

State-local conflict over recycling sites

June 8, 2011 by JENNIFER SMITH / jennifer.smith@newsday.com



Two recycling sites near the Yaphank Historic District where machinery gobbles up tree stumps and tunnel rock, generating towering piles of mulch and gravel, are emblematic of a growing state-local conflict on Long Island.

Heavy trucks bound for the two operations rumble down wooded East Main Street, past 19th century structures in an area zoned for residential use. Neighbors said that over the last two years, the traffic, fumes, noise and stench of rotting vegetation have made sitting outside on warm days intolerable and sleeping a challenge. The Town of Brookhaven is seeking to shut one site, saying it needs town approval to operate in a residential zone, and said it is investigating the other.

State law makes it easy to set up operations that recycle nonhazardous waste, as long as they meet state environmental standards. Some operations require no state approvals, depending on the type of material they accept. Even when they do, the state Department of Environmental Conservation doesn't notify local governments when such sites are approved, nor check whether operations comply with local zoning codes. In cases where there's a zoning dispute, state regulators cannot enforce local codes. Municipalities seeking to do so can often end up in court.

Yaphank residents such as Kathleen Madigan say they're watching their quality of life erode as operations at the two sites, which have separate owners, have expanded far beyond their original size.

"I find it absolutely unbelievable that Yaphank was transformed into a truck terminal," said Madigan, who lives nearby. "I don't understand how operations that seem to be in conflict with the zoning were able to launch and expand."

Law gives little oversight

The Yaphank sites are among 133 across Long Island where yard waste and clean demolition debris are recycled into paving material, mulch and compost under a process fast-tracked by a state eager to encourage such reuse.

These operations have proliferated on Long Island -- there were only three in 1994.

Operators don't need state permits. Most simply register with the DEC, and some small operations do not need to do that, depending on what and how much they process. Registration of a site assumes that applicants comply with local zoning but does not require the state to notify the public or get input when new registrations are sought or issued.

Many are in industrial or commercial zones, but some, such as the Yaphank operations, are in or near residential districts where neighbors object.

DEC officials said they have no reason to close either site on East Main Street because neither violates state conservation law nor poses a danger to environmental or public health. The zoning issue is outside their jurisdiction, they said.

Town of Brookhaven officials said the process leaves municipalities in the dark.

"The state will not issue a liquor license without checking with the municipality to make sure there are no zoning violations," said deputy town attorney David Moran.

Brookhaven has gone to court to shut down the mulching and topsoil production at 275 E. Main St., saying special town approval is needed to operate in the residential area. The suit names property owner Edward Hololob, Hololob Industries, and tenant Beaver Industries. A second tenant, D.B.O.W. II, is not named.

The town says it has launched a similar investigation of the site next door, 275A E. Main St., where tunnel rock is being processed, but has not filed legal action.

Hololob's attorney and some operators at the two sites said that, although they're in a residential zone, the operations fall under an exemption the town issued to mine sand there. The sand mining stopped a few years ago.

The dispute also highlights the limitations for state regulators overseeing such recycling sites, DEC Regional Director Peter Scully said. Nassau and Suffolk counties have dozens more of these operations than other regions and a handful of staff to oversee them.

"We need to find a middle ground between what is essentially a document review and the more rigorous process we require for full solid waste permits," Scully said.

Scully said as a result of the Yaphank disputes, DEC regional officials are giving registration applications more scrutiny and "actively discussing changes to the solid waste regulations, which would give us the tools to confront the problems these sites present on Long Island."

Still, Scully said these recycling operations serve a useful purpose by reusing products that would otherwise be thrown away.

"You may not like it, but it's got to go someplace and it's not as environmentally offensive as solid waste," he said.

Land with a history

At least four businesses appear to be operating out of the Yaphank sites, where neighbors said activity has ramped up since 2009. Edward Hololob, who owns 275 E. Main St., leases land to two companies that make topsoil and mulch.

His neighbor to the north, Randolph Froehlich, rents space at 275A E. Main to a welding shop and a Mineola carting company, New York Dirt, which was contracted to dispose of tunnel rock from the Long Island Rail Road's East Side Access project. The rock is being processed for resale as a substitute for gravel or bluestone, the DEC said.

Hololob's attorney, Daniel O'Brien, said similar activities have been going on there since the land was first mined for sand in the 1920s and '30s. Hololob's family divided the property in the 1990s and sold the top parcel to Froehlich.

"I don't know what the neighbors are complaining about . . . this guy is recycling trees, leaves and soil," O'Brien said. "You can't be any more environmental than that."

Fred Mars, a lawyer for Froehlich, said of the activity at 275A: "He's not really involved with it. He's just the landlord and collecting rent."

Peter Sullivan, an attorney for Froehlich's tenant New York Dirt, said the firm's activities there were appropriate. "The material is clean and it's as professional an operation as you would expect," Sullivan said.

Moran, the deputy town attorney, contends the mulching and topsoil production on Hololob's land was not covered by a 1987 certificate legalizing the land's use for sand-mining. It's a new use that needs town approvals, he said.

Across the county border in Oyster Bay, town officials used zoning to try to shut down a Jericho Turnpike site where neighbors complained about smells from a 30-foot pile of leaves and wood chips. In 2008, the town issued summonses to the owner for running a business in a residential district; that dispute is still in district court.

Environment's a concern

Both of the Yaphank sites were the scene of previous environmental violations by the property owners, the DEC said. Neither disqualified operators for state registrations to process materials at the sites.

Hololob Industries in 2008 admitted to unlawful disposal of solid waste and paid a \$2,000 fine, said Capt. Timothy Huss of the DEC's division of law enforcement.

The DEC in 2008 fined Froehlich and his company, Frog Hollow Industries, Inc., \$300,000 for illegally mining sand beyond his permit boundaries.

His tenant, New York Dirt, had its municipal permit to haul solid waste in New York City revoked last year by the city over the owner's reputed association with a member of the Gambino crime family, according to a decision by the city's Business Integrity Commission. Sullivan, New York Dirt's attorney, said the permit was not renewed "because of an extortion attempt by an organized crime member." Transit officials said the firm stopped work on the East Side Access project last June as a result.

The Yaphank sites don't require state registrations to process tunnel rock or make mulch from land-clearing debris. But operators did seek registrations that enable them to also process wood and clean demolition debris there if they wish.

"No one has ever come to me with a specific complaint, which I'd be happy to address," said Dominic Testa, who said he managed the property for Froehlich until April. "We want to protect the value of the property. Having the neighbors upset doesn't improve that."

Some residents said they're disheartened.

"It has become an area that is now frequented with heavy-duty eighteen-wheelers, sometimes 50 per day, 24 hours a day, seven days a week," said Linda Petersen, who has lived in Yaphank for 25 years.