

# Contaminated Fill Legal Issues

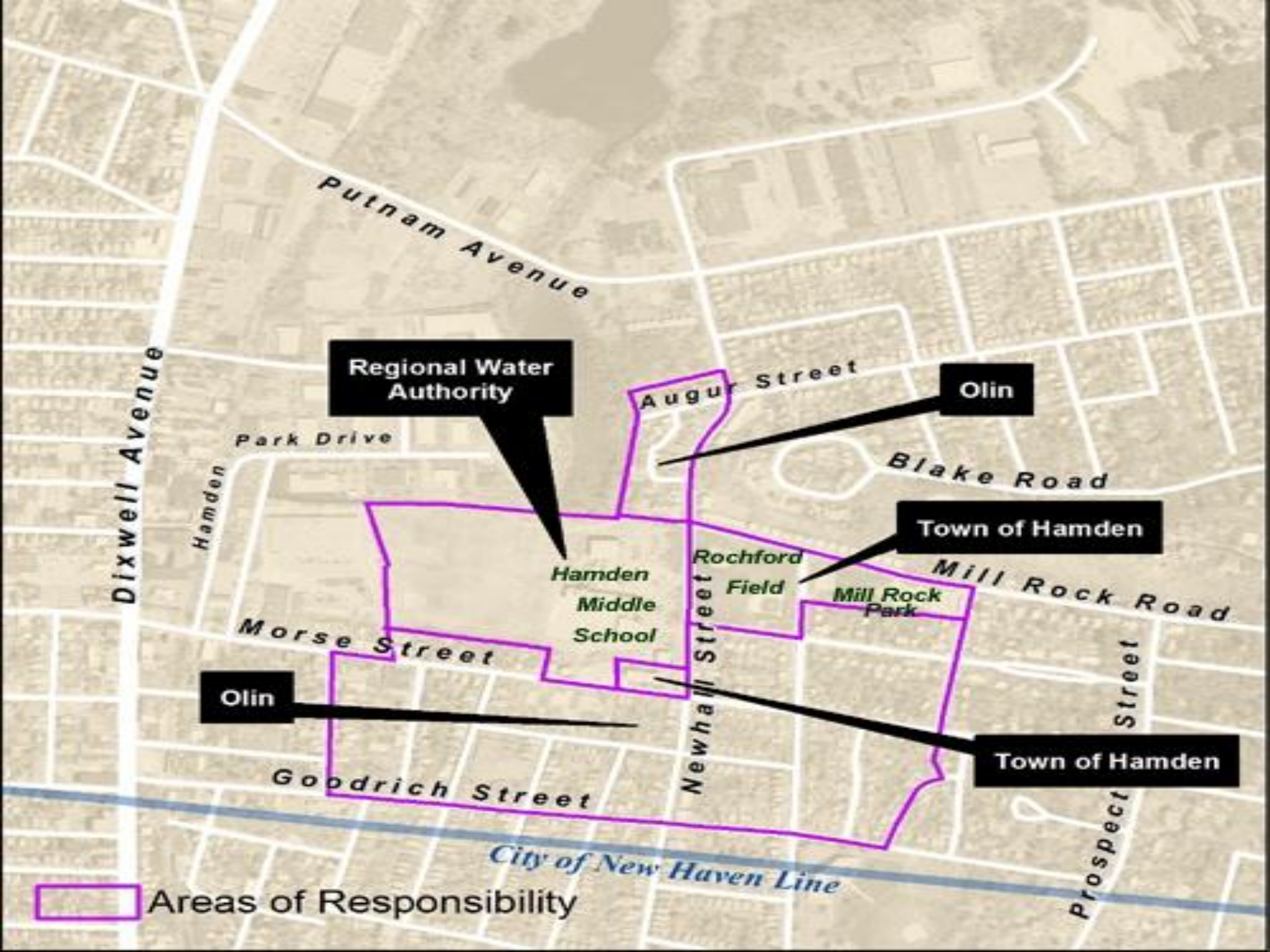
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# Fill Cases In The News

- “Valhalla's Contaminated fill dumper pleads guilty”
- “ Framingham suing contractor over contaminated fill sent to Milford”
- “Briarcliff Manor families to sue schools over children's cancer deaths, cite contaminated fill”
- ‘Contaminated fill’ to be removed from farm land”
- “Palmer Couple Sue Company Over Gas-contaminated Fill They Say Home Was Devalued”




**Regional Water Authority**

**Olin**

**Town of Hamden**

**Olin**

**Town of Hamden**

 Areas of Responsibility

# Common Problematic Materials

- Sediments/sludge
- Road Material
- Recycled/Crushed Concrete
- Bricks,
- Coal ash/MSW incinerator ash
- ACM
- RCRA Wastes
- Slags/tailings/foundry sand

# Common Problematic Scenarios

- unregulated fill at schools, playgrounds, daycares, and residential properties.
- Gravel pits
- Wetlands
- Farmland



# Ongoing Challenge

- Significant Volume of Historic Fill still being improperly managed
- Significant Volume Historic Fill is ending up in the inappropriate location
- Much fill moved beyond state jurisdiction
- Many developers look for “deal on fill”

# Identification of Historic Fill Areas

- Review of Historic Maps and Other Historical Data (e.g. Sanborn Maps)
- Review Site Assessments, Soil Borings, etc
- Information Review of information from National Resource Conservation Service (NRCS)

# Recent Caselaw

## ■ Imported Fill

- *In the Matter of Hamburg Mills Creek Superfund Site*
- *U.S. Home v Settler's Crossing*, 2010 U.S. Dist. LEXIS 22653 (D. Md. 3/11/10)
- *Knoll v. MTS Trucking, Inc.*, 2011Minn. App. Unpub. LEXIS 767 (Minn. Ct. App., Aug. 15, 2011)
- *Woodcliff, Inc. v Jersey Construction, Inc*, 2012 U.S. Dist. LEXIS 125214 (D.N.J. 9/4/12)
- *Collins v. Olin Corp*, 2010 U.S. Dist. LEXIS 39862 (D.Conn 2010)
- *Lewis v. GE*, 254 F. Supp. 2d 205 (D.Ma. 2005)



# Recent Caselaw Cont'd

- Exporting Fill Material
  - *Ford Motor Co. v. Edgewood Properties*, 2012 U.S. Dist. LEXIS 125197 (D.N.J. 8/31/12)
  - *Lowe's Home Centers Inc. v. Tetra Tech Inc. et al* (D.N.H. 2012)
- Reuse/Spread On-Site
  - *US v Honeywell*, 542 F. Supp. 2d 1188 (E.D.Ca. 2006)
  - *Bonnieview Homeowners vs. Woodmont Builders*, 655 F. Supp. 2d 473 (D.N.J. 2009); *Montville Twp. v. Woodmont Builders, LLC*, 2010 U.S. Dist. LEXIS 55932 (D.N.J. 2010)

# Potential Statutory Liability

- CERCLA
  - Owner/operator/generator/transporter
  - Release
  - NCP
- RCRA
  - Contained-in
  - LDRs
  - Corrective Action /7002 Actions
- CWA
- TSCA

# Common Law

- Trespass
- Nuisance
- Negligence
- Strict Liability
- Fraud
- Misrepresentation