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BY APPOINTMENT:  
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June 17, 2010

Hon. David Wylock, Co-Chair  
Hon. Valerie LaRobardier, Co-Chair  
Town of Dover Planning Board  
126 East Duncan Hill Road  
Dover Plains, NY 12522

**Re: RASCO Materials**

Dear Co-Chairs Wylock and LaRobardier,

In his memo to the Planning Board dated May 5, 2010, CEO George Hearn indicated that Town records regarding the status of TT Materials "should be checked" as he could not find any specific approvals for the operation of TT Materials in the Town records. Accordingly, we have undertaken a search of available Town records on the issue.

Based on the Town records we have located records that address the issue of legal non-conforming use by TT Materials for processing of contaminated soil at the Mid-Hudson Recycling Park site. I ask that the Planning Board rescind its request that the issue of legal non-conforming use be considered by the Zoning Board of Appeals.

Firstly, Mr. Hearn notes in his memo that on May 20, 1992, then Planning Board Chairman Thomas A. Taylor issued a letter informing the NYSDEC Region 3 that the Planning Board had reviewed an application for site plan approval for Carbon Activation US Inc. Chairman Taylor laid out "the Planning Board's position" to the DEC, indicating that the Planning Board had made the "decisions" that the company would be "occupying an existing building in an approved site with an existing site plan, therefore do not need at this time a site plan approval." He also stated that, "Without the need to grant site plan approval we have no jurisdiction."

Appended to this May 20, 1992 letter in the Planning Board files, but not referenced by Mr. Hearn, was a site map of what has since come to be known as the Mid-Hudson Recycling Park site, indicating the location that Carbon Activation US (also known by its acronym CActUS) occupied throughout most of the 1990s. Shown on the same site map (although not labeled as such) were the buildings that TT Materials, and subsequently Rasco Materials LLC, would be occupying a scant two years later.

It is no surprise then that former CEO Binotto, in 1994, and his successor Hearn in 2010, found no site plan approvals for the TT Materials operations begun in 1994, as the Planning Board had already made the determination that no site plan approval was then necessary for permitted uses in those existing buildings. If a site plan was not necessary, as indicated above, the CEO would certainly not find an approval when none was required.

Additionally, I am attaching portions of Appendix D to the “Town of Dover Proposed Zoning Law and Master Plan Amendment”, dated October 28, 1998 and issued by the Town Board. Appendix D contains supplemental documentation for the Zoning Law and Master Plan, which were adopted on April 28, 1999. Appendix D examines in considerable detail the operations of all the solid waste management facilities then existing in the Town of Dover, including TT Materials (see pages 17, 21, 22, and 27).

It is implausible, given the particular attention paid to solid waste facilities as part of the process to amend the Master Plan and Zoning Law, that TT Materials would have been included in that Town Board-issued zoning document had there been any issue at that time as to the legality of its use. Appendix D notes a number of violations issued to TT Materials for improper material storage, but raises no questions as to illegality of use. If there had been any such questions, given the purpose for which the review was undertaken, the issue of illegality would have been highlighted in the same manner as other violations.

Indeed, Appendix D left little doubt as to the status of the facility: “Under the Proposed Zoning Law, existing legally permitted private SWMFs in the Town of Dover will continue to operate, as well as the Town operated transfer station.” ... “The petroleum-contaminated soil treatment plant and the MSW/C&D transfer facility will not be affected by the proposed prohibition. As non-conforming uses, these will be permitted to expand as per Section 6.3 of the Proposed Zoning Law.” (Appendix D, “Town of Dover Proposed Zoning Law and Master Plan Amendment”, October 28, 1998, at page 27.)

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When the Town in 1999 adopted a revised zoning law which did prohibit new solid waste facilities, the same zoning law recognized at §145-50 that existing solid waste facilities which were non-conforming could continue providing they complied with the standards of that section to the extent practical. Moreover, the Town of Dover Master Plan amendments adopted contemporaneously with the new zoning law specifically stated that existing solid waste facilities in the Town “can continue as non-conforming uses.”

Given these pieces of documentary evidence generated as a result of official reviews undertaken by both the Planning Board and Town Board in the 1990s, and available to the Planning Board in 2010, as well as the substantial legal question as to whether the Hearn letter is an appealable document, it is unreasonable to burden the applicant and others with an issue that is already adequately addressed in the Town’s own documents and which was unequivocally addressed by Hearn in the December 1, 2009 agreement which Hearn determination is a final determination binding upon him (see, e.g. *In the Matter of Foy v. Schechter et al.*, 1 NY2d 604, 611(1956); *Gorman v Town of Huntington*, 47 AD3d 3038, 39 (2<sup>nd</sup> AD, 2007)). Any current review requested by the Planning Board would be untimely.

Very truly yours,

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By: JON HOLDEN ADAMS

JHA:jv

cc: Jack Nelson