

STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

AUGUST 31, 2009

PETITION<sup>1</sup> FOR DECLARATORY RULING REGARDING WATER DIVERSION  
PERMIT APPLICATIONS FOR TILCON CONNECTICUT, INC.'S PLAINFIELD,  
WALLINGFORD, MONTVILLE, NORTH BRANFORD, AND GRISWOLD FACILITIES

I. INTRODUCTION.

Tilcon Connecticut, Inc. ("Tilcon"), a Connecticut corporation whose principal office is located at Black Rock Avenue, P. O. Box 1357, New Britain, Connecticut 06050, operates earth materials extraction facilities in, among other places, the Towns of Plainfield, Wallingford, Montville, North Branford, and Griswold. As a part of its operations at facilities in these five towns, Tilcon utilizes water from man-made basins or underground wells as wash water for stone-sand processing or for non-contact cooling. Subject to a specific reservation regarding quarry dewatering at its North Branford and Wallingford facilities, in general, Tilcon recognizes that its facilities utilize water in a way that meets the definition of a "diversion" and thus are regulated by the Department of Environmental Protection ("DEP") as set forth in Conn. Gen. Stat. §§ 22a-365 *et seq.*

In response to Public Act 02-102, in 2003, Tilcon submitted water diversion permit applications for facilities located in the five above-referenced towns. *See* Exhibit 1. During the DEP's review of these applications, Tilcon and the DEP's Inland Water Resources Division ("Division") developed a substantial disagreement about the scope of the Division's geographic and regulatory jurisdiction regarding water diversion permit applications. The Division's view, as expressed in letters dated July 18, 2006 and October 21, 2008, is that maintenance of a

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<sup>1</sup> This petition is a resubmission of Tilcon's January 16, 2009 filing, which was withdrawn on August 19, 2009.

diversion at each site "facilitate[s] . . . continued mining activities and earth product processing"; and as a result, the Division, as a condition of processing the diversion applications, has the authority to request substantial environmental and business information that is unrelated to the diversion itself and its hydraulic impacts. Tilcon's contrary conclusion, asserted in this petition, is that under the relevant statutes and regulations, the DEP's jurisdiction extends to the hydraulic impacts resulting from a diversion of water – what is called the "area of influence" – but not activities that are hydraulically and environmentally unrelated to the diversion. Applied to the five sites at issue, this disagreement between Tilcon and the Division results in a substantial variance regarding the scope of the DEP's jurisdiction and its authority to delay permit processing or deny an application based on the applicant's refusal or inability to supply this significantly broader scope of information. For example, at Tilcon's North Branford facility, the diversion's hydraulic influence, as calculated by Tilcon's consulting professional engineers, is 1.57 acres, but the Division, before it will process the diversion application, is requiring environmental and property use information covering the entire 600 acre facility.

The Division's view of the DEP's jurisdiction is not in accord with the plain language of the statute or regulations, the legislative history of the Water Diversion Policy Act, or efficient regulation. The regulations are specific; they instruct the applicant to calculate the area of influence of the proposed diversion. The statute directs the Division to assess the effects "of the proposed diversion." *See* Conn. Gen. Stat. § 22a-369 ("Application for permit. Information required") and § 22a-373 ("Decision"). The statute does not authorize the Division to assess and regulate effects not attributable to the hydraulic impact of diversion, or to regulate all environmental and business aspects of the site merely because a diversion exists somewhere on the site. In addition, the diversion program is one permitting program among many, and the diversion statutes and regulations do not, for example, authorize the Division to regulate impacts on inland wetlands that have nothing to do with the diversion and are regulated by local wetlands agencies, acting as delegees of the DEP Commissioner. *See* Conn. Gen. Stat. §§ 22a-38(1), 22a-39, 22a-41, and 22a-42d. This petition, therefore, requests that the Commissioner issue a

declaratory ruling that the Division's jurisdiction to regulate the diversion of water is limited to the effects of the diversion itself, that is, the area of hydraulic influence, and does not extend to demanding information regarding environmental resources, business plans, and other activities on the property hydraulically unrelated to the diversion, merely because a diversion "facilitates" other activities on the site.

Tilcon has posed one jurisdictional issue that is common to all five facilities, and two additional, separate questions for its North Branford facility.

## II. JURISDICTION.

This request is made pursuant to the Uniform Administrative Procedure Act ("UAPA"), Conn. Gen. Stat. §§ 4-175 and 4-176, and the Conn. Agencies Regs. § 22a-3a-4. Conn. Gen. Stat. § 4-176 provides that any person may petition an agency for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the General Statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency. Subsection (e) further provides that the agency must respond in writing to the request in one of five ways:

- (1) Issue a ruling declaring the validity of a regulation or the applicability of the provision of the general statutes, the regulation, or the final decision in question to the specified circumstances, (2) order the matter set for specified proceedings, (3) agree to issue a declaratory ruling by a specified date, (4) decide not to issue a declaratory ruling and initiate regulation-making proceedings, under section 4-168, on the subject, or (5) decide not to issue a declaratory ruling, stating the reasons for its action.

Conn. Gen. Stat. § 4-176(e). If the agency fails to take action as required by § 4-176(e)(1), (2), or (3), within 60 days of the filing of this petition, decides not to issue a declaratory ruling under § 4-176(e)(4) or (5), or is deemed to have decided not to issue a declaratory ruling under § 4-176(i), the petitioner may seek a declaratory judgment in the Superior Court. Conn. Gen. Stat. § 4-175(a). Further, a ruling pursuant to § 4-176(e) is appealable as a final decision. Conn. Gen. Stat. § 4-166(3).

### III. WATER DIVERSION PROGRAM, STATUTE, AND REGULATIONS.

The State's water diversion permit program was adopted in 1982 as the Water Diversion Policy Act, Conn. Gen. Stat. §§ 22a-365 through 22a-378 ("Act") and later, Conn. Agencies Regs. §§ 22a-372-1 through 22a-377(c)-2. The Act required all water diversions existing prior to July 1, 1982 to be registered with the Commissioner by July 1, 1983 and that any person seeking to divert the waters of the State commencing after July 1, 1982 must first seek a permit from the Commissioner. Conn. Gen. Stat. § 22a-368. The goal of the Act is to regulate the diversion of water in order to maintain an adequate supply of water for a variety of purposes throughout Connecticut. *See* Conn. Gen. Stat. § 22a-366.

A water diversion is "any activity which causes, allows or results in the withdrawal from or the alteration, modification or diminution of the instantaneous flow of the waters of the state." Conn. Gen. Stat. § 22a-367(2). Under § 22a-373, the DEP Commissioner is directed to consider several factors in determining whether to grant a permit. *Each factor specifically requires the Commissioner to consider the effect "of the proposed diversion."* Conn. Gen. Stat. §§ 22a-369 and 22a-377 and Conn. Agencies Regs. § 22a-377(c)-1 require an applicant to submit several categories of information, but each specifically related to the amount, location, purpose, and impacts "of the proposed diversion." An applicant is required to furnish information about "[t]he effect of the proposed diversion on public water supplies, water quality, wastewater treatment needs, flood management, water-based recreation, wetland habitats, waste assimilation, agriculture, fish and wildlife and low flow requirements." Conn. Gen. Stat. § 22a-369(7).

In 2002, the legislature and the Governor passed Public Act 02-102, which directed the DEP to implement a program allowing those who had not registered certain water diversions in 1982 to submit applications for permits. In compliance with Public Act 02-102, Tilcon, in July 2003, timely submitted applications for existing diversions at each of the facilities discussed in this petition. *See* Exhibit 1.

#### IV. DIVERSIONS AT TILCON'S FIVE FACILITIES.

Each facility and diversion summarized below is described in detail in Tilcon's July 2003 filings and supplemental filings made in May 2007, in response to the Division's requests. In summary:

**Plainfield:** The Plainfield site contains rock crushers, an aggregate washing plant, and an asphalt batch plant. There are four water diversions on the site. The first diversion consists of three basins that are used to supply water to the aggregate wash plant. Water is drawn from Basin 1, and excess water is returned to Basin 2 through subsurface piping. Water then flows from Basin 2 to Basin 3 before returning to Basin 1. This use requires approximately 1,920,000 gpd, with a total consumptive loss of 57,000 gpd. Its area of influence is limited to the area of the basins and covers 20.52 acres on a 676.5 acre site.

The second diversion is for dust suppression. Water is withdrawn from Basin 4 at approximately 140,000 gpd for this purpose. For approximately two weeks out of the year, water is also drawn from Basin 4 to supplement Basin 1 at the same rate of 140,000 gpd. Its area of influence is 30 feet from the edge of the basin after 180 days and covers 33.45 acres on a 676.5 acre site.

The third diversion consists of a bedrock well used for dust suppression. The fourth diversion consists of a stratified drift well that supplies a scale house and laboratory, the garage building, and a concrete pipe manufacturer (withdrawal of approximately 3,000 gpd). Based on the hydrogeologic calculations completed, there is essentially no area of influence from this well given the low rate of withdrawal.

**Wallingford:** The activities at the Wallingford site include quarrying, aggregate processing, production of asphalt products, and production of stone-sand. There are three water diversions on the site, the second of which is located in the town of Durham. The first diversion is for wash water for the stone-sand plant. Four settling basins in a closed loop system are used for this purpose. Based on the hydrogeologic calculations made, the area of influence is limited to the area of the basins and covers 3.22 acres on a 400 acre site.

The second diversion is a quarry stormwater pump.<sup>2</sup> Water from the quarry stormwater basin is moved to water trucks and used to prevent the migration of dust. Water used by the trucks is consumed, either through evaporation or adhesion to the soil. This use accounts for 559,680 gpd. Because there is no groundwater drawdown, as water is intercepted from the bedrock floor of the quarry, area of influence is inapplicable.

Finally, the third diversion is water drawn from a bedrock well for use as either non-contact cooling or dust suppression. Area of influence is inapplicable.

**Montville:** The Montville site consists of rock crushers, an aggregate washing plant, and an asphalt batch plant. There are two diversions on the site. The first is excavation dewatering where excessive stormwater is removed from the quarry. The area of influence for this diversion is inapplicable because there is no groundwater drawdown, as water is intercepted from the bedrock floor of the quarry.

The second diversion is wash water drawn from basins for aggregate processing and non-contact cooling water. Based on the calculations completed, its area of influence is limited to the area of the basins and covers 2.14 acres on a 127 acre site.

**North Branford:** The activities at the North Branford site include quarrying, processing, and production of stone-sand. There are two water diversions on this site. The first diversion is wash water pumped from a series of supply basins for the stone-sand plant. This is a closed loop system that withdraws approximately 1,152,000 gpd. There is no area of influence from the upper supply basins as the basins are above the water table. Two additional water supply basins are located to the south of the upper supply basins and provide supplemental water supply (approximately 67,200 gpd) for Diversion 1. Based on the calculations made, the area of influence from the southern basins is limited to the area of the basins and covers 1.57 acres on a 600+ acre site.

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<sup>2</sup> In correspondence on file with the DEP, Tilcon has stated its position with respect to whether quarry dewatering is a regulated diversion. Tilcon continues to reserve this position.

A third diversion is quarry dewatering.<sup>3</sup> Stormwater is removed from the quarry through a sump pump that discharges into three sedimentation basins. Its area of influence is inapplicable, however, because there is no groundwater drawdown as water is intercepted from the bedrock floor of the quarry.

At the North Branford facility, Tilcon is the holder of a National Pollution Elimination Discharge System ("NPDES") permit, for which it has a pending application for renewal. The Division, in correspondence, *see* Exhibit 2, has taken the position that it will not process the NPDES application unless Tilcon provides all of the additional information requested by the Division for its water diversion permit application.

In addition for the North Branford facility, the Town of North Branford Conservation and Inland Wetlands and Watercourses Agency as well as the Army Corps of Engineers have granted permits for regulated activities. However, the Division has requested information about these same wetlands and demonstrated its intent to regulate activities affecting them, even though they are unrelated to the diversion and have already been permitted by other agencies.

**Griswold:** The activities at the Griswold site include mining and processing of sand and gravel. There are two diversions on this site. The first diversion is water withdrawn from a man-made supply basin for use as wash aggregate and as non-contact cooling water. This is a closed loop system, and excess water is returned to the supply basin after passing through two settling basins. This diversion requires 240,000 gpd. Approximately 8,500 gpd are consumed as retained moisture and evaporation. Based on the calculations made, its area of influence is limited to the area of the basins and covers 0.63 acres on a 135 acre site.

The second diversion is a withdrawal of water from a shallow overburden groundwater supply well used for dust suppression. Occasionally, this well is also used to recharge the supply basin. Water may be pumped from this well at a maximum rate of 144,000 gpd, but actual use is

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<sup>3</sup> *See* fn.1.

probably lower. Based on the results of pump testing, its area of influence was calculated to be 25 feet radially outward from the well (an area of approximately 0.04 acres) on a 135 acre site.

## V. JURISDICTIONAL DISAGREEMENT.

The Division responded to Tilcon's 2003 filing in a July 18, 2006 letter, *see* Exhibit 3, demanding substantial additional information, including a site plan detailing "the overall proposed limits of earthwork, including but not limited to, excavation of sand and gravel deposits, construction of roadways, soil stabilization measures and wetland/watercourse and associated buffer areas for the duration of the requested permit." The Division indicated it required this information to fully assess the long-term effects of the proposed diversion "since the proposed water supply systems will facilitate the continued mining activities and earth product processing at the project sites."

In a March 28, 2007 letter, *see* Exhibit 4, Tilcon explained its disagreement with the Division's interpretation of its jurisdiction to regulate the effect of non-diversionary activities on Tilcon's property merely because the diversion of water facilitates those activities. For example, with regard to Tilcon's North Branford property, hydrogeologic investigations reveal an area of influence of the regulated diversions of approximately 1.57 acres whereas the total property is over 600 acres. In Montville, the property is 127 acres, but the diversion's area of influence is only 2.14 acres. Therefore, Tilcon indicated that it was unwilling to supply the Division with additional information regarding areas of the property outside the area of influence of the diversions, but that it would provide the Division with such information as it pertained to the area of influence. In May 2007, Tilcon filed supplemental information regarding the individual permit applications for these sites, thus providing complete engineering and hydraulic information with respect to each regulated diversion and its actual area of influence.

After a July 2008 meeting with Division representatives to try to resolve the jurisdictional dispute, Tilcon requested the Division, in two separate letters dated July 23, 2008, to provide a detailed written response to its March 28, 2007 letter with respect to jurisdiction. The Division

responded in an October 21, 2008 letter, *see* Exhibit 5, that it maintained its position that it has the authority to regulate the environmental effect of all of Tilcon's activities because they are facilitated by Tilcon's water diversion activities. In addition, it listed the additional information it sought, which was substantially the same as the information requested in the July 18, 2006 letter. To resolve this impasse, Tilcon now files this request for a declaratory ruling of the Division's jurisdiction.

## VI. QUESTIONS AS TO WHICH DECLARATORY RULING IS SOUGHT.

1. **As to all five facilities: When processing an application for a water diversion permit, does the DEP have jurisdiction and authority to consider all potential environmental resources and issues on the entire site on which the diversion is located, even if those other resources and issues are hydraulically unrelated to the diversion or are committed by statute or regulation to other DEP bureaus or regulatory agencies?**

2. **As to North Branford: When an applicant for a water diversion permit already has obtained a local wetlands permit for activities that are located on the diversion site but are hydraulically unrelated to the diversion, may the DEP, processing a diversion permit application, demand information regarding such wetlands and regulated activities and regulate those activities again?**

3. **As to North Branford: May the DEP decline to process or delay processing an NPDES permit renewal on the ground that the applicant has not supplied to the DEP requested additional information regarding a pending water diversion permit application?**

## VII. ARGUMENTS IN SUPPORT OF THE PETITION.

### A. Text Of Water Diversion Statute And Regulations.

The water diversion statutes and regulations require submission of comprehensive environmental information about those portions of Tilcon's properties that are, or are reasonably expected to be, affected by an actual diversion of water, the area of influence of such diversion.

The Division's contrary view, as expressed to Tilcon during a meeting in 2006, a July 18, 2006 letter, a July 2008 meeting, and an October 21, 2008 letter, is that the diversion statutes and regulations grant authority to demand information about, and to regulate through the diversion program, environmental impacts and property use plans that have nothing to do with the hydraulic effect of the diversion of water.

The consistent and defining characteristic of the water diversion statutes and regulations is the reference to "the diversion" – the alteration or modification of the instantaneous flow of water. The Act defines "diversion" as "any activity which causes, allows or results in the withdrawal from or the alteration, modification or diminution of the instantaneous flow of the waters of the state." Conn. Gen. Stat. § 22a-367(2). Under § 22a-373, the DEP Commissioner is directed to consider several factors regarding the effect "of the diversion" on the public water supply, flood-management, and fish and wildlife. Conn. Gen. Stat. § 22a-373. Thus, in an application for a permit, an applicant is required to furnish information about "[t]he effect of *the proposed diversion* on public water supplies, water quality, wastewater treatment needs, flood management, water-based recreation, wetland habitats, waste assimilation, agriculture, fish and wildlife and low flow requirements." Conn. Gen. Stat. § 22a-369(7) (emphasis added). Subject to activities that are exempt or subject only to a general permit, Conn. Gen. Stat. §§ 22a-369 and 22a-377 and Conn. Agencies Regs. § 22a-377(c) require an applicant to submit several categories of information about the amount, location, purpose, and impacts of the "proposed diversion."

Section 22a-371, regarding additional information, is not a free-standing or limitless section but an aid to the Department in making sure that it has the information about the diversion, not the business operation on the property or the property itself. Thus, the DEP's jurisdiction is defined by, and coterminous with, the diversion and its hydraulic impact. Neither the statute nor the regulations permit the DEP to look beyond the effect of a diversion.

The effect of a diversion that is a withdrawal is not a subjective determination, but a defined, calculable area based on stream flows and critical dry periods. Conn. Agencies Regs. § 22a-377(c)-2(2) states:

For purposes of section 22a-369(7) of the general statutes, the effect of the proposed diversion shall be evaluated using stream flows, where applicable, with the following recurrence intervals: (A) for low flows: seven-day ten-year, seven-day two-year, thirty-day two-year, and annual average flows; (B) for high flows: peak flows corresponding to the probable maximum flood, half probable maximum flood, and 500-year, 100-year, 50-year, 10-year, and 2-year flood events and average annual flows; and (C) a critical dry period with a 1 in 100 year chance of occurrence. For purposes of this subsection and section 22a-369 of the general statutes, "drought" and "critical dry period" shall include low flows or water shortages whether resulting from meteorological conditions or human use.

This regulation thus requires applicants to measure a diversion's hydraulic impact.

B. The Legislative History Of The Water Diversion Act Confirms The Division's Limited Jurisdiction.

Defining the Division's jurisdiction based on a diversion and its hydraulic impact is also consistent with the Act's legislative history. The Act was originally concerned with ensuring an adequate supply of clean drinking water. The legislative history reveals that the Act was motivated in large part by the Metropolitan District Commission's controversial proposal in 1981 to divert 19 billion gallons of water per year from the west branch of the Farmington River. *E.g.*, 25 S. Proc., Pt. 13, 1982 Sess., p. 4277. The Act was intended to establish "a clearly defined application procedure" for diversions in order to preserve a supply of clean drinking water. 25 H. Proc., Pt. 19, 1982 Sess. p. 6240.

C. Administrative Agencies Have Limited Jurisdiction.

Administrative agencies may only exercise those powers granted by the legislature. They are "tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes vesting them with power and they cannot confer jurisdiction upon themselves." *Fullerton v. Administrator*, 280 Conn. 745, 755 (2006). The Connecticut Supreme Court has recognized

"that it is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner. It cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power." Id. The legislature clearly did not intend the Act as a means to regulate all business operations on any property on which a regulated diversion exists, or all environmental impacts of a business that happen to rely on a regulated diversion, but rather to focus on the diversion itself and its impacts.

D. The Division's Jurisdiction Over Water Diversion Is Separate And Distinct From Other DEP/Environmental Programs And Functions.

Environmental regulation only works when the legislature assigns clear and separate jurisdictional areas of responsibility to state and local agencies, and those agencies adhere to their assigned duties. In this case, the Division has a specific, assigned role within the DEP. Other departments within the DEP, as well as local agencies, are statutorily delegated the authority to oversee other aspects of Tilcon's operations, including: water quality (Conn. Gen. Stat. §§ 22a-416 *et seq.*); aquifer protection (Conn. Gen. Stat. §§ 22a-354a *et seq.*); impacts to inland wetlands (Conn. Gen. Stat. §§ 22a-38 *et seq.*); hazardous waste (Conn. Gen. Stat. § 11a-114); noise pollution (Conn. Gen. Stat. §§ 22a-67 *et seq.*); and wildlife protection (Conn. Gen. Stat. §§ 26-1 *et seq.*). To reach beyond the calculated impact of a diversion not only goes beyond the authority granted to the Division under the Act, but actively interferes with the assignment of responsibility for environmental regulation that the legislature has established. Just as the Inland Wetlands and Watercourses Act does not turn local inland wetlands commissions into "little environmental protection agencies," *AvalonBay Communities, Inc. v. Inland Wetlands Commission*, 266 Conn. 150, 160-61 (2003), the Water Diversion Policy Act does not transform the Division into a wetlands commission, a hazardous waste bureau, or an agency of the U.S. Environmental Protection Agency.

E. Water Diversion Does Not "Facilitate" All Other On-Site Activities.

The Division's position that it is entitled to request comprehensive environmental, engineering and planning information about an entire site because a water diversion facilitates or allows other site activities to occur is unsupported by the statute, regulations, and common sense. First, if the statute and regulations intended such a broad reach, then §§ 22a-369 or 22a-371 would have empowered the Division to request information about "all activity on the site, whether related to the diversion or not," or words to this effect. The text, however, is strictly limited to the diversion of water and its impacts. Second, if this logic were employed elsewhere, then every permit application of every kind would encompass the entire business operation and the entire property. Without intending to be ridiculous, the Department of Motor Vehicles could request comprehensive environmental information about each Tilcon site, on the ground that Tilcon's drivers, by driving trucks onto and off of the site and participating in the sand and gravel operations, which utilize water diversions, cause environmental impacts that DMV should regulate.

F. North Branford NPDES Issue And Wetlands Permit Issue.

While an NPDES permit application and a water diversion permit application may overlap in some respects, there is no basis in the water diversion statutes for holding up processing of an application due to issues related to the NPDES program, which is a separate program and process with different criteria. Also, there is no authorization in the NPDES program to delay processing in order to force an applicant to provide information not within the scope of the diversion program.

While the DEP is certainly authorized to evaluate the impact of a diversion on a wetland or watercourse, it is not authorized to regulate or evaluate again wetlands impacts unrelated to the diversion that have already been reviewed and approved by the DEP Commissioner through her statutory delegee, a local wetlands agency.

### Request For Hearing

Tilcon requests that the Commissioner hold a hearing on this Petition, pursuant to § 22a-3a-4(C)(4) of the Rules of Practice.

Tilcon has proposed to DEP's in-house attorney a proposed stipulation regarding the factual basis of this Petition. Such a stipulation may well reduce or even eliminate the need for a fact-finding adjudication proceeding. However, without such a stipulation, it is essential that Tilcon be provided an opportunity to establish the factual predicate of this Petition.

The undersigned knows of no case law or ruling by the DEP that has addressed the issue of the DEP's jurisdiction regarding water diversion permits. As this Petition presents an important question, the outcome of which could have considerable ramifications for Tilcon and others, a hearing would be more than appropriate.

### Address Of Petitioner

Pursuant to § 22a-3a-4(2) of the Rules of Practice, Tilcon's address and phone number are as follows: Frank T. Lane, Director of Real Estate and Environmental Compliance, Tilcon Connecticut, Inc., 1 Forest Road, North Branford, Connecticut.

### Affidavit Of Notice

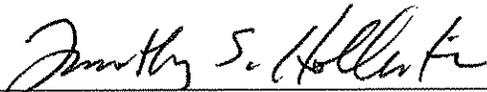
The petitioner acknowledges its obligation to publish notice of this petition. It will do so upon notification that the Petition is being set for a specified proceeding and once it has reached an agreement with the Acting Commissioner on the wording of such notice.

VIII. CONCLUSION.

For all of the reasons set forth herein, Tilcon Connecticut, Inc. respectfully requests a Declaratory Ruling on the questions set forth in § VI above.

Dated: Hartford, Connecticut  
August 31, 2009

RESPECTFULLY SUBMITTED,  
PETITIONER,  
TILCON CONNECTICUT, INC.

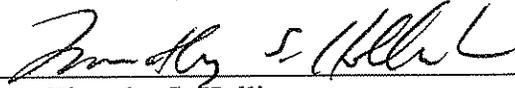
By:   
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Its Attorneys

CERTIFICATION

I hereby certify that the foregoing complies with the requirements of § 22a-3a-4 of the Rules of Practice. I further certify that a copy of the foregoing Petition for Declaratory Ruling was hand delivered this 2nd day of September, 2009, to:

Acting Commissioner Amey Marrella  
Department of Environmental Protection  
75 Elm Street  
Hartford, CT 06106-5127

Melinda M. Decker, Esq.  
Agency Legal Director  
Department of Environmental Protection  
75 Elm Street  
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Timothy S. Hollister

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STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

PETITION OF TILCON CONNECTICUT,  
INC. FOR A DECLARATORY RULING  
AS TO THE DEPARTMENT'S  
JURISDICTION REGARDING WATER  
DIVERSION PERMIT APPLICATIONS

AUGUST 31, 2009

EXHIBITS IN SUPPORT OF PETITION FOR DECLARATORY  
RULING REGARDING WATER DIVERSION PERMIT APPLICATIONS  
FOR TILCON CONNECTICUT, INC.'S PLAINFIELD, WALLINGFORD,  
MONTVILLE, NORTH BRANFORD, AND GRISWOLD FACILITIES

1. DEP Receipts of Tilcon's 2003 Water Diversion Permit Applications
2. October 26, 2007 Letter from Melissa J. Blais, Supervising Sanitary Engineer, Water Permitting and Enforcement Division, Materials Management and Compliance Assurance Bureau, to Triton Environmental, Inc.
3. July 18, 2006 Letter from Denise Ruzicka, Director, Inland Water Resources Division, Department of Environmental Protection, to Frank T. Lane, Director of Real Estate and Environmental Compliance, Tilcon Connecticut, Inc.
4. March 28, 2007 Letter from Timothy S. Hollister, Shipman & Goodwin LLP, to Denise Ruzicka and Brian Golembiewski, Department of Environmental Protection
5. October 21, 2008 Letter from Denise Ruzicka, Director, Inland Water Resources Division, Department of Environmental Protection, to Timothy S. Hollister, Shipman & Goodwin LLP



# MURTHA CULLINA LLP

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July 1, 2003

Central Permit Processing Unit  
Department of Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

Re: Tilcon Connecticut Inc., Wauregan Facility

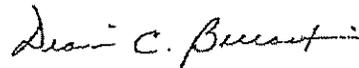
Dear Sir or Madam:

On behalf of our client, Tilcon Connecticut Inc. ("Tilcon"), we are submitting the attached application for an individual water diversion permit for diversions associated with an existing sand and gravel plant and quarry at Tilcon's Wauregan facility. Tilcon uses water at this facility for sand and gravel wash and for dust suppression. Diversion reporting forms were filed for these diversions on January 23, 2003. Tilcon is submitting this application to ensure coverage under the amnesty provisions of Public Act 02-102. Water used for operations at Tilcon's Wauregan facility is recirculated in a closed-loop system that ensures that the water consumption and the resulting hydrologic and environmental effects are minimal.

The Application package includes a Permit Application Transmittal Form, a Permit Application for Programs Administered by the Inland Water Resource Division, and an appropriate application fee. Tilcon will submit a certified copy of the public notice as it appeared in the newspaper when it becomes available.

If you have any questions regarding the submitted documents, please contact me.

Very truly yours,



Diane C. Bellantoni

Enclosures

B O S T O N      H A R T F O R D      N E W   H A V E N

Central Permit Processing Unit  
July 1, 2003  
Page 2

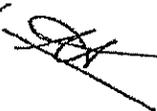
cc: Denise Ruzicka, DEP  
Frank Lane, Tilcon Connecticut Inc.  
Ms. Megan Raymond, Triton Environmental  
Mark R. Sussman, Esq.

**TRITON ENVIRONMENTAL, INC.**

741 Boston Post Road, Suite 101  
Guilford, Connecticut 06437  
Phone: (203) 458-7200 Fax: (203) 458-7201

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
CENTRAL PERMIT PROCESSING UNIT

JUN 30 2003

RECEIVED BY 

**LETTER OF TRANSMITTAL**

**Date:** 6/30/2003 **Copy:**  
**To:** Central Permit Processing Unit  
Department of Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127  
**From:** Megan B. Raymond

**RE:** Individual Permit Application for the Diversion of Water for Consumptive Use

**Contents:**  Letter  For Your Review  As Requested  
 Report  For Your Approval  Request for Information  
 Proposal  For Your Signature  Other: \_\_\_\_\_  
 Drawing  For Your Information

**Comments:** To Central Permit Processing Unit – Please find enclosed one additional copy of the application package to permit water use at the Tilcon Connecticut Inc. Wallingford facility. One original and six copies of this application package were provided to you via overnight mail today, June 30, 2003.  
If you have any questions or comments regarding these items, please call me at (203) 458-7200.

Sincerely,



Megan B. Raymond

Ref. No. 101522LT03CPU

# MURTHA CULLINA LLP

A T T O R N E Y S   A T   L A W

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185 ASYLUM STREET  
HARTFORD, CONNECTICUT 06103-3469

TELEPHONE (860) 240-6000  
FACSIMILE (860) 240-6150  
www.murthalaw.com

DIANE C. BELLANTONI  
(860) 240-6126  
DBELLANTONI@MURTHALAW.COM

July 1, 2003

Central Permit Processing Unit  
Department of Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

Re: Tilcon Connecticut Inc., Wallingford Facility

Dear Sir or Madam:

On behalf of our client, Tilcon Connecticut Inc. ("Tilcon"), we are submitting the attached application for an individual water diversion permit for the quarry and existing sand and gravel plant at Tilcon's Wallingford facility. Tilcon uses water at this facility for aggregate washing at the sand and gravel plant, for non contact cooling water and for dust suppression. Diversion reporting forms were filed for these diversions on January 23, 2003. Tilcon is submitting this application to ensure coverage under the amnesty provisions of Public Act 02-102. Water used for operations at Tilcon's Wallingford facility is recirculated in a closed-loop system that ensures that the water consumption and the resulting hydrologic and environmental effects are minimal.

The Application package includes a Permit Application Transmittal Form, a Permit Application for Programs Administered by the Inland Water Resource Division, and an appropriate application fee. Tilcon will submit a certified copy of the public notice as it appeared in the newspaper when it becomes available.

If you have any questions regarding the submitted documents, please contact me.

Very truly yours,



Diane C. Bellantoni

Enclosures

B O S T O N            H A R T F O R D            N E W   H A V E N

MURTHA CULLINA LLP

Central Permit Processing Unit  
July 1, 2003  
Page 2

cc: Denise Ruzicka, DEP  
Frank Lane, Tilcon Connecticut Inc.  
Ms. Megan Raymond, Triton Environmental  
Mark R. Sussman, Esq.



**STATE OF CONNECTICUT**  
**DEPARTMENT OF ENVIRONMENTAL PROTECTION**



FRANK I. LANE, DIR OF ENV COMPLIANCE  
 TILCON CONNECTICUT INC.  
 PO BOX 1357  
 NEW BRITAIN, CT 06050-1357

Dear Applicant:

This letter is to confirm the receipt of the following application package:

Permit Type: DIVERSION

PERMIT FOR AN EXISTING STONE-SAND PLANT & QUARRY STORMWATER Dewatering - NORTH BRANFORD LOCATION

Your application has been assigned the following application number: 200301965  
 Please include this number on all correspondence regarding this application.

As of today, the following materials have been received:

ITEM	REQUIRED FEE	FEE RECEIVED	RECEIVED ON
Application Package			JUNE 30, 2003
Application Fee:	\$ 4,000.00	\$ 4,000.00	JUNE 30, 2003

If there are any questions regarding this notice, please feel free to contact the Central Permit Processing Unit at (860)424-4004.

Your application has been forwarded to the appropriate permit program. As a reminder, depending on the type of permit you are seeking, you may be required to publish notice of your application in accordance with Section 22a-6g of the General Statutes and submit a copy of such notice to DEP. If this is the case, DEP will not process your application further until we have received the certified copy of such notice.

If you have specific technical questions regarding your application, please contact the permit program directly:

ROBERT GILMORE, (860) 424-3019

Please be aware that any work without the permits or authorizations required by Section 22a-36B CGS

is a violation of state law, and may subject you to enforcement action. Also the application review process is a continuing one. The department may request further information to evaluate your application.

Thank You.

Sincerely,

Central Permit Processing Unit

# MURTHA CULLINA LLP

A T T O R N E Y S   A T   L A W

DIANE C. BELLANTONI  
(860) 240-6126  
DBELLANTONI@MURTHALAW.COM

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July 1, 2003

Central Permit Processing Unit  
Department of Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

Re: Tilcon Connecticut Inc., North Branford Facility

Dear Sir or Madam:

On behalf of our client, Tilcon Connecticut Inc. ("Tilcon"), we are submitting the attached application for an individual water diversion permit for diversions associated with an existing sand and gravel plant and quarry at Tilcon's North Branford facility. Tilcon uses water at this facility for sand and gravel wash, for non contact cooling water and for dust suppression. Tilcon also collects and discharges stormwater from the quarry. Diversion reporting forms were filed for these diversions on January 23, 2003. Tilcon is submitting this application to ensure coverage under the amnesty provisions of Public Act 02-102.

The Application package includes a Permit Application Transmittal Form, a Permit Application for Programs Administered by the Inland Water Resource Division, and an appropriate application fee. Tilcon will submit a certified copy of the public notice as it appeared in the newspaper when it becomes available.

Tilcon is filing this application for a diversion permit without waiving its right to claim that a permit is not required for the dewatering of stormwater from the quarry. Tilcon submitted a letter to the DEP on June 4, 2003 providing DEP with information describing the quarry pumpout system and demonstrating that the quarry pumpout consists of stormwater only. We asked that DEP consider the information provided in that letter before it concluded that a diversion permit was necessary for the quarry pumpout at the North Branford quarry. As described in our letter forwarding the diversion reporting forms for this facility, Tilcon has discussed the stormwater management issues at this quarry with DEP for years and Tilcon's position on the need for a water diversion permit for this system has remained the same. Tilcon has always disputed the need for a water diversion permit for this system, as described in its June 30, 1998 letter and compliance statement in response to NOV DIV-98-1013V to the DEP.

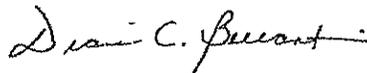
B O S T O N            H A R T F O R D            N E W   H A V E N

Central Permit Processing Unit  
July 1, 2003  
Page 2

Although Tilcon submitted a diversion reporting form for the quarry dewatering, Tilcon continues to believe that a water diversion permit is not needed because the collection and discharge of these waters from the quarry is authorized by DEP through NPDES permit no. CT0000892. The Connecticut Water Diversion Policy Act exempts "diversions" that are permitted under 22a-430 of the General Statutes. Conn. Gen. Stat. Section 22a-377(a)(3). Tilcon's water discharge permit for the North Branford quarry specifically covers the collection and discharge of water from the quarry. The permit requires that the stormwater run-off, quarry pump-out and rock crusher non-contact cooling water "shall be collected, pretreated and discharged" in accordance with the application and DEP approvals. (NPDES Permit CT0000892, Paragraph I). Furthermore, DEP has been aware of the water management at the North Branford quarry for years and, in fact, through conditions in the NPDES permit, has directed Tilcon to relocate a portion of its water discharge. In addition, the NPDES permit directs the management of stormwater in the quarry and requires studies of the quarry pumpout to address environmental impacts of the stormwater management system. Therefore, although Tilcon is including the quarry dewatering in this application for a diversion permit to maintain its amnesty under Public Act 02-102, Tilcon reserves its right to challenge the need for a diversion permit for this system.

If you have any questions regarding the submitted documents, please contact me.

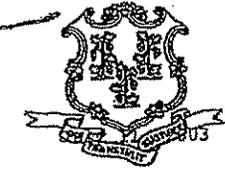
Very truly yours,



Diane C. Bellantoni

Enclosures

cc: Denise Ruzicka, Department of Environmental Protection  
Frank Lane, Tilcon Connecticut Inc.  
Ms. Megan Raymond, Triton Environmental  
Mark R. Sussman, Esq.



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



FRANK T. LANE, DIR OF ENV COMPLIANCE  
TILCON CONNECTICUT INC.  
PO BOX 1357  
NEW BRITAIN, CT 06050-1357

Dear Applicant:

This letter is to confirm the receipt of the following application package:

Permit Type: DIVERSION

PERMIT FOR AN EXISTING SAND & GRAVEL PLANT & QUARRY STORMWATER DEWATERING

Montville

Your application has been assigned the following application number: 200301961  
Please include this number on all correspondence regarding this application.

As of today, the following materials have been received:

ITEM	REQUIRED FEE	FEE RECEIVED	RECEIVED ON
Application Package			JULY 1, 2003
Application Fee:	\$ 2,500.00	\$ 2,500.00	JULY 1, 2003

If there are any questions regarding this notice, please feel free to contact the Central Permit Processing Unit at (860)424-4004.

Your application has been forwarded to the appropriate permit program. As a reminder, depending on the type of permit you are seeking, you may be required to publish notice of your application in accordance with Section 22a-6g of the General Statutes and submit a copy of such notice to DEP. If this is the case, DEP will not process your application further until we have received the certified copy of such notice.

If you have specific technical questions regarding your application, please contact the permit program directly:

ROBERT GILMORE, (860) 424-3019

Please be aware that any work without the permits or authorizations required by Section 22a-368 CGS

is a violation of state law, and may subject you to enforcement action. Also, the application review process is a continuing one. The department may request further information to evaluate your application.

Thank You.

Sincerely,

Central Permit Processing Unit

# MURTHA CULLINA LLP

A T T O R N E Y S   A T   L A W

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DBELLANTONI@MURTHALAW.COM

July 1, 2003

Central Permit Processing Unit  
Department of Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

Re: Tilcon Connecticut Inc., Montville Facility

Dear Sir or Madam:

On behalf of our client, Tilcon Connecticut Inc. ("Tilcon"), we are submitting the attached application for an individual water diversion permit for diversions associated with an existing sand and gravel plant and quarry at Tilcon's Montville facility. Tilcon uses water at this facility for sand and gravel wash. Tilcon also dewateres the quarry as necessary. Diversion reporting forms were filed for these diversions on January 23, 2003. Tilcon is submitting this application to ensure coverage under the amnesty provisions of Public Act 02-102. Water used for operations at Tilcon's Montville facility is recirculated in a closed-loop system that ensures that the water consumption and the resulting hydrologic and environmental effects are minimal.

The Application package includes a Permit Application Transmittal Form, a Permit Application for Programs Administered by the Inland Water Resource Division, and an appropriate application fee. Tilcon will submit a certified copy of the public notice as it appeared in the newspaper when it becomes available.

If you have any questions regarding the submitted documents, please contact me.

Very truly yours,



Diane C. Bellantoni

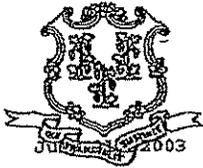
Enclosures

B O S I O N      H A R I F O R D      N E W      H A V E N

MURTHA CULLINA LLP

Central Permit Processing Unit  
July 1, 2003  
Page 2

cc: Denise Ruzicka, DEP  
Frank Lane, Tilcon Connecticut Inc.  
Ms. Megan Raymond, Triton Environmental  
Mark R. Sussman, Esq.



**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



FRANK T. LANE, DIR OF ENV COMPLIANCE  
IILCON CONNECTICUT INC.  
PO BOX 1357  
NEW BRITAIN, CT 06050-1357

Dear Applicant:

This letter is to confirm the receipt of the following application package:

Permit Type: DIVERSION  
GRISWOLD PLANT-176 RIXTOWN RD., GRISWOLD, CT

Your application has been assigned the following application number: 200301966  
Please include this number on all correspondence regarding this application.

As of today, the following materials have been received:

ITEM	REQUIRED FEE	FEE RECEIVED	RECEIVED ON
Application Package			JUNE 30, 2003
Application Fee:	\$ 1,200.00	\$ 1,200.00	JUNE 30, 2003

If there are any questions regarding this notice, please feel free to contact the Central Permit Processing Unit at (860)424-4004.

Your application has been forwarded to the appropriate permit program. As a reminder, depending on the type of permit you are seeking, you may be required to publish notice of your application in accordance with Section 22a-6g of the General Statutes and submit a copy of such notice to DEP. If this is the case, DEP will not process your application further until we have received the certified copy of such notice.

If you have specific technical questions regarding your application, please contact the permit program directly:

ROBERT GILMORE, (860) 424-3019

Please be aware that any work without the permits or authorizations required by Section 22a-368 CGS

is a violation of state law, and may subject you to enforcement action. Also the application review process is a continuing one. The department may request further information to evaluate your application.

Thank You.

Sincerely,

Central Permit Processing Unit

# MURTHA CULLINA LLP

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July 1, 2003

Central Permit Processing Unit  
Department of Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

Re: Tilcon Connecticut Inc., Griswold Facility

Dear Sir or Madam:

On behalf of our client, Tilcon Connecticut Inc. ("Tilcon"), we are submitting the attached application for an individual water diversion permit for diversions associated with an existing sand and gravel mine and plant at Tilcon's Griswold facility. Tilcon uses water at this facility for aggregate washing at the sand and gravel plant and for dust suppression. Diversion reporting forms were filed for these diversions on January 23, 2003. Tilcon is submitting this application to ensure coverage under the amnesty provisions of Public Act 02-102. Water used for operations at Tilcon's Griswold facility is recirculated in a closed-loop system that ensures that the water consumption and the resulting hydrologic and environmental effects are minimal.

The Application package includes a Permit Application Transmittal Form, a Permit Application for Programs Administered by the Inland Water Resource Division, and an appropriate application fee. Tilcon will submit a certified copy of the public notice as it appeared in the newspaper when it becomes available.

If you have any questions regarding the submitted documents, please contact me.

Very truly yours,



Diane C. Bellantoni

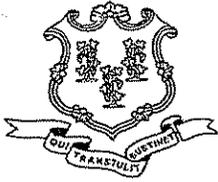
Enclosures

B O S T O N            H A R T F O R D            N E W   H A V E N

MURTHA CULLINA LLP

Central Permit Processing Unit  
July 1, 2003  
Page 2

cc: Denise Ruzicka, DEP  
Frank Lane, Tilcon Connecticut Inc.  
Ms. Megan Raymond, Triton Environmental  
Mark R. Sussman, Esq.

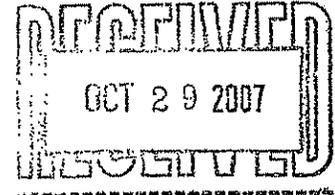


STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



October 26, 2007

Iriton Environmental, Inc  
385 Church Street, Suite 201  
Guilford, CT 07437



RE: Tilcon Connecticut Inc. - North Branford Quarry  
NPDES Renewal Application - Pilot Test at 2 MGD Discharge

Dear Mr. Marchesi.

I am in receipt of your letter to me dated September 20, 2007 regarding the above matter. I have forwarded your letter to Mr. Ken Major, Supervising Sanitary Engineer, in our Division, and also gave copies to Brian Golembiewski and Jeff Caiola of the Inland Water Resources Division (IWRD). Mr. Major and his staff will be your future contacts for the water discharge permit. As Mr. Major has not been involved with your application thus far, I will offer the following comments to your letter.

It is my understanding that the Division Directors of Water Permitting and Enforcement Division and the Inland Water Resources Division are in agreement that the Diversion Permit and the Discharge Permit should be processed concurrently, and that this has been previously communicated to your client. I am not aware of any change in this position.

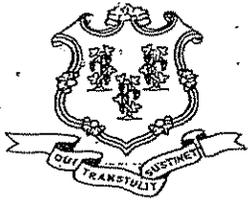
Your letter indicates that the August 23, 2007 pilot test showed the downstream channel did not accommodate flows of 2 MGD. Therefore, I would not recommend that the Department issue a discharge permit that included a Maximum Daily Flow limit of 2 MGD at this time. I suggest that additional pilot tests be performed to demonstrate what maximum daily flow and maximum instantaneous flow would be acceptable. Once those flows are determined, they can be incorporated into the draft permit.

Finally, given the expressed desire to have the permit issued expeditiously, I suggest that the additional tests be performed at your earliest convenience, with the oversight of IWRD staff.

Sincerely,

Melissa J. Blais, Supervising Sanitary Engineer  
Water Permitting and Enforcement Division  
Materials Management and Compliance Assurance Bureau

cc: Ken Major, DEP/WPED  
Brian Golembiewski, DEP/IWRD  
Jeff Caiola, DEP/IWRD  
Frank Lane, Tilcon Connecticut Inc.  
Gary Wall, Tilcon Connecticut Inc.

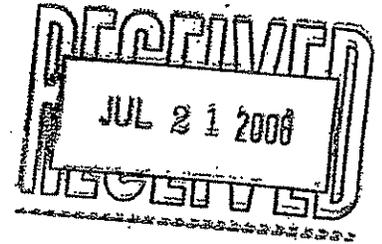


STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
REQUEST FOR INFORMATION



July 18, 2006

Frank T. Lane  
Director of Real Estate & Environmental Compliance  
Tilcon Connecticut Inc.  
P.O. Box 1357  
New Britain, CT 06050



Re: Application Nos.: DIV-200301939, DIV-200301941, DIV-200301944,  
DIV-200301961, DIV-200301965 & DIV-20031966  
Water Supply for Sand and Gravel Processing Operations  
Groton, Plainfield/Killingly, Wallingford/Durham, Montville, North Branford &  
Griswold, CT

Dear Mr. Lane:

Staff of the Inland Water Resources Division have completed a review of your applications for a water diversion permit and has found that they do not include a site plan which details the overall proposed limits of earthwork, including but not limited to, excavation of sand and gravel deposits, construction of roadways, soil stabilization measures and wetland/watercourse and associated buffer areas, at the identified project sites for the duration of the requested permits. Since the authorization of the proposed water supply systems will facilitate the continued mining activities and earth product processing at the project sites, Division staff need the aforementioned site development plans to fully assess the long-term effects of the proposed diversion on inland wetlands and watercourses, fish and wildlife and water quality.

Please be aware, that pursuant to Connecticut General Statutes Section 22a-373(b), the Department, in making a decision on the applications, must evaluate the effect of the proposed diversion on wetland habitats and on existing water conditions, with due regard to watershed characterization, groundwater availability potential, evapotranspiration conditions and water quality. Further, pursuant to the Regulation of Connecticut State Agencies Section 22a-377(c)(1), the applicant must demonstrate that the proposed diversions are consistent with the standards, criteria, policies and water quality classifications for ground and surface water adopted and amended under section 22a-426 of the General Statutes. Based on these statutes and regulations, the Department must find that the proposed diversions are consistent with the State's goal of restoring and maintaining the chemical, physical, and biological integrity of Connecticut surface waters, and wherever attainable, providing for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water.

Therefore, the development plans for the project sites must include the following components:

- The location and extent of inland wetland and watercourses, endangered, threatened and special species habitats; and significant natural communities;
- The location and extent of buffer areas provided to protect inland wetland and watercourses, endangered, threatened and special species habitats; and significant natural communities;
- Adequate erosion and sedimentation controls, consistent with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control; for all phases of development;
- Restoration and Enhancements of existing ponds, wetlands and watercourses utilized for sand and gravel processing to maximize wetland functions and values;
- Adequate stormwater control measures, consistent with the 2004 Connecticut Stormwater Quality Manual; for all phases of development and
- Final stabilization measures for the completed site development.

The requested overall site development plans must be submitted to the department within sixty (60) days of the date of this request. Please be aware, however, that the department may have additional questions regarding your proposals based on its review of the new information.

Should you have any questions or would you like to meet with the department's staff to discuss this matter, please call Brian Golembiewski at (860) 424-3019. Correspondence should be directed to Mr. Golembiewski at the Inland Water Resources Division.

Sincerely,



Denise Ruzicka  
Director  
Inland Water Resources Division

cc: Diane C. Bellantoni, Murtha Cullina LLP, City Place 1, 185 Asylum Street, Hartford, CT  
06103-3469  
Triton Environmental Inc., 741 Boston Post Road, Suite 101, Guilford, CT 06437 ✓



**SHIPMAN & GOODWIN<sup>LLP</sup>**  
COUNSELORS AT LAW

Timothy S. Hollister  
Phone: (860) 251-5601  
Fax: (860) 251-5318  
thollister@goodwin.com

March 28, 2007

Ms. Denise Ruzicka  
Department of Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

Mr. Brian Golembiewski  
State of Connecticut  
Department of Environmental Protection  
79 Elm Street  
Hartford, CT 06106-5127

Re: Water Diversion Permit Applications of Tilcon Connecticut, Inc., Application Nos. DIV-200301939; DIV-200301941; DIV-200301944; DIV-200301961; DIV-200301965; and DIV-20031966: Scope of DEP Jurisdiction in Consideration of Water Diversion Permit Applications for Tilcon's Facilities in Plainfield/Killingly, Wallingford/Durham, Montville, North Branford, and Griswold

Dear Ms. Ruzicka and Mr. Golembiewski:

We represent Tilcon Connecticut, Inc. ("Tilcon"). As you know, Tilcon operates earth materials extraction facilities in the Towns of Groton, Plainfield/Killingly, Wallingford/Durham, Montville, North Branford, and Griswold.

In 2003, Tilcon submitted applications for a water diversion permit at each of its facilities, under the amnesty program, in order to validate previously-established operations. In 2006, the Inland Water Resources Division responded to these applications by requesting a significant amount of additional information. In doing so, the Division took an expansive view of its jurisdiction, with which Tilcon substantially disagrees. This disagreement requires resolution in order for Tilcon to file responsive additional information and for the permits to be issued. Tilcon has asked us to evaluate the Division's position regarding its jurisdiction and the additional information, and to articulate the basis for Tilcon's narrower view, which we have done in this letter.

Ms. Denise Ruzicka  
Mr. Brian Golembiewski  
March 28, 2007  
Page 2

In summary, the water diversion statutes and regulations require submission of comprehensive environmental information about those portions of Tilcon properties that are, or are reasonably expected to be, affected by an actual diversion of water, the "area of influence" of such diversion, or in the case of a quarry where the stormwater collection exceeds 100 acres, the downstream impact. The Division's contrary view, as expressed to Tilcon during a meeting in 2006 and in a July 18, 2006 letter, is that Tilcon must submit comprehensive information regarding the entire property on which Tilcon conducts any extraction that includes a regulated diversion, even if the physical water diversion and its area of influence constitutes a much smaller percentage of the overall property. For example, with regard to Tilcon's North Branford property, hydrogeologic and hydraulic investigations reveal an area of influence of the regulated diversions of approximately 1.57 acres, but the total property is over 600 acres. In Montville, the property is 127 acres, but the diversion's area of influence is only 2.14 acres. Yet, the Division has informed Tilcon that, with respect to each facility, in order to obtain a water diversion permit, it must prepare and submit comprehensive environmental information for the entire acreage, even though most of it has no hydraulic or other connection to the diversion itself. The Division's theory, apparently, is that because the diversion of water, however small and localized, facilitates or assists Tilcon's excavation and processing on the other areas of the property, the entirety falls within the Division's permitting jurisdiction.

We respectfully but vehemently disagree. The purpose of this letter is to explain why the water diversion statute and regulations do not support the Division's view of its jurisdiction.

At this time, the Division has granted Tilcon an extension for its submission of additional information to May 18, 2007. We are raising this jurisdictional issue before the deadline in an effort to resolve the issue and submit in a timely manner additional information that the Division considers acceptable. To this end, simultaneously with this letter, Tilcon and its environmental consultants are preparing in good faith, and will submit under separate cover by the deadline, all of the additional information requested by the Division in 2006 with respect to the area of influence or discharge of each diversion, as the applicant has calculated it.

After reviewing briefly each facility, we will explain why the water diversion statute and regulations grant the Division jurisdiction over the diversion itself, area of influence, or discharge but not the entire earth materials operation or the entire property.

#### **Tilcon's Facilities And Diversion Applications**

In 2003, Tilcon submitted applications for water diversion permits at six sites in Connecticut. Since that time, the Groton plant has eliminated the asphalt plant wet scrubber and its corresponding water diversion, greatly reducing the total volume withdrawal. An individual

diversion permit is no longer required for this site's diversion, and Tilcon will be submitting shortly a request for a general permit under Conn. Gen. Stat. § 22a-378a.

The five other sites are listed in the table on the following pages. In each case, water is withdrawn from on-site detention basins as wash water for stone sand processing or for non-contact cooling water. The "area of influence" calculations, where applicable, have been conducted in the past several months by Tilcon's consultant, Triton Environmental of Guilford. In all but one instance, the area of influence is limited to the area within the basin. At the Wauregan plant, the area of influence of Diversion 1 extends approximately 30 feet from the edge of the basin. Thus, in each case, the impact of the diversion is many times smaller than the entire property. Based on these calculations, the Division's 2006 request for additional information on the entire property is not supportable.

Facility Location	On-Site Activities	Total Property	Purpose of Diversion(s)	Physical "Area of Influence" of Diversion
Griswold	Mining and processing of sand and gravel	135 acres	Diversion 1: wash aggregate and as non-contact cooling water  Diversion 2: dust suppression	Diversion 1: limited to area of basins (0.63 acres)  Diversion 2: limited to area of basins (0.00016 acres)  <b>Total: 0.63 acres</b>
Wauregan	Site contains rock crushers, aggregate washing plant, and asphalt batch plant	676.5 acres	Diversion 1: supply aggregate wash plant  Diversion 2: dust suppression  Diversions 3 and 4: supply a scale house and laboratory; the garage building, and a concrete pipe manufacturer	Diversion 1: limited to area of basins (20.52 acres)  Diversion 2: 30' from edge of basin after 180 days (33.45 acres)  Diversion 3: n/a (bedrock well)  Diversion 4: <i>de minimis</i> drawdown after 180 days  <b>Total: 53.97 acres</b>

Facility Location	On-Site Activities	Total Property	Purpose of Diversion(s)	Physical "Area of Influence" of Diversion
North Branford	Quarrying, processing, and production of stone sand	600+ acres	Diversion 1: wash water for stone-sand plant  Diversion 2: supplement wash water for stone-sand plant  Diversion 3: non-contact cooling water  Diversion 4: quarry dewatering	N/A - Diversion 1: basin above water table; make up water from Diversion 2  Diversion 2: limited to area of basins (1.57 acres)  Diversion 3: n/a (bedrock well)  Diversion 4: n/a (no groundwater drawdown as water is intercepted from bedrock floor of quarry)  <b>Total: 1.57 acres</b>
Wallingford	Quarrying, aggregate processing, production of asphalt products, and production of stone sand	400 acres	Diversion 1: wash water for stone sand plant  Diversion 2: quarry storm-water pump  Diversion 3: non-contact cooling well	Diversion 1: limited to area of basins (3.22 acres)  Diversion 2: n/a (no groundwater drawdown as water is intercepted from bedrock floor of quarry)  Diversion 3: n/a (bedrock well)  <b>Total: 3.22 acres</b>
Montville	Site contains rock crushers, aggregate washing plant, and asphalt batch plant	127 acres	Diversion 1: excavation dewatering  Diversion 2: wash water for aggregate processing and non-contact cooling water	Diversion 1: n/a (no groundwater drawdown as water is intercepted from bedrock floor)  Diversion 2: limited to area of basins (2.14 acres)  <b>Total: 2.14 acres</b>

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### **DEP's 2006 Request For Additional Information**

On July 18, 2006, the Division sent Tilcon a letter requesting, for each site, "a site plan which details the overall proposed limits of earthwork, including but not limited to, excavation of sand and gravel deposits, construction of roadways, soil stabilization measures and wetland/watercourse and associated buffer areas, at the identified project sites for the duration of the requested permits." Thus, the letter covered all business operations and environmental features of the site, whether or not related to the diversion and its area of influence. The letter further specified that the site plans must contain:

- the location and extent of inland wetland and watercourses, endangered, threatened and special species habitats, and significant natural communities;
- the location and extent of buffer areas provided to protect inland wetland and watercourses, endangered, threatened and special species habitats, and significant natural communities;
- erosion and sedimentation controls, consistent with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control, for all phases of development;
- restoration and enhancements of existing ponds, wetlands, and watercourses utilized for sand and gravel processing to maximize wetland functions and values;
- stormwater control measures, consistent with the 2004 Connecticut Stormwater Quality Manual, for all phases of development; and
- final stabilization measures.

Thus, the Division's request encompasses comprehensive assessments of the entire property, not just the diversions and their areas of influence. As explained below, this request far exceeds the scope of the DEP's jurisdiction when reviewing applications for water diversion permits.

## DEP's Jurisdiction Under The Water Diversion Policy Act

### 1. Text Of Water Diversion Statute And Regulations

The consistent and defining characteristic of the water diversion statutes and regulations is the reference to "the diversion" – the alteration or modification of the instantaneous flow of water. The Water Diversion Policy Act (the "Act") defines "diversion" as "any activity which causes, allows or results in the withdrawal from or the alteration, modification or diminution of the instantaneous flow of the waters of the state." Conn. Gen. Stat. § 22a-367(2). Under § 22a-373, the DEP Commissioner is directed to consider several factors regarding the effect "of the diversion" on the public water supply, flood-management, and fish and wildlife. Conn. Gen. Stat. § 22a-373. In part of an application for a permit, an applicant is required to furnish information about "[t]he effect of the proposed diversion on public water supplies, water quality, wastewater treatment needs, flood management, water-based recreation, wetland habitats, waste assimilation, agriculture, fish and wildlife and low flow requirements." Conn. Gen. Stat. § 22a-369(7). Subject to activities that are exempt or subject only to a general permit, Conn. Gen. Stat. §§ 22a-369 and 377 and Regs. Conn. State Agencies § 22a-377(c) require an applicant to submit several categories of information about the amount, location, purpose, and physical impacts of the "proposed diversion." Section 22a-371, regarding additional information, is not a free standing or limitless section, but an aid to the Department in making sure that it has the information about the diversion, not the business operation on the property or the property itself. Thus, the DEP's jurisdiction is defined by, and coterminous with, the diversion and its physical impact. Neither the statute nor the regulations permit the DEP to look beyond the hydrogeologic effect of a diversion.

The "effect" of a diversion that is a withdrawal is not a subjective determination, but a defined, calculable area based on stream flows and critical dry periods. Regs. Conn. State Agencies § 22a-377(c)-2(2) states:

For purposes of section 22a-369(7) of the general statutes, the effect of the proposed diversion shall be evaluated using stream flows, where applicable, with the following recurrence intervals: (A) for low flows: seven-day ten-year, seven-day two-year, thirty-day two-year, and annual average flows; (B) for high flows: peak flows corresponding to the probable maximum flood, half probable maximum flood, and 500-year, 100-year, 50-year, 10-year, and 2-year flood events and average annual flows; and (C) a critical dry period with a 1 in 100 year chance of occurrence. For purposes of this subsection and section 22a-369 of the

general statutes, "drought" and "critical dry period" shall include low flows or water shortages whether resulting from meteorological conditions or human use.

This regulation thus requires applicants to measure a diversion's "area of influence."

## 2. Legislative History

Defining the Division's jurisdiction based on a diversion and its area of influence is also consistent with the Act's legislative history. The Act is primarily concerned with ensuring an adequate supply of clean drinking water. The legislative history reveals that the Act was motivated in large part by the Metropolitan District Commission's controversial proposal in 1981 to divert 19 billion gallons of water per year from the west branch of the Farmington River. E.g., 25 S. Proc., Pt. 13, 1982 Sess., p. 4277. The Act was intended to establish "a clearly defined application procedure" for diversions in order to preserve a supply of clean drinking water. 25 H. Proc., Pt. 19, 1982 Sess. p.6240.

## 3. Administrative Agency Limited Jurisdiction

Administrative agencies may only exercise those powers granted by the legislature. They are "tribunals of limited jurisdiction and their jurisdiction is dependent entirely upon the statutes vesting them with power and they cannot confer jurisdiction upon themselves." Fullerton v. Administrator, 280 Conn. 745, 755 (2006). The Connecticut Supreme Court has recognized "that it is clear that an administrative body must act strictly within its statutory authority, within constitutional limitations and in a lawful manner. It cannot modify, abridge or otherwise change the statutory provisions under which it acquires authority unless the statutes expressly grant it that power." Id. The legislature clearly did not intend the Act as a means to regulate all business operations on any property on which a regulated diversion exists, or all environmental impacts of a business that happens to rely on a regulated diversion, but rather to focus on the diversion itself and its impacts.

## 4. Separation Of Water Diversion From Other DEP/Environmental Programs And Functions

Environmental regulation only works when the legislature assigns clear and separate jurisdictional areas of responsibility to state and local agencies, and those agencies adhere to their assigned duties. In this case, the Division has a specific, assigned role within the DEP.

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Other departments within the DEP, as well as local agencies, are statutorily delegated the authority to oversee other aspects of Tilcon's operations, including: water quality (Conn. Gen. Stat §§ 22a-416 et seq.); aquifer protection (Conn. Gen. Stat. §§ 22a-354a et seq.); impacts to inland wetlands (Conn. Gen. Stat. §§ 22a-38 et seq.); hazardous waste (Conn. Gen. Stat. § 11a-114); noise pollution (Conn. Gen. Stat. §§ 22a-67 et seq.); and wildlife protection (Conn. Gen. Stat. §§ 26-1 et seq.). To reach beyond the calculated impact of a diversion not only goes beyond the authority granted to the Division under the Act, but actively interferes with the assignment of responsibility for environmental regulation that the legislature has established. Just as the Inland Wetlands and Watercourses Act does not turn local inland wetlands commissions into "little environmental protection agencies," AvalonBay Communities, Inc. v. Inland Wetlands Commission, 266 Conn. 150, 160-61 (2003), the Water Diversion Policy Act does not transform the Division into a wetlands commission, a hazardous waste bureau, or an agency of the U.S. Environmental Protection Agency.

#### 5. Water Diversions Do Not "Facilitate" All Other On-Site Activities

The Division's position that it is entitled to request comprehensive environmental, engineering and planning information about an entire site because a water diversion facilitates or allows other site activities to occur is unsupported by the statute, regulations, and common sense. First, if the statute and regulations intended such a broad reach, then §§ 22a-369 or 22a-371 would have empowered the Division to request information about "all activity on the site, whether related to the diversion or not," or words to this effect. But the text is strictly limited to the diversion of water and its physical impacts. Second, if this logic were employed elsewhere, then every permit application of every kind would encompass the entire business operation and the entire property. Without intending to be ridiculous, the Department of Motor Vehicles could request comprehensive environmental information about each Tilcon site, on the ground that Tilcon's drivers, by driving trucks onto and off of the site and participating in the sand and gravel operations, which utilize water diversions, cause environmental impacts that DMV should regulate.

#### 6. Relationship To Other Permits/NPDES

Finally, there is no basis in the statutes or regulations to make the pending water diversion permit applications dependent on renewal of other permits. Indeed, the statutes and regulations in some cases grant exemptions from diversion permits where other, similar permits, such as an NPDES permit, have already been issued. As you know, Tilcon's North Branford

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facility has an NPDES permit that is up for renewal. We respectfully submit that that permit stands on its own, to be evaluated under federal Clean Water Act standards which have different criteria and purposes from the State Water Diversion Act.

### Conclusion

Tilcon respectfully submits that the Division's July 2006 position and request for environmental evaluations of the entire site of each diversion application impermissibly expands the scope of its jurisdiction under the Connecticut Water Diversion Policy Act. The Division's evaluation should be limited to the diversion and its area of influence or downstream impact. Tilcon is ready, willing, and able to submit comprehensive information about its diversions, the area of influence, and downstream impacts, but no more.

Tilcon requests guidance as promptly as possible so that it can submit an agreeable scope of information. Thank you.

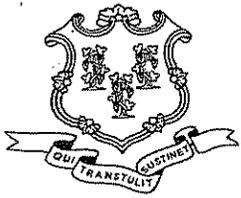
Very truly yours,



Timothy S. Hollister

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459842

c: Rick Mergens, President, Tilcon Connecticut, Inc.  
Gary Wall, Vice President, Tilcon Connecticut, Inc.  
Frank T. Lane, Director of Real Estate and Environmental Compliance,  
Tilcon Connecticut, Inc.  
Christopher E. Marchesi, Triton Environmental, Inc.



STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



October 21, 2008

Timothy S. Hollister  
Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103-1919

Re: Scope of DEP Jurisdiction in Consideration of Water Diversion Permit Applications --  
Tilcon Connecticut Inc. Application Nos.:  
DIV-200301941 (Wauregan facility at 190 All Hallows Rd.);  
DIV-200301944 (Wallingford facility at 1605 Durham Rd.);  
DIV-200301961 (Montville facility at 53 Caroline Rd.);  
DIV-200301965 (North Branford facility at 1 Forest Rd.); and  
DIV-200301966 (Griswold facility at 232 Rixtown Rd.)

Dear Mr. Hollister:

This letter substantively responds to your March 28, 2007 letter seeking guidance on and subsequent July 23, 2008 letter requesting justification of the Department of Environmental Protection's (the "DEP" or the "Department") jurisdiction with respect to Tilcon's pending water diversion permit applications. This response also addresses your July 23, 2008 request for a list of the additional information the Department needs to complete its review of Tilcon's Wauregan, Wallingford, Montville, North Branford and Griswold facilities.

**Scope of DEP Jurisdiction**

As we discussed at the July 17, 2008 meeting, the Department respectfully disagrees with your interpretation of the Department's jurisdiction under the Connecticut Water Diversion Policy Act. For example, you contend that DEP is limited to review 1.57 acres of the 600+ acres of the North Branford site because DEP is restricted to the proposed diversion's "area of influence." Your reliance on a term that is not in the statute or regulations and the limited scope of your interpretation is unsupported by the plain reading of the Act and its regulations or the legislative history of the Act. *See* Conn. Gen. Stat. § 1-2z (legislative mandate to consider the plain meaning of a statute's text and to consider extratextual evidence only when the statute's text is not plain and is ambiguous). Moreover, such a limited interpretation does nothing to further this Act's policies or DEP's mandate to cohesively manage and protect our natural resources. *See id.* at §§ 22a-366 and 22a-5.

**1. Statutory and Regulatory Interpretation**

A diversion permit is required for any person "commenc[ing] to divert water from the waters of the state[.]" *Id.* at § 22a-368(b); *see also* Regs., Conn State Agencies § 22a-377(c)-1(a) (provides examples of, but does not limit, diversions regulated by DEP). DEP's jurisdiction

is triggered by the definition of diversion: “**any activity** which causes, allows or results in the withdrawal from or the alteration, modification or diminution of the instantaneous flow of the waters of the state[.]” Conn. Gen. Stat. § 22a-367(2) (emphasis added); *see also id.* at § 22a-367(4) and (9) (statutory terms “instantaneous flow” and “waters” are similarly broad). Here, the Department’s jurisdiction will be triggered because **Tilcon’s activity** at each of the five sites will result in the withdrawal from the instantaneous flow of the waters of the state because this activity includes the withdrawal of water from on-site basins.

Once an applicant’s activity triggers the diversion definition, the Department may request any information that “the commissioner deems necessary to fulfill the purposes of [the Act], including but not limited to[] . . . [t]he effect of the proposed diversion on public water supplies, water quality, wastewater treatment needs, flood management, water-based recreation, wetland habitats, waste assimilation, agriculture, fish and wildlife and low flow requirements[.]” *Id.* at § 22a-369 (emphasis added); *see also id.* at § 22a-373(b) and (c); Regs., Conn. State Agencies § 22a-377(c)-2(f). Therefore, the legislature has given the Department broad authority, which is not restricted to the “area of influence” at each of the five Tilcon facilities. Further, the Department’s interpretation and application of its jurisdiction have been consistent since the Act’s 1986 inception. *See generally Conn. State Med. Soc’y v. Conn. Bd. of Examiners in Podiatry*, 208 Conn. 709, 719 (1988) (deference given to a state agency’s interpretation of a statute “when the agency has consistently followed its construction over a long period of time, the statutory language is ambiguous, and the agency’s interpretation is reasonable”). The Department is seeking information that Tilcon’s activity has or will have on, for example, wetlands or wildlife potentially affected by Tilcon’s activity at each of its five sites. *See also* Regs., Conn. State Agencies § 22a-377(c)-2(i)(7) (“In constructing or maintaining any structure or facility or conducting any activity authorized herein, the permittee may not cause pollution, impairment, or destruction of the air, water, or other natural resources of this State.”). This information is the same information the Department has requested from similar applicants when evaluating whether an application is complete and whether to grant or deny a permit.

To summarize:

- (1) Your client’s activity at all five sites triggers the Department’s jurisdiction because the site activity, which includes the withdrawal of water from on-site basins, will result in the withdrawal from the instantaneous flow of the waters of the state.
- (2) Once this jurisdiction is triggered, the Department’s scope of review when determining whether your client’s application is complete is broad as the Department is statutorily authorized to review, among other factors, the effects your client’s activity may have on wetlands or wildlife.

## 2. Legislative History

The Department’s broad jurisdiction is amply supported by the legislative history and shows how the General Assembly and the public were aware of the breadth of this Act, its requirements and its potential consequences. The definition of “diversion” and, thus, DEP’s jurisdictional trigger was broad and was raised by a number of commenters:

The definition of diversion is so broad that it would catch just an innumerable, incalculable number of water utility operations in the state. . . . It seems to me to be a very risky business for the legislature to entrust such broad discretion to [the DEP Commissioner].

- Charles Mokrisku, attorney representing the Connecticut Water Works Association (March 11, 1982 ), Conn. Joint Standing Committee Hearings, Environment, Pt. 4, 1982 Sess., p. 836.

The definition of diversion is extremely broad.

- Written testimony from Town of Waterford, Water Pollution Control Authority, Conn. Joint Standing Committee Hearings, supra, p. 921.

[This Act] is by definition more sweeping in its jurisdiction than the inland wetlands act, the tidal wetlands act, and the clean water act put together. The act defines water so broadly as to include all surface and groundwater. It defines diversion so broadly so as to include any activity resulting in any alteration of the flow of water. For jurisdictional purposes the act encompasses all of the matters included in the tidal wetlands, inland wetlands, and the clean water act. . . . In short, everyone who diverts the flow of water is subject to regulation by the D.E.P.

- Written testimony from Phyllis Francklyn, Secretary of the Connecticut Conservation Association, Inc., Conn. Joint Standing Committee Hearings, supra, p. 899.

[T]he legislation is virtually limitless in the scope of the authority it gives one State official – the Commission of the Department of Environmental Protection – in determining whether a diversion should be permitted.

- Written testimony from MDC Chairman Donald J. Vigneau, Conn. Joint Standing Committee Hearings, supra, p. 907.

The General Assembly, in response to such comments, limited DEP's broad jurisdictional trigger by providing specific exemptions in the Act and also giving the Department the authority to adopt regulations to exempt additional classes of diversions (*see* Conn. Gen. Stat. § 22a-377(b)):

The definition of diversion is broad and this has caused people some concern. However, we do have some specific exemptions from all the provisions of the bill and I would like to touch on those very briefly because I think they answer some of the concerns that people have had.

- Rep. Bertinuson (57th) (April 30, 1982), 25 H.R. Proc., Pt. 19, 1982 Sess., p. 6239.

And once DEP's jurisdiction to review a diversion activity is triggered, the Department's scope of review is broad and includes examining the possible environmental impacts of the

diversion activity (which, in this case, would be Tilcon's activity at all five sites):

Diversions made as a result of policy decisions without regard to potential environmental impact, cannot be allowed. No project should be undertaken until it has been proved to be prudent, logical and environmentally sound.

- Edward J. Smith, Farmington River Anglers Association (March 11, 1982), Conn. Joint Standing Committee Hearings, Environment, Pt. 4, 1982 Sess., p. 883

It's important as those [diversion] permits are made, that they are not made . . . in isolation from a larger consideration of public health needs and the environmental needs and of the economic needs of an entire region. . . . [The bill on diversion is] setting up for the first time a process that guarantees that all of the diverse interests will be at least examined before action is taken . . . .

- Senator Curry (May 4, 1982), 25 S. Proc., Pt. 13, 1982 Sess., pp. 4281, 4282.

[The bill] fills a gapping [sic] hole in terms of guaranteeing that there is a proper environmental oversight of diversion projects in the State and that there will be a proper balancing of environmental concerns with of course, the need for water supply.

- Senator Leonhardt, supra, p. 4284.

### **DEP Discretion**

While DEP has broad jurisdiction, scope and authority in administering the Water Diversion Policy Act, DEP has shown discretion and has been reasonable in undertaking its responsibilities. In the case of Tilcon's five sites, the Department proposed a reasonable approach at our July 17, 2008 meeting with you: that Tilcon submit the requested information for areas where Tilcon's activities will be undertaken during the duration of the permit. DEP is willing to consider an area corresponding to the requested length of permit up to 25 years. Tilcon can choose a more narrow area and accept a shorter permit duration or give us information for the entire area anticipated to be mined over a 25 year period. The approach proposed to resolve Tilcon's permits has been successfully utilized to permit a number of other extraction operations.

### **Additional Information Requested**

1. All five water diversion permit applications require the submittal of revised site plans that incorporate the following:
  - The delineated boundaries of inland wetlands and watercourses for the existing limits of the processing and excavation areas and any areas proposed to be disturbed for the duration of the permit;

- The location of the FEMA floodplain and floodway and the elevation contour of the base flood based on information provided by the National Flood Insurance Program (NFIP);
  - Existing topography within the current limits of the processing and excavation areas and proposed topography for any areas of expansion for the duration of the permit;
  - The location and extent of buffer areas provided to protect inland wetlands and watercourses. The Department recommends a minimum wetland buffer of 100-feet;
  - An erosion and sedimentation control plan, consistent with the 2002 Connecticut Guidelines for Soil Erosion and Sediment Control, for the existing disturbed areas and any areas proposed to be disturbed for the duration of the permit; and
  - Adequate stormwater control measures, consistent with the 2004 Connecticut Stormwater Quality Manual; for the existing disturbed areas and any areas proposed to be disturbed for the duration of the permit.
2. All five water diversion permit applications require the submittal of a hydraulic and hydrologic report that demonstrates that:
- the hydraulic aspects of the project sites have been properly designed within accepted criteria, provided for in the statutes, regulations, and engineering practice;
  - the project sites, specifically the North Branford and Wallingford quarries, do not impede or modify drainage patterns, flood flows, flood storage, or low flows in such a way as to cause adverse impacts to other properties or to the environment; and
  - the project sites are constructed in such a way as to protect other properties and the environment from adverse pollution impacts.
3. If any expansion of the existing processing and/or excavation areas, proposed for the duration of the permit, will encroach into the delineated inland wetlands and watercourses, the following reports will be required:
- Aquatic and vegetation habitat surveys and assessments of the inland wetlands and watercourses to be impacted;
  - A functions and values assessment of the inland wetlands and watercourses to be impacted. The Department recommends the use of the US Army Corps of Engineers New England Division methodology available at this Web link:  
<http://www.nae.usace.army.mil/reg/hwsplmnt.pdf>;
  - An assessment of the impacts to the functions and values of the affected inland wetland and watercourses; and
  - An inland wetland and watercourses mitigation plan which proposes measures to offset assessed impacts.

At the northern portion of the Griswold Plant, the current and proposed excavations occur within an area that the Department's Natural Diversity Data Base has identified as preferred habitat for two State Species of Special Concern, the Wood Turtle (*Glyptemys insculpta*) and Eastern Box Turtle (*Terrapene carolina carolina*). To address this issue and potential impact, a qualified herpetologist needs to conduct field surveys to determine the presence of Wood Turtles and Eastern Box Turtles within the proposed limits of disturbance, for the duration of the permit.

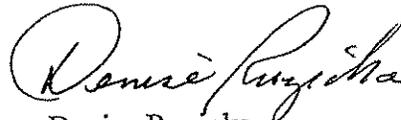
If either species is determined to be present within the proposed impact area, the qualified herpetologists shall develop operational procedures and a mitigation plan for the site so that direct impacts to any individuals are minimized and that there is no net loss of the species' preferred habitat.

At the North Branford Tilcon Site, the following additional information is necessary to complete the application:

1. A wetland mitigation plan to offset the approximately 12 acres of inland wetlands that have been destroyed by the post-1990 expansion of the quarry;
2. A channel and crossing improvements plan, which provides for safe conveyance of the proposed 2.0 mgd quarry discharge and a 25-year storm flow from the quarry outlet downstream to Cedar Lake; and
3. A plan to treat the quarry discharge to be consistent with the EPA approved TMDL for Cedar and Linsley Ponds, which limits the quarry discharge to a phosphorus load of 28kg/year or 2.33 kg/month.

Please get back to us within 90 days as to your schedule for supplying this information. While DEP is prepared to show some flexibility, we are actively working to wrap up all diversion applications pending as a result of PA 02-102.

Very truly yours,



Denise Ruzicka

Director

Inland Water Resources Division