

---

**FOR IMMEDIATE RELEASE**

---

Date: July 22, 2008

From: Mayor and Township Committee, Bernards Township

Re: Status of Importation of Fill to the Millington Quarry Property; and  
Status of Litigation filed in the NJ Superior Court, Somerset County, by  
Millington Quarry, Inc. ("MQI") and Tilcon New York, Inc. ("Tilcon")

---

**Background**

On March 25, 2008, the Township Committee adopted Ordinance #2008 to implement a temporary moratorium on importation of fill to the Quarry Property pending completion of the Planning Board's review of MQI's and Tilcon's 2008 Proposed Rehabilitation Plan. MQI and Tilcon filed a lawsuit in the New Jersey Superior Court challenging the provisions of Ordinance #2008. The Honorable Yolanda Ciccone, Assignment Judge of the New Jersey Superior Court, Somerset County, Civil Division, stayed both the litigation filed by MQI and Tilcon against the Township and the enforcement of Ordinance #2008 pending public hearings and determination by the Planning Board and Township Committee on MQI's and Tilcon's 2008 Proposed Rehabilitation Plan, and Judge Ciccone directed in conjunction with the stay that the required review of Proposed Rehabilitation Plan be completed in an expedited manner.

**Recent Events**

On June 10, 2008, the Township Committee adopted Resolution #080295 requesting that the NJ Department of Environmental Protection ("NJDEP") exercise its regulatory powers to assume jurisdiction and oversight to ensure only clean fill material is imported to the Quarry Property. After adoption of Resolution #080295 on June 10,

2008, the amount of truckloads of fill imported to the Quarry Property dropped significantly.

	May 1 <sup>st</sup> -15 <sup>th</sup>	May 16 <sup>th</sup> -30 <sup>th</sup>	June 1 <sup>st</sup> - 15 <sup>th</sup>	June 16 <sup>th</sup> - 30 <sup>th</sup>	July 1 <sup>st</sup> - 15 <sup>th</sup>
Total # of Truckloads:	2,234	2,197	2,214	427	180

By letter dated June 12, 2008, Tilcon’s attorneys advised the Township that, as of May 2008, Tilcon requires that all sources importing fill material into the Quarry Property provide soil sampling and testing, and complete a revised Fill Acceptance Certification form prior to importing fill. The Township’s environmental engineering consultant, Geoffrey Goll, P.E., of Princeton Hydro, LLC, on July 18, 2008, requested Tilcon provide copies of the completed Certification forms and sampling test results to the Township.

The Township Planning Board conducted nine (9) public hearings and adopted its Resolution of Findings, Report and Recommendations on the Proposed Rehabilitation Plan on June 11, 2008. The Township Committee received the Planning Board’s report, conducted two public hearings, and adopted its Resolution #080308 on the Proposed Rehabilitation Plan on July 2, 2008.

On July 15, 2008, the Township Committee repealed Ordinance #2008 and its temporary moratorium which had been enacted pending Planning Board review of the Proposed Rehabilitation Plan. Also on July 15, 2008, the Township Committee adopted Ordinance #2025 prohibiting importation of fill material onto Quarry Property.

**Status of Litigation**

Attorneys for MQI and Tilcon have indicated their intent to file an Order to Show Cause Application (“OTSC”) with the court regarding Bernards Resolution #080308 and Ordinance #2025. Procedurally, as there is existing litigation, counsel for MQI and Tilcon were required to contact the court for scheduling purposes prior to filing their

OTSC papers. Judge Ciccone is scheduled to be on vacation during the entire month of August, and, accordingly, Her Honor's court calendar in August includes only two (2) dates, with extremely limited scheduling availability.

On Friday, July 18, 2008, Judge Ciccone held a telephonic Case Management Conference with counsel for the parties. Judge Ciccone signed a Scheduling Order setting dates for submission of court papers by all parties and the hearing date on the OTSC Application, as follows:

- July 29, 2008 MQI and Tilcon to file Order to Show Cause
- August 25, 2008 Township to file opposition papers to OTSC
- September 3, 2008 MQI and Tilcon to file any reply papers
- September 8, 2008 Hearing on OTSC before Judge Ciccone

As part of the Scheduling Order, enforcement of Township Resolution #080308 and Ordinance #2025 is put on hold pending submissions by all parties of court papers and a hearing before Her Honor on the OTSC. The Scheduling Order expressly indicates it does not include any findings of fact or determination by Judge Ciccone on the merits of Township Resolution #080308 and Ordinance #2025. Rather, the Scheduling Order provides all parties with the opportunity to present their respective arguments to the court on the record prior to the Judge making a decision to grant or deny MQI's and Tilcon's OTSC Application. In addition to setting dates, the Scheduling Order signed by Judge Ciccone:

- **Requires continued monitoring on a daily basis by the Township's environmental consultants**, Princeton Hydro, LLC, of fill imported to the Quarry Property in accordance with the provisions of Ordinance #2001.
- **Requires MQI and Tilcon to deposit \$150,000 into the escrow account**. (Payment for the cost of Princeton Hydro's monitoring is made from the escrow account.)
- **Limits the amount of trucks and fill permitted to be brought into the Quarry Property** pending the parties' court submissions and the Judge's

final determination on the MQI's and Tilcon's OTSC Application. Without this clause, MQI and Tilcon would be operating with no limitation on trucks. Although the Township Committee sought a lower limitation pending the September 8, 2008, court hearing, MQI and Tilcon were intransigent.

- **Requires MQI and Tilcon to provide the Township with copies of completed Clean Fill Material Acceptance Certification Forms,** together with all attachments including test results, for all sources of fill imported into the Quarry Property.