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\$3.99 | LI EDITION
Sunday
Jan. 4, 2015

SPORTS FINAL
Newsday
THE LONG ISLAND NEWSPAPER



ILLEGAL DUMPING

WETLANDS PERIL

Months after tainted fill discovered, still no action
to prevent more damage, sources say

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ILLEGAL DUMPING

Danger remains

7 months after tainted fill found at Deer Park site, nothing done to prevent more damage, sources say

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Seven months after contaminated fill was discovered in a Deer Park wetland, nothing has been done to keep the debris from further damaging the sensitive ecosystem, a source and the adjoining property owner's attorney said.

The 6-acre parcel at 175 Brook Ave., which backs onto the wetland, is one of four sites being investigated by the Suffolk County district attorney's office as part of its probe into illegal dumping on Long Island.

The source said the state Department of Environmental Conservation has asked the owner of the property, April Masie, to take steps to keep the fill from eroding and posing an even greater threat to the wetland. Masie's attorney, Gerard Glass of Babylon, said his client is a victim who is not responsible for the dumping and cannot afford the remediation efforts.

"We're struggling to financially accommodate these requests," Glass said. "I think the DEC would love to see the property owner accept responsibility and conduct a cleanup. It's just not feasible. You can't get blood from a stone."

The DEC issued a statement through spokesman Peter Constantakes saying it "continues to work with local officials and responsible parties to ensure waste is properly removed from these sites to protect the environment and public health."

Legal responsibility at issue

Last month, Thomas Datre Jr., two Datre family companies — 5 Brothers Farming Corp. and Day-

tree at Cortland Square — and Ronald Cianciulli of Atlas Asphalt, a paving company headquartered on Brook Avenue near the dumping site, were named in an indictment issued by a special grand jury convened by the Suffolk County district attorney's office on charges related to the dumping on the property.

Lawyers for the men and the corporations have denied the charges. They are due back in court Thursday.

Glass said Masie was considering a civil suit "in the near future" against those the district attorney's office has named as responsible for the dumping.

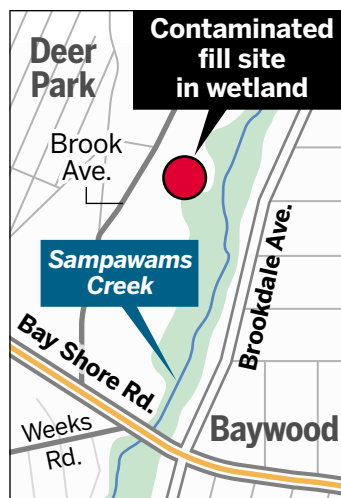
Federal and state cases interpreting environmental statutes have held landowners liable for contamination or dumping caused by third parties, according to one environmental attorney not connected to the case.

"The premise here is that a landowner has an active duty to prevent illegal dumping" if the owner is renting the property out for economic gain, said Jon Schuyler Brooks, environmental partner at Phillips Nizer of Garden City.

If the landowner won't remediate or can't afford to, the state could pay for the work itself and then place a lien against the property or seek reimbursement from the landowner or anyone deemed responsible for the dumping, or both, he said.

Permanent damage worries

But as the legal wrangling continues, the 300-foot-long berm perched along a steep slope above Sampawams Creek in the Town of Babylon continues to alarm freshwater-wetlands experts, who worry the unsecured



fill will damage the fragile area.

The contaminants in the fill — semivolatile organic compounds, pesticides and metals — can leach out and poison plant and animal life, while the sediment itself can choke the wet soil and allow invasive species to take hold, said Steve Englebright, a Democratic assemblyman and sedimentologist who

teaches Long Island natural history at Stony Brook University.

"Once you identify a site where loose material is adjacent to a steep slope and there are wetlands that might be impacted, there should not be delay," he said. "Act prudently, because it's very difficult to reverse damage to a wetland."

Heavy precipitation, as Long Island experienced last year, and any melting snow can exacerbate the problem, he said.

"Those loose sediments will migrate with heavy rain," Englebright said. "They will be carried downslope and deposited into the wetlands. And then the wetlands are permanently damaged."

Decades of dumping

The contaminated fill discovered last year isn't the first dumping violation at the Brook Avenue property. In 2002, the DEC cited the previous property owner — Masie's father, Joseph Masie — for clearing plant life and placing fill containing dirt,

vegetation and concrete in half an acre of the protected wetland. That fill was not found to contain contaminants, but it also was unclear where it came from, sources said.

Joseph Masie, who the DEC said assumed responsibility for the dumping, signed an order on consent in that case in 2003, agreeing to replant the vegetation and construct a chain-link fence and berm to protect the area — work he completed three years later at a cost of \$30,000 to \$50,000, sources said.

Sampawams Creek itself has long borne the weight of decades of dumping and fill along Brook Avenue, said Richard Groh, chief environmental analyst with the Town of Babylon's Department of Environmental Control.

"There's been situations where people have tried to increase the usable portion of their lot by filling in the regulated state wetlands," Groh said. "It was perhaps the cost of doing business years ago."

for wetlands



An aerial view in August of the parcel at 175 Brook Ave. in Deer Park that backs onto a sensitive wetland and Sampawams Creek, part of the Great South Bay watershed.

Status of other dumping sites



NEWSDAY / JOHN PARASKEVAS

Roberto Clemente Park:

Islip Town is finalizing its response to comments it received from the state Department of Environmental Conservation in November on its work plan to remediate the park, said Inez Birbiglia, deputy town parks commissioner.

Islip Avenue/Sage Street in Central Islip:

Levels of contamination in the fill were found to be above groundwater-protection standards, which means the fill must be disposed of in a facility off Long Island, sources said, adding that the owner of the site, L-C Real Estate Group, must now prepare a plan to remove and dispose of the fill and submit it to the DEC. Steven LoSquadro, a Rocky Point attorney representing the landowner, said his client paid for the testing and is cooperating with the DEC. But, he said, his client is also a "victim of a crime" and will seek restitution from the criminal justice system.

Louise Harrison, a consulting conservation biologist who worked for five years on a wetlands project at Sampawams Creek for Suffolk County in the 1980s and '90s, said the legacy of dumping there can be seen in the steep slopes that can be found along the creek — made up of "concrete and brick and demo debris and everything else."

"Sampawams Creek has received illegal fill for years and years," said Harrison, who also once enforced wetlands violations, including some along Brook Avenue, as a former DEC conservation biologist.

On a recent visit to the creek, about half a mile from 175 Brook Ave., Harrison crouched over rusted, crushed 55-gallon drums that lay in the water, along with half-submerged shopping carts and the candy wrappers and empty soda cans that make up the usual suburban detritus.

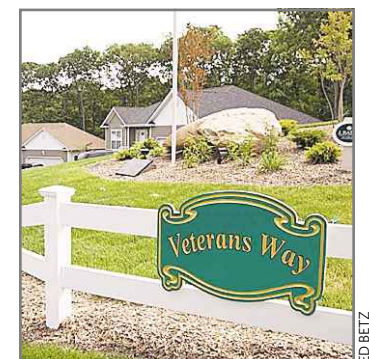
"You can't say it's pristine. You can't say it's healthy," she said. "I would love to see this area cleaned up."



Wetlands expert Louise Harrison looks at a rusted 55-gallon drum on Dec. 18 in Sampawams Creek, the site of decades of dumping. ■ More photos of Suffolk dumping sites: newsday.com/toxicdumping

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NEWSDAY, SUNDAY, JANUARY 4, 2015

Veterans Way in Islandia:

Contaminated fill was removed from the site last month and clean fill brought in to replace it. Additional testing was being done to address homeowners' concerns that the first round of testing was not adequate.