

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : ***ORDER NO. 1674***

TILCON CONNECTICUT, INC : ***MAY 28, 2003***

FINAL DECISION

On May 22, 2003, the respondent in the above referenced matter, Tilcon Connecticut, Inc., and the Department of Environmental Protection filed a *Joint Motion for Final Decision Issuing Consent Order No. 1674 As Revised*. On that same date, the intervenor, M.A.R.C.H., LLC withdrew its pending objections to Consent Order No. 1674. The parties have therefore agreed to resolve the appeal of this matter by issuance of the attached Consent Order No. 1674. The parties have confirmed their review, understanding and assent to this order. The joint motion is therefore granted and by my signature, I hereby issue this Consent Order as the Final Decision in this matter.

May 28, 2003
Date

/s/ Jean F. Dellamarggio
Jean F. Dellamarggio, Hearing Officer

cc: Mark Sussman, Esq.
Richard F. Webb, Esq.
Walter Twachtman, Esq.
Patrick Bowe
Robert Girard

STATE OF CONNECTICUT) Consent Order No. 1674
)
VS.)
)
TILCON CONNECTICUT INC.)

CONSENT ORDER

- A. With the agreement of Tilcon Connecticut Inc. (“Respondent”), the Commissioner of Environmental Protection (“Commissioner”) finds the following:
1. Respondent is a corporation that owns and operates a six-ton Hot-Mix Asphalt Batch Plant (“Asphalt Batch Plant”) at 569 North Main Street, (“facility”) in Manchester, Connecticut.
 2. The Balf Company purchased the property and a pre-existing asphalt plant at the site on August 15, 1967. Respondent took over the operational responsibility of the Asphalt Batch Plant on March 1, 2001 through a lease agreement with the property owner, The Balf Company.
 3. On February 18, 2002, the Department of Environmental Protection (“DEP”) issued Administrative Order No. 1674 to the Respondent requiring that: “Respondent shall immediately cease operation of the Asphalt Batch Plant at the facility. Respondent shall not resume operation of the Asphalt Batch Plant, unless and until a permit to operate is issued by the DEP.” On March 18, 2002, the Respondent appealed the Order and filed an “Answer and Request for Hearing in response to Order No. 1674” with the Department of Environmental Protection’s Office of Adjudications. This Consent Order resolves the issues raised by Administrative Order No. 1674.
 4. On or about July 30, 1987, pursuant to The Regulations of Connecticut State Agencies (“R.C.S.A.”), the Balf Company applied to the DEP for a permit to modify the existing asphalt plant by replacing it with another asphalt plant at the exact location of the prior plant. The Asphalt Batch Plant is subject to the conditions of Permit No. 097-0020, which was issued to the Balf Company on October 24, 1990. This permit was subsequently transferred to the Respondent on April 16, 2001.

5. The final permit to operate establishes federally enforceable limitations that restrict potential and allowable emissions from the plant. These limitations include restricting asphalt production to 400 tons per hour (“tph”). The potential and allowable emissions established by the permit were based on the production of asphalt using the Asphalt Batch Plant’s design hourly capacity of 400 tons of asphalt produced per hour, ten hours of operation per day, and 1600 hours of operation per year.
6. Permit No. 097-0020 also contains the following operating conditions for the Asphalt Batch Plant:
 - (a) Operating constraints: ten (10) hours per day, 1600 hours per year;
 - (b) Maximum firing rate: 600 gallons per hour (85.2 MM BTU/hr);
 - (c) Type of Fuel: No. 2 Fuel Oil;
 - (d) Distance to Nearest Property Line: 800 feet;
 - (e) Control Equipment: Primary Collector: Cyclone
Secondary Collector: ACS/AEDCO Baghouse
7. On September 7, 2001, Mark Potash, an Air Pollution Control Engineer from the Bureau of Air Management of the Department of Environmental Protection (“DEP”), conducted a site inspection of the facility.
8. According to information provided to Mr. Potash during the site inspection of September 7, 2001, the DEP concluded that the Asphalt Batch Plant had been operated in violation of several conditions of Permit No. 097-0020.
 - (a) The daily permitted operating hours of ten (10) hours per day had been exceeded on eight (8) days in year 2000 and on five (5) days in year 2001.
 - (b) Natural gas was being used as a fuel instead of the permitted No. 2 oil.
 - (c) Permit No. 097-0020, lists the nearest property-line distance from the Asphalt Batch Plant stack as 800 feet. According to a Town of Manchester property map, the nearest property line distance from the stack is estimated to be 275 feet.
9. Respondent provided information through the Adjudicatory process that indicates that natural gas was first combusted by the Asphalt Batch Plant on November 8, 1991.
10. The Asphalt Batch Plant exceeded the ten hours per day limit a total of thirteen times in 2000 and 2001. These exceedances resulted in less than twenty-two hours of unauthorized operation.

11. Through the Adjudicatory process, Respondent has documented through facility operating records dating back to 1995 that the Asphalt Batch Plant never exceeded its permitted hourly asphalt production limitation of 400 tons per hour.
12. By virtue of Paragraphs A.8 through A.10, Respondent violated the daily operating hours condition and the fuel type condition set forth in Permit No. 097-0020.
13. Pursuant to §22a-174-29(b)(2) of the R.C.S.A., no person shall cause or permit the emission of any hazardous air pollutant from any stationary source or modification for which the person applies for and obtains a permit on or after July 1, 1986 at a concentration at the discharge point in excess of the Maximum Allowable Stack Concentration ("MASC") unless the source is in compliance with R.C.S.A. §22a-174-29(d)(3).
14. The operating permit for this facility was issued on October 24, 1990.
15. §22a-174-29(d)(3) of the R.C.S.A. states: If the "source" does not comply with the "MASC" and there is an applicable Ambient Air Quality Standard ("AAQS"), then the owner or "operator" shall: (A) install and use "Best Available Control Technology" for the applicable "hazardous air pollutant"; and (B) not cause an impact in excess of the applicable "AAQS" if such impact is significant as determined in subsection 22a-174-3(c).
16. The DEP has not issued an applicable "AAQS" for formaldehyde or quinone. Therefore, §22a-174-29(d)(3) of the R.C.S.A. does not apply.
17. By virtue of the above, the facility is subject to §22a-174-29(b)(2) of the R.C.S.A.
18. Permit No. 097-0020 does not contain an emission limit for quinone. However, the Asphalt Batch Plant is subject to the MASC for all hazardous air pollutants as set forth in §22a-174-29 of the R.C.S.A. Permit No. 097-0020 contains an emission limit of 4171.5 $\mu\text{g}/\text{m}^3$ for formaldehyde. A DEP approved stack test conducted in 1990, while the Asphalt Batch Plant was operating using fuel oil and the original burner demonstrated that the Asphalt Batch Plant emitted formaldehyde in the range of 26-28 $\mu\text{g}/\text{m}^3$.
19. Applying the correct distance to the property line (275 feet), and the parameters in the Permit, the Commissioner has determined that the formaldehyde MASC is 1309.6 $\mu\text{g}/\text{m}^3$ and the quinone MASC is 873.1 $\mu\text{g}/\text{m}^3$.

20. Using the United States Environmental Protection Agency's AP-42 emissions factors, as revised in December of 2000, and the correct distance to the property line, the Commissioner has determined through calculations that there are projected emissions of formaldehyde and quinone from the Asphalt Batch Plant at a concentration at the discharge point in excess of the MASC, as established by §22a-174-29 of the R.C.S.A., Table 29-2 and Table 29-3, respectively.
21. Based on parameters stated in the operating permit and the correct property-line distance of 275 feet, the Commissioner calculated the projected actual stack concentration ("ASC") of formaldehyde to be 2469.9 $\mu\text{g}/\text{m}^3$ and the projected ASC of quinone to be 901.2 $\mu\text{g}/\text{m}^3$.
22. By virtue of paragraphs A.13 through A.21, Respondent may be in violation of §22a-174-29 of the R.C.S.A.
23. On October 5, 2001, the DEP issued Notice of Violation No. 14764 to the Respondent for having calculated projected exceedances of the MASC for formaldehyde as derived from the Hazard Limiting Value listed in Table 29-2, §22a-174-29(b)(2) of the R.C.S.A.
24. Pursuant to §22a-174-29(e)(2)(C) of the R.C.S.A., testing to determine concentrations of hazardous air pollutants from the discharge point may be required if the source is subject to the requirements of R.C.S.A. §22a-174-29(b)(2).
25. Information provided to Mr. Potash during the September 7, 2001 inspection indicated that a replacement burner had been installed on April 7, 1993. This replacement burner was being operated on natural gas and No. 2 fuel oil and had a maximum rated design capacity of 135 million Btu/hr ("MM Btu/hr"), which corresponds to a firing rate greater than the permitted 600 gallons per hour, when operating on oil.
26. On October 5, 2001, the DEP issued Notice of Violation No. 14763 to the Respondent alleging that the Asphalt Batch Plant had been modified by replacing the burner on the 400 Ton per hour Asphalt Batch Plant without having applied for permits to construct and operate, pursuant to §22a-174-3 of the R.C.S.A. in effect at the time. In its reply to the NOV, the Respondent denied that the installation of the replacement burner constituted a modification requiring a permit under §22a-174-3 of the R.C.S.A.
27. Through the Adjudicatory process, Respondent has sufficiently demonstrated that the original burner installed in the plant at the time the Asphalt Batch Plant was permitted, was a Genco Astraflame Model AF-75. The maximum rated design capacity of this burner was 125 MM Btu/hr.

28. Information provided by the Respondent to the DEP through the Adjudicatory process has demonstrated that the 1993 replacement burner's maximum rated design capacity of 135 MM Btu/hr could not have been reached due to the physical restriction of the exhaust fan configuration that was in place prior to July, 2001.
29. The exhaust fan that was installed in the Asphalt Batch Plant in 1987 is a single speed fan, Twin City Fan & Blower, Model Number 542-BC-SW. Through the Adjudicatory process, Respondent has sufficiently demonstrated that the size of this exhaust fan is a physical restriction that limits the maximum firing rate of the burner installed in the Asphalt Batch Plant. This information is from Exhibit A of the BAEB Uniform Burner Rating Method for Aggregate Dryers, a publication produced by the Bituminous and Aggregate Equipment Bureau of the Construction Industry Manufacturer's Association ("BAEB publication").
30. Permit No. 097-0020 limits operation of the Asphalt Batch Plant to a maximum firing rate of 600 gallons per hour or 85.2 MM Btu/hr.
31. Since the larger replacement burner, installed April 7, 1993, was limited by the exhaust fan, its installation was not a modification that would require the issuance of a new permit under the 1989 R.C.S.A. §22a-174-3, as alleged in Administrative Order 1674.
32. In July 2001, Respondent replaced the exhaust fan sheave in an attempt to improve the operation of the Asphalt Batch Plant. This replacement increased the amount of exhaust airflow, which allowed operation of the replacement burner at a firing rate of 93.3 MM Btu/hr.
33. Information provided by Respondent through the Adjudicatory process, indicated that when the fan sheave was replaced in July 2001, the replacement burner, installed on April 7, 1993 was able to operate at a maximum rated capacity of 93.3 MM Btu/hr, which exceeded the maximum firing rate allowed by Permit No. 097-0020 (85.2 MM Btu/hr).
34. On or around May 6, 2002, Respondent installed a new burner (a Flametech Whisperjet WJ-75 OC) that is capable of burning either natural gas or fuel oil. The new burner is nominally rated at 75 MM Btu/hr but, based on exhaust capacity, has a maximum capacity of 83.5 MM Btu/hr. According to the burner's manufacturer, Astec. Inc., the burner uses air staging and a rapid burning and swirling flame to minimize air emissions.
35. In August 2002, Respondent determined that use of the larger exhaust fan sheave had resulted in the fan being operated above its maximum safe operating speed. Therefore, operation with the original fan configuration was resumed during August 2002.

36. As stated in Paragraph A.9, Respondent provided information through the Adjudicatory process that indicates that natural gas was first combusted by the Asphalt Batch Plant in November 1991.
37. The 1989 R.C.S.A. §22a-174-1(52) stated that a change in fuel type used in accordance with a permit or order shall be considered a modification unless such change is allowed under a permit or order. The 1989 R.C.S.A. §22a-174-3 required the owner or operator of a new stationary source or modification to apply for a permit to operate if the new stationary source or modification had potential emissions of any individual air pollutant equal to or greater than five (5) tons per year, used gaseous fuel in which the maximum heat input guaranteed by the manufacturer was 11,000,000 BTUs/hr or more, or was subject to 40 CFR Part 60 and to obtain a permit to operate if the modification had potential emissions of any individual air pollutant equal to or greater than five (5) tons per year. The Asphalt Batch Plant has potential emissions of several individual air pollutants equal to or greater than five (5) tons per year, has a heat input of greater than 11,000,000 BTU/hr, and is subject to 40 CFR Part 60, and Balf did not submit a permit application to allow for the fuel change. However, the change to natural gas did not increase any emissions by more than five (5) tons per year, did not increase the maximum heat input, and did not cause the Asphalt Batch Plant to become subject to 40 CFR Part 60.
38. In 1991, when the Respondent's change in fuel type was made, the Respondent's addition of natural gas may have been acted upon as a revision rather than a permit modification, since the use of natural gas in place of fuel oil resulted in a net decrease in emissions from the Asphalt Batch Plant, rather than an increase in potential emissions.
39. Since the issuance of Administrative Order 1674, New Source Review permitting regulations have been changed. The new §22a-174-3a(a)(2)(A)(iii) of the R.C.S.A., effective March 15, 2002, does not require a facility to apply for a new operating permit to convert from fuel oil to natural gas, or to add natural gas burning capabilities in addition to fuel oil. Therefore, a permit application for the addition of the use of natural gas, is not required under the current regulations.
40. As part of its regular maintenance and upgrading program, Respondent recently made several additional improvements to the facility that minimize air emissions from the Asphalt Batch Plant including (a) replacement of the bags in the fabric filter air pollution control equipment with heavier "Nomex" bags designed for effective control of particulates with improved heat and abrasion resistance; and (b) installation of vapor condensers on the vents for liquid asphalt tanks to minimize emissions and potential odors.
41. By agreeing to issuance of this Consent Order, Respondent makes no admission of any violation of laws or regulations.

B. The Commissioner, acting under §22a-5a, 22a-6, 22a-171, 22a-174, 22a-176, 22a-177 and 22a-178, of the Connecticut General Statutes, orders Respondent as follows:

1. Notwithstanding the requirement in Paragraph B.19.a., Respondent has retained a consultant, Triton Environmental, Inc., that is acceptable to the Commissioner to assist in the preparation of documents and actions required by this Consent Order.
2. Until this Consent Order has been fully complied with, Respondent shall retain one or more qualified consultant(s) acceptable to the Commissioner.
3. At least ten (10) days prior to retaining any consultant other than that originally identified under paragraph B.1 of this Consent Order, Respondent shall notify the Commissioner in writing of the identity of such other consultant, and within ten (10) days after any request, Respondent shall submit to the Commissioner a description of the consultant's relevant education, experience and training.
4. Nothing in paragraphs B.1 through B.3 shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.
5. Respondent may continue to operate the Asphalt Batch Plant using natural gas or No. 2 fuel oil under the current Permit No. 097-0020 and shall limit its asphalt production at the Asphalt Batch Plant as required by Permit No. 097-0020.
6. Within thirty (30) days of the issuance of this Consent Order, pursuant to R.C.S.A. §22a-174-2a(f), Respondent shall submit an application to the DEP to revise Permit No. 097-0020: (a) to change the distance from closest property line to the Asphalt Plant's stack from 800 feet to 275 feet; (b) to correct the MASC values for formaldehyde and quinone to reflect the actual formaldehyde and quinone MASCs, as identified in R.C.S.A. §22a-174-29; (c) to reflect the use of natural gas, in addition to fuel oil, as the type of fuel used at the Asphalt Batch Plant; and (d) to reflect actual control equipment in use at the Asphalt Batch Plant.
7. Nothing in this Consent Order shall be construed to prevent Respondent from filing any other applications for modifications to Permit. No, 097-0020, as may be allowed by law.
8. On or before July 31, 2003, or within thirty (30) days of DEP approval of the Intent to Test protocol required by Paragraph B.11 of this Consent Order, if such approval is issued after July 1, 2003, Respondent shall perform emissions testing as prescribed in paragraph B.11 of this Consent Order at the Asphalt Batch Plant's stack. The purpose of such emissions testing is to determine the actual emissions of the pollutants identified in

paragraph A.19, formaldehyde and quinone, and to determine compliance with the formaldehyde and quinone MASCs as identified in R.C.S.A. §22a-174-29.

9. If the emissions testing conducted pursuant to paragraph B.8 indicates that emissions from the Asphalt Batch Plant's stack are in violation of the formaldehyde or quinone MASC identified in R.C.S.A. §22a-174-29, within ninety (90) days of submission of the written report identified in paragraph B.12, Respondent shall submit a Compliance Plan for the Commissioner's review and approval. This Compliance Plan, shall at a minimum, include a schedule and detailed description of how the Respondent will comply with the formaldehyde and/or quinone MASC identified in R.C.S.A. §22a-174-29 by not later than April 30, 2005.
10. By not later than April 30, 2005, Respondent shall be in full compliance with the formaldehyde and quinone MASC identified in R.C.S.A. §22a-174-29.
11. Emissions Testing. Except as otherwise provided in this Consent Order or by the Commissioner in writing, all emissions testing required under this Consent Order shall be conducted and reported as follows: Within thirty (30) days after issuance of this Consent Order, Respondent shall submit to the Commissioner for his review and written approval an Intent to Test ("ITT") protocol for such emissions testing. The ITT protocol shall include at least:
 - a. The Department's Bureau of Air Management Test Form No. 1, "Intent To Test";
 - b. A detailed description of all aspects of facility operations (e.g., type and quantity of raw materials utilized) and any and all air pollutant control equipment in use (e.g., screen mesh size, control equipment efficiency) which may affect emissions testing results, and how and when such information will be monitored;
 - c. A detailed description of each emissions testing methodology to be utilized, provided that all such methodologies shall conform to those approved by the U.S. Environmental Protection Agency and the Commissioner; and
 - d. A description of the discharge point at which emissions testing is to be conducted.
12. Respondent shall provide to the Commissioner any information that the Commissioner deems necessary to review Respondent's ITT protocol. Respondent shall complete emissions testing by the date specified in this

Consent Order. Respondent shall schedule all emissions testing so as to allow the Commissioner to be present during such testing and to independently verify relevant facility operations, air pollution control equipment parameters, and testing procedures. Within sixty (60) days after completing any emissions testing required by this Consent Order, Respondent shall submit to the Commissioner a written report providing the results of such testing; within fifteen (15) days of a notice from the Commissioner indicating any deficiencies in such report, Respondent shall submit a revised report.

13. Best Management Practices Plan. Within one hundred eighty (180) days of the date of issuance of this Consent Order, Respondent shall submit for the Commissioner's review and approval, a Best Management Practices Plan ("BMP Plan") to minimize the impact of Asphalt Batch Plant operations on the environment and surrounding community.

The following best management practices, which are responsible and effective processes designed to minimize the impact of facility operations on the environment, have been implemented by the Respondent at many of its facilities as part of its normal maintenance and facility enhancement program. The BMP Plan developed by Respondent for the Manchester facility under this paragraph B.13, will include at least these best management practices, to be followed during the Asphalt Batch Plant's operating season:

- a. Perform burner tune-ups with a gas analyzer to minimize air emissions at least annually.
- b. Inspect fabric filters at least annually with florescent powder and a black light, maintain a supply of replacement filter bags and seals on site and replace any leaking bags or seals within 24 hours of any leakage discovery.
- c. Maintain vapor condensers on the vents for liquid asphalt tanks to minimize emissions and potential odors.
- d. Install and maintain insulation, except as necessary for repair and maintenance, during normal operation of the aggregate dryer to reduce fuel usage and noise.
- e. Continue to supply truckers with biodegradable release agents only and in designated paved truck spray-down areas. Additionally, post sign at spray down area indicating: Truckers should (i) only spray release agent inside truck body, (ii) minimize quantity used (do not overspray), and (iii) only apply when truck is parked in spray pad area with tailgate latched.
- f. Provide notice to outside trucking concerns suggesting that truckers using the facility: (i) adhere to local speed limits, (ii)

make efforts to reduce noise, (iii) not park on Tilcon property earlier than thirty minutes prior to loading time, and (iv) cover their loads before leaving the facility. Such notices shall be provided through the use of a sign on the property and/or by distributing copies of the notice to truckers entering the property.

- g. Provide notice to the Town of Manchester, when Tilcon receives a request (at least 48 hours in advance of the work) to utilize the facility to conduct night-time paving operations that will continue for five (5) days or more or that will extend over a weekend. In such instances where the request is received less than 48 hours in advance of such work, Tilcon will notify the Town of Manchester as soon as possible. Notice to the Town of Manchester shall be given through the Mayor's office and/or the Police Department.
 - h. Tilcon shall post a sign at an appropriate location that requests drivers to reduce the noise generated by "slamming" their tailgates in an effort to dislodge material that has adhered to the truckbed.
 - i. To minimize fugitive dust emissions: (i) the entry road and plant area shall be paved, (ii) sweeping of paved surfaces will be conducted when needed or at least once a week during periods of operation; (iii) consistent with Respondent's Stormwater Pollution Prevention Plan, water sprays will continue to be used as necessary to suppress dust on traffic areas and on aggregate processing equipment and aggregate handling areas.
14. Supplemental Environmental Project. Respondent agrees to provide funds in support of the State's "Clean School Bus Program". The Clean School Bus Program is designed to significantly reduce the exposure of children to toxic air pollutants and improve regional air quality by reducing harmful diesel emissions from school buses through cleaner fuels and new technology. Therefore, on or before thirty days after issuance of this Consent Order, Respondent shall pay \$8855.00 to the Clean School Bus Program SEP Account. The payment shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, Connecticut 06106-5127, and shall be by certified or bank check payable to the "Treasurer, State of Connecticut," with notation thereon "Clean School Bus Program SEP Account" and "Consent Order No. 1674." In the event that any portion of the SEP payment made by the Respondent to the Department can not be used for its stated purpose as described above, the Department may use such unexpended SEP funds for additional SEP(s) consistent with its February 15, 1996 Policy on Supplemental Environmental Projects.

15. No Tax Relief for SEP. The Respondent shall not claim or represent that any SEP payment made pursuant to this Consent Order constitutes an ordinary business expense or charitable contribution or any other type of tax deductible expense, and Respondent shall not seek or obtain any other tax benefit such as a tax credit as a result of the payment made according to Paragraph B.14.
16. Public Statements Regarding SEP. If and when Respondent disseminates any publicity, including but not limited to any press releases regarding funding the SEP, Respondent shall include a statement that such funding is in partial settlement of an enforcement action brought by the Commissioner.
17. Failure to Fund SEP. If the Respondent fails to fund the SEP in accordance with Paragraph B.14 above, Respondent shall immediately pay a civil penalty of \$ 8855 + 10% (\$ 9740.50). The Respondent shall pay such civil penalty in accordance with the provisions of Paragraph B.18 of this Consent Order.
18. Payment of penalties. Payment of penalties under this Consent Order shall be mailed or personally delivered to the Department of Environmental Protection, Bureau of Financial and Support Services, Accounts Receivable Office, 79 Elm Street, Hartford, CT 06106-5127, and shall be by certified or bank check payable to “Treasurer, State of Connecticut.” The check shall state on its face, “Bureau of Air Management, Compliance and Field Operations Division civil penalty, Consent Order No. 1674.”
19. Compliance Audit. Respondent agrees to conduct a compliance audit as described below for the facility.
 - a. Within ninety (90) days from the date of issuance of this Consent Order, Respondent shall submit for the Commissioner’s review and approval the name of the consultant(s) retained to perform the compliance audit required pursuant to this paragraph, and a description of such consultant’s education, experience and training which is relevant to the work required by this paragraph. The consultant(s) retained to perform the compliance audits shall include a qualified professional engineer licensed to practice in Connecticut. Respondent shall certify to the Commissioner that such consultant: (i) is not a subsidiary or affiliated corporation; (ii) does not own stock in Respondent or any parent, subsidiary, or affiliated corporation; (iii) is not otherwise engaged by the Respondent to prepare documents or implement or oversee any other actions required by this or any other Department of Environmental Protection order and has no history of participation in any previous contractual agreement, and no anticipated future contractual relationships, with Respondent or any parent, subsidiary, or affiliated corporation, which, in the Commissioner’s judgment and after full disclosure of such participation, would affect

the consultant's ability to exercise the independent judgment and discipline required to conduct the compliance audit(s); and (iv) has no other direct financial stake in the outcome of the compliance audit(s) outlined in this Consent Order. Respondent shall retain such consultant(s) acceptable to the Commissioner until paragraph B.19 of this Consent Order is fully complied with. Nothing in this paragraph shall preclude the Commissioner from finding a previously acceptable consultant unacceptable.

- b. Respondent shall cause the consultant to perform one (1) environmental compliance audit at the facility in accordance with the scope of work approved by the DEP pursuant to paragraph B.19.c., for the period ending September 30, 2004. The Respondent's consultant, approved pursuant to paragraph B.19.a., shall evaluate the facility's compliance with all applicable environmental laws and regulations including, but not limited to, Title 22a of the CGS and DEP's implementing regulations.
- c. Within sixty (60) days from the date of the Commissioner's approval of the consultant(s) selected to perform the compliance audit required pursuant to this paragraph, Respondent shall submit for the Commissioner's review and written approval a detailed written report which proposes a work plan that shall be followed by the consultant, approved pursuant to paragraph B.19.a. in performing the environmental compliance audit. Such work plan shall include a detailed description of the procedures that shall be followed in evaluating Respondent's compliance with all applicable requirements and the specific items identified in paragraph B.19.b. above.
- d. As soon as possible, but not later than ninety (90) days after completion of the audit, Respondent shall remedy any violations discovered therein and shall submit to the Commissioner for his review and written approval a detailed written report of the results of the compliance audit conducted pursuant to paragraph B.19. which describes all observations and conclusions made by the consultant with respect to the Respondent's compliance or noncompliance. The written audit report shall be prepared in accordance with the work plan approved pursuant to paragraph B.19.c. The audit report shall include, but not be limited to, a summary of compliance with statutes, regulations, permits and this Consent Order organized by media; copies of all completed forms used to record all observations; a description of all remedial actions taken to address each violation discovered; a detailed description of the audit process, including the areas of the facility inspected, the records reviewed, sampling and analytical methods used and persons interviewed to determine compliance. Respondent shall take prompt remedial action to correct each and every violation discovered during the environmental audit. The audit report shall include a certification of compliance as to any violations discovered during the audit and documentation

demonstrating such compliance. If the Respondent determines that the correction of any violation requires more than ninety (90) days to complete, the audit report shall include a detailed written plan for correcting the violation, including but not limited to, a schedule to complete said remedial measures.

20. Full Compliance. Respondent shall not be considered in full compliance with this Consent Order until all actions required by this Consent Order have been completed as approved and to the Commissioner's satisfaction.
21. Approvals. Respondent shall use best efforts to submit to the Commissioner all documents required by this Consent Order in a complete and approvable form. If the Commissioner notifies Respondent that any document or other action is deficient, and does not approve it with conditions or modifications, it is deemed disapproved, and Respondent shall correct the deficiencies and resubmit it within the time specified by the Commissioner or, if no time is specified by the Commissioner, within 30 days of the Commissioner's notice of deficiencies. In approving any document or other action under this Consent Order, the Commissioner may approve the document or other action as submitted or performed or with such conditions or modifications as the Commissioner deems necessary to carry out the purposes of this Consent Order. Nothing in this paragraph shall excuse noncompliance or delay.
22. Definitions. As used in this Consent Order, "Commissioner" means the Commissioner or a representative of the Commissioner. The date of "issuance" of this Consent Order is the date the Order is deposited in the U.S. mail or personally delivered, whichever is earlier.
23. Dates. The date of submission to the Commissioner of any document required by this Consent Order shall be the date such document is received by the Commissioner. The date of any notice by the Commissioner under this Consent Order, including but not limited to notice of approval or disapproval of any document or other action, shall be the date such notice is deposited in the U.S. mail or is personally delivered, whichever is earlier. Except as otherwise specified in this Consent Order, the word "day" as used in this Consent Order means calendar day. Any document or action which is required by this Consent Order to be submitted or performed by a date which falls on a Saturday, Sunday or a Connecticut or federal holiday shall be submitted or performed by the next day which is not a Saturday, Sunday or Connecticut or federal holiday.
24. Certification of documents. Any document, including but not limited to any notice, which is required to be submitted to the Commissioner under this Consent Order shall be signed by Respondent or, if Respondent is not an individual, by Respondent's chief executive officer or a duly authorized representative of such officer, as those terms are defined in

§22a-430-3(b)(2) of the Regulations of Connecticut State Agencies, and by the individual(s) responsible for actually preparing such document, and Respondent or Respondent's chief executive officer and each such individual shall certify in writing as follows:

"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify, based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, that the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that any false statement made in the submitted information is punishable as a criminal offense under section 22a-175 of the Connecticut General Statutes, under section 53a-157b of the Connecticut General Statutes and any other applicable statute."

25. Noncompliance. This Consent Order is a final order of the Commissioner with respect to the matters addressed herein, and is nonappealable and immediately enforceable. Failure to comply with this Consent Order may subject the Respondent to an injunction and penalties.
26. False Statements. Any false statement in any information submitted pursuant to this Consent Order is punishable as a criminal offense under §53a-157b of the Connecticut General Statutes and any other applicable law.
27. Notice of transfer; liability of Respondent and others. Until Respondent has fully complied with this Consent Order, Respondent shall notify the Commissioner in writing no later than 15 days after transferring all or any portion of the facility, the operations, the site or the business which is the subject of this Consent Order or after obtaining a new mailing or location address. Respondent's obligations under this Consent Order shall not be affected by the passage of title to any property to any other person or municipality.
28. Commissioner's powers. Nothing in this Consent Order shall affect the Commissioner's authority to institute any proceeding or take any other action to prevent or abate violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for past, present, or future violations of law. If at any time the Commissioner determines that the actions taken by Respondent pursuant to this Consent Order have not successfully corrected all violations, fully characterized the extent or degree of any pollution, or successfully abated or prevented pollution, the Commissioner may institute any proceeding to require Respondent to undertake further investigation or further action to prevent or abate violations or pollution.

29. Respondent's obligations under law. Nothing in this Consent Order shall relieve Respondent of other obligations under applicable federal, state and local law.
30. No assurance by Commissioner. No provision of this Consent Order and no action or inaction by the Commissioner shall be construed to constitute an assurance by the Commissioner that the actions taken by Respondent pursuant to this Consent Order will result in compliance.
31. Access to Site. Any representative of the Department of Environmental Protection may enter the facility without prior notice for the purposes of monitoring and enforcing the action required or allowed by this Consent Order.
32. No effect on rights of other persons. This Consent Order neither creates nor affects any rights of persons or municipalities that are not parties to this Consent Order.
33. Notice to Commissioner of changes. Within 15 days of the date Respondent becomes aware of a change in any information submitted to the Commissioner under this Consent Order, or that any such information was inaccurate or misleading or that any relevant information was omitted, Respondent shall submit the correct or omitted information to the Commissioner.
34. Notification of noncompliance. In the event that Respondent becomes aware that it did not or may not comply, or did not or may not comply on time, with any requirement of this Consent Order or of any document required hereunder, Respondent shall immediately notify by telephone the individual identified in the next paragraph and shall take all reasonable steps to ensure that any noncompliance or delay is avoided or, if unavoidable, is minimized to the greatest extent possible. Within five (5) days of the initial notice, Respondent shall submit in writing the date, time, and duration of the noncompliance and the reasons for the noncompliance or delay and propose, for the review and written approval of the Commissioner, dates by which compliance will be achieved, and Respondent shall comply with any dates which may be approved in writing by the Commissioner. Notification by Respondent shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay unless specifically so stated by the Commissioner in writing.

35. Submission of documents. Any document required to be submitted to the Commissioner under this Consent Order shall, unless otherwise specified in this Consent Order or in writing by the Commissioner, be directed to:

Allison O'Neil
Department of Environmental Protection
Bureau of Air Management
Compliance and Field Operations Division, 5th Fl.
79 Elm Street
Hartford, Connecticut 06106-5127

Respondent consents to the issuance of this Consent Order without further notice. The undersigned certifies that he/she is fully authorized to enter into this Consent Order and to legally bind the Respondent to the terms and conditions of the Consent Order.

Tilcon Connecticut Inc.
P.O. Box 1357
New Britain, CT 06050-1357

Signature: /s/ Joseph A. Marrone

Name: Joseph A. Marrone

Title: Manager/Asphalt

Date: May 23, 2003

This Consent Order No. 1674 is issued as the Final Decision resolving the appeal of Administrative Order No. 1674.

May 28, 2003
Date

/s/ Jean F. Dellamarggio
Jean F. Dellamarggio, Hearing Officer

TOWN OF MANCHESTER
LAND RECORDS
MAILED CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
Certified Document No. _____