

Evelyn and Joseph Chiarito  
90 Craig Lane, Dover Plains, NY 12522  
845-877-6498

August 4, 2010

To: ZBA Chair Marilyn VanMillon and ZBA Board Members

RE: Rasco Materials, LLC Public Hearing seeking an interpretation of the Code Enforcement Officer regarding whether the use of the property as a cold-mix asphalt facility is pre-existing non-conforming.

Thank you for holding a public hearing on the Rasco application.

My greatest concern is the possible contamination of the water we all require and want to maintain. The 1999 Chazen Companies study of the Harlem Valley aquifer indicates that the Harlem Valley towns from Amenia to Patterson all share the same aquifer, which provides water for 20,000 people (water does not respect town lines). I realize that is not the decision you are asked to make but nevertheless it is of great concern to me and to your children.

This Rasco application came before you in a very back door type of way. Supv. Courtien, Mr. Galayda and Ms. Frame approved the Stipulation which was drawn up by the Town Attorney. It is clearly not authored by the Town CEO so I would not say it is his opinion and if so, why seek an interpretation now. Seems to me to be an oxymoron. From Town Board minutes of Nov. 23, 2009, the Stipulation is captioned "**Stipulation Agreement between Town of Dover and Planning Board and Rasco Materials, LLC. – CEO is not included** – then Town Board authorizes the Supervisor, Building Inspector and Planning Board Chair to execute the Stipulation. The CEO did sign but is still not in the heading nor does it appear to be his written opinion.

Page 1 of 3



From Evelyn Chiarito

Why didn't the applicant do the normal and proper procedure as I have always seen in Dover and also in all other towns? First go to the CEO (It is not the Town Board's authority to make these decisions), then if not pleased, go to ZBA for a determination. As a layperson, and familiar with town boards and having attended many seminars given by the Dutchess County Planning Federation, the whole procedure that they followed seems to me to be highly suspicious. Not one I've seen before so I have to wonder what the payoff is.

Since much of the history of TT Materials and Rasco Materials is tainted with contamination and violations of their DEC permit, future contamination is a very real possibility and could be MTBE since it is a frequent contaminant in petroleum contaminated soil. It is said that past behavior is the best predictor of future behavior. This applicant does not come before you with clean hands as they had many DEC violations and eventually signed Consent Agreements and paid fines for their violations (see DEC Jan 96, Feb 96 and Nov. 98 letters attached).

According to PB minutes of 1/6/10, Mr. Nelson worked at the site for 1 year prior to the DEC Permit expiring so he had to be aware of the violations and the DEC permit expiring and that a DEC Consent Order needed to be signed and fines paid. So, they operated under a DEC consent order until Nov 15, 2005. The fact that his permit expired and he had numerous violations and could no longer operate is no fault of the Town of Dover, it is his own doing. So, it is his own doing that he lost his pre-existing, non-conforming use. If it was a period of one year, I could understand his position, but five (5) years is stretching it quite a lot. I went through the DEC file in New Paltz and you see note after note, "Notice of Incomplete Application." If it takes Rasco five (5) years to get a DEC application right, how can they manage a contaminated soil facility? Most towns allow one year and after that you are out in the cold according to the law. Now, suddenly in 2010, it is an emergency that they get approval and I do wonder why? This material is currently not allowed per Town of Dover Zoning Law to be used in the Town of Dover, of course, the Town Board could change that.

Also, I must mention that I was dismayed when the ZBA attorney determined that the Rasco Application should not appear on the town website which has all the other Rasco information from the Planning Board as well as from Building Dept. It seems to me that when we have very capable town hall employees and modern technology available, it would make it more convenient for the public/taxpayers who are interested to review the files.

Another concern I have is that the attorneys representing the ZBA are the same as those drawing up the Stipulation and supporting it. Seems to me that they would already be prejudiced and that this is a conflict of interest.

Respectfully Submitted,

Evelyn Chiarito

845-877-6498

TOWN OF DOVER TOWN BOARD PUBLIC HEARING AND REGULAR MEETING,  
NOVEMBER 23, 2009 CONTINUED:

RESOLUTION # 3052009

RETURN FROM EXECUTIVE SESSION TO REGULAR MEETING

The following resolution was offered by Councilman Galayda, seconded by Councilwoman Frame, to wit:

**BE IT RESOLVED**, the Town Board of the Town of Dover returned to the regular meeting at 8:31 pm. No money was spent and no decisions were made.

The question of the adoption of the foregoing Resolution was duly put to a vote which resulted as follows:

Christopher Galayda	Voting <u>Aye</u>
Kathryn Palmer-House	Voting <u>Absent</u>
Catherine Frame	Voting <u>Aye</u>
Richard Hawthorne	Voting <u>Absent</u>
Ryan Courtien	Voting <u>Aye</u>

The Resolution was thereupon adopted on November 23, 2009.

TOWN OF DOVER

A meeting of the Town Board of the Town of Dover was convened in public session at the Town Hall, 126 East Duncan Hill Road, Dover Plains, New York on November 23, 2009 at 6:30 o'clock P.M. local time. The meeting was called to order by Supervisor Ryan Courtien, and upon roll being called the following were present:

Present:	Supervisor Ryan Courtien
	Councilman Christopher Galayda
	Councilwoman Catherine Frame
Absent:	Councilwoman Katherine Palmer-House
	Councilman Richard Hawthorne

RESOLUTION # 3062009

TO AUTHORIZE AGREEMENT BETWEEN THE  
TOWN OF DOVER AND RASCO MATERIALS, LLC

The following resolution was offered by Councilman Galayda, seconded by Councilwoman Frame, to wit:

**BE IT RESOLVED**, that the Town Board hereby authorizes the Supervisor, Building Inspector and Planning Board Chairman to execute the Stipulation of Agreement between the Town of Dover and Rasco Materials, LLC, which Stipulation is attached hereto and hereby made part hereof and shall be filed in the office of the Town Clerk and the Building Department.

The question of the adoption of the foregoing Resolution was duly put to a vote which resulted as follows:

Christopher Galayda	Voting <u>Aye</u>
Kathryn Palmer-House	Voting <u>Absent</u>
Catherine Frame	Voting <u>Aye</u>
Richard Hawthorne	Voting <u>Absent</u>
Ryan Courtien	Voting <u>Aye</u>

The Resolution was thereupon adopted on November 23, 2009.

Stipulation of Agreement

by and between

Town of Dover Town Board and Planning Board and Rasco Materials LLC

**WHEREAS**, Rasco Materials LLC ("Rasco") operates a cold-mix asphalt plant (the "Operation") on premises located at 2241 Route 22, Wingdale, New York, which premises are owned by Howlands Lake Partners, LLC and are shown on the Town of Dover Tax Map as Parcels 7061-00-585063 and 7061-00-580190 (collectively referred to herein as the "Site"); and

**WHEREAS**, Rasco suspended physical operations on the Site in November, 2005 upon the expiration of its Solid Waste Management Permit from the New York State Department of Environmental Conservation ("DEC") and in furtherance of a consent order with DEC and the issuance of a Stop Work Order by the Town of Dover Code Enforcement Officer; and

**WHEREAS**, following Rasco's application to DEC for a renewal of the expired permit, which resulted in the filing a new submission in 2005, a new Solid Waste Management Permit and a Beneficial Use Determination both dated January 15, 2009 have been issued by DEC together with a Negative Declaration under SEQRA; and

**WHEREAS**, Rasco has now requested, as of April, 2009, that the Town of Dover Code Enforcement Officer remove the Stop Work Order to permit the resumption of the Operation; and

**WHEREAS**, while the operation, of a solid waste management facility, is no longer permitted as a use in the Town of Dover and while it appears that Site Plan Approval for the Operation was never obtained by Rasco or its predecessors, issues have been raised by Rasco that the Operation is a legal pre-existing non-conforming use and Site Plan Approval was never required to be obtained; and

**WHEREAS**, upon investigation of the files of the Town Clerk, Building Department and the minutes of the Planning Board and discussions with various individuals familiar with the Site, a review of the prior historical use the Site for materials processing and the Operation itself, it appears, absent agreement between the parties, that no determination can be made as to whether the Operation is a legal pre-existing nonconforming use without the intervention of the Supreme Court of the State of New York; and

TOWN OF DOVER TOWN BOARD PUBLIC HEARING AND REGULAR MEETING,  
NOVEMBER 23, 2009 CONTINUED:

*WHEREAS* bona fide issues have been raised by Rasco that the Operation is a legal non-conforming use and Site Plan Approval did not have to be obtained for the Operation, and neither Rasco nor the Town desire to engage in costly litigation on the questions and have reached an agreement which is mutually satisfactory to both parties and that honors the spirit and intent of the Town's laws with regard to the Operation, all of which is set forth below.

*NOW THEREFORE BE IT RESOLVED*, the Town and Rasco hereby agree as follows:

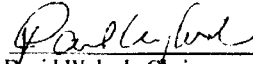
1. The Operation may continue as a legal non-conforming use but prior to the resumption of the Operation, Rasco shall obtain Site Plan Approval from the Planning Board in accordance with Section 145-60 of the Town of Dover Zoning Law. Since the Site is already improved with structures, impervious surfaces and other improvements, the Planning Board's review shall be consistent with a review for a change in use of an otherwise hypothetically approved site plan for the existing buildings, impervious surfaces and other improvements. Notwithstanding, the Operation shall be subject to the requirements of Section 145-50 and such other conditions customarily imposed (i) by the Planning Board and the Town Engineer in connection with that type of use as provided in Section 145-50 and 145-63 (applicable standards listed in Appendix A to this Agreement); (ii) as necessary to support a determination of Negative Declaration under SEQRA; and (iii) for the adequate protection of the Swamp River, which flows near the Site. Rasco shall apply for such permit within 60 days of delivery of a fully executed copy of this agreement to it. Improvements to the facility may take place prior to the conclusion of the Planning Board review but shall not include the enlargement of any structure or the addition of any new impervious surface or create any vested rights.
2. Rasco shall comply with DEC Permit No. 3-1320-00144-00005 and BUD 864-3-14, both of which are dated January 15, 2009 and are attached hereto. A violation of any condition of the Permit or the BUD shall subject the Operation to a Stop Work Order regardless of whether the DEC suspends or revokes the Permit or BUD. Any Stop Work Order shall conform to the enforcement provisions of the zoning law and shall specify the particular conduct for which the stop work order is issued, the rule, regulation or permit condition believed to have been violated. Copies of any correspondence to or from the DEC and Rasco on the Permit shall also be copied to the Building Department and the Town Engineer. Copies of all correspondence and communications between Town and DEC shall also be copied to Rasco unless exempt from public disclosure. An electronic transmission of said correspondence shall be acceptable.
3. It is anticipated that an application may be submitted from a future entity to construct a power plant on the Site and a portion of the Site and a storage building for Rasco will need to be relocated to another location on the Site. Should Rasco and the Planning Board decide that it would be appropriate and efficient to review the possible relocation of the Rasco storage building simultaneously with the application required by this Agreement, then the Site Plan Approval may contemplate the possible relocation of that building. However, such relocation project shall be deemed unrelated to the power plant application and shall not be consolidated with the power plant application nor shall Rasco be required, in such instance, to review the cumulative impacts of its relocated operation and the impacts associated with the power plant application.
4. Upon receipt of Site Plan Approval from the Planning Board, a Certificate of Compliance shall be issued for the Operation which shall indicate its status as a legal nonconforming use with Site Development Approval.
5. To the extent and in the manner provided by the Zoning Law, all costs associated with the Site Plan Approval for the above shall be borne by Rasco and, at the time of signature of this Agreement, reparations shall be made to the Town of Dover in the amount of \$1,000 by a bank or certified check.
6. This agreement shall be binding upon and inure to the benefit of any successor or assign of Rasco.

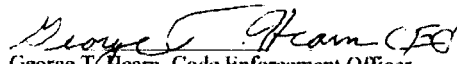
Town of Dover

By:   
Ryan Courtien, Supervisor

Rasco Materials LLC

By: 

  
David Wylock, Chairperson

  
George T. Hearn, Code Enforcement Officer

Dated December 1, 2009

**New York State Department of Environmental Conservation**  
21 South Post Corners Road, New Paltz, NY 12561-1696  
(914) 256-3137 FAX (914) 255-3414

M-18



**Michael D. Zagata**  
Commissioner

Certified Mail: Z402292097

JANUARY 16, 1996

**NOTICE OF VIOLATION**

**ARTHUR CONNOLLY**  
36 ZOAR AVE.  
OAKVILLE, CT 06779

RE: INSPECTION JANUARY 11, 1996

Dear Mr. Connolly,

On January 11, 1996 I inspected the T.T. Materials Corp. Facility located in the Town of Dover, Dutchess County. The purpose of this letter is to notify you that the facility was found to be in violation of its Permit (3-1326-00144/00001-0) which was issued on October 11, 1994 and expires on October 11, 1999. The facility is currently in violation of permit condition #9, which states that "The contaminated soil and the finished product shall be stored in an enclosed building. Outdoor storage or stockpiling of such material is prohibited.". The facility is storing contaminated soil on the west side of the building outside.

The operator of the facility explained the reason for this storage, which was due to problems with equipment and weather. I can understand the problems associated with the operating of your facility, however, these problems do not allow the facility to function outside the parameters specified in your permit.

The facility has until January 31, 1996 to have all contaminated soil which is stored outside to be covered with a impervious tarp. A letter should be transmitted to me indicating that this requirement has been completed.

The facility has until March 15, 1996 to have all contaminated material stored undercover of a building. A letter should be transmitted to me indicating that this requirement has been completed.

The Department may seek additional enforcement action regarding this violation. In addition, the Department may require sampling of the original grade soils following removal of the contaminated soils.

The Department will be contacting you in the near future regarding your requested permit modification. We are in a position to move forward with your request, providing the above issues are addressed. Prior to acting on you modification a meeting may be necessary to adequately address your needs, along with the needs of the Department.

Please attend to the above corrective measures immediately. If you have any questions regarding the above issues please contact me at the above number.

Sincerely yours,

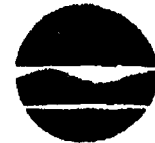
Alan A. Fuchs  
Regional Solid Materials Engineer

cc: J. McCarthy, TT Materials, PO Box 630, Rt 22, Wingdale, NY, 12594

COPY

M-18

New York State Department of Environmental Conservation  
21 South Platt Corners Road, New Paltz, NY 12561-1696  
(914) 256-3137 FAX (914) 255-3414



Michael D. Zagata  
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Alan A. Fuchs  
Regional Solid Materials Engineer

cc: J. McCarthy, TT Materials, PO Box 630, Rt 22, Wingdale, NY, 12594

COPY

M-16  
New York State Department of Environmental Conservation  
Division of Solid and Hazardous materials, Region 3  
21 South Platt Corners Rd., New Paltz, NY 12561-1696  
Telephone: (914) 256-3143 Fax: (914) 255-3414



Michael D. Zagata  
Commissioner

## NOTICE OF VIOLATION

CERTIFIED MAIL # Z 402 292 185

February 29, 1996

Mr. Arthur Connolly  
T.T. Materials Corp.  
Route 22,  
Wingdale, NY 12594

Re: T.T. Materials Corp.

Dear Mr. Connolly:

Please take notice that the Department of Environmental Conservation has determined that you are in violation of your permit conditions in connection to the above referenced facility.

During an inspection of your facility on February 27, 1996, the following violations were observed by the writer:

1. The contaminated soil was stored uncovered outside the building in violation of the permit condition # 9.
2. More than 1000 tons of contaminated soil and more than 1000 tons of finished product were observed on site in violation of the permit condition #5.
3. Finished product was being stored in an area other than the storage area indicated on the plans approved by the Department in violation of condition # 4.

In his letter of January 16, 1996, Mr. Alan Fuchs asked you to cover the contaminated soil stored outside the building by January 31, 1996. Your letter of February 2, 1996 indicated that you had complied with that order. In fact this violation has not been corrected.

The Department is reviewing its options with regard to enforcement action, including assessment of penalties and injunctive relief, for the violations which already have occurred. You are hereby advised to immediately take measures to correct the violations indicated in this notice, and refrain from any further violations.

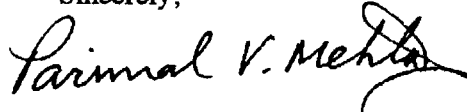
The Department has information that substandard finished product has been distributed by your facility to the general public in a manner inconsistent with your permit. You are hereby notified that the substandard product is considered a waste and hence must be disposed of properly. Any further distribution of the product that does not meet NYSDOT specification (Section 302) for granular material

Arthur Connolly  
February 29, 1996  
Page 2 of 2

will be considered violation of the provisions of Beneficial Use Determination (BUD) #94001 and will result in revocation of the BUD.

In order to address these violations, you are to appear on March 11, 1996 at 10:00 AM at the Regional Office in New Paltz. Please contact me at 914-256-3140 to confirm the time and the date.

Sincerely,



Parimal V. Mehta  
Environmental Engineer I

cc: C. Manfredi

A. Fuchs

Law Enforcement

R. Speidel



David Ruff, Dutchess County Health Dept.

New York State Department of Environmental Conservation  
Division of Solid & Hazardous Materials, Solid Waste Unit, Region 3  
21 South Putt Corners Road, New Paltz, NY 12561-1696  
Telephone: (914) 256-3144 FAX (914) 255-3414



RECEIVED NOV 10 1998

### NOTICE OF VIOLATION

Certified Mail Z 143 658 417

November 6, 1998

Arthur Connolly  
TT Materials  
P.O.Box 630  
Wingdale, NY 12594

Re: TT Materials

Dear Mr. Connolly:

Perry Mehta of my staff inspected the above referenced facility on October 29, 1998. Mr. Mehta informs me that during the inspection of the facility he observed several violations of the permit. Some of these violations have been noted and brought to your attention in the past. In spite of being notified of these violations several times, they have continued. The violations that were noted during the last inspection were:

- Storage of more than two thousand tons of contaminated soil and finished product on site. The processing building was observed to contain approximately three thousand tons of contaminated soil and the storage building was observed to contain an additional one thousand tons of finished product. Permit condition #5 allows only 1000 tons of petroleum contaminated soil and 1000 tons of finished product.
- Finished product was observed to be stored outside the processing building in violation of permit condition # 9.
- Finished product was observed to be stored off the property of the permitted site in an adjacent building.
- The facility is in violation of permit condition # 16. Fleet bank has notified that Department that \$9,000 of the \$50,000 financial assurance will not be renewed as of November 7, 1998. The permit condition requires the permittee to have a substitute mechanism in place 30 days prior to the expiration of the instrument.

Based on the above violations and the facility's continued non compliance, TT Materials must immediately cease acceptance of any contaminated soil at the facility until (1) the facility comes into compliance with it's permit and consent orders; (2) Department staff have reinspected the facility to determine compliance; and (3) TT Materials receives a letter from the Department indicating that it can start accepting material.

On August 3, 1998 the facility entered into a consent order with the Department which cited a number of violations and provided a Schedule of Compliance which TT Materials agreed to comply with. To date, two of the three requirements stated in the Schedule of Compliance have not been adhered to (the storage of material outside enclosed structure,

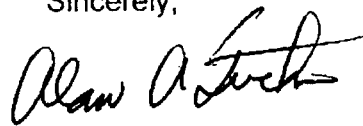
A. Connolly  
TT Materials  
November 6, 1998  
Page 2 of 2

and the maintaining of an Environmental Monitoring Account). The Environmental Monitoring account was to be established within 15 days of the effective date of the order, August 18, 1998. Paragraph 2 of the order provides a stipulated penalty of \$1,000 per day for violations of schedule A or B. As of the date of this letter the facility has been in violation for 80 days. This equates to a stipulated penalty of \$80,000. The Department has notified you of the violations of the consent order and, at this time, is requiring TT Materials to pay only a part of the \$80,000 in stipulated penalties now due, i.e., the sum of \$25,000. The Department may at a future date require payment of all or part of any unpaid stipulated penalties, if the facility does not immediately come into compliance with all requirements of the consent order, their Part 360 permit, and the Part 360 regulations.

Please notify the Department in writing when you have reduced the amount of soil (contaminated and finished product) to under two thousand tons and have brought the facility into full compliance. In addition, please make payment of the above stipulated penalty (\$25,000) to John Kennedy, Regional Attorney, within 30 days of this notice. Upon receiving your notification of compliance, along with the above stipulated penalty, Department staff will conduct an inspection of the facility and determine whether the facility should be allowed to resume the acceptance of the petroleum contaminated soil.

Should you have any questions, please feel free to contact me at 256-3137.

Sincerely,



Alan A. Fuchs, P.E.  
Regional Solid Waste Engineer

aaf/pm

cc: J. Kennedy  
J. Way, Town of Dover Supervisor