



Department of
Environmental
Conservation

Comprehensive Revisions to 6NYCRR Part 360 Solid Waste Management Facilities Regulations

2

Timeline

- Draft regulations posted on DEC website on February 26
- State Register and ENB publication on March 16
- Public hearings in June (Long Island 6/2, Albany 6/6, Rochester 6/7, New York City 6/9)
- Public information and targeted stakeholder workshops
- (April and May)
- Public comment period extended to September 13
- Final regulations in early 2017



3

Part 360 Revised Series Structure

- Part 360 General Requirements
- Part 361 Material Recovery Facilities
- Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities
- Part 363 Landfills
- Part 364 Waste Transporters
- Part 365 Biohazard Waste Management Facilities
- Part 366 Local Solid Waste Management Planning
- Part 369 State Assistance Projects



4

Part 360 General Requirements

- Registration duration limited to 5 years
- New exemptions added
- New pre-determined BUDs added
- Case-specific BUD approvals limited to 5 years
- Specific provisions for case-specific BUDs for navigational dredge material (NDM) and oil/gas brine
- New section for management of historic fill



5

Part 360 General Requirements

- Permit applications submitted by private entities must also demonstrate consistency with the goals and objectives of the Local Solid Waste Management Plan for municipalities in facility's service area
- Acceptance rate increases not designated as minor under Part 621 will be treated as new applications
- If financial assurance mechanism is provided by the private operator of a municipally-owned facility, the fully funded mechanism must be transferred to the municipality upon return to municipal operation or control



6

Part 361 Material Recovery Facilities

- Subpart 361-1 Recyclables Handling and Recovery Facilities
- Subpart 361-2 Land Application and Associated Storage Facilities
- Subpart 361-3 Composting and Other Organics Processing Facilities
- Subpart 361-4 Wood Debris and Yard Trimmings Processing Facilities
- Subpart 361-5 Construction and Demolition Debris Processing Facilities
- Subpart 361-6 Waste Tire Handling and Recovery Facilities
- Subpart 361-7 Metal Processing and Vehicle Dismantling Facilities
- Subpart 361-8 Used Cooking Oil and Yellow Grease Processing Facilities



7

Part 361 Material Recovery Facilities

- New exemption for small scale composting facilities to facilitate composting at community gardens [$< 1\text{cy SSO/wk}$]
- Registration provisions, instead of permits, for food scrap composting from 1000 to 5000 cubic yards per year
- New subpart established for production of mulch from grinding and storage of clean wood (wood debris & yard trimmings) [Exempt <2 acres; Registration $<10\text{ac}$]



8

Part 361 Material Recovery Facilities

- Requires permit rather than registration for RHRFs and C&D debris processors that receive more than 250 tons/day
- Expand tracking of C&D debris to include material leaving registered C&D debris processing facilities
- Requires receiving, processing, and sorting of mixed C&D debris within an enclosed building



9

Part 361 Material Recovery Facilities

- Incorporates the requirements of Article 27, Title 23: Vehicle Dismantling Facilities by establishing operating and reporting requirements for these facilities
- Requires registration for large scrap metal processors that store more than 500 cubic yards of metal
- New subpart added to address the processing of used cooking oil and yellow grease [Exempt <1000 gal/yr; Registration <500,000 gal/yr]



10

Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities

- Subpart 362-1 Combustion Facilities and Thermal Treatment Facilities
- Subpart 362-2 Municipal Solid Waste Processing Facilities
- Subpart 362-3 Transfer Facilities
- Subpart 362-4 Household Hazardous Waste Collection Facilities and Events



11

Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities

- Clarifies that emerging thermal treatment technologies are regulated under 362-1
- Adds registration provisions for combustion of limited amounts of waste tires [<10 tons/day], unadulterated wood [<1400 tons/day], and used cooking oil or yellow grease [<1000 gal/day]
- Relocates refuse-derived fuel processing facility requirements and post collection recyclables recovery facilities to MSW Processing Facilities under 362-2



Department of
Environmental
Conservation

12

Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities

- Expands exemptions for three specific transfer facility types:
 - vehicle to vehicle transfer
 - small municipally owned transfer facilities [20 cy/day]
 - small source separated organic waste transfer facilities [5 cy/day]
- Prohibits source-separated recyclables, electronic waste, rechargeable batteries, mercury-containing products, and other product stewardship items from being transferred from transfer facility to a combustor, thermal treatment facility or landfill



Department of
Environmental
Conservation

13

Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities

- Repeals existing Subpart 373-4 for HHW collection and moves requirements into new subpart
- Requires fixed radiation detectors and establishes operating requirements including daily background radiation readings, acceptance thresholds, weekly field checks, annual detector calibration, staff training, records maintenance, and reporting
- (Similar requirements are included for other facilities that accept MSW including landfills, composting facilities, processing facilities, and transfer facilities which ship waste out of state)



Department of
Environmental
Conservation

14

Part 363 Landfills

- Exemptions related to disposal relocated to this Part and several new exemptions added
- Limits exempt disposal of tree debris to no more than 1 acre (Outside Long Island only)
- Replaces the current exemption which allows unlimited disposal of concrete, asphalt, rock, brick, soil and glass (CARBS) at a facility with a limitation of no more than 5,000 cubic yards (Outside Long Island only)
- Removes requirement for a site selection study while still maintaining minimum siting criteria



Department of
Environmental
Conservation

Part 363 Landfills

- Adds requirement for notification to the Department for inactive landfills which are encroached upon or which exhibit environmental impacts
- Requires liner integrity testing be conducted on both geomembrane liners of a double composite liner system
- Secondary leachate collection and removal system must be designed to a minimum capacity of 1000 gallons per acre per day for rapid detection of leaks



Part 363 Landfills

- Consolidates Long Island and C&D Debris landfill requirements
- Reduced separation to bedrock from 10' to 5' if material meets 1×10^{-6} cm/s permeability specification
- Requires new landfills or subsequent development at existing landfills to utilize aboveground leachate storage tanks



17

Part 363 Landfills

- Requires active landfill gas collection for new MSW landfills and subsequent development at existing MSW landfills
- Acceptance of alternate operating cover (AOC) above 20% of annual tonnage must be counted toward tonnage disposed
- Incorporates the concept of custodial care for long-term management of landfill after post-closure care period



18

Part 364 Waste Transporters

- Exemption for small loads increased from 500 to 2000 lbs
- Registration criteria added for:
 - self transport of RMW quantities < 50 lbs per month
 - transport of < 50 lbs per shipment of HHW
 - transport of commercial waste > 2000 lbs per shipment
 - transport of C&D debris or historic fill > 10 cubic yards per shipment
 - transport of sharps from a household medical waste sharps collection facility
- Adds tracking forms for C&D debris, drilling and production waste, and historic fill



Part 365 Biohazard Waste

- New Part that consolidates existing criteria for RMW and adds criteria for waste streams that are similar to RMW including:
 - trauma scene waste
 - biohazard/bioterrorism waste
- Registration replacing permitting for:
 - on-site treatment for small quantity generators of RMW or biohazard waste < 220 lbs. month
 - radiopharmacies
 - on-site treatment facilities employing single use containment treatment systems that treat <50 lbs/month



Part 366 Local Solid Waste Management Planning

- Streamlining and reorganization of the LSWMP content and approval process
- Clarified and enhanced the public participation process
- Current requirement for updates, modifications and biennial compliance reports replaced with an annual planning unit report, accompanied every other year with a biennial update
- The biennial update will be used as the mechanism for modifying (and receiving department approval for) LSWMPS



Part 369 State Assistance Projects

- Establishes separate funding categories for:
 - capital projects (waste reduction & recycling, HHW)
 - education & coordination projects
 - HHW collection and disposal projects
 - landfill closure
 - landfill gas management
 - targeted WR&R priority area projects



Part 369 State Assistance

- Establishes an annual application and funding process for Education & Coordination and HHW projects
- Allows Department to target high priority WR&R areas annually
- Requires that funded MWRR projects be included in the approved CRA or LSWMP for the municipality
- Restricts LF closure funding to landfills that stopped receiving waste prior to April 9, 1997



23

Comments Welcome

- Written public comments will be accepted until 5:00 pm on July 15, 2016 to:

SolidWasteRegulations@dec.ny.gov

or

Melissa Treers, P.E.
New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233-7260

Appropriate revisions will be made based on public input



24

Questions or Comments?





Department of
Environmental
Conservation

Highlights of the Major Changes to the State's Solid Waste Management Regulations

NYSBA, Environmental Law Section
October 15, 2016

Jennifer L. Maglienti, Esq.
NYSDEC, Office of General Counsel
Jennifer.Maglienti@dec.ny.gov

2

Major Goals of the Rulemaking

1. **Streamline** regulations to make them easier for the regulated community and Department staff to understand and implement
2. **Address** additional facilities and waste streams that were previously exempt from regulation but have adverse impacts
3. **Update** technical criteria and relax or eliminate regulatory requirements which provided little or no environmental benefit



3

Streamline

**Consolidate
definitions**

**Group
requirements
applicable to all
facilities in one
location**

**Reflect the
solid waste
hierarchy**



4

REGULATED WASTE STREAMS

MSW

Recyclables (Metals,
Plastics)

Compost/Organics

Wood Debris/Yard Waste

Construction and
Demolition Debris

Waste Tires

Used Cooking Oil and
Yellow Grease

Metal Processing and
Vehicle Dismantling

Regulated Medical Waste



5

FOCUS OF PUBLIC INTEREST

MULCHING

- Wood Debris & Yard Trimmings

CONSTRUCTION & DEMOLITION DEBRIS

RADIATION DETECTION

REGULATED MEDICAL WASTE



6

- **Mulch production from wood debris:** larger than 2 acres now regulated. Registration: (2-10 ac); Permit (>10 ac) – Subpart 361-4



7

YARD WASTE

Registration <30,000 cy
Permit >30,000 cy

Pile size restrictions and setbacks

- 200 ft to water well
- 25 ft to property line
- 200 ft to residence



Department of Environmental Conservation

8

YARD WASTE

Temperature monitoring required at least 2x per week

Piles must be broken down if temp exceeds 140°F

Runoff must be addressed



Subpart 361-4

Department of Environmental Conservation

9

Department of
Environmental
Conservation

10

Construction & Demolition (C&D) Debris

- Facilities that receive 250 tons on any day or greater of concrete, asphalt, rock, brick and soil (CARBS) will need permit
- Expanded use of tracking forms for C&D debris transport
- Lowers threshold to trigger need for registration
- Adds new requirement for enclosure of mixed C&D debris processing facilities

Department of
Environmental
Conservation

11

Exempt disposal?



12

Exempt disposal?



13



NEW YORK
STATE OF
OPPORTUNITY

Department of
Environmental
Conservation

14

Radiation Detection

Facilities that handle MSW would be required to install fixed radiation detectors:

- Landfills
- Combustion facilities
- MSW composters
- Transfer facilities that ship out of state



NEW YORK
STATE OF
OPPORTUNITY

Environmental
Conservation

15

Radiation Detection – Commercial and Industrial Use



Department of
Environmental
Conservation

16

REGULATED MEDICAL WASTE (RMW)

Expands scope of program to cover generators

Includes criteria for handling and treatment of RMW including household medical waste sharps

Contains autoclave requirements for RMW treatment facilities

17

Feedback on draft rules. . .

- ❖ Lower permit threshold for RUCARBS will be disincentive to recycling and lead to more landfilling
- ❖ Transition rules lack administrative process
- ❖ Timeline for transition is too restrictive
- ❖ RMW rules conflict with federal law



18

Feedback on draft rules, cont'd. . .

- ❖ Revoking BUD through regulation is improper
- ❖ Size and time restrictions on stockpiles are too restrictive
- ❖ Recycled asphalt pavement should be exempt from tracking
- ❖ Setbacks are impossible to meet in urban areas



THANK YOU!

For More Information:

Draft regulations and supporting documents:

<http://www.dec.ny.gov/regulations/81768.html>

Contact info:

Jennifer L. Maglienti, Esq.
NYSDEC
Office of General Counsel
625 Broadway, 14th Floor
Albany, New York 12233
518-402-9188



Proposed Part 360 Regulations



Thomas S. West, Esq.
The West Firm, PLLC
October 26, 2016



KEY ISSUES FOR THE REGULATED COMMUNITY

Proposed Revisions to 6 NYCRR
Part 360 –
Something for Everyone;
Too Much for Most

SOME KEY ISSUES

- Wastes Originating From Oil and Gas Exploration and Production – Frack Wastes!!!
- Closure/Post-Closure/Custodial Care Issues.
- Local Solid Waste Management Plan (“LSWMP”) Issues.
- Beneficial Use Determination (“BUD”) Issues.

Frack Wastes

Section 363-4.5(1) & 363-8.1(a)(4) – Radiation Detectors Required for All Landfills.

- Fixed detection units;
- Set point – 2 to 5 times background;
- Daily background, weekly field checks and annual calibration required;
- Procedures for handling potentially contaminated and contaminated loads required.

Frack Wastes

The Single Issue Drawing the Most Comments:

- Separate comment letters from 30+ Assembly and 20 Senate members calling for a complete ban on the disposal of frack wastes.
- Significant issue for environmental advocates of New York.
- Thousands of form comments seeking to ban disposal of frack wastes.

Frack Wastes – History of Issue

- Wastes from the oil and gas industry have been disposed at landfills for decades without incident or problem.
- The disposal of drill cuttings is legal under State law and regulation.
- *Matter of Chemung County*, August 4, 2011, rejected the adjudicability of the disposal of drill cuttings, but directed implementation of a formal monitoring protocol, voluntarily offered by the landfill operator, to monitor incoming loads for radioactivity.
- Since 2010, there have been no exceedances relating to frack wastes.

Frack Wastes – History of Issue

- September, 2015 – DEC issues a formal policy requiring the implementation of the Chemung County Landfill monitoring protocol at all landfills that receive frack wastes.
- December, 2015 – DEC issues a modified Part 360 permit for the Hyland Landfill over the objection of approximately 4000 commenters seeking to adjudicate the disposal of frack wastes. Hyland follows the Chemung County protocol for screening incoming wastes.
- The proposed part 360 regulations will formalize this official guidance.



Post Closure Care – Are We Moving To Perpetual Care?

- Current regulations require financial assurance for post-closure care for a period of 30 years following closure of a Part 360 landfill.
- Current policy interprets this as a 30-year rolling time period, which extends the financial assurance requirement.
- The proposed regulations formally implement the 30-year rolling policy and introduce the concept of “custodial care,” which follows the post-closure care period and seems to extend indefinitely. Proposed Part 360.22, Part 363-4.5(n), and Part 363-10.

Custodial Care Issues

- Proposed regulations requiring custodial care may exceed the legal authority of the DEC if there is no threat to the environment following the post-closure care period.
- Many of the terms are vague and ambiguous, making the proposed regulations suspect as a matter of law.
- Industry will have difficulty obtaining financial assurance for custodial care, without better definition and certainty regarding time limits.
- Proposed solutions – clarify the regulatory provisions, make custodial care available earlier, and require financial assurance for custodial care every five years.

LSWMP Issues – Potential Trouble for Private Operators

- Under existing regulations, permit applicants need only demonstrate consistency with a LSWMP if they are acting “by or on behalf of a municipality.” *See* 6 NYCRR 360-1.2(b)(21).
- Proposed Part 360.16(c)(5), entitled “State and Local Plan Consistency,” requires, *inter alia*, “A demonstration that the facility is consistent with the goals and objectives of:

....

(iii) the department-approved Local Solid Waste Management Plan (LSWMP) in effect for the municipalities in the facility’s service area.”

LWSMP ISSUES

- How is “consistency” with all LSWMPs in the “facility’s service area” demonstrated?
- Private operators serve broad areas of the state & beyond.
- What if the local municipality does not want competition? Can the municipality put a private facility out of business by failing to mention the facility in the LSWMP?
- What about municipalities in other parts of the state that are serviced by the private facility?
- What is the effect on competition if a remote municipality needs to amend its LSWMP or Comprehensive Recycling Analysis before it can switch business to another contractor?

LSWMP Problems

- The Legislature did not grant the DEC the authority to delegate to municipalities the future of private facilities. Therefore, the proposal is *ultra vires*.
- The proposed regulation potentially impacts the vested rights of private operators. Consider the impact on private landfills, with tens of millions of dollars of private sector investment. *See Niagara Recycling v. Town of Niagara*, 83 A.D.2d 316 (4th Dep't 1981) (involving an existing commercial waste disposal facility and new local law giving town board authority to grant or deny permit to operate).

BUD ISSUES

- The proposed regulations limit general BUDs, limit individual BUDs to five years duration, substantially increase the application requirements to obtain an individual BUD, and increase the authority of the DEC to revoke BUDs.
- Many commenters have focused upon the five-year duration of a BUD, requesting permanent BUDs, but the environmental community wants to limit BUDs to three years.
- A related issue exists limiting alternative daily cover at landfills, which is most often a BUD material, to 20% of the volume allowed at the facility.

THE WEST FIRM, PLLC

THOMAS S. WEST, ESQ.
677 Broadway, 8th Floor
Albany, New York 12207
Tel.: (518) 641-0500

Email: twest@westfirmlaw.com

Website: www.westfirmlaw.com

This presentation is made available by The West Firm, PLLC only for educational purposes as well as to give general information and a general understanding of the law. It should not be construed as the firm's legal advice or opinion regarding a particular issue or assessment of law for any particular jurisdiction. It also should not be construed to represent the position of any client represented by the firm.



Proposed Revisions to the Part 360 Series



Resa A Dimino
RADimino & Associates

Based on Analysis Prepared for Environmental Advocates of NY

Enhanced Oversight

- Fewer exemptions
- More facilities and transporters under registration and / or permit
 - Basic operating standards and reporting
 - *Need for on-line reporting system for easier analysis*
- Revisit registrations every 5 years
 - *Three years would be preferred*
- Permitting requirements for large MRFs
- Limits on variances
- Integrates planning and permitting

GHG Reduction

- Mandatory landfill gas capture & destruction
- Incentives for food waste recovery
- Incentives for improved recycling

Recycling Incentives

- Strategic use of grant funds with new "Target Priority Area" grants
- Landfill "Sustainability Plans"
 - *Should be stronger and updated every 3 years*
- Parallel service requirements for permitted drop off sites
- Clarified definition of recycling
- Disposal bans on source separated recyclables and materials in EPR programs

Organics Recovery

- Higher thresholds for registration and permitted facilities
 - Provides flexibility to experiment with small scale food waste recovery
 - Encourages small scale biodiesel production
- Regulatory certainty for developers of Anaerobic Digestion

Beneficial Use Determinations

- Review case-specific BUDs every 5 years
 - *Should be every three years*
- Ability to rescind pre-determined BUDs
- Reporting requirements for all case-specific BUDs and pre-determined BUDs greater than 10,000 tons per year
- New requirements for Historic Fill, Navigational Dredge Material and Gas Storage and Production Brine
 - *BUDs should not be issued for ANY brine or other gas drilling & production waste from shale regions*

Drilling & Production Waste

- May be managed at any landfill (C&D, Industrial or MSW), but not near leachate collection or final cover
 - *Disposal of any oil and gas waste should be prohibited at any of these landfills*
- Tracking requirements in Part 364
- Leachate analysis for Radium, under certain conditions

Part 371 should be amended to eliminate the loophole that exempts oil and gas waste from hazardous waste

Expansion of Part 364

- Greater oversight of a variety of streams
 - Commercial Waste
 - Historic Fill
 - Construction & Demolition Waste
- Will create improved transparency and valuable data

Thank you!

Resa Dimino

resa.dimino@gmail.com

(518) 610-8095