris, concrete, brick, other demolition debris, and contaminated soil in the fill material imported and placed at the site, which does not meet the definition of "clean fill" as per N.J.A.C. 7:26-1.4, the MQI/Tilcon operation constitutes an unlicensed solid waste facility as per N.J.A.C. 7:26-1.4 because it is used for the collection, storage, and/or disposal of fill which, as defined in N.J.A.C. 7:26-1.6, is a solid waste, and should be subject to the Solid Waste Regulations (also see the June 10, 2008, Resolution #080295 of the Township Committee previously submitted to the Department, **Exhibit 1**).
5. The topographic volume analysis presented in the RIW may generally delineate the physical limits of most of the fill placed on the site, but does not characterize the environmental quality of the imported fill materials and potential contamination. Additionally, only minimal previous environmental investigation of the placed fill was conducted in 2004, prior to the emplacement of most of the fill on the site. The proposed investigation is thus for initial characterization of the environmental quality of the placed fill, not for contaminant delineation or confirmation sampling.
6. Based on the acreage of fill alleged in the RIW, the 29 soil borings proposed in the RIW represent an overall sampling frequency of approximately 1 boring per 2 acres of fill. The actual acreage of fill on the quarry floor may be more extensive than reported in the RIW. In addition, the thickness of the fill at the site is up to 200 feet. It is our opinion that the frequency of proposed borings is not sufficient to characterize and screen the amount of fill present on the site, particularly as the fill consists of various

materials derived from numerous sources, including non-virgin sites and known contaminated sites. The fill material placed on the site is analogous to historic fill, which is defined as "...non-indigenous material, deposited to raise the topographic elevation of the site, which was contaminated prior to emplacement, and is in no way connected with the operations at the location of emplacement..." (N.J.A.C. 7:26E-1.8). An investigation of historic fill in accordance with N.J.A.C. 7:26E-4.6(b) would require at least four (4) borings per acre.

7. The proposed total of 78 discrete laboratory analytical samples represents an overall frequency of approximately 1 analytical sample per 50,000 CY. It is our opinion that the frequency of analytical samples is not sufficient for initial characterization of the quality of the fill material that was obtained from numerous sources including known contaminated sites. It is also our opinion that initial characterization of the fill materials should include a wider range of analytical parameters (e.g. EPA Target Compound List + 30 / Target Analyte List, Total Petroleum Hydrocarbons, Hexavalent Chromium, and pH).
8. The RIW proposes screening at 20- to 25-foot increments in deep soil borings, and 10- to 15-foot increments in the shallow borings. We recommend continuous screening in the soil borings since, as noted, the fill consists of various materials derived from numerous sources, including non-virgin sites and known contaminated sites.
9. The RIW does not include a plan for direct evaluation of groundwater quality in accordance with N.J.A.C. 7:26E-4.4. The limited quality control sampling of incoming fill that was performed indicates that various contaminants, including trace levels of soluble organic compounds, are present in the fill material. Therefore, groundwater samples should be collected and analyzed to evaluate potential impacts to groundwater quality.
10. The RIW does not propose evaluation of surface water quality in the onsite quarry lake in accordance with N.J.A.C. 7:26E-4.5. The limited quality control sampling of incoming fill that was performed indicates that various contaminants, including trace levels of soluble organic compounds, are present in the fill material. The quarry lake receives storm water runoff from the contaminated fill. Therefore, water samples should be collected from the lake and analyzed to evaluate potential impacts to surface water quality.

11. The MOA application indicates that the only known contamination onsite is a single soil sample with benzo(a)pyrene at 0.21 ppm. The limited QC sampling performed by the Township's Environmental Consultant identified other contaminants in imported fill material at concentrations exceeding the applicable remediation standards, including metals, pesticides, and various PAH compounds; the contaminated material remains onsite.
12. We note that the Township required reclamation of the quarry site. MQI/Tilcon had the responsibility to ensure that all accepted fill material would meet the unrestricted use standard as defined in N.J.A.C. 7:26E-1.8., and that fill material is in compliance with all applicable state and/or federal regulations.
13. MQI/Tilcon failed to comply with applicable state and/or federal regulations, and benefited financially from importing contaminated fill materials to the site. MQI/Tilcon disposed contaminated fill materials at the quarry without legal authority, i.e. NJDEP approval of a Fill Protocol, Beneficial Use Determination or Landfill Permit.

In conclusion, the Township of Bernards is justifiably and extremely concerned about the environmental quality of the fill materials already imported to the site. The Township has strong reservations regarding the adequacy of the proposed limited investigation to fully characterize the environmental quality of the imported fill materials and to provide a thorough assessment of its potential environmental impacts.

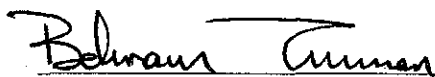
On behalf of the Township of Bernards, we respectfully request that the Department consider the additional information, findings, and recommendations presented in this letter in reviewing the RIW submitted by MQI/Tilcon. Specifically, the Township is requesting that the Department require MQI/Tilcon to increase the frequency of proposed borings and analytical samples, increase the acreage of the quarry included in the sampling parameters, expand the parameters analyzed in the samples, conduct continuous screening in soil borings, collect and analyze groundwater and surface water samples, and interact closely with the Township and its professionals to ensure the soil and groundwater at the site is contaminant free. Further, the Township requests the Department consider the issuance of an Administrative Order assessing penalties for illegal operations and environmental impacts, and requests a meeting with the Department to discuss the remediation of this site, pursuant to N.J.A.C. 7:26E-1.4(o)(1)(iii).

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Should you have any questions concerning this matter, please do not hesitate to contact this office.

Very Truly Yours,
Icon Engineering – A Division of CME Associates


Behram Turan, P.E.
Principal

Enclosures

cc: Mayor and Township Committee, Bernards Township
Denise Szabo, Township Clerk
Frances Florio, Clerk, Bernards Township Planning Board
Peter A. Messina, P.E., P.P. - Township Engineer/Planner
John P. Belardo, Esq. – McElroy, Deutsch, Mulvaney & Carpenter
Jonathan Drill, Esq., Stickel, Koenig & Sullivan
Dennis J. Krumholz, Esq. – Riker Danzig
Irene Kropp, Assistant Commissioner – NJDEP Site Remediation Program

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