

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
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In the Matter of the Petition of

EAGLE ENTERPRISES, INC.

DECLARATORY RULING  
DEC 27-30

for a Declaratory Ruling  
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### Introduction

Petitioner Eagle Enterprises, Inc., a New York corporation, proposes to transport municipal solid waste and construction and demolition debris by ship to a permitted landfill outside New York State. Petitioner seeks a Declaratory Ruling pursuant to section 204 of the State Administrative Procedure Act ("SAPA") to determine whether a solid waste management permit is required for this operation. For the reasons described below, I conclude that such a permit is required.

### Background

As described in the petition and the applications Eagle has already submitted, the operation would involve driving waste collection or consolidation vehicles onto a pier at the Southwest Brooklyn Marine Terminal, and into the hold of a waiting vessel. The waste would be dumped from the truck into the vessel's hold, and the vessel would remain at the pier for as much as five days, while its hold was being filled to capacity.

### Discussion

Petitioner suggests that this sort of truck-to-ship transfer does not meet the definition of a "transfer station" in section 360-1.2(b)(172), and thus that no transfer station permit is needed. However, section 360-1.2(b)(172) exempts truck to ship transfer from permit requirements only where the container holding the waste itself will not be opened, as in the case of so-called "roll-off" containers that will be stacked aboard ship. Since Eagle proposes simply to dump uncontainerized wastes from trucks into a ship's hold, where it will remain for as much as five days, its operation would not constitute such an exempt activity.

In this regard, the language of section 360-1.2(b)(172) is specifically drawn to allow an exemption only for waste that at all times during transfer from one vehicle to another remains in a leakproof, closed modular container:

Transfer of leakproof, closed modular  
containers of solid waste from vehicle to

vehicle, including truck to train, for the purposes of consolidating loads for shipment to an authorized disposal or treatment facility, is not considered a transfer station provided: the contents of each container remain in their closed container during the transfer between vehicles; .... (Underline added.)

The removal of waste from a truck by dumping it on the floor of a ship's hold is not the same as taking a sealed container, such as a "roll-off," from one vehicle and transporting it unopened to another vehicle. The exemption in the regulation is for a container that is transferred from one vehicle to another - not just one vehicle dumping its load into another vehicle. I note that in this context, a water vessel or ship is a "vehicle." 6 NYCRR §360-1.2(182). In order to qualify for a permitting exemption, Eagle would have to bring this waste on board the ship in sealed, leakproof containers acceptable to the department, and keep those containers closed and in a nuisance free manner free of odor while they are stored on the vessel. This would meet the exemption for transfer of containerized waste from one vehicle to another.

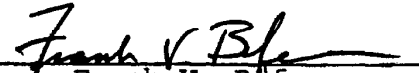
I also conclude that the pier to which the ship is moored must be permitted along with the ship. The petition contends that the pier is not a transfer station, and does not need a permit, because waste will not be stored or reside at the pier; it will be dumped directly onto the ship. However, it appears that the pier and the ship are to function as a unified operation. Fundamentally, the pier and the ship are one unit because the vessel could not function as a transfer point without the pier. According to Eagle's engineering report and facility plan, most of the functions of a Part 360 transfer station are performed on the pier, such as screening of truckloads, admittance of trucks for transfer of their loads, weighing, pass-through on the pier and access to the vessel via ramps from the pier, recordkeeping, and site security. Eagle intends each ship to remain docked at the pier for up to five days.

Ships docked with solid wastes for up to five days must be viewed as part of one unified transfer facility involving the pier and the ship. The same may be said of a railhead where a flatbed railcar is stored, or a land-based transfer station where waste is stored in trucks. DEC cannot consider a moored ship containing solid waste as separate from a pier at which it will remain stored for nearly a week.

Conclusion

Based on the above, I rule that a solid waste management facility permit is required for the operations that Petitioner proposes since such operations constitute a transfer facility as defined in 6 NYCRR §360-1.2(b)(172), at which Petitioner proposes to dump non-containerized municipal solid waste and construction and demolition debris in a ship and store it at the pier for up to five days.

Dated: July 24, 1995  
Albany, New York

  
Frank V. Bifera  
Acting General Counsel