

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

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.

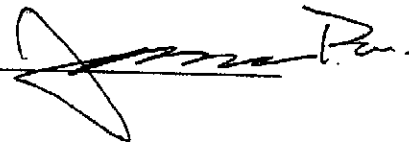
2. Rasco shall comply with DEC Permit No. 3-1320-00144-00005 and BUD 864-3-14, both of which are dated January 15, 2009 and are attached hereto. A violation of any condition of the Permit or the BUD shall subject the Operation to a Stop Work Order regardless of whether the DEC suspends or revokes the 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