

RECENT CORRESPONDENCE WITH CTDEEP

Daniel Kops

From: Daniel Kops
Sent: Thursday, September 24, 2020 4:05 PM
To: 'Robert.Isner@ct.gov'
Cc: tlee@fillaw.com; 'Joseph Porto'; 'Lauren Garrett'; Matthew J. Davis; Holly Masi; Natalie Barletta; 'Brack Poitier'; Joe Banks (j.banks@perkinseastman.com); 'Joe McDonagh'; Joel Mastroianni; 'Michele Mastropetre'; Paul Begemann; Robert Cocchiaro; 'Robert Roscow'; Shenae Draughn; Ted Stevens
Subject: Zoning Violations Associated with 82 Crest Way, Hamden - Dumping on Abutting Properties at 785 and 925 Sherman Ave, Hamden
Attachments: 82-92 Crestway Remediation Work SP 20-1511 Letter 09-24-20 to Robert Isner DEEP WEED Public Hearing 09-22-20.PDF.PDF; 82-92 Crestway Remediation Work SP 20-1511 Petition to Intervene by Lauren Garrett Public Hearing 09-22-20.PDF; 82-92 Crestway Remediation Work Special Permit 20-1511 Application Public Hearing 09-22-20.pdf; 82-92 Crestway Remediation Work Special Permit 20-1511 Plans Public Hearing 09-22-20.pdf

Dear Mr. Isner:

The attached letter to you and the related documents regarding 82 Crest Way indicate the current status of the site. The letter includes a request for assistance is assessing the material that was deposited illegally.

I look forward to hearing from you.

*Dan Kops
Town Planner
Hamden Government Center
2750 Dixwell Ave
Hamden, CT 06518
(203)-287-7070*



TOWN OF HAMDEN
PLANNING & ZONING DEPARTMENT

Hamden Government Center
2750 Dixwell Avenue
Hamden, Connecticut 06518
Tel: (203) 287-7077
Fax: (203) 287-7075
www.hamden.com

Daniel W. Kops, Jr., PhD
Town Planner

Communicated Via Email

September 24, 2020

Mr. Robert C. Isner
Director
Waste Engineering and Enforcement Division
Bureau of Materials Management & Compliance Assurance
Connecticut Department of Energy and Environmental Protection

Re: Zoning Violations Associated with 82 Crest Way, Hamden -- Dumping on the abutting properties at 785 and 925 Sherman Avenue

Dear Mr. Isner:

I think it's been several months since we last heard from you, so I want to bring you up to date with the Town's enforcement activity regarding 82 Crest Way and the related dumping on adjoining properties.

The Planning and Zoning Department required the owner of 82 Crest Way to engage the services of a licensed soil scientist to determine whether or not there were wetlands in the area of the dumping, which would result in the need for the Inland Wetlands Commission to approve any remedial work. It's now been determined that there are no wetlands in the affected area and therefore no approval from that commission is required at this time.

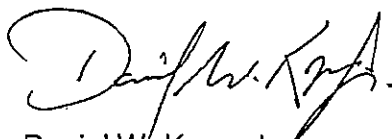
The Planning and Zoning Commission opened a Public Hearing on Special Permit 20-1511 on Tuesday, September 22, 2020. The application seeks approval to remove 5,925 cubic yards of dumped soil, rock and wood deposited downslope on two other abutting properties -- 785 and 925 Sherman Avenue -- without the approval of the Hamden Planning and Zoning Commission and permission from the property owners. I'm attaching a copy of the application, itself, and the plans, which indicate the area of disturbance and proposed scheme for removal of the material. After more than two hours of testimony the Public Hearing was continued to the Planning and Zoning Commission meeting of October 27, 2020.

At the meeting, the Commission voted unanimously to accept a Petition to Intervene in an Administrative Hearing submitted by Lauren Garrett, granting her Intervenor Party status. Ms. Garrett's petition contains several allegations, including that the "...subject waste material may be infested or show signs of insect infestation." It also recommends referring the application to your office for review and comment. I've attached a copy of her petition.

Given the substantive nature of the allegations and concerns raised by Planning and Zoning Commissioners regarding the nature of the dumped material, I am requesting your assistance in reviewing the application. Your department's expertise will be of obvious benefit to the Commission as well as Planning and Zoning Department staff.

I look forward to hearing from you and would be happy to participate in a videoconference using Zoom.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel W. Kops, Jr.", written in a cursive style.

Daniel W. Kops, Jr.
Town Planner

DWK: tbn

cc: Hamden Planning and Zoning Commission
Attorney Timothy Lee, Esq.
Attorney Joseph Porto, Esq.
Ms. Lauren Garrett

Daniel Kops

From: Daniel Kops
Sent: Wednesday, October 7, 2020 4:26 PM
To: 'yvonne.bolton@ct.gov'
Cc: tlee@fillaw.com; Matthew J. Davis; Holly Masi
Subject: Questions Regarding Tornado Debris With Possible Insect Infestation in Hamden

Dear Ms. Bolton:

As you know, in May of 2018, a tornado severely affected the Town of Hamden and other communities. On May 18, 2018, as Bureau Chief of Materials Management and Compliance Assurance, you signed emergency authorization #201802071 to aid the cleanup. Included in this EA were conditions relating to identifying and handling waste contaminated with invasive insects.

Pursuant to this EA, Hamden hired contractors to assist with the clean-up and disposal of this tornado debris. Unfortunately, one or perhaps more of the contractors hired for this work, did not take all of the waste to an approved debris management site, but buried an estimated 6,000 cubic yards on private property without necessary Town zoning or State DEEP approvals. Some of the waste was processed into firewood and sold, also without Town zoning permits and we suspect, absent compliance with State regulations relating to the sale and transportation of firewood.

One of the contractors (Paradise Landscaping) has now made application to the Hamden Planning and Zoning Commission (PZC) for a special permit to remove and dispose of the illegally landfilled material, as a means of resolving the violations. A Hamden resident, Ms. Lauren Garrett, then filed a "Petition for Intervenor Status" under CGS 22a-19. The PZC granted her petition.

Ms. Garrett has raised the issue of potential insect infestation from such species as the Emerald Ash Borer and the Asian Longhorn Beetle, and argued that the material should be thoroughly analyzed prior to any removal from the site. The PZC hearing on this special permit application commenced on September 22, 2020 and was continued after three hours to October 27, 2020 meeting.

The PZC has asked staff to seek professional guidance with regard to the proper testing, handling and disposal of the subject waste. Towards that end, staff initiated inquiries with professional consultants, who suggested we contact the Connecticut Agricultural Experiment Station in New Haven for advice regarding the potential insect infestation. When I contacted the CAES I received a prompt response from Dr. Kirby Stafford, stating:

In reference to insect infestation such as the emerald ash borer (EAB) and Asian longhorned beetle (ALB), removal shouldn't pose an issue if disposal is in Connecticut. With my guidance at the time, DEEP did adopt regulations pertaining to removal of storm debris when movement of material with these two pests was a high concern. FEMA also followed these rules. However, there are now no restrictions on movement of potentially infested material with EAB within Connecticut as this insect has been detected in almost all Connecticut towns and is present throughout the state. Internal quarantines were dropped a long time ago.

This would seem to contradict DEEP the afore-mentioned EA and the very recently issued EA #20202078 regarding the need to evaluate the waste for insect infestation and if identified as present, to document, manage and dispose of it in a particular way. In order for us to advise the PZC at its October 27th hearing, I'm asking for direction from your office –

- Should we ignore the issue of possible insect infestation or should we follow the requirements specified in the 2018 EA?

- Are the terms of the subject EA 201802071 still valid?
- Is the State DEEP still concerned about the need to properly document, manage and dispose of infected waste?
- If the answer to the above are affirmative, what steps should Hamden PZC take to limit unreasonable impacts that might be reasonably likely to occur as a result of the handling and disposal of said infected waste?

Please also be advised that Mr. Isner of DEEP WEED is aware of this matter and we believe still has an open investigation file, although that office has not to our knowledge, taken any investigative or enforcement action with regard to this specific location (82-92 Crestway, Hamden CT). He has graciously offered the help of his office to this department and we may, depending on how events evolve, need to take him up on his offer.

In the meantime, I would be happy to speak to you. Time is somewhat critical, at least with regard to the October 27th hearing date. We would need to have any new information posted at least 24 hours prior to that date, pursuant to the Governor's COVID-19 mandates. If you need any additional information, please feel free to contact me at my direct line, 203-287-7070 or at DKops@hamden.com.

I would greatly appreciate your assistance in this matter and look forward to hearing from you.

Sincerely,

Ms.

*Dan Kops
Town Planner
Hamden Government Center
2750 Dixwell Ave
Hamden, CT 06518
(203)-287-7070*

Daniel Kops

From: Daniel Kops
Sent: Wednesday, October 14, 2020 11:57 AM
To: 'Bolton, Yvonne'
Cc: Matthew J. Davis; tlee@fillaw.com; Holly Masi
Subject: RE: Questions Regarding Tornado Debris With Possible Insect Infestation in Hamden

Thanks for getting back to me. The Special Permit application states the excavated material would be brought to 15-75 Stillman Road and/or 200 Sackett Point Road, North Haven. However during the public hearing the applicant's attorney indicated all of the material would be going to a contractor in Windsor, CT. It's our understanding that the contractor is Elite Construction.

From: Bolton, Yvonne [mailto:Yvonne.Bolton@ct.gov]
Sent: Wednesday, October 14, 2020 10:45 AM
To: Daniel Kops <DKops@Hamden.com>
Subject: RE: Questions Regarding Tornado Debris With Possible Insect Infestation in Hamden

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Hi Mr. Kops, just wanted to let you know I received your email and am looking into your issues and hope to get back to you shortly. Do you know what the disposal destination is for the buried wood waste?

Yvonne

From: Daniel Kops <DKops@Hamden.com>
Sent: Wednesday, October 7, 2020 4:26 PM
To: Bolton, Yvonne <Yvonne.Bolton@ct.gov>
Cc: tlee@fillaw.com; Matthew J. Davis <mdavis@Hamden.com>; Holly Masi <HMasi@Hamden.com>
Subject: Questions Regarding Tornado Debris With Possible Insect Infestation in Hamden

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Dear Ms. Bolton:

As you know, in May of 2018, a tornado severely affected the Town of Hamden and other communities. On May 18, 2018, as Bureau Chief of Materials Management and Compliance Assurance, you signed emergency authorization #201802071 to aid the cleanup. Included in this EA were conditions relating to identifying and handling waste contaminated with invasive insects.

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Daniel Kops

From: Isner, Robert <Robert.Isner@ct.gov>
Sent: Wednesday, October 21, 2020 12:04 PM
To: Dews, George; Daniel Kops; TLee@FILLaw.com; Holly Masi
Cc: Patel, Nisha
Subject: Re: Hamden Letter
Attachments: Hamden Letter 10 21 2020 2.pdf

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Tim & Dan,

The last paragraph in George's letter reflects that some wood is wanted and has value in markets as a commodity. A viable commodity is not unwanted or discarded as is the trigger under the definition of solid waste, and is exempt from DEEP solid waste permitting.

Stumps, brush, rotted, and other wood that is not commodity grade typically has a negative value and is unwanted and is managed through waste not commodity markets.

For example if DEEP observes an 8 foot long, straight, large diameter oak logs organized and ready for milling, DEEP's conclusion would be different than that of a pile of short (less than 8 feet long), crooked pine, as the value and market for each pile is very different. The oak logs have positive value (wanted) and can be sold as is, where the pine wood will have a negative value (unwanted).

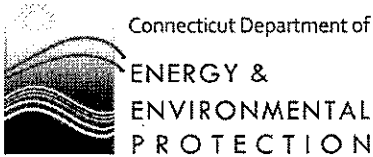
Let us know if you would prefer to have call to discuss.

Robert C. Isner
Director
Waste Engineering and Enforcement Division
Department of Energy and Environmental Protection
robert.isner@ct.gov

From: Dews, George <George.Dews@ct.gov>
Sent: Wednesday, October 21, 2020 11:04 AM
To: DKops@Hamden.com <DKops@Hamden.com>; TLee@FILLaw.com <TLee@FILLaw.com>
Cc: Isner, Robert <Robert.Isner@ct.gov>; Patel, Nisha <Nisha.Patel@ct.gov>
Subject: Hamden Letter

Hi Dan, I hope you are safe and well. The letter we discussed at our recent meeting is attached. Please let me know if you have any questions.

Sincerely,
George Dews



10/21/2020

Daniel Kops, Town Planner
Hamden Government Center
2750 Dixwell Ave
Hamden, CT 06518

Subject: DEEP Solid Waste Program Complaint No. 19-204
82 Crest Way and abutting properties at 785 and 925 Sherman Ave., Hamden

Dear Mr. Kops:

On October 16, 2020, a virtual meeting was held between Town of Hamden officials including you, Matthew Davis, Holly Masi and Tim Lee and DEEP/Waste Engineering & Enforcement Division ("WEED") staff Robert Isner, Nisha Patel, and George Dews to discuss violations at the above referenced site, among which include the unauthorized receipt and improper management of approximately 6,000 cubic yards of bulky waste [as defined by Section 22a-209-1 of the Regulations of Connecticut State Agencies ("RCSA")] including land clearing debris (as defined by Section 22a-208a-1 of the RCSA) collectively referred to hereafter as "wood waste". Town officials discussed that a Cease and Desist Order has been issued and resolution of the violations which would be on the agenda of the upcoming Planning & Zoning Commission meeting scheduled for October 27, 2020. WEED staff identified that if greater than ten (10) cubic yards of wood waste had been buried, violations of solid waste statutes and regulations had occurred, including operating solid waste facility without a permit from DEEP as required by Connecticut General Statutes Section ("CGS") 22a-208a. The severity of the violations and DEEP response would depend on the specific facts and upon consideration of the associated environmental risk, available staff resources, and enforcement priorities, WEED would provide support to the Town's enforcement efforts to resolve the subset of wood waste related violations. WEED therefore provides the following guidance and applicable solid waste statutory and regulatory references:

Applicable definitions:

CGS Section 22a-207(3): "Solid waste" means unwanted or discarded solid, liquid, semisolid or contained gaseous material, including, but not limited to, demolition debris, material burned or otherwise processed at a resources recovery facility or incinerator, material processed at a recycling facility and sludges or other residue from a water pollution abatement facility, water supply treatment plant or air pollution control facility.

CGS Section 22a-207(4) "Solid waste facility" means any solid waste disposal area, volume reduction plant, transfer station, wood-burning facility or biomedical waste treatment facility.

CGS Section 22a-207(6): "Solid waste disposal area" means any location, including a landfill or other land disposal site, used for the disposal of more than ten cubic yards of solid waste. For purposes of this

subdivision, “disposal” means the placement of material at a location with the intent to leave it at such location indefinitely, or to fail to remove material from a location within forty-five days, ...”

CGS Section 22a-208a.(b) and RCSA Section 22a-209-4.: No person or municipality shall establish, construct or operate a solid waste facility without a permit issued by the commissioner under this section.

Permitting:

WEED understands from dialog with the Town of Hamden that Paradise Landscaping has ceased the receipt of wood waste. Should Paradise wish to operate a wood waste management or other solid waste operation on an ongoing basis or conduct short term processing of wood waste to address the noted violations, in addition to applicable local approvals and/or permits, a permit from DEEP would be required prior to initiation of such activity. DEEP’s solid waste permitting webpage provides information on permitting options. DEEP strongly advises all potential applicants to request a pre-application meeting before the submission of a permit application.

Corrective Actions:

In order to rectify the solid waste disposal area violation, the approx. 6000 cy of buried wood waste placed on abutting property (785 and 925 Sherman Ave, Hamden) must be removed and disposed of at a facility permitted by DEEP to receive such wood waste. Paradise Landscaping has identified Elite Construction (Windsor) as the disposal facility; however this is not a facility permitted by DEEP and therefore cannot legally be the recipient of the wood waste. The receiving facility must be a DEEP permitted facility.

The buried wood waste (along with any other solid waste that may exist) must be characterized (i.e. categorized by waste type) prior to removal. The characterization should be conducted and overseen by an environmental consultant (such as a CT Licensed Environmental Professional) with relevant expertise. Should other solid waste (such as tires, asbestos or PCB containing materials, chemical containers, etc.) be discovered during excavation or characterization, the environmental consultant should appropriately analyze such waste, identify appropriate removal and remedial action(s), and oversee the implementation of such action(s).

Insect infestation assessment:

The town should continue to engage with the CT Agriculture Experimental Station on how to best assess the wood waste for potential invasive pests. In addition, WEED offers the following, which is standard language in its solid waste permits, to mitigate the spread of potential pests:

General Permit to Construct and Operate a Commercial Facility for the Management of Recyclable Materials and Certain Solid Wastes:

Part II.C.1.e: Management of Pest Infested Clean Wood. The Registrant shall ensure that any Clean wood received is visibly inspected immediately upon Receipt for signs of possible pest infestations including the presence of the Asian Longhorn Beetle and the Emerald Ash Borer. i. Signs indicating possible Asian Longhorn Beetle infestation can be found at the CT DEEP webpage: <http://www.ct.gov/deep/alb>; ii. Signs indicating possible Emerald Ash Borer infestation can be found at the CT DEEP webpage: <http://www.ct.gov/deep/eab>; iii. Any Clean wood suspected of being

infested by either the Asian Longhorn Beetle or the Emerald Ash Borer should be identified at the source of generation and managed in accordance with existing quarantine agreements. Such waste shall be managed separately from other types of waste; and iv. If signs of infestation are observed:

- A. Digital photos and careful identification notes shall be provided to the Connecticut Agricultural Experiment Station (Deputy State Entomologist direct phone line: 203-974-8474; e-mail CAES.StateEntomologist@ct.gov);
- B. The infested green waste shall be: segregated from other green waste; marked as segregated; securely stored and kept reasonably intact;
- C. Any handling activities (chipping; moving) shall be postponed until an investigator from, or designated by, the Connecticut Agricultural Experiment Station, has examined the potentially infested green waste; and
- D. Any truck load tickets and other documentation of deliveries shall note whether a pest infestation assessment has occurred.

In closing, please note that wood managed for processing into lumber or firewood as part of a legitimate business is not by itself a solid waste and can be managed as allowed by local zoning requirements. If there are any questions, please contact me at George.dews@ct.gov.

Regards,

/S/ George Dews
Supervising Sanitary Engineer
Waste Engineering & Enforcement Division

cc: Attorney Timothy Lee, Town of Hamden
WEED Complaint #19-204 Complaint File

Daniel Kops

From: Isner, Robert <Robert.Isner@ct.gov>
Sent: Wednesday, October 21, 2020 12:52 PM
To: Matthew J. Davis; Daniel Kops; Tim Lee; Dews, George
Cc: Patel, Nisha; Holly Masi
Subject: Re: Crestway Bulky Waste Facility

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Regarding Attorney Lee's response - Unfortunately the question of "what is solid waste" can be a tricky question to answer. DEEP does in part assess the value of the material in question to make the determination and sometimes it comes down to if the material is wanted (can it be sold) or unwanted (must a fee be paid to someone to manage it) in the market place.

Managing (receiving, storing, or processing) solid waste from off-site requires a solid waste facility permit. If the material is not a solid waste, no solid waste facility permit is required.

Regarding Matt's email below, please forward whatever new documentation you have such as photo documentation (retain detail of who, when, where for the photos), field notes, reports, etc., and DEEP can review. Issuing an order is not feasible by October 27th.

If need be we can set up another call time as DEEP cannot continue replying to each email coming in leading to another series of emails.

Be well.

Robert C. Isner
Director
Waste Engineering and Enforcement Division
Department of Energy and Environmental Protection
robert.isner@ct.gov

From: Matthew J. Davis <mdavis@Hamden.com>
Sent: Wednesday, October 21, 2020 12:41 PM
To: Daniel Kops <DKops@Hamden.com>; Tim Lee <TLee@FILLaw.com>; Dews, George <George.Dews@ct.gov>
Cc: Isner, Robert <Robert.Isner@ct.gov>; Patel, Nisha <Nisha.Patel@ct.gov>; Holly Masi <HMasi@Hamden.com>
Subject: Crestway Bulky Waste Facility

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Thank you Dan - Folks, the evidence Dan just discovered, is in my opinion, absolutely a change in material circumstances which justifies that DEEP assert its jurisdiction over the entire matter. Per our recent zoom

Thank you, George. I am referencing to the last paragraph of the letter. Based on our conference call, my understanding was that the applicant would also require a permit/license from DEEP in order to process lumber or firewood at the site in addition to any local zoning approval. Is that correct?

Timothy J. Lee, Esq.
Fasano, Ippolito, Lee & Florentine, LLC
388 Orange Street
New Haven, CT 06511
(203) 787-6555

261 East Main Street
Branford, CT 06405
(203) 483-9609
(203) 483-1342

From: Daniel Kops [<mailto:DKops@Hamden.com>]
Sent: Wednesday, October 21, 2020 11:17 AM
To: Dews, George <George.Dews@ct.gov>; Tim Lee <TLee@FILLaw.com>
Cc: Isner, Robert <Robert.Isner@ct.gov>; Patel, Nisha <Nisha.Patel@ct.gov>; Matthew J. Davis <mdavis@Hamden.com>; Holly Masi <HMasi@Hamden.com>
Subject: RE: Hamden Letter

Thanks George

We'll review your letter and get back to you if we have any questions or comments.

From: Dews, George [<mailto:George.Dews@ct.gov>]
Sent: Wednesday, October 21, 2020 11:05 AM
To: Daniel Kops <DKops@Hamden.com>; TLee@FILLaw.com
Cc: Isner, Robert <Robert.Isner@ct.gov>; Patel, Nisha <Nisha.Patel@ct.gov>
Subject: Hamden Letter

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Hi Dan, I hope you are safe and well. The letter we discussed at our recent meeting is attached. Please let me know if you have any questions.

Sincerely,
George Dews
860-633-2543