

Rasco Materials Site Plan-7061-00-585063 & 7061-00-580190

Applicant: RASCO Materials, Property Owner Howland Lake Partners, LP
Plans Prepared by Frank Peduto of Spectra Engineering
Property located at Wingdale Industrial Park, 2241 NYS Rt 22, Wingdale
Application for Site Plan *on 3.0 acres in the M district*

Mr. Nelson, Mr. Adams & Mr. Peduto present

Mr. Peduto attempted to submit documents to the Board in response to the site walk. No documents were distributed to the Board as per the policy of having all documents processed prior to distribution

Mr. Peduto- Project located at the Mid-Hudson Recycling park- proposing to recycle contaminated soil into cold mix asphalt, material. They have received a DEC pod 360 solid waste handling permit. They now seek site plan.

Site walk was conducted January 23, 2010- there were concerns raised- lavatory facilities, swale, turning radius. He then also explained the process to be conducted at the plant.

Chair Wylock- Does this process remove the contaminants? A: No it encapsulates them; the asphalt surrounds the soil particles and locks them in. There is a leeching test that is done that proves this, if the product was squeezed, there should be no contaminant. It does not transform or remove the contaminant it encapsulates it.

Engineer Berger wanted to make clear that this is the black asphalt cement, the emulsion part, not the entire aggregate mix.

Mr. Peduto- Site walk:

SPCC plan for this facility-A; One will be provided. It will identify the material on site, if secondary containment is needed, where, as well as maintenance. The emulsified asphalt tank will require secondary containment- one will be constructed beneath it. For the 55 gallon drums- the rule requires having secondary containment to take on at least one of the drums. If there are 2- 55 gallon drums- you need to contain 55 gallons.

Swale off the site - and the concern of the road way being so close - there will be work on the road to build up the elevation, as it approaches it will be bermed on the side of the swale to force any potential storm water from entering and move it back towards the facility

Lavatory facilities- There will be a full size trailer that has lavatory facilities, placed by the small shed, now called the scale house- that will come out and the trailer will be placed there. The trailer will be half lavatory and the other half a small office area. There will be a well drilled to provide water and a septic installed to collect waste. This will be periodically pumped by a certified sewer waste disposal company.

Chair Wylock- You will get a letter from the Health Department approving that? A: The Health department has already "signed off" It's a small facility- and not of concern to them, not an issue that they will insist that any work. As far as the septic, there will be no leech field, - just a high level alarm on the tank. There will be heaters and hot and cold water.

Chair Wylock read:

January 21, 2010

To: Town of Dover Planning Board

Re: RASCO Material LLC

On this date at 10:00 am I met with Mr. Jack Nelson concerning the sanitary disposal facility planned for the site (2241 Route 22). Mr. Nelson informed me that he had been speaking with Jim Napoli from DCBOH concerning installing a trailer with the sanitary facilities required, having it empty to a tank with an alarm to indicate when pumping out was required and contracting for the service of a provider to handle this activity.

I informed him that he should get a letter from Mr. Napoli stating that this was acceptable to DCBOH. If this is acceptable then it will meet with the New York state Code requirements.

Yours truly,

George T. Hearn
Code Enforcement Officer

Mr. Adams- Stated Mr. Napoli did not want to put much time into this matter- passed this information to Engineer Berger and asked him to call Mr. Napoli to confirm this information. He did not want to write a letter.

Chair Wylock- Again made a request for a letter- Mr. Adams said he would approach Mr. Napoli

Mr. Peduto- Concerns with vibrations at the facility- Upon DEC's request- a structural evaluation of both buildings was done. They made recommendations that are in their special conditions. There are some repairs that need to be made, which Rasco needs to and will complete, before DEC says go. The conclusion of the *structural assessment* was that the buildings are in very good shape and should be adequate for the intended use.

It was requested that this report be submitted to this Board as well.

This report does not address vibration- it was understood as to the type of application at the facility.

Q: Did DEC ever do a noise test? A: Spectra did a *noise test* for them, that too was presented. It complied with all of the requirements a facility in that location. DEC requested as a condition one to be done each year. Q: Will this noise level comply with Town Law? A: If is it similar to DEC.

Member-Town law levels are 60db between 7am and 8 pm. A: We're ok

It was requested that this report be submitted to this Board as well.

Q: Ventilation study for concerns of exhaust

A: A ventilation study was not done, the large doors are open throughout the process ventilation should not be an issue. Q: How would we know that? A: We would have to have the material in the building during testing to know, If that is acceptable to you- Member Kelly- It's not acceptable to me. Mr. Peduto- we would have to have material in the building and put air monitors on people for a few days. It is extremely well ventilated is due to the size of the doors at both ends. If it would hold air or fumes, they would be up at the ceiling. Member Kelly- Once it gets cold they will come down. Mr. Peduto- there's naturally y a lot of ventilation via the construction Member Kelly- What does DEC classifies the material coming in as? A: Petroleum contaminated soil, solid waste, which is why it required a part 360, non hazardous.

Member Kelly- From the site walk he feels it is the Planning Board's obligation to notify the DEC and the EPA of the carbon stored on site in a deteriorated state. There are containers there holding product which should be cleaned up.

Mr. Peduto - was unaware of carbon on site.

Mr. Nelson - Understood the concern, and explained that this was found on an area outside of his operation.

Member Kelly- Also requested a full site plan of the property showing all buildings, flagging of the wetlands and an overlay of the power plant, because an application has gone to the Town Board. He felt the overlay will allow the Board to see what will happen to the RASCO project. There should also be a build out given once the other buildings are removed

Mr. Adams- This was agreed at the last session by the Board that that application would not impact what they are applying for today. The issue was raised and the Board acknowledged that is a permit a request to the Rasco process to go ahead and involve another permit that may it may not happen down the road, that the energy project would have to consider RASCO in their application, but RASCO did not have to do it for their application.

Member Kelly disagreed, after his review; he felt that this is not a pre existing non conforming use. He feels this project is outdated.

Chair Wylock- The operation was shut down 2005? A: Yes Q: When did you make application to DEC?

Mr. Adams Felt this was all covered at the last meeting. The Town had agreed and acknowledged that this is a lawful non conforming use. That issue is behind them, it was decided by the Town Board and the Code Enforcement officer. The Town Attorney determined that since there were pursuing an application while being shut down.

Attorney Polidoro- The Building Inspector is responsible for interpreting the Code and he did make the determination that this is a pre existing non conforming use, then the Town and the applicant entered into a stipulation agreement, the Planning Board is a party to this agreement and voted on it.

Member Johnson- Did this have Planning Board approval before? Attorney Polidoro- It's unsure and unsure if that mattered. This is something worked out with the Town Board and the applicant

Member Johnson- Does the Code clearing say no solid waste? A: Yes but-

Member Kelly- Felt as though he was led to believe that I this was a preexisting non- conforming use that was an ongoing application, which he does not feel that it is.

Attorney Polidoro- that was the initial understanding from the meeting with the Supervisor and the Town Attorney they had explained their research and the process they went through to come to this conclusion

Member Kelly- Stated he would like to rescind his vote of last month to ratify the agreement with the Planning Board and the Town Board.

Mr. Adams- the Code Enforcement officer in Town is the individual charged with the interpretation of whether this is a lawful, conforming or non conforming use. He had made his decision, and signed it; this board is bound by that decision. This Board does not have the power to second guess the code enforcement officer.

Member Kelly repeated that he was led to believe that this application was an ongoing use. Chair Wylock asked if there was a lapse of time between the times you were shut down Nov 2005 and when you filed for a new application

Mr. Adams- Because they had a stop work order and were applying for an application that time did not count, it's a matter of appellant authority and this Board should not be second guessing the Boards of the state

Chair Wylock- You shut down Nov 2005 if you didn't file an application to DEC until December 2006 - if that happened-

Mr. Adams- That is not correct, we filed an application—there was a prior user of this facility named TNT material we applied through them for renewal of the permit during that renewal process the DEC decided that rather than renewing, they wanted us to file a new permit- At all times the directives of DEC were followed- we submitted time charts to the Town Attorney showing this

Chair- We have never seen them

It was requested that this documentation be submitted to this Board as well.

*Mr. Adams- We have extensive documentation that we gave the Town Attorney
Chair- Which we have never seen- that's all we're asking for*

Member Kelly- Mr. Chairman, I still wish to rescind my vote of last month

Member Johnson- Did this have Planning Board approval before, to put the scale in to operate?

Mr. Nelson- TT was there for 9-10 years; RASCO took over and ran the company for about 6 months around fall 2005.

Member Muroski- still very concerned with the condition of the buildings and the vibration needs to make sure the structures are perfectly sound before the machines get started.

On the site was he was surprised at the condition of the site- barrels of unknown fluids, obviously whoever was there before did not clean up afterwards, it's a problem

Mr. Peduto- When they had to close down it was the end of the season December, prior to starting operation, the entire facility needs to be clean and there is other work that needs to be done and it is all listed on the DEC permit, there are 53 special conditions.

The entire site should be cleaned up- it is understood that Rasco leases only a portion of it, Member Kelly feels that it is the obligation of the Planning Board to notify the DEC and the EPA of the condition of the site.

Dec is fully aware of the Rasco project; there is a DEC monitor that has walked the site several times in the last few months. There was no comment made.

Mr. Nelson- in that area, where the carbon is; is outside their area of operation. It is outside of their area of responsibility, he was not saying it shouldn't be cleaned up, but it shouldn't be used to determine if RASCO should operate. There is no carbon within a portion of buildings they intend to use. As far as the drums, they did not put them there. He believes they were used to store water from the drilling to test the ground water. The drums were used and emptied. They were there

before they got there. The new drums have hydraulic oil in them they were delivered from an auto parts store and used for the equipment.

Co-Chair LaRobardier- felt that although they walked the whole site it would be unfair to hold the applicant accountable for the whole site. This was the review approach used for other applications as well. The concern of the carbon on site could be reported, but not as a part of this discussion, all other documents and previous reports should be submitted and reviewed for this application.

Additional documents requested of applicant vibration study, noise study, flagged wetlands, overlay of Power plant project, Department of Health documentation with respect to the trailer, Structural report, as well as other technical studies that may have been done.

Once operation has begun a ventilation air test will be performed, a standard is to be met a process will be in place if levels are exceeded, OSHA regulations are to be reviewed and referenced.

The applicant agreed to perform this test if a condition of approval

Member Johnson asked our consultants what is our responsibility with the activated carbon that is exposed on site? A: DEC should be notified- the Board can authorize the Chair to send a letter.

Mr. Nelson believes the carbon on site was used to polish water, the previous business on site was "Carbon Activation" systems

Engineer Berger stated the carbon smelt like volatiles.

He will submit a letter to DEC with concerns with the Howland Lakes Partners and reference the tax grid numbers, not by project name.

Planer Ley-The wetland maps that were provided by Cricket Valley were reviewed because they did encompass this portion of the site, the swale that is really close to the building is not flagged. That is not to say it is not a wetland, but other documentation the Town has received did not indicate that it is a wetland. The area closer to the rail road tracks is flagged, as a non regulated wetland. The Dec 100' buffer is too far away from these buildings and the driveway.

Mr. Peduto stated that the request of having the Cricket Valley plan overlaid - is something already done and on the town website.

When Cricket Valley is built the storage building will be coming down- that would be a conflict- the applicant would need to return to Planning when the new structure is located.

It will be the charge of Cricket Valley to show any changes to the Rasco site as generated. Cricket Valley and the Town Board should be reminded that this site exists and how their future plans will impact it.

Member Johnson again mentioned his concern of this being a pre existing non conforming use.

Attorney Polidoro reminded him that this agreement was in place by the determination between the Code Enforcement officer, the Applicant and the Town Board. Generally when there is a question of interpretation we ask the Code enforcement officer, then the ZBA. It is questionable as to where or not this needs to go to the ZBA, as it stands we are in this agreement, we are party to it. If there was no agreement it probably would go before the ZBA but as it stands there is an agreement.

Engineer Berger- ESC concerns of the area where the swale is and the berm is recommended with bio-retention, it would provide treatment before hand.
A Spill prevention plan should be in place.

Tanks- it was stated during the site walk that the trailer would be removed and a tank would be placed permanently. A new 10,000 gallon tank would be placed there with containment below of 110% volume.

Carbon activation - was there a site plan done??? Do we need a survey that shows all of the structures?

Mr. Peduto stated a survey of the entire Howland Lake property was done- this was given to engineer Berger- they did not put all of the buildings on it just the buildings they are using- a disclaimer should be put on the maps stating not all of the buildings are shown nor are they in use by Rasco

The concern that where the carbon was found was in a section of one of the building proposed to be used- it's a whole building and very hard to not look at the structure as a whole- there is no divider or separation - the applicant also has no plans to enclose or put up any type of wall or divider, this is the area where the material will be stored.

What happens now when they are referred to the ARB- when there is no proposal to fix the buildings or modify the site?
The ARB will need to decide this.

A copy of the spill prevention plan, Contingency plan shall be submitted to the Board as well as the Fire Company, Operation maintenance manual as well as a vibration study purpose and use of the building and study used with the rock crusher in the measurement of Steady State inches, the closure plan and site time line.

Chair Wylock will discuss structural concerns with the Building Inspector and ask for guidance and direction
A bulk regulation table should also appear on the plans

At the request of Attorney Adams- Public hearing is to be set within 62 days of the site plan application being submitted

Planning Board deadline for the March meeting is February 10, 2010 @ noon

Motion made by Valerie LaRobardier to set the Public Hearing to March 15, 2010; 2nd by Peter Muroski

VOTE: Co-CHAIR DAVID WYLOCK – AYE	Co-CHAIR VALERIE LAROBARDIER- AYE
MEMBER JOHN FILA – absent	MEMBER BRIAN KELLY - NAY
MEMBER JAMES JOHNSON -NAY	MEMBER PETER MUROSKI - AYE
MEMBER MICHAEL VILLANO– AYE	

Motion approved

Returning to Member Kelly's request to rescind his vote- a vote can not be rescinded, but motion can be made to have the Board rescind the ratification of the stipulation agreement- It is a Board action

Member Kelly- the reason for that ratification is that the Board was lead to believe that this was a preexisting non conforming use- he disagrees and feels this should go before the ZBA and a variance should be requested by the Applicant and requests the Planning Board re- vote

Member Johnson- Our code clearly states that no solid waste facilities are allowed, He asked the attorney to confirm this

The stipulation was drawn on the determination of the Code Enforcement officer

Attorney Polidoro read- *"the following uses are prohibited under all circumstances (existing uses may be continued pursuant to the nonconforming use provisions of Article VI): heavy industry, asphalt plants, new mobile home courts, facilities for the disposal of hazardous or radioactive material, and, except as provided in § 145-50, solid waste management facilities as defined in Article XII, including but not limited to the use of solid waste or material that has previously been part of the solid waste stream (whether or not it has a beneficial use designation from the Department of Environmental Conservation) as fill"*

So if this wasn't an existing use then it would not be permitted by the code- but that determination was made by the Code Enforcement officer

Motion made by Brian Kelly to reconsider and have a revote and rescind their vote on the Stipulation agreement on RASCO; 2nd by James Johnson

VOTE: Co-CHAIR DAVID WYLOCK – NAY
MEMBER JOHN FILA – absent
MEMBER JAMES JOHNSON - AYE
MEMBER MICHAEL VILLANO– NAY

Co-CHAIR VALERIE LAROBARDIER- NAY
MEMBER BRIAN KELLY - AYE
MEMBER PETER MUROSKI - NAY

Motion denied