

6 NYCRR Part 360 is amended to read as follows:

Section 360.1 (heading) through subdivision 360.1(a) remains unchanged.

Paragraph 360.1(a)(1) is amended to read as follows:

(1) This Part sets forth requirements for the management of solid waste subject to regulation under this Part and Parts 361, 362, 363, 365, and 366, and Subpart 374-2 of this Title, other than at waste facilities or activities located partially or wholly within the State of New York that are subject to the following regulations:

Subparagraph 360.1(a)(1)(ii) through paragraph 360.1(a)(3) remain unchanged.

Subdivision 360.1(b) is amended to read as follows:

(b) Applicability. All solid waste, other than waste subject to the criteria in subparagraphs (a)(1)(i) or (a)(1)(ii) of this section, must be transferred, processed, recovered, stored, reclaimed or disposed of in a manner consistent with Parts 360, 361, 362, 363, and 365, and Subpart 374-2 of this Title. However, the management of nonhazardous solid waste in a portion of a facility that also handles hazardous waste is subject to the requirements of Part 373 of this Title unless the facility or collection event is exempted under that Part. Any facility or collection event exempt from regulation under Part 372, 373, or 376 or from Subpart 374-1 or 374-3 of this Title is subject to Parts 360, 361, 362, 363, and 365 of this Title. The requirements governing the transportation of waste are set forth in Part 364 of this Title. The provisions of sections 360.6(b), 360.10, 360.11, 360.12, 360.[13]14, 360.17, 360.18, 360.19(c), and 360.19([1]k) through ([o]n), of this Part do not apply to the portion of any solid waste management facility subject to regulation under Subpart 374-2 of this Title. The standards for the content, review and approval of a local solid waste management plan are set forth in Part 366 of this Title. The application, review, and contracting procedures for state assistance grant programs under title 5 and title 7 of article 54 of the Environmental Conservation Law are set forth in Part 369 of this Title.

Section 360.2 (heading) through paragraph 360.2(a)(3) remain unchanged

Subparagraph 360.2(a)(3)(i) is amended to read as follows:

(i) [materials]consumer products that are intended for reuse for their original function, without processing, such as [materials] items at a garage sale, consignment shop, textile collection location or similar venue;

Subparagraph 360.2(a)(3)(ii) through subparagraph 360.2(a)(3)(iii) remain unchanged.

Subparagraph 360.2(a)(3)(iv) is amended to read as follows:

(iv) any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly or privately-owned treatment works for treatment;

Subparagraph 360.2(a)(3)(v) through subparagraph 360.2(a)(3)(x) remain unchanged.

Subparagraph 360.2(a)(3)(xi) is amended to read as follows:

(xi) material removed from the waters of the state and placed or disposed in compliance with a permit issued under ECL article 15, 24, 25, or 34 or a water quality certification issued under Section 401 of the Federal Water Pollution Control Act to the extent that disposal of the material is regulated by [such] the permit or certification. However, any disposal not regulated by [such] the permit remains subject to regulation under Parts 360, 361, 362, 363, and 365 of this Title. Dredged or excavated material generated by a manufacturing or industrial process is industrial waste, and the treatment, storage, transfer, or disposal of the material is subject to regulation under Parts 360 to 365 of this Title; and

Subparagraph 360.2(a)(3)(xii) is amended to read as follows:

(xii) waste samples received at a laboratory or educational institution for analysis and/or evaluation of its constituents.

Subdivision 360.2(b) (heading) through paragraph 360.2(b)(6) remain unchanged.

Paragraph 360.2(b)(7) is amended to read as follows:

(7) 'Alternative fuel' means a waste or byproduct material that [has been authorized by the department for use as a fuel in either a combustion or other thermal unit] is not subject to Commercial and Industrial Solid Waste Incineration Units: New Source Performance Standards and Emission Guidelines for Existing Sources referenced in Part 200 of this Title.

Paragraph 360.2(b)(8) through paragraph 360.2(b)(37) remain unchanged.

Paragraph 360.2(b)(38) is amended to read as follows:

(38) 'By or on behalf of a municipality' in the context of a permit or registration means:

(i) a municipality is the owner or operator, individually or with one or more other owners or operators;

(ii) the owner or operator is not a municipality but the owner or operator's facility is partially funded by the 1972 Environmental Quality Bond Act, the Solid Waste Management Act of 1988, the Environmental Protection Act of 1993, or the 1996 Clean Water/Clean Air Bond Act or constructed pursuant to and in compliance with a construction contract with a municipality pursuant to Town, Village, County or General Municipal Law;

(iii) in the case of a facility with a proposed service area that only includes municipalities within a single planning unit, the owner or operator is not a municipality but has a contractual or other relationship with one or more municipalities within the planning unit, [such that] where the capacity of the facility will be designed, used, or designated primarily (more than two-thirds) for waste received from those municipalities; or

(iv) in the case of a facility with a proposed service area that includes municipalities from two or more planning units, the owner or operator is not a municipality but has a contractual or other relationship with one or more municipalities in [such] those planning units, and the capacity of the facility will be designed, used, or designated primarily (more than two-thirds) for waste received from those municipalities.

(v) for purposes of subparagraphs (iii) and (iv) of this paragraph, examples of contractual or other relationships include, but are not limited to, put-or-pay contracts, waste supply guarantees, long-term contracts for the delivery of waste, waste-processing guarantees, long-term leases, and flow control ordinances.

Paragraph 360.2(b)(39) through paragraph 360.2(b)(40) remain unchanged.

Paragraphs 360.2(b)(41) through (48) are renumbered paragraphs 360.2(b)(42) through (49) and a new paragraph 360.2(b)(41) is added to read as follows:

(41) ‘Certificate of Status’ means a Certificate of Good Standing or Certificate of Existence issued by the New York State Department of State.

Newly renumbered paragraph 360.2(b)(42) through newly renumbered paragraph 360.2(b)(46) remain unchanged.

Newly renumbered paragraph 360.2(b)(47) is amended to read as follows:

(47) ‘Combustion facility’ means a facility that uses combustion to treat solid waste. These facilities include[,] but are not limited to: mass burn combustors;[,] modular combustors;[,] and fluidized bed combustors; and facilities that combust refuse-derived fuel.

Newly renumbered paragraph 360.2(b)(48) through newly renumbered paragraph 360.2(b)(49) remain unchanged.

Existing paragraph 360.2(b)(56) is repealed

Existing paragraphs 360.2(b)(49) through (55) are renumbered paragraphs 360.2(b)(51) through 360.2(b)(57) and a new paragraph 360.2(b)(50) is adopted to read as follows:

(50) ‘Commercial land use’ means the use of land for the primary purpose of buying, selling or trading of merchandise or services. Commercial land use includes passive recreational uses, which are public uses with limited potential for soil contact.

Newly renumbered paragraph 360.2(b)(51) through newly renumbered paragraph 360.2(b)(57) remain unchanged.

Existing paragraph 360.2(b)(57) is renumbered paragraph 360.2(b)(58) and remains unchanged.

Existing paragraph 360.2(b)(58) is renumbered paragraph 360.2(b)(59) and is amended to read as follows:

([58]59) ‘Concentrated animal feeding operation’ or ‘CAFO’ means an animal feeding operation [that meets certain animal size thresholds and that also confines animals for 45 days or more in any 12 month period in an area that does not produce vegetation.] as defined in section 750-1.2(a)(23) of this Title.

Existing paragraphs 360.2(b)(59) through (61) are renumbered 360.2(b)(60) through (62).

Newly renumbered paragraph 360.2(b)(60) remains unchanged.

Newly renumbered paragraph 360.2(b)(61) is amended to read as follows:

(61) ‘Construction’ means any physical modification to the area or location of a site or facility, including, but not limited to, site preparation (e.g., clearing, grading, and excavation, etc.) and building of structures.

Newly renumbered 360.2(b)(62) is amended to read as follows:

([61]62) ‘Construction and demolition debris’ or ‘C&D debris’ means waste resulting from construction, remodeling, repair and demolition of structures, buildings and roads. C&D debris includes [fill] excavated material, demolition wastes, and construction wastes. Materials that are not C&D debris (even if generated from construction, remodeling, repair and demolition activities) include municipal solid waste, friable asbestos-containing waste, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformers, fluorescent lights, solar panels, furniture, appliances, tires, drums, fuel tanks, containers greater than ten gallons in size, and any containers having more than one inch of residue remaining on the bottom.

Existing paragraphs 360.2(b)(62) through (80) are renumbered paragraphs 360.2(b)(63) through (81).

Newly renumbered paragraph 360.2(b)(63) through newly renumbered paragraph 360.2(b)(81) remain unchanged.

Existing paragraphs 380.2(b)(81) through (96) are renumbered paragraphs 360.2(b)(83) through (98) and a new paragraph 360.2(b)(82) is added to read as follows:

(82) ‘Designated food scraps generator’ means a person who generates at a single location an annual average of two tons per week or more of food scraps based on a methodology established by the department pursuant to regulations, including, supermarkets, large food service businesses, higher educational institutions, hotels, food processors, correctional facilities, and sports or entertainment venues. For a location with multiple independent food service businesses, such as a mall or college campus, the entity responsible for contracting for solid waste hauling services is responsible for managing food scraps from the independent businesses.

Newly renumbered paragraph 360.2(b)(83) through paragraph 360.2(b)(98) remain unchanged.

Existing paragraphs 380.2(b)(97) through (106) are renumbered paragraphs 360.2(b)(100) through (109) and a new paragraph 360.2(b)(99) is added to read as follows:

(99) ‘Excavated material’ means soil, rock or other material excavated during construction or maintenance activities.

Newly renumbered paragraph 360.2(b)(100) through newly renumbered paragraph 360.2(b)(109) remain unchanged.

Existing paragraph 360.2(b)(107) is renumbered 360.2(b)(110) and is amended to read as follows:

([107]110) ‘Fill [material]’ means excavated material including soil [and similar] or other granular, compactible material [excavated for the purpose of construction or maintenance] that is used as authorized under Section 360.13 of this Part, but does not include overburden generated from mining operations regulated pursuant to Parts [422] 420 through 425 of this Title.

Existing paragraphs 360.2(b)(108) through (109) are renumbered paragraphs 360.2(b)(116) through (117) and new paragraphs 360.2(b)(111) through (115) are added to read as follows:

- (111) 'Fill Type 1' or 'F1' means excavated material that meets criteria in section 360.13(f) of this Part.
- (112) 'Fill Type 2' or 'F2' means excavated material that meets criteria in section 360.13(f) of this Part.
- (113) 'Fill Type 3' or 'F3' means excavated material that meets criteria in section 360.13(f) of this Part.
- (114) 'Fill Type 4' or 'F4' means excavated material that meets criteria in section 360.13(f) of this Part.
- (115) 'Fill Type 5' or 'F5' means excavated material that meets criteria in section 360.13(f) of this Part.

Newly renumbered paragraph 360.2(b)(116) through newly renumbered paragraph 360.2(b)(117) remain unchanged.

Existing paragraph 360.2(b)(110) is renumbered paragraph 360.2(b)(118) and is amended to read as follows:

([110]118) 'Flowable fill' means a self-compacting, [cementitious, low-strength mixture of soil, water, or coal combustion residuals,] low-strength mixture of commercial aggregate, water and a cementitious binder used to backfill excavations and capable of being pumped.

Existing paragraphs 360.2(b)(111) through (112) are renumbered paragraphs 360.2(b)(119) through (120).

Newly renumbered paragraph 360.2(b)(119) through newly renumbered paragraph 360.2(b)(120) remain unchanged.

Existing paragraph 360.2(b)(113) is renumbered 360.2(b)(121) and is amended to read as follows:

([113]121) 'Food processing waste' means waste resulting solely from the processing of fruits, vegetables, grains, dairy products, and related food products. It does not include waste from the processing of animal carcasses or parts. It also does not include sanitary waste or processes that involve the addition of a hazardous chemical to the manufacturing process. Food processing waste includes, but is not limited to:

- (i) vegetative residues that are recognizable as part of a plant, fruit or vegetable. Grape or apple pomace are considered recognizable.

(ii) any solid, semisolid or liquid food sludge or residue that is unrecognizable but identifiable by analysis or can be certified as solely a byproduct of plant, fruit, vegetable or dairy processing. Egg shells are considered unrecognizable.

Existing paragraphs 360.2(b)(114) through (116) are renumbered paragraphs 360.2(b)(122) through (124).

Newly renumbered paragraph 360.2(b)(122) through newly renumbered paragraph 360.2(b)(124) remain unchanged.

Existing paragraph 360.2(b)(117) is renumbered paragraph 360.2(b)(125) and is amended to read as follows:

(~~[117]~~125) ‘Friable asbestos–containing waste’ means any waste containing greater than one percent by weight of asbestos that can be crumbled, pulverized, or reduced to powder by hand pressure when dry; and any asbestos-containing waste that is collected in a pollution control device designed to remove asbestos. This definition does not include friable asbestos-containing wastes that are discarded by a household[.] by either being collected at the curb or taken to an authorized solid waste management facility.

Existing paragraphs 360.2(b)(118) through (120) are renumbered paragraphs 360.2(b)(126) through (128).

Newly renumbered paragraph 360.2(b)(126) through newly renumbered paragraph 360.2(b)(128) remain unchanged.

Existing paragraph 360.2(b)(121) is repealed.

Existing paragraphs 360.2(b)(122) through (130) are renumbered paragraphs 360.2(b)(129) through (137).

Newly renumbered paragraph 360.2(b)(129) through newly renumbered paragraph 360.2(b)(137) remain unchanged.

Existing paragraph 360.2(b)(131) is renumbered paragraph 360.2(b)(138) and is amended to read as follows:

(13[1]8) *Governing body* for the purposes of Part 369 of this Title means:

(i) in the case of a county outside the City of New York, the county board of supervisors or other elective governing body;

- (ii) in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;
- (iii) in the case of a town, the town board;
- (iv) in the case of a public authority, the governing board of directors, members, or trustees thereof;
- (v) in the case of a public benefit corporation, the board of directors, members, or trustees thereof;
- (vi) in the case of a not-for-profit corporation, the board of directors thereof or [such] other body designated in the certificate of incorporation to manage the corporation;
- (vii) in the case of a Native American tribe or nation, any governing body recognized by the United States or the State of New York;
- (viii) in the case of a school district or supervisory district, the board of education, or board of directors, members, or trustees thereof; and
- (ix) in the case of a State agency, the commissioner of the State agency.

Existing paragraphs 360.2(b)(132) through (135) are renumbered paragraphs 360.2(b)(139) through (142).

Newly renumbered paragraph 360.2(b)(139) through newly renumbered paragraph 360.2(b)(142) remain unchanged.

Existing paragraphs 360.2(b)(136) through (137) are renumbered paragraphs 360.2(b)(144) through (145) and a new paragraph 360.2(b)(143) is added to read as follows:

(143) Home scrap metal means scrap metal generated by steel mills, foundries, and refineries and includes but is not limited to turnings, cuttings, punchings, and borings.

Newly renumbered paragraph 360.2(b)(144) through newly renumbered paragraph 360.2(b)(145) remain unchanged.

Existing paragraph 360.2(b)(138) is renumbered paragraph 360.2(b)(146) and is amended to read as follows:

([138]146) ‘Household hazardous waste collection facility and collection event’ means a facility or collection event involving the collection, storage [and] or disposal of household hazardous waste and may include the collection, storage [and] or disposal of hazardous wastes from conditionally exempt small quantity generators (CESQGs) as defined in Part 371 of this Title.

Existing paragraphs 360.2(b)(139) through (141) is renumbered 360.2(b)(147) through (149).

Newly renumbered paragraph 360.2(b)(147) through newly renumbered paragraph 360.2(b)(149) remain unchanged.

Existing paragraph 360.2(b)(142) is renumbered paragraph 360.2(b)(150) and is amended to read as follows:

([142]150) ‘Hydraulic conductivity’ means the rate of flow of water through a cross section of [one square foot under a unit of hydraulic gradient at the prevailing temperature] a material when the hydraulic gradient is equal to 1.0.

Existing paragraph 360.2(b)(143) is renumbered 360.2(b)(152).

A new paragraph 360.2(b)(151) is added to read as follows:

(151) Inactivation or inactivate for the purpose of Part 365 of this Title means the method (biological, chemical or physical) used to cause a viable infectious agent to lose disease-producing capacity or to render a biological agent's toxic properties (biological toxins) harmless to other organisms.

Newly renumbered paragraph 360.2(b)(152) is amended to read as follows:

([143]152) ‘Industrial land use [category]’ means the use of land [used] primarily for the purpose of manufacturing, production, fabrication or assembly processes and ancillary services. Industrial land use does not include any recreational component.

Existing paragraphs 360.2(b)(144) and (145) are renumbered paragraphs 360.2(b)(153) and (154).

Newly renumbered paragraph 360.2(b)(153) through newly renumbered paragraph 360.2(b)(154) remain unchanged.

Existing paragraph 360.2(b)(146) is renumbered 360.2(b)(155) and is amended to read as follows:

([146]155) ‘Infectious substance’ for the purposes of Part 364 (transport) and [Part 365-1.4(i)(3) (packaging and labeling for off-site treatment)] subdivision 365-1.2(c) (transfer of RMW for off-site treatment) of this Title means a Category A or B material known or reasonably expected to contain a pathogen including bacteria, viruses, rickettsiae, parasites, fungi, or prions that can cause disease in humans or animals.

(i) Category A means an infectious substance in a form capable of causing permanent disability or life threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. Category A poses a higher degree of risk than Category B.

(ii) Category B means an infectious substance not in a form generally capable of causing permanent disability or life-threatening or fatal disease in otherwise healthy humans or animals when exposure to it occurs. This includes Category B infectious substances transported for diagnostic or investigational purposes.

Existing paragraph 360.2(b)(147) is renumbered paragraph 360.2(b)(156) and is amended as follows:

([147]156) ‘Institutional waste’ means waste that is generated by hospitals, long-term care facilities, schools, prisons government agencies or other similar type facilities. It includes water-treatment wastes other than biosolids.

Existing paragraphs 360.2(b)(148) through (160) are renumbered paragraphs 360.2(b)(157) through (169).

Newly renumbered paragraph 360.2(b)(157) remains unchanged.

Newly renumbered 360.2(b)(158) is amended to read as follows:

([149]158) ‘Land application facility’ means an area or location where waste is applied to [the] agricultural soil [surface or injected into the upper layer of the soil] to improve soil quality or provide plant nutrients.

Newly renumbered paragraph 360.2(b)(159) through newly renumbered paragraph 360.2(b)(169) remain unchanged.

Existing paragraph 360.2(b)(161) is repealed

Existing paragraphs 360.2(b)(162) through (167) are renumbered paragraphs 360.2(b)(170) through (175).

Newly renumbered paragraph 360.2(b)(170) through newly renumbered paragraph 360.2(b)(175) remain unchanged.

Existing paragraph 360.2(b)(168) is renumbered paragraph 360.2(b)(176) and is amended to read as follows:

([168]176) ‘Mercury-added component’ means a motor vehicle component that contains greater than fifteen milligrams of mercury, which was intentionally added to [such] the motor vehicle in order to provide a specific characteristic, appearance or quality[,]; to perform a specific function[,]; or for any other purpose. [Such] [c]Components include, but are not limited to, switches, sensors, lights and navigational systems.

Existing paragraph 360.2(b)(169) is renumbered paragraph 360.2(b)(177) and is amended to read as follows:

([169]177) ‘Mercury-added consumer product’ means any device or material into which elemental mercury or mercury compounds are intentionally added during [such]the device's or material's formulation or manufacture, and in which the continued presence of mercury is required to provide a specific characteristic, appearance or quality, or to perform a specific function. [Such] This term includes, but is not limited to mercury-containing: thermostats; thermometers; switches, whether individually or as part of another product; medical or scientific instruments; electrical relays and other electrical devices; lamps; and batteries sold to consumers[,], but does not include button batteries.

Existing paragraph 360.2(b)(170) is renumbered paragraph 360.2(b)(178) and is amended to read as follows:

([170]178) ‘Mercury containing device’ means any device or material into which elemental mercury or mercury compounds are intentionally added during the manufacture of [such]the devices and in which the continued presence of mercury is required to provide a specific characteristic, appearance, or quality or to perform a specific function.

Existing paragraphs 360.2(b)(171) through (176) are renumbered paragraphs 360.2(b)(179) through (184).

Newly renumbered paragraph 360.2(b)(179) through newly renumbered paragraph 360.2(b)(184) remain unchanged.

Existing paragraph 360.2(b)(177) is renumbered 360.2(b)(185) and is amended to read as follows:

([177]185) ‘Municipal solid waste processing facility’ means a facility that primarily performs post-collection separation [and/]or processing of municipal solid waste or other wastes to recover recyclables or to produce a refuse-derived fuel [or other waste-derived fuel].

Existing paragraphs 360.2(b)(178) through (181) are renumbered paragraphs 360.2(b)(186) through (189).

Newly renumbered paragraph 360.2(b)(186) through newly renumbered paragraph 360.2(b)(189) remain unchanged.

Existing paragraph 360.2(b)(182) is renumbered paragraph 360.2(b)(191). A new paragraph 360.2(b)(190) is added to read as follows:

(190) ‘New York City Metropolitan Area Waste Impact Zone’ means the area encompassing the City of New York and the counties of Nassau, Suffolk, Putnam and Westchester.

Newly renumbered paragraph 360.2(b)(191) remains unchanged.

Existing paragraphs 360.2(b)(183) through (188) are renumbered paragraph 360.2(b)(193) through (198).

A new paragraph 360.2(b)(192) is added to read as follows:

(192) ‘NYSDOH’ means the New York State Department of Health.

Newly renumbered paragraph 360.2(b)(193) through newly renumbered paragraph 360.2(b)(198) remain unchanged.

Existing paragraph 360.2(b)(189) is renumbered paragraph 360.2(b)(199) and is amended to read as follows:

([189]199) ‘Organics recycling facility’ means a facility that processes the organic components in waste to produce a mature product for use as a source of nutrients, [animal feed,] organic matter, liming value, or other essential constituent for a soil to help sustain plant growth. The processes include, but are not limited to,

composting, vermiculture, anaerobic digestion, fermentation, and Class A processes. An organics [waste processing] recycling facility also includes processes to convert biodegradable organic components in waste to produce animal feed. The product no longer has the visual appearance of the waste from which it was produced. Existing paragraphs 360.2(b)(190) through (202) are renumbered paragraphs 360.2(b)(200) through (212). Newly renumbered paragraph 360.2(b)(200) through newly renumbered paragraph 360.2(b)(212) remain unchanged.

Existing paragraph 360.2(b)(203) is renumbered paragraph 360.2(b)(214).

A new paragraph 360.2(b)(213) is added to read as follows:

(213) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated.

Newly renumbered paragraph 360.2(b)(214) remains unchanged.

Existing paragraph 360.2(b)(204) is renumbered paragraph 360.2(b)(215) and is amended to read as follows:

([204]215) 'Processing' for the purposes other than Subpart 361-8 of this Title, means the use of a combination of structures, machinery or devices to alter the volume or the chemical or physical characteristics of solid waste.

Basic handling or compacting of waste at a transfer facility is not considered processing.

Existing paragraphs 360.2(b)(205) through (206) are renumbered paragraphs 360.2(b)(216) through (217).

Newly renumbered paragraph 360.2(b)(216) through newly renumbered paragraph 360.2(b)(217) remain unchanged.

Existing paragraph 360.2(b)207 is renumbered 360.2(b)(218) and is amended to read as follows:

([207]218) ‘Project engineer’ means a professional engineer capable of operating independently and without influence who is [the] a representative of the permittee or is an independent environmental monitor funded by the permittee and who certifies that activities related to the facility conform to the engineering design contained in the permit and the applicable regulations.

A new paragraph 360.2(b)(219) is added to read as follows:

(219) ‘Prompt scrap metal’ means metal generated by metal working or metal fabrication industries. It includes turnings, cuttings, punchings and borings.

Existing paragraphs 360.2(b)(208) through (212) are renumbered paragraphs 360.2(b)(220) through (224).

Newly renumbered paragraph 360.2(b)(220) through newly renumbered paragraph 360.2(b)(224) remain unchanged.

Existing paragraph 360.2(b)(213) is renumbered paragraph 360.2(b)(225) and is amended to read as follows:

([213]225) ‘Qualified environmental professional’ means a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding the presence of releases or threatened releases to the surface or subsurface of a property or off-site areas, sufficient to meet the objectives and performance factors for the areas of practice identified by this Title. [Such a person] The qualified environmental professional must:

- (i) hold a current professional engineer's or a professional geologist's license or registration issued by the State or another state, and have the equivalent of three years of full-time relevant experience; or
- (ii) be a site remediation professional licensed or certified by the Federal government, a state or a recognized accrediting agency, to perform investigation or remediation tasks consistent with department guidance, and have the equivalent of three years of full-time relevant experience.

Existing paragraphs 360.2(b)(214) through (218) are renumbered paragraphs 360.2(b)(226) through (230).

Newly renumbered paragraph 360.2(b)(226) through newly renumbered paragraph 360.2(b)(230) remain unchanged.

Existing paragraph 360.2(b)(219) is renumbered paragraph 360.2(b)(231) and is amended to read as follows:
([219]231) ‘Record drawings’ means, with respect to the construction of a facility, each drawing, specification, addendum, written amendment, change order, work directive change, field order, and written interpretation and clarifications in good order and annotated to show all changes made during construction that constitutes a physical record detailing how a particular facility was constructed in accordance with the permit for [such] the facility.

Existing paragraphs 360.2(b)(220) through (227) are renumbered paragraphs 360.2(b)(232) through (239).

Newly renumbered paragraph 360.2(b)(232) through newly renumbered paragraph 360.2(b)(239) remain unchanged.

Existing paragraph 360.2(b)(228) is renumbered paragraph 360.2(b)(240) and is amended to read as follows:
([228]240) ‘Regulated medical waste (RMW)’ for the purpose of this Title, means waste generated in diagnosis, treatment or immunization of humans, or animals, in research pertaining thereto, or in production and testing of biologicals; provided, however, that regulated medical waste must not include hazardous waste and household medical waste, except as prescribed in subparagraph ([iv]ii) [below] of this paragraph.

(i) Regulated medical waste includes:

(‘a’) cultures and stocks of infectious agents, culture dishes and devices used to transfer, inoculate or mix cultures that have come into contact with or are known to be contaminated with biological agents infectious to humans, or agents of economic concern (*e.g.*, foreign animal diseases);

(‘b’) human pathological waste, including tissue, organs, body parts, excluding teeth and contiguous structures of bone and gum, body fluids removed during surgery, autopsy or other medical procedures, specimens of body

fluids and their containers, and discarded materials saturated with body fluids other than urine. Human pathological waste must not include urine or fecal material submitted for purposes other than diagnosis of infectious diseases;

(‘c’) human blood and blood products, including their components (*e.g.*, serum and plasma), containers with free-flowing blood, discarded blood products as defined in 10 NYCRR Subpart 58-2, and materials saturated with flowing blood (except feminine hygiene products);

(‘d’) sharps, whether used or unused, including residential sharps accepted by a facility regulated under Article 28 of the Public Health Law pursuant to Section 1389-dd(4) of the Public Health Law;

(‘e’) animal waste, including animal carcasses, body parts, body fluids, blood or bedding originating from animals known to be contaminated with infectious agents (*e.g.*, zoonotic or potentially zoonotic organisms) or from animals inoculated with infectious agents for purposes including, but not limited to, research, production of biologicals, or drug testing. Body fluids include urine and feces when infectious agents are known to be shed in the urine and feces; and

(‘f’) any other waste materials containing infectious agents designated by the Commissioner of Health as regulated medical waste.

(ii) Regulated medical waste does not include:

(‘a’) human cadavers managed in accordance with Article 42 of the Public Health Law and the New York State Department of State rules for cemeteries and crematories;

(‘b’) discarded and essentially empty urine collection bags and tubing, urine specimen cups, urinary catheters, bedpans contaminated with feces, and urine bottles, unless the item was submitted as a clinical specimen for laboratory tests or the patient was found to have a disease transmitted through urine or feces;

(‘c’) tissue blocks of organs or tissues which have been fixed in paraffin or similar embedding materials for cytological or histological examination;

(‘d’) organs, tissue or recognizable body parts that have been removed during surgery or child birth, except a fetus, and retained by the patient for religious or other purposes provided that the organs, tissue or body parts are not provided to another person in any form, and are not a potential source of disease transmission, as determined by a health care professional;

(‘e’) bandages, gauze, or cotton swabs or other similar absorbent materials unless they are saturated or would otherwise release blood or human body fluids, other than urine, if compressed;

(‘f’) housekeeping waste from hotels, except medical waste generated from the provision of healthcare at a hotel;

(‘g’) cleaned soiled bedding from commercial laundry facilities that is intended for reuse;

(‘h’) veterinary medical waste, if generated by the owner of a companion animal;

(‘i’) medical waste, including sharps, generated through the self-administration of medicine in a household, excluding waste containing cultures;

(‘j’) pharmaceutical waste generated in a household;

(‘k’) contaminated foodstuffs;

(‘l’) genetically modified or attenuated infectious agents and their products used in the diagnosis, treatment or immunization of human beings or animals or for research or production of biologicals, including attenuated vaccines, antigens and antitoxins provided genetic modification or attenuation has been conducted to render the infectious agent non-infectious;

(‘m’) bandages, gauze, or cotton swabs or other similar absorbent materials that are not saturated [or would] and do not otherwise release blood or human body fluids if compressed and that are generated from cosmetology, ear piercing or tattooing practices. However, contaminated sharps generated from these practices must be managed as regulated medical waste;

(‘n’) materials containing an infectious agent at a concentration naturally occurring in the environment, including samples for routine laboratory analyses of foodstuffs, environmental samples, quality control samples, etc.;

(‘o’) medical equipment that is not mixed with RMW and is intended for reuse in a medical setting or equipment used for testing where the components within which the equipment is contained, essentially function as packaging; and

(‘p’) used health care products not conforming to the requirements in 29 CFR 1910.1030 and being returned to the manufacturer or the manufacturer’s designee if transported in accordance with 49 CFR 173.134(b)(12). This does not apply to used health care products being transported for treatment as RMW.

Existing paragraphs 360.2(b)(229) through (235) are renumbered paragraphs 360.2(b)(241) through (247).

Newly renumbered paragraph 360.2(b)(241) through newly renumbered paragraph 360.2(b)(247) remain unchanged.

Existing paragraph 360.2(b)(236) is repealed.

Existing paragraphs 360.2(b)(237) through (240) are renumbered paragraphs 360.2(b)(248) through (251).

Newly renumbered paragraph 360.2(b)(248) through newly renumbered paragraph 360.2(b)(251) remain unchanged.

Existing paragraph 360.22(b)(241) is renumbered paragraph 360.22(b)(252) and is amended to read as follows:

([241]252) Scrap metal processor means a facility [engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap (including decommissioned vehicles), the end product of which is the production of raw material for remelting purposes for steel mills, foundries, smelters, refiners, and similar users.] that receives, decommissions, processes, dismantles, stores, or recycles ferrous and/or non-ferrous metal and discarded metal-containing products, including appliances.

Existing paragraphs 360.2(b)(242) through (249) are renumbered paragraphs 360.2(b)(253) through (260).

Newly renumbered paragraph 360.2(b)(253) through newly renumbered paragraph 360.2(b)(260) remain unchanged.

Existing paragraph 360.2(b)(250) is renumbered paragraph 360.2(b)(261) and is amended to read as follows:

[(250)]261) ‘Soil’ means naturally occurring unconsolidated, granular material consisting of variable proportions of rock fragments, sand, silt, clay and organic matter, the latter derived from plants and animals living within or upon the soil.

Existing paragraphs 360.2(b)(251) through (253) are renumbered paragraphs 360.2(b)(262) through (264).

Newly renumbered paragraph 360.2(b)(262) through newly renumbered paragraph 360.2(b)(264) remain unchanged.

Existing paragraph 360.2(b)(254) is renumbered paragraph 360.2(b)(265) and is amended to read as follows:

[(254)]265) ‘Source-separated organics’ means organic material that has been separated at the point of generation including, but not limited to, food scraps, food processing waste, soiled or unrecyclable paper, [and parts,] and yard trimmings. Source-separated organics do not include industrial waste, animal mortalities or parts, biosolids, sludge, [or] septage, or other waste with significant pathogen content.

Existing paragraphs 360.2(b)(255) through (266) are renumbered paragraphs 360.2(b)(266) through (277).

Newly renumbered paragraph 360.2(b)(266) through newly renumbered paragraph 360.2(b)(277) remain unchanged.

Existing paragraphs 360.2(b)(267) is renumbered 360.2(b)(279) and is amended to read as follows:

[(267)]279) ‘Taking of endangered or threatened species’ means disturbing, harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting endangered or threatened species, or attempting to engage in [such] this conduct.

A new paragraph 360.2(b)(278) is added to read as follows:

(278) ‘Suspect asbestos-containing material’ means material identified in 12 NYCRR 56-5.1(f)(1)(i) and (ii).

Existing paragraphs 360.2(b)(268) through (275) are renumbered 360.2(b)(2)(280) through (287)

Newly renumbered paragraph 360.2(b)(280) is amended to read as follows:

(280) ‘Tank’ means a non-earthen structure designed to contain [of] waste in semi-solid or liquid form.

Newly renumbered 360.2(b)(281) is amended to read as follows:

(281) ‘Thermal treatment’ means the exposure of waste to elevated temperatures [or chemicals] for the purpose of changing the chemical, physical or biological character or composition of the waste, and includes [combustion,]pyrolysis, gasification, hydrolysis or other similar processes, but does not include composting or anaerobic digestion.

Newly renumbered 360.2(b)(282) through newly renumbered paragraph 360.2(b)(287) remain unchanged.

Existing paragraph 360.2(b)(276) is renumbered paragraph 360.2(b)(289) and is amended to read as follows:

([276]289) ‘Transfer facility’ means a facility that receives solid waste, including source-separated recyclables, for the purpose of [subsequent] transfer to another facility for [further] processing, treatment, disposal or further transfer[, or disposal].

A new paragraph 360.2(b)(288) is added to read as follows:

(288) ‘Traditional fuel’ for purposes of Subpart 362-1 of this Title means any material burned for its energy content that is not designated pursuant to Section 200.1 of this Title as refuse and is not considered an alternative fuel as defined in paragraph 360.2(b)(7) of this Part.

Existing paragraphs 360.2(b)(277) (281) are renumbered paragraphs 360.2(b)(290) through (294).

Newly renumbered paragraph 360.2(b)(290) through newly renumbered paragraph 360.2(b)(294) remain unchanged.

Existing paragraph 360.2(b)(282) is renumbered paragraph 360.2(b)(295) and is amended to read as follows:

([282]295) ‘Treatment’ for the purposes of Part 365 of this Title means any method, technology or process designed to irreversibly change the character or composition of any regulated medical waste or other infectious

waste so that it no longer constitutes a threat to public health and the environment. Treatment does not include compaction or disinfection.

Existing paragraphs 360.2(b)(283) through paragraph 360.2(b)(285) are renumbered paragraphs 360.2(b)(296) through (298).

Newly renumbered paragraph 360.2(b)(296) through newly renumbered paragraph 360.2(b)(298) remain unchanged.

Existing paragraph 360.2(b)(286) is renumbered paragraph 360.2(b)(299) and is amended to read as follows:

[(286)]299) ‘Uncontaminated’ means material that is not commingled with, and does not [containing] contain the following:

- (i) other unauthorized waste;
- (ii) petroleum and petroleum products, except those present solely as a result of normal use of vehicles on roadways or parking areas;
- (iii) pesticides except those present solely as a result of the proper application in normal agricultural or horticultural practices; and
- (iv) hazardous waste.

Existing paragraph 360.2(b)(287) is renumbered paragraph 360.2(b)(300) and is amended to read as follows:

[(287)]300) ‘Under the control’ means subject to the full or partial power to manage or cause a change in the policies of a facility, directly or indirectly, whether through the ownership of voting securities, by contract,[or] lease, franchise agreement, easement or otherwise.

Existing paragraphs 360.2(b)(288) through paragraph 360.2(b)(290) are renumbered paragraphs 360.2(b)(301) through (303).

Newly renumbered paragraph 360.2(b)(301) through newly renumbered paragraph 360.2(b)(303) remain unchanged.

A new paragraph 360.2(b)(304) is adopted to read as follows:

(305) ‘USFDA’ means the United States Food and Drug Administration.

Existing paragraphs 360.2(b)(291) through paragraph 360.2(b)(298) are renumbered paragraphs 360.2(b)(305) through (312).

Newly renumbered paragraph 360.2(b)(305) through newly renumbered paragraph 360.2(b)(312) remain unchanged.

Existing paragraph 360.2(b)(299) is renumbered paragraph 360.2(b)(313) and is amended to read as follows:

([299]313) ‘Used oil’ means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and as a result of [such] use, is contaminated by physical or chemical impurities.

Existing paragraphs 360.2(b)(300) through paragraph 360.2(b)(302) are renumbered paragraphs 360.2(b)(314) through (316).

Newly renumbered paragraph 360.2(b)(314) through newly renumbered paragraph 360.2(b)(316) remain unchanged.

Existing paragraph 360.2(b)(303) is renumbered paragraph 360.2(b)(317) and is amended to read as follows:

([303]317) ‘Vehicle’ for the purposes of Part 364 of this Title means any motor vehicle, trailer, water vessel, railroad car, airplane, or other device used [for] to contain and transport[ing] regulated waste.

Existing paragraph 360.2(b)(304) is renumbered paragraph 360.2(b)(318) and is amended to read as follows:

([304]318) ‘Vehicle dismantling facility’ means a facility that stores, decommissions, dismantles, and recycles end of life vehicles.

Existing paragraphs 360.2(b)(305) through paragraph 360.2(b)(313) are renumbered paragraphs 360.2(b)(319) through (327).

Newly renumbered paragraph 360.2(b)(319) through newly renumbered paragraph 360.2(b)(327) remain unchanged.

Existing paragraph 360.2(b)(314) is renumbered paragraph 360.2(b)(328) is amended to read as follows:

([314]328) 'Yard trimmings' means, leaves, grass clippings, garden and other plant debris, small tree branches and limbs (less than [4] four inches in diameter)[, aquatic weeds and other similar materials]. Yard trimmings does not include agricultural waste.

Existing paragraph 360.2(b)(315) is renumbered paragraph 360.2(b)(329).

Newly renumbered paragraph 360.2(b)(329) remains unchanged.

Section 360.3 is repealed and a new section 360.3 is adopted to read as follows:

Section 360.3 References

The following documents are incorporated by reference and are on file with the New York State Department of State. The documents are available for inspection and copying at the department's offices at 625 Broadway, Albany, New York 12233.

(a) United States Code

(1) Marine Protection, Research and Sanctuaries Act of 1972 33 U.S.C. Section 1401 'et seq.' & 16 U.S.C.

Section 1431 'et seq.' (1972) as amended by Pub. L 110-114 (2007)

(b) Code of Federal Regulations (CFR). Any volume of the CFR can be obtained by writing to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Copies of CFR sections may also be obtained at the National Archives and Records Administration, <http://www.access.gpo.gov/nara/cfr/>.

(1) 7 CFR Part 331 (January 1, 2015).

(2) 9 CFR Part 121 (January 1, 2015).

(3) 21 CFR Parts 1300, 1301, 1304, 1305, 1307 and 1317 (April 1, 2015).

(4) 29 CFR Part 1910:

(i) Section 1910.1200 (July 1, 2013);

(ii) Section 1910.120 (January 1, 2015).

(5) 40 CFR:

(i) Part 61 Subparts A and M (July 1, 2015);

(ii) Part 141 (July 1, 2014);

(iii) Part 144, Section 144.62 (July 1, 2014);

(iv) Part 258 (July 1, 2014);

(v) Part 264 (July 1, 2014);

(vi) Part 265 (July 1, 2014);

(vii) Part 280 (July 1, 2014);

(viii) Part 761 (July 1, 2014).

(6) 42 CFR Part 73 (October 1, 2014).

(7) 49 CFR:

(i) Part 172 Sections 172.602 (October 1, 2014) and 172.704 (October 1, 2014);

(ii) Part 173 Sections 173.134, 173.196, 173.197 and 173.199 (October 1, 2014).

(iii) Part 387 (October 1, 2014).

(c) United States Environmental Protection Agency:

(1) 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods', EPA publication SW-846 (Third Edition, November 1986), as amended by updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), document number 955-001-00000-1).

(2) 'Method 300.0 Determination of Inorganic Anions by Ion Chromatography', revision 2.1, John D. Pfaff, USEPA, August 1993.

(3) EPA Method 1664, Revision A: N-Hexane Extractable Material (HEM; Oil and Grease) and ‘Silica Gel Treated N-Hexane Extractable Material’ (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, United States Environmental Protection Agency, EPA-821-R-98-002, February 1999.

(4) ‘Methods for Chemical Analysis of Water and Wastes’, USEPA-600/4-79-020, March 1983.

(5) ‘Prescribed Procedures for Measurement of Radioactivity in Drinking Water’, USEPA-600/4-80-032, August 1980.

(d) Other:

(1) ‘Biosafety in Microbiological and Biomedical Laboratories’, 6th Edition, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health, HHS publication No. (CDC) 300859, revised June 2020.

(2) ‘NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules’, ‘National Institutes of Health’, April 2016.

(3) ‘United States Department of Agriculture, Natural Resource Conservation Service Conservation Practice Standard’, ‘Waste Storage Facility’, (No.) Code 313, May 2016.

Section 360.4 is repealed and a new section 360.4 is added to read as follows:

Section 360.4 Transition

Except as otherwise provided in this Part or in Parts 361, 362, 363, 364, 365, 369 or Subpart 374-2 of this Title, the following constitute the transition rules for persons subject to this Part.

(a) A permitted facility or transporter must comply with the conditions of the permit and the solid waste management facility regulations in effect on the day when the permit was issued for the duration of the permit, unless a modification under Part 621 of this title is approved. At the time of permit renewal, the application from a facility operating under the Part 360 regulation in effect prior to November 4, 2017 will be considered a permit modification request and the facility or transporter must comply with the regulations that pertain to the type of facility or transporter in effect at the time of permit renewal. Nothing in this subdivision can be construed to limit or prohibit a department-initiated modification of a permit under the provisions of Part 621 of this Title.

(b) Unless otherwise specified in this section, a permit application that is deemed complete by the department will be reviewed for conformance with the Part 360, 361, 362, and 365 regulations in effect at the time the application was deemed complete.

(c) Subpart 361-5 Facilities

(1) Except as noted within this subdivision, facilities subject to Subpart 361-5 of this Title must comply with all applicable operating requirements of those regulations within 180 days of the effective date of this rulemaking. Facilities subject to Subpart 361-5 which hold registrations issued prior to November 4, 2017 under section 360.16 must submit a new registration within 180 days of the effective date of this rulemaking. Until the department makes a determination regarding issuance of a new registration for a facility subject to 361-5, the facility must continue to comply with the conditions of the registration in effect.

(2) Existing facilities that hold registrations issued prior to November 4, 2017 under section 360.16 of this Part and which now require a permit to operate under Subpart 361-5 of this Title must have a complete application on file with the Department within 365 days of the effective date of this rulemaking. A complete application

must contain sufficient information to define the activities to be conducted at the facility, but it need not include all the discrete technical details that will be required to be included for the technical review, and any applicable State Environmental Quality Review Act requirements must be commenced, but a negative declaration or acceptance of a draft environmental impact statement need not be completed by the end of the 365-day term. Facilities must remain in compliance with the conditions of the registration issued under section 360.16 of this Part until a permit is issued by the department.

(d) Facilities subject to section 360.13 of this Part must comply with all applicable requirements of those regulations within 240 days of the effective date of this rulemaking.

(e) Septage storage facilities with a valid registration on the effective date of this rulemaking may continue to operate under that registration, provided sufficient documentation has been provided to the department to demonstrate compliance with the registration criteria.

(f) Facilities located on Long Island subject to the groundwater monitoring protection criteria in Subparts 361-3 and 361-4 of this Title must install the required groundwater monitoring wells in accordance with the following schedule:

(1) Within 120 days following the effective date of this rulemaking, the facility owner or operator must submit to the Department's Region 1 Office a groundwater monitoring plan that complies with the requirements of Subparts 361-3 and 361-4 of this Title.

(2) Within 60 days of Department approval, the required groundwater monitoring wells must be installed in accordance with the groundwater monitoring plan.

(g) Except for landfills, retrofitting of existing structural components of facilities is not required to comply with requirements of this Part and Parts 361, 362, and 365 of this Title. If new structural components are built after 180 days following the effective date of this rulemaking, the structural components must comply with the applicable requirements of this Part and Parts 361, 362, and 365 of this Title.

- (h) An expansion of any facility is subject to all applicable requirements of this Part and Parts 361, 362, 363, 365, 366 and Subpart 374-2 of this Title.
- (i) Facilities that closed in compliance with the Part 360, 361, 362, 363 and 365 regulations in effect on the date of closure remain subject to all the requirements in effect on the date of closure. For landfills, the requirements of Subpart 363-3 and Section 363-9.7 of this Title also apply.
- (j) The following financial assurance criteria apply to permitted and registered facilities.
- (1) A registered facility that did not have a valid financial assurance mechanism in place on the day before November 4, 2017, but which is required to obtain financial assurance after that date, must comply with the financial assurance provisions of section 360.22 of this Part by November 4, 2022.
- (2) A registered facility that had a valid financial assurance mechanism in place prior to November 4, 2017, and is required to obtain additional financial assurance after that date, must comply with the financial assurance provisions of section 360.22 of this Part by November 4, 2024.
- (3) A permitted facility that had a valid financial assurance mechanism in place prior to November 4, 2017, and is required to obtain additional financial assurance after that date, must comply with the financial assurance provisions of section 360.22 of this Part at the time of permit renewal.
- (k) In addition to the other criteria in this section, the following criteria apply to landfills.
- (1) Subsequent landfill development, such as the construction of additional lined landfill areas, or vertical height or waste loading increases for areas included in the permit but for which construction plans and drawings have not been approved by the department, must comply with the design, construction and certification requirements of Part 363 of this Title.
- (2) Construction of the first landfill cell, for which construction plans and drawings were approved by the department prior to 180 days following the effective date of this rulemaking, must comply with the design, construction and certification requirements of the Part 360 and Subpart 363-6 regulations in effect on the date of

that approval. Construction of any subsequent landfill cells must comply with the design, construction and certification requirements of Part 363 of this Title.

(3) Retrofitting of existing landfill liners, buried pipes, leachate storage tanks and similar existing structural components is not required.

(4) Except as provided in paragraph 5 of this subdivision, landfills which ceased accepting waste between October 9, 1993 and November 4, 2017 must comply with the Part 360 regulations in effect on the date the landfill ceased accepting waste. The registration requirement may be replaced by a one-time notification to the department on a form prescribed by the department.

(5) For landfills that ceased accepting waste after October 9, 1993, final cover systems must comply with the design, construction and certification requirements of Part 363 of this Title.

(6) A permit application that is deemed complete by the department will be reviewed for conformance with the Part 360 and Part 363 regulations in effect at the time the application was deemed complete. However, for permits issued after November 4, 2017, the permittee must comply with the operational, closure, and post-closure requirements set forth in Part 360 and Part 363 of this Title in effect at the time of permit issuance.

(7) Existing landfills which have prior department approval of the existing water quality database described in section 363-4.6(f)(9)(i) of this Title may continue to utilize those established statistical trigger values for compliance purposes.

(8) A landfill which had a valid Part 360 registration prior to November 4, 2017 that is three acres or less in area may continue to accept tree debris, uncontaminated soil and rock from land clearing, utility line maintenance and season or storm-related cleanups as well as recognizable uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil and rock until the authorized capacity is utilized.

(l) Beneficial use. Pre-determined beneficial use determinations in effect prior to November 4, 2017 that are no longer included in section 360.12 of this Part expired on May 4, 2018 but may be eligible for a case-specific

beneficial use determination. All beneficial use determinations in effect prior to November 4, 2017 are subject to the reporting requirements of this Part on November 4, 2017. In addition, all beneficial use determinations in effect prior to November 4, 2017 that did not contain a condition with a specific expiration date expired on May 4, 2018 unless a request for renewal was submitted to the department by May 4, 2018. In those instances, the beneficial use determination will remain in effect until the department notifies the applicant of renewal approval or denial.

(m) Local solid waste management plans. A local solid waste management plan (LSWMP) approved prior to November 4, 2017 remains in effect for the planning period established in the approved LSWMP, except for the reporting requirements of Subpart 366-5 of this Title which replace the reporting requirements that existed prior to November 4, 2017. In addition, the requirements of section 366-4.2 of this Title apply to LSWMPs approved prior to November 4, 2017.

(n) State assistance grants for municipal waste reduction and recycling projects.

(1) On November 4, 2017, the municipal waste reduction and recycling project waiting list that existed on November 3, 2017 expired. For projects on the prior waiting list the following will apply: (1) applicants for capital projects on the waiting list that existed prior to November 4, 2017 that meet the eligibility requirements for funding under Subpart 369-2 of this Title had until January 3, 2018 to submit an application in accordance with section 369-2.1(a) of this Title. Any applicant who submitted an application by January 3, 2018 in accordance with section 369-2.1(a) of this Title, will have its original pre-application date remain as the submittal date for purposes of section 369-2.1(c) of this Title. Any applicant who failed to submit an application pursuant to section 369-2.1(a) of this Title by January 3, 2018, will have its project eliminated from

consideration under this transition provision. Applications will be evaluated in accordance with the criteria of Subpart 369-2 of this Title;

(2) applicants with education, promotion, planning and coordination projects who were on the waiting list that existed prior to November 4, 2017 satisfy the eligibility criteria of Subpart 369-3 of this Title and seek reimbursement for costs that have already been incurred, must submit an application within 60 days in accordance with the regulations that existed prior to the effective date of this part. Acceptable projects will be funded in the order of their original pre-application date;

(3) applicants with education, promotion, planning and coordination projects who were on the waiting list that existed on November 3, 2017 and seek reimbursement for costs that will occur after November 4, 2017 must submit an application in accordance with section 369-3.1(b) of this Title.

(o) State assistance grants for landfill closure/landfill gas projects. Projects on waiting lists that existed on November 3, 2017 will remain on waiting lists as described in section 369-6.1(b)(2) or 369-7.1(b)(2) of this Title depending on the type of project; however, no project will remain on the waiting list if it does not satisfy the eligibility requirements of Subparts 369-6 or 369-7 of this Title.

Section 360.5 through Section 360.7 remain unchanged

Section 360.8 is amended to read as follows:

360.8 Prohibited [siting] actions.

(a) Special flood hazard areas. [Person(s) must not construct a] A new facility or [expand] the lateral expansion of an existing [one] facility, must not be located in a special flood hazard area, unless provisions acceptable to

the department have been made to prevent flooding of the facility, [and to prevent the] constriction of floodwaters, reduction in the temporary storage of floodwaters, and washout of solid waste. The facility must not pose a significant hazard to human life, wildlife, fisheries, or land or water resources.

(b) Endangered species. [Person(s) must not construct a] A new facility or [laterally] the lateral [expand] expansion of an existing facility [one] must not be designed, built, or operated in a manner that causes or contributes to the taking of any endangered or threatened species or to the destruction or adverse modification of their critical habitat, unless the required permits are obtained from the appropriate federal agency and/or the department.

(c) Wetlands. [Person(s) must not construct a] A new facility or [laterally expand] the lateral expansion of an existing [one] facility must not occur within the boundary of either state or federally regulated wetlands, unless the required permits are obtained from the U.S. Army Corps of Engineers and/or the department.

(d) Long Island. A composting facility, mulch processing facility, or construction and demolition debris handling and recovery facility located in Nassau or Suffolk County must not be operated within a mine subject to regulation under article 23 of title 27 of the ECL.

e. Cannabis. No facility, other than one located at the site of waste generation, shall accept cannabis waste from a cannabis business or processor unless it has been rendered unrecoverable and beyond reclamation in accordance with methods acceptable to the Department of Health.

Section 360.9 (heading) through paragraph 360.9(b)(4) remain unchanged.

Paragraph 360.9(b)(5) through subparagraph 360.9(b)(5)(ii) are amended to read as follows:

(5) accept waste except at:

(i) a facility exempt from the requirements of Parts 360, 361, 362, 363, 365, or Subpart 374-2 of this Title; or

(ii) a facility authorized by the department to accept the waste pursuant to Parts 360, 361, 362, 363, 365, and Subpart 374-2 of this Title or by a department-issued or court-issued order;

Paragraph 360.9(b)(6) is amended to read as follows:

(6) act as a broker or otherwise arrange for the transportation, discard or disposal of waste at a facility unless the facility is exempt from the requirements of Parts 360, 361, 362, 363, or 365 of this Title or authorized to operate through a registration or permit issued pursuant to Parts 360, 361, 362, 363, or 365 of this Title.

Subdivision 360.9(c) remains unchanged

Subdivision 360.9(d) is amended to read as follows:

(d) If a person fails or refuses to comply with any requirement applicable to a permitted or registered facility or collection event contained in this Title, [such] noncompliance will constitute a violation, and, after notice and opportunity for hearing, the commissioner may modify, suspend, or revoke the authorization to operate the facility or collection event and may impose other penalties as the law may provide

Subdivision 360.9(e) through subparagraph 360.10(a)(2)(vi) remain unchanged

Subdivision 360.10(b) is amended to read as follows:

(b) Variance applications. A variance application for a permitted facility must be submitted as part of a permit application or modification of an existing permit. A variance application from the requirements of section 363-3 or section 363-9.7 for landfills that ceased accepting waste prior to November 4, 2017 does not need to be submitted as part of a permit application or modification of an existing permit. In addition, an application for a variance must:

Paragraph 360.10(b)(1) through subdivision 360.11(a) remain unchanged.

Paragraph 360.11(a)(1) through subparagraph 360.11(a)(1)(ii) is repealed and a new paragraph 360.11(a)(1) is added to read follow:

(1) An identification of the waste stream must include the following:

(i) a description of the quantity and composition of the types of solid waste contained in the municipal solid waste (MSW) (i.e., residential, commercial and institutional waste) subdivided into individual components by

type, including, but not limited to: various paper grades (e.g., newspaper, corrugated cardboard, paperboard, and office paper); metal; glass; plastics; textiles; and organics (e.g., yard trimmings and food scraps);

(ii) a description of the quantity and composition of the types of waste contained in the construction and demolition (C&D) debris; industrial waste; and biosolids; and

(iii) a projection, for each year of the 10-year planning period, of the quantity and composition of the MSW generated within the municipality(ies). Projections for future MSW generation must be based on changes in population and must account for seasonal variations and any additional applicable factors impacting waste generation. The source of the data must be identified and can be a combination of data available from the department as well as other information available to the municipality. If actual data is not available or is incomplete, estimates may be developed based on available information acceptable to the department. The projection must include:

(‘a’) the actual or estimated quantity of recyclables by type;

(‘b’) the actual or estimated quantity of recyclables expected to be generated; and

(‘c’) the actual or estimated quantity of recyclables that could potentially be recovered whether or not feasible at the time of CRA preparation.

Paragraph 360.11(a)(2) remains unchanged.

Subparagraph 360.11(a)(2)(i) is amended to read as follows:

(i) an identification of existing municipal, and known private commercial, institutional, and industrial [and] efforts to recover recyclables. Data must include quantity and types of recyclables recovered, and a description of the recyclables collection and processing programs, the organic recovery programs and the public outreach and education programs used;

Subparagraph 360.11(a)(2)(ii) through subparagraph 360.11(a)(3)(ii) remain unchanged.

Subparagraph 360.11(a)(3)(iii) is amended to read as follows:

(iii) an identification of the types of processing necessary [for] to reduce the level of contamination and improve the separation [and upgrading] of recovered recyclables to assure market acceptance.

Paragraph 360.11(a)(4) through subparagraph 360.11(a)(4)(i) remain unchanged.

Subparagraph 360.11(a)(4)(ii) is amended to read as follows:

(ii) the financial structure[,costs, revenues or other funding sources] for all solid waste management facilities and programs operated or administered by the municipality(ies) including:

Clause 360.11(a)(4)(ii)(‘a’) through clause 360.11(a)(4)(ii)(‘c’) remain unchanged.

Subparagraph 360.11(a)(4)(iii) is amended to read as follows:

(iii) an identification of all laws and policies related to solid waste management within the municipality(ies) along with a designation of whether the municipality(ies) has adopted and is enforcing the identified laws and policies, including but not limited to:

Clause 360.11(a)(4)(iii)(‘a’) remains unchanged.

Clause 360.11(a)(4)(iii)(‘b’) is amended to read as follows:

(‘b’) waste importation and/or disposal prohibitions, flow control or local [hauler] waste transporter licensing laws;

Clause 360.11(4)(iii)(‘c’) remains unchanged.

Clause 360.11(a)(4)(iii)(‘d’) is repealed.

Clause 360.11(a)(4)(iii)(‘e’) through clause 360.11(a)(4)(iii)(‘g’) are renumbered clause 360.11(a)(4)(iii)(‘d’) through clause 360.11(a)(4)(iii)(‘f’).

Newly renumbered clause 360.11(a)(4)(iii)(‘d’) is amended to read as follows:

([‘e’]d) zoning laws [or building permits];

Newly renumbered clause 360.11(a)(4)(iii)(‘e’) remains unchanged.

Newly renumbered clause 360.11(a)(4)(ii)(‘f’) is amended to read as follows:

([‘g’]’f) a description of any other local laws adopted or used to implement the solid waste management programs of the [planning unit] municipality that could [e]affect recycling, an assessment of their effectiveness, and a description of any proposed amendments, or new legislation being considered.

Paragraph 360.11(a)(5) through subparagraph 360.11(a)(5)(ix) remain unchanged.

Subparagraph 360.11(a)(5)(x) is amended to read as follows:

(x) local [hauler] waste transporter licensing programs, including an assessment of laws preventing commingling of recyclables with waste;

Subparagraph 360.11(a)(5)(xi) through subparagraph 360.11(a)(5)(xii) remain unchanged.

Subparagraph 360.11(a)(5)(xiii) is amended to read as follows:

(xiii) private sector management and coordination opportunities.

The information used in the assessment of alternatives and enhancements may be drawn from a combination of technology and program summary information prepared by or compiled by the department as well as other information available to the [planning unit] municipality.

Paragraph 360.11(a)(6) through clause 360.11(a)(6)(ii)(‘c’) remain unchanged.

Clause 360.11(a)(6)(ii)(‘d’) is amended to read as follows:

(‘d’) an assessment of the environmental justice impacts in the [planning unit] municipality.

Paragraph 360.11(a)(7) through subparagraph 360.11(a)(7)(i) remain unchanged.

Subparagraph 360.11(a)(7)(ii) is repealed.

Subparagraph 360.11(a)(7)(iii) is renumbered subparagraph 360.11(a)(7)(ii).

Newly renumbered subparagraph 360.11(a)(7)(ii) remains unchanged.

Subparagraph 360.11(a)(7)(iv) is repealed.

Subparagraph 360.11(a)(7)(v) is renumbered subparagraph 360.11(a)(7)(iii) and is amended to read as follows:

([v]iii) an identification of the administrative, contractual, and financial requirements [required] for program implementation; and

Subparagraph 360.11(a)(7)(vi) is renumbered subparagraph 360.11(a)(7)(iv).

Newly renumbered paragraph 360.11(a)(7)(iv) remains unchanged.

Subparagraphs 360.11(a)(7)(vii) through subparagraph 360.11(a)(7)(vii) are repealed.

Paragraph 360.11(a)(8) is amended to read as follows:

(8) Implementation schedule. An implementation schedule, must be included with specific dates for implementation of the selected program, [()including dates to attain specified, progressively decreasing

quantities of MSW generated in the [planning unit] municipality that will be managed through thermal treatment and disposal.

Paragraph 360.11(a)(9) is amended to read as follows:

(9) Projections for all MSW generated (both quantity and composition) within the municipality(ies) based on actual or estimated solid waste generation data. MSW projections must be:

Subparagraph 360.11(a)(9)(i) is amended to read as follows:

(i) [Projections must be] provided for each year of the planning period based on the implementation plan and schedule.

Subparagraph 360.11(a)(9)(ii) is renumbered subparagraph 360.11(a)(9)(iii) and is amended to read as follows:

(iii) [Projections must be] accompanied with an explanation of the assumptions and data used for:

Clause 360.11(a)(9)(ii)(‘a’) is renumbered clause 360.11(a)(9)(iii)(‘a’) and is amended to read as follows:

(‘a’) projected MSW generation; [based on projected population, including the percentage of each generating sector; and]

Clause 360.11(a)(9)(ii)(‘b’) is renumbered clause 360.11(a)(9)(iii)(‘c’) and is amended to read as follows:

([‘b’]’c’) progressively-decreasing quantities of MSW generated in the [planning unit] municipality managed through thermal treatment and disposal.

A new clause 360.11(a)(9)(iii)(‘b’) is added to read as follows:

(‘b’) projected population, including the percentage of each generating sector (i.e., residences, commercial entities and institutional establishments); and

A new subparagraph 360.11(a)(9)(ii) is added to read as follows:

(ii) based on changes in population and must account for seasonal variations and any additional applicable factors impacting waste generation.

Subdivision 360.11(b) through paragraph 360.11(c)(2) remain unchanged.

Paragraph 360.11(c)(3) is amended to read as follows:

(3) The municipality has the right to request a hearing if the department [revokes] issues a written notice of intent to revoke approval of the CRA. [If the department declares that the CRA is revoked, a municipality may request a hearing within 30 days of receipt of the declaration.] Such requests must be received by the department within 30 days of the issuance of a written declaration of intent to revoke.

Subdivision 360.11(d) is amended to read as follows:

(d) CRA reporting. [An annual report must be submitted, on forms acceptable to the department, no later than May 1st of each year, providing waste recovery data and implementation schedule progress.]

A new paragraph 360.11(d)(1) is added to read as follows:

(1) An annual report must be submitted no later than May 1st of each year.

A new paragraph 360.11(d)(2) is adopted to read as follows:

(2) The annual report must include the following:

(i) implementation schedule progress;

(ii) waste generation and recovery data; and

(iii) updated MSW projections.

Section 360.12 (heading) remains unchanged.

Subdivision 360.12(a) through paragraph 360.12(a)(3) are repealed

A new subdivision 360.12(a) is added to read as follows:

(a) Applicability.

.

(1) This section applies to the use of certain wastes as effective substitutes for commercial products or raw materials as determined by the department. The materials cease to be solid waste when used according to this section.

(2) This section does not apply to the following:

(i) solid waste that is being sent to facilities subject to regulation under Part 361 of this Title until the solid waste is processed to meet the requirements of this Section;

(ii) materials combusted pursuant to Subpart 362-1 of this Title;

(iii) materials used pursuant to section 363-6.21 of this Title; and

(iv) waste used in a manner that constitutes disposal.

(3) Specific requirements for the beneficial use of navigational dredged material (NDM), brine, and excavated material are found in subdivisions 360.12(e)-(f) and section 360.13 of this Part.

(4) The department reserves the right to require a permit pursuant to section 360.17 of this Part for land placement, including mine reclamation or subsurface mine filling, in place of a beneficial use determination, if deemed necessary by the department to prevent adverse impacts to public health and the environment.

Proposed land placement requiring a permit may include, but are not limited to the following:

- (i) Receipt of a fee or other form of consideration for acceptance of any quantity of material;
- (ii) Receipt of material not conforming to pre-determined uses in this section and section 360.13 of this Part;
- (iii) Receipt of material in quantities of more than 100,000 cubic yards at any one site;
- (iv) Receipt of material from more than one source;
- (v) Receipt of material over a period exceeding 365 days

Subdivision 360.12(b) through subdivision 360.12(c) (heading) remain unchanged.

Paragraph 360.12(c)(1) through subparagraph 360.12(c)(1)(iv) are repealed.

New subparagraph 360.12(c)(1) is added to read as follows:

(1) The following cease to be waste when used as described in this paragraph:

(i) materials identified in section 371.1(e)(1)(vi) through (viii) of this Title that cease to be solid waste as defined in section 371.1 of this Title;

(ii) excavated material when used in accordance with section 360.13 of this Part;

(iii) NDM used outside ecologically sensitive areas, as commercial aggregate in place of sand or gravel if the NDM contains at least 90 percent sand and gravel, as determined by a standard grain size analysis method approved by the department and performed by an independent laboratory, and if the NDM contains less than 0.5 percent total organic carbon.

(iv) The materials in this subparagraph cease to be waste when used for grade adjustment on the site of generation. This subparagraph does not apply to sites which are subject to a department-approved remedial program or to waste that was illegally disposed of on-site. Friable asbestos-containing waste and any other wastes identified in section 363-2.1(a) of this Title are excluded from reuse under this determination.

(‘a’) Excavated material used to backfill the same excavation or as grade adjustment in areas of similar physical characteristics on the site of generation. If the material exhibits visual or historical evidence of contamination (including odors) and will be used in an area with public access, the material must be covered with pavement, foundation, or with a minimum of 12 inches of soil or fill that meets the criteria to be used as Fill Type 1 and Fill Type 2 in section 360.13 of this Part.

(‘b’) Recognizable and uncontaminated concrete or concrete products (including those that have embedded reinforcement), asphalt pavement or millings, and brick from demolition of on-site structures.

Paragraph 360.12(c)(2) through subparagraph 360.12(c)(2)(viii) are repealed.

New paragraph 360.12(c)(2) is added to read as follows:

(2) The following cease to be waste when received at the location of use as described in this paragraph:

(i) uncontaminated newsprint used as animal bedding;

(ii) uncontaminated used wood pallets that are used to produce reconditioned or remanufactured wood pallets;

(iii) street sweepings, car wash grit, and water system catch basin materials that consist of sand and gravel and are free from litter and objectionable odors, when used in the following applications:

(‘a’) as a substitute for commercial aggregate for the construction of roads or parking areas;

(‘b’) as backfill for utilities within transportation corridors other than potable water utility lines;

(‘c’) or in locations subject to commercial or industrial land use.

(iv) waste tires or passenger tire equivalents used to secure tarpaulins in common weather protection practices such as agricultural storage covers and salt pile protection, that meet the following requirements:

(‘a’) are used in a single layer over the tarpaulin, or double layer of sidewall weights;

(‘b’) are used in a second layer of tires to anchor edges, if needed; or double the number of sidewall weights;
and

(‘c’) the tires must meet one of the following:

(‘1’) be cut in half;

(‘2’) have one side wall removed and placed with the cut side down;

(‘3’) have a sufficient number of holes drilled in them to prevent retention of water, or

(‘4’) if whole tires are used, the tires must be covered, arranged on the tread in close alignment, or otherwise stored in a manner to prevent retention of water unless they are being used to secure tarpaulins.

(v) 150 or fewer waste tires or tire equivalents at a single site for purposes such as retaining walls, decoration, playground components, bumper guards, manufactured products feedstock, and similar purposes;

(vi) bread and other similar grain products (spent brewery grains, etc.) used for animal feed or pet food, provided all packaging is removed prior to use;

(vii) fruits and vegetables, in quantities less than 500 pounds per week from a single location or event, such as a farmers’ market, used for animal feed. All packaging must be removed prior to use. The fruits and vegetables must be stored in the following manner:

(‘a’) in a container or in an enclosed area prior to use; and

(‘b’) for a maximum of seven days but must be removed from storage as soon as spoilage or malodors occur.

(viii) source-separated recyclables that are typically managed at a recyclables handling and recovery facility but instead are received directly by a manufacturing plant for use as an ingredient in the manufacturing of a product.

(ix) except in Putnam County, Nassau County, Suffolk County, and Westchester County, material consisting only of recognizable, uncontaminated concrete or concrete products (including those that have embedded

reinforcement), asphalt pavement or millings, brick, rock, Fill Type 1, Fill Type 2, Fill Type 3 or mixtures of these materials. De minimis amounts of wood included with these materials are acceptable under this determination. The material must meet the following requirements:

(‘a’) Be used in one of the following ways:

(‘1’) for grade adjustment to alter the slope of a landform;

(‘2’) to raise the surface elevation for site development; or

(‘3’) to meet requirements of a department-approved mined land-use plan; and

(‘b’) Be used in a manner that complies with the following conditions:

(‘1’) the material is received at a site for a project that is authorized by an approved local building permit or other municipal authorization, if required. Materials are prohibited from use pursuant to this subparagraph at any site that is subject to regulation under title 27 of article 23 of the ECL unless that activity is authorized in an approved Mined Land Use Plan that is incorporated in a Mined Land Reclamation Permit issued by the department.

(‘2’) the material is only received during daylight hours between sunrise and sunset, except-for night deliveries associated with municipal or state highway projects after a one-time notification to the appropriate department regional office. Any fee or other form of consideration for receipt of the material is prohibited;

(‘3’) the material must be placed above the seasonal high groundwater table;

(‘4’) the material must not be placed in a surface water body or wetlands;

(‘5’) the material must not include residues from C&D debris handling and recovery facilities; and

(‘6’) the user must notify the appropriate department regional office if the use is greater than 2500 cubic yards.

(x) Recycled aggregate from bricks, concrete pavement and/or asphalt pavement when used in or under asphalt pavement or other impermeable surface, if separated from other material and stored in a separate area as a discrete material stream. De minimis amounts of soil or wood included with these materials are acceptable under this determination.

(xi) Recycled aggregate from bricks, concrete pavement and/or asphalt pavement distributed by a facility authorized under Subpart 361-5 of this Title for use as a commercial aggregate in subsurface applications at a depth of at least three inches or under an impermeable surface, if separated from other material and stored in a separate area as a discrete material stream.

Paragraph 360.12(c)(3) through subparagraph 360.12(c)(3)(iii) remain unchanged

Subparagraph 360.12(c)(3)(iv) is amended to read as follows:

(iv) fats, oil, grease, and rendered animal parts in products, provided applicable industry and/or government standards are met, except for use as or in production of fuels;

Subparagraphs 360.12(c)(3)(v) through subparagraph 360.12(c)(3)(vi) remain unchanged.

Subparagraph 360.12(c)(3)(vii) is amended to read as follows:

(vii) coal combustion bottom ash for use as an aggregate in [portland cement,] concrete, asphalt pavement, or roofing materials;

Subparagraph 360.12(c)(3)(viii) is repealed and a new 360.12(c)(3)(viii) is added to read as follows:

(viii) uncontaminated, recognizable concrete, brick and other masonry products or rock for use as commercial aggregate if separated from other material prior to any necessary processing at an authorized facility and stored in a separate area as a discrete material stream. De minimis amounts of soil or wood included with these materials are acceptable under this determination.

Subparagraph 360.12(c)(3)(ix) is repealed and a new 360.12(c)(3)(ix) is added to read as follows:

(ix) uncontaminated, recognizable asphalt pavement and asphalt millings for use as an ingredient in asphalt pavement or in other paved surface construction and maintenance applications if separated from other material prior to any necessary processing at an authorized facility and stored in a separate area as a discrete

material stream. De minimis amounts of soil or wood included with these materials are acceptable under this determination.

Subparagraph 360.12(c)(3)(x) is amended to read as follows:

(x) asphalt pavement and asphalt millings received at an asphalt manufacturing plant for incorporation into an asphalt product[;]. De minimis amounts of soil or wood included with these materials are acceptable under this determination.

Subparagraph 360.12(c)(3)(xi) is renumbered subparagraph 360.12(c)(3)(xii).

A new subparagraph 360.12(c)(3)(xi) is adopted to read as follows:

(xi) concrete and other masonry products received at a ready-mix plant for incorporation into a concrete product. De minimis amounts of soil or wood included with these materials are acceptable under this determination.

Newly renumbered subparagraph 360.12(c)(3)(xiii) remains unchanged.

New subparagraph 360.12(c)(3)(xiii) is added to read as follows:

(xiii) excavated material meeting specifications of and used pursuant to a municipal soil reuse program approved by the department and administered by the municipality under an agreement with the department.

New subparagraph 360.12(c)(3)(xiv) is added to read as follows:

(xiv) scrap metal, including processed scrap metal, prompt scrap metal and home scrap metal, which meets a commercial commodity specification for use in an industrial or manufacturing process.

New subparagraph 360.12(c)(3)(xv) is added to read as follows:

(xv) dewatered solids from concrete grinding slurry from road construction and maintenance operations, as a component in the following products or uses:

('a') commercial aggregate; or

('b') ingredient in flowable fill, asphalt pavement and other construction materials;

New subparagraph 360.12(c)(3)(xvi) is added to read as follows:

(xvi) wet concrete grinding slurry from road construction and maintenance operations, when meeting industry specifications for use as an ingredient in manufactured products or building materials including, but not limited, to concrete products, brick, asphalt pavement, shingles, and grout.

Paragraph 360.12(c)(4) is amended to read as follows:

(4) The following cease to be waste when the material leaves a facility subject to exemption or regulation under this Part or Parts 361 or 362 of this Title, provided the material is ultimately recycled or reused. If the material is taken to another facility regulated under this Part or Parts 361, 362, 363, or 365 of this Title, these provisions do not apply:

Subparagraph 360.12(c)(4)(i) through clause 360.12(c)(4)(i)(‘b’) remain unchanged.

Subparagraph 360.12(c)(4)(ii) is amended to read as follows:

(ii) compost and [other soil conditioning] products produced from facilities regulated under Subpart 361-3 of this Title provided the use restrictions are followed;

Subparagraph 360.12(c)(4)(iii) is amended to read as follows:

(iii) ground tree debris, wood debris, and yard trimmings used for mulch and other common uses provided the material meets an accepted industry standard and has a legitimate market;

Subparagraph 360.12(c)(4)(iv) through paragraph 360.12(d)(4) remain unchanged.

Paragraph 360.12(d)(5) is amended to read as follows:

(5) The department [will] may modify, suspend, or revoke any determination made under this section, upon notice and an opportunity to be heard, if it finds that one or more of the factors serving as the basis for the department's determination were incorrect or are no longer valid, that there has been noncompliance with any condition attached to the determination, or if necessary to prevent adverse impacts to public health and the environment, or control nuisances.

Paragraph 360.12(d)(6) remains unchanged.

Paragraph 360.12(d)(7) is amended to read as follows:

(7) An approved case-specific beneficial use determination is valid for no more than five years from the date of approval. Case-specific beneficial use determinations may be renewed upon review and approval of the department. A renewal is not required for case-specific beneficial use determination of a time-limited or quantity-limited nature wherein work is completed and no additional waste is proposed or approved for beneficial use.

Paragraph 360.12(d)(8) through subdivision 360.12(e) remain unchanged.

Paragraph 360.12(e)(1) is amended to read as follows:

(1) Applicability. This subdivision applies to the upland management of NDM in a beneficial manner. This subdivision does not apply to NDM management in surface water, or in the riparian zone, or to the upland management of NDM if it is included under a dredging permit or other applicable permits specified in [subparagraph] section 360.2(a)([4]3)(xi) of this Part.

Paragraph 360.12(e)(2) through paragraph 360.12(e)(3) remain unchanged.

Subparagraph 360.12(e)(3)(i) is amended to read as follows:

(i) The department will determine in writing, on a case-specific basis, whether the proposal constitutes a beneficial use, based on requirements described in this section and paragraph 360.12(d)(3) of this Part. For use of NDM as [general fill] Fill Type 2, Fill Type 3 or cover, the requirements of subparagraph 360.12(d)(3)(vi) of this section must be met, except where NDM will meet criteria for and will be used in the same manner as [Restricted-Use or Limited-Use Fill Material] Fill Type 4 or Fill Type 5 as described in section 360.13 of this Part.

Subparagraph 360.12(e)(3)(ii) subparagraph 360.12(e)(4)(iii) remain unchanged.

Subparagraph 360.12(e)(4)(iv) is amended to read as follows:

(iv) Statistical analysis in accordance with USEPA SW-846, as incorporated by reference in section 360.3 of this Part, may be used to justify compliance of NDM with contaminant limits where results show an exceedance. [If the pollutant limit for beneficial use is lower than the required detection limit, an analytical result less than the required detection limit will be considered to comply with the pollutant limit.]

Subdivision 360.12(f) through clause 360.12(f)(2)(vii)(‘c’) remains unchanged.

Clause 360.12(f)(2)(vii)(‘d’) is amended to read as follows:

(‘d’) if the proposed use is ice or snow control, a description of how the operation complies with [Department of Transportation] published state guidelines for snow and ice control.

Paragraph 360.12(f)(3) through subparagraph 360.12(f)(3)(ii) remain unchanged.

Subparagraph 360.12(f)(3)(iii) is amended to read as follows:

(iii) Brine must comply with the following standards (test methods are incorporated by reference in section 360.3 of this Part):

BUD Criteria for the Use of Oil/Gas Well and LPG Storage Brine for Road Uses*

Parameter	Criteria, mg/L	Test Method
Total Dissolved Solids	>170,000** <u> </u>	Method approved by Department
Chloride	>80,000** <u> </u>	EPA Method 300.00
Sodium	>40,000** <u> </u>	SW-846 6010[C]
Calcium	>20,000** <u> </u>	SW-846 6010[C]
Iron	<250	SW-846 6010[C]
Barium	<1.0	SW-846 6010[C]
Lead	<2.5	SW-846 6010[C]
Sulfate	<[2500]8200	EPA Method 300.0
Oil/Grease	<15	EPA Method 1664
Benzene	<0.5	SW-846 8260
Ethylbenzene	<0.5	SW-846 8260
Toluene	<0.5	SW-846 8260
Xylene	<0.5	SW-846 8260

* These criteria do not apply to use of brine for road stabilization, which will be reviewed on a case-specific basis. For all uses, if the criterion for beneficial use is lower than the laboratory reporting limit, an analytical result less than the reporting limit will be considered to comply with the criterion.

** lower [levels] concentrations may be considered when brine is used for dust control or road stabilization.

Subparagraph 360.12(f)(3)(iv) through subparagraph 360.12(f)(3)(viii) remain unchanged.

Subparagraph 360.12(f)(3)(ix) is amended to read as follows:

(ix) One representative analysis of the brine [prior to] at a point of use for the constituents in subparagraph 360.12(f)(3)(iii) of this section must be submitted annually to the department. All analyses must be performed by a laboratory certified by the New York State Department of Health using methods acceptable to the department.

Subparagraph 360.12(f)(3)(x) is amended to read as follows:

(x) In lieu of paragraph 360.12(d)(8) of this section an annual report must be submitted to the department by March [31] 1 of each year containing data for the previous calendar year. The report must include:

Clause 360.12(f)(3)(x)(‘a’) through subparagraph 360.12(f)(3)(x)(‘d’) remain unchanged.

Clause 360.12(f)(3)(x)(‘e’) is amended to read as follows:

(e) name of roads where applied, distance applied, and gallons applied; [and]

Clause 360.12(f)(3)(x)(‘f’) is amended to read as follows:

(f) effectiveness of brine application (excellent, good, fair, poor), etc; and [.]

New clause 360.12(f)(3)(x)(‘g’) is added to read as follows:

(g) a signed statement by a responsible official of the petitioner’s organization that the organization has been in compliance with the terms and conditions of the approved case-specific beneficial use determination during the reporting period.

Subparagraph 360.12(f)(3)(xi) through 360.12(f)(5)(i) remain unchanged.

Section 360.13 is repealed and a new section 360.13 is added to read as follows:

Section 360.13 Special requirements for pre-determined beneficial use of excavated material.

(a) Applicability.

(1) This section applies to the use of excavated material as fill under a pre-determined beneficial use, including fill distributed for reuse from facilities subject to regulation under Subpart 361-5 of this Title;

(2) Excavated material that does not meet the requirements of this section must be managed at a facility authorized to receive the excavated material or used pursuant to a case-specific beneficial use determination in accordance with section 360.12(d) of this Part.

(3) This section does not apply to excavated material sent to facilities subject to regulation under Subpart 361-5 of this Title.

(b) Waste cessation. Excavated material ceases to be solid waste in accordance with the following:

(1) Fill Type 1

(i) Fill Type 1 generated outside of the New York City Metropolitan Area Waste Impact Zone – once a determination has been made that the material is Fill Type 1;

(ii) Fill Type 1 generated within Nassau, Suffolk, Westchester and Putnam Counties – once the material is delivered to the site of reuse.

(iii) Fill Type 1 cannot be generated within the City of New York.

(2) Fill Type 2 and Fill Type 3

(i) Fill Type 2 and Fill Type 3 generated outside of the New York City Metropolitan Area Waste Impact Zone – once a determination has been made that the material is Fill Type 2 or Fill Type 3.

(ii) Fill Type 2 and Fill Type 3 generated within the New York City Metropolitan Area Waste Impact Zone - once the material is delivered to the site of reuse.

(3) Fill Type 4 and Fill Type 5 - once the material is delivered to the site of reuse.

(c) Notification requirements.

(1) Notification in the City of New York. For Fill Type 2, Fill Type 3, Fill Type 4 and Fill Type 5 generated within the City of New York, the department must be notified at least five days before the first load greater than

10 cubic yards is planned to be transported from the site of excavation directly to a site of reuse. Notifications must be made on forms acceptable to the department and must include any information required by the department, including analytical data required by this section. The department reserves the right to inspect any site of excavation or site of reuse of fill.

(2) Notification of fill placement. For Fill Type 4 and Fill Type 5 generated outside the City of New York, the department must be notified at least five days before the first load greater than 10 cubic yards is planned to be transported directly from the site of excavation to the site of reuse. Notification must be made on forms acceptable to the department and must include any information required by the department, including the analytical data required by this section. The department reserves the right to inspect any site receiving fill.

(d) Testing requirements for excavated material as fill. Excavated material that is not otherwise excluded or exempt from regulation under this section must be sampled and analyzed pursuant to subdivision (e) of this section if:

(1) the excavated material originates from a location within the City of New York unless the quantity of excavated material does not exceed 10 cubic yards from one site and the 10 cubic yards or less of material does not exhibit historical evidence of contamination based on site use, reported spill events, or visual and other indicators (odors, etc.) of chemical or physical contamination; or

(2) the excavated material originates from a location outside the City of New York and either one of the following occur:

(i) there is historical evidence of contamination based on site use, reported spill events, or visual and other indicators (odors, etc.) of chemical or physical contamination discovered prior to excavation; or

(ii) visual indication of chemical or physical contamination is discovered during excavation.

(e) Sampling and analysis requirements for excavated material as fill.

(1) Sample method and frequency. Samples must be representative of the fill. The sampling program must be designed and implemented by or under the direction of a qualified environmental professional (QEP), using Table 1 below as a minimum sampling frequency. Written documentation of the sampling program with certification from the QEP that samples were representative of the fill must be retained for three years after the sampling occurs and must be provided to the department upon request.

TABLE 1: Minimum Analysis Frequency for Fill

Fill Quantity (cubic yards)	Minimum Number of Analyses for Volatile Organic Compounds, if Required	Minimum Number of Analyses for all other parameters
0-300	2	1
301-1000	4	2
1001-10,000	6	3
10,001+	Two for every additional 10,000 cubic yards or fraction thereof	One per every additional 10,000 cubic yards or fraction thereof

(2) Analytical parameters. Fill samples must be analyzed for:

- (i) the Metals, PCBs/Pesticides, and Semivolatile organic compounds listed in section 375-6.8(b) of this Title;
- (ii) asbestos, if suspect asbestos-containing material is observed as determined by the New York State Department of Labor or a New York State Department of Labor certified inspector. If sampling is required, at least two samples must be collected from each suspect asbestos-containing excavated material to be used;
- (iii) volume of physical contaminants, if present, based on visual observation; and
- (iv) volatile organic compounds listed in section 375-6.8(b) of this Title, if their presence is possible based on site events such as an historic petroleum spill, odors, photoionization detector meter or other field instrument readings.

(3) Laboratory and analytical requirements. Laboratory analyses must be performed by a laboratory currently certified by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).

(f) Acceptable fill uses.

Fill can be beneficially used in accordance with table 2 below.

TABLE 2: Fill Beneficial Use

Fill Type	Fill End Use	Physical Criteria	Maximum Concentration Levels
Fill Type 1 (F1)	Any end use.	Only soil, sand, gravel, or rock which is generated outside of New York City with no evidence of historical contamination based on site use, reported spill events, or visual or other indication (odors, etc.) of chemical or physical contamination; no non-soil constituents. Must not produce objectionable petroleum or other odors.	No testing required.

Fill Type 2 (F2)	<p>Any setting where the fill meets the engineering criteria for use, except: agricultural land used for raising livestock or producing animal products for human consumption.</p> <p>Fill Type 2 may also be used in the same manner as Fill Type 3, Fill Type 4 and Fill Type 5.</p>	<p>Only soil, sand, gravel or rock; no non-soil constituents. Must not produce objectionable petroleum or other odors.</p>	<p>Lower level between Protection of Public Health-Residential Land Use and Protection of Groundwater Soil Cleanup Objectives in section 375-6.8(b) of this Title.</p>
Fill Type 3 (F3)	<p>Any setting where the fill meets the engineering criteria, for use, except : 1. Undeveloped land; and 2. Agricultural crop on land used for raising livestock or producing</p>	<p>Only soil, sand, gravel, and de minimis amounts of brick, concrete or asphalt; no other non-soil constituents. Must not produce objectionable petroleum or other odors.</p>	<p>Lower level between Protection of Public Health-Residential Land Use and Protection of Groundwater Soil Cleanup Objectives in section 375-6.8(b) of this Title.</p>

	<p>animal products for human consumption.</p> <p>If used on residential property, material must be under impermeable surface or under a minimum three inches of Fill Type 1, Fill Type 2 or commercial soil.</p> <p>Fill Type 3 may also be used in the same manner as Fill Type 4 and Fill Type 5.</p>		
Fill Type 4 (F4)	<p>Engineered use for embankments or subgrade: A) in transportation corridors, or B) on sites where in-situ materials contain higher levels of contaminants than Fill</p>	<p>No volume limit for granular, compactible non-soil constituents.¹</p>	<p>Same levels as Fill Type 2, except that polycyclic aromatic hydrocarbons must not exceed 3 mg/kg (dry weight) total benzo(a)pyrene (BAP) equivalent.²</p>

	<p>Type 4 or Fill Type 5 criteria.</p> <p>Must be placed above the seasonal highwater table.</p> <p>May also be used in the same manner as Fill Type 5, except in locations where using Fill Type 5 is prohibited in accordance with paragraph 360.13(g)(2).</p>		<p>No greater than one percent by weight for any single suspect asbestos-containing material.</p> <hr/> <p>In Nassau or Suffolk County, Individual polycyclic aromatic hydrocarbons must not exceed Protection of Groundwater Soil Cleanup Objectives in the table in section 375-6.8(b) of this Title. (BAP equivalent does not apply.)</p>
Fill Type 5 (F5)	Engineered use under foundations and pavements above the seasonal highwater table. ³	No volume limit for granular, compactible non-soil constituents. ¹	<p>Same levels as Fill Type 2, except metals must not exceed Protection of Public Health-Commercial Soil Cleanup</p>

			Objectives in the table in section 375-6.8(b) of this Title; and BAP equivalent must not exceed 3 mg/kg (dry weight). ² No greater than one percent by weight for any single suspect asbestos-containing material.
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Footnotes

1

Granular, compactible non-soil constituents exclude plastic, gypsum wallboard, wood, paper, or other material that may readily degrade or produce odors.

2

Benzo(a)pyrene (BAP) equivalent is calculated using the following formula: BAP Equivalent = 1 x conc.

Benzo(a)pyrene + 0.1 x [conc. Benz(a)anthracene + conc. Benzo(b)fluoranthene + conc. Benzo(k)fluoranthene + conc. Dibenzo(a,h)anthracene + conc. Indeno(1,2,3-c,d)pyrene] + 0.01 x conc. Chrysene (All concentrations in mg/kg or ppm, dry weight.)

3

If foundation or pavement is not installed within 365 days of fill placement, then the fill placement will constitute a prohibited disposal.

(g) Other fill use criteria.

(1) Placement of Fill Type 4 is prohibited within the following counties, with the exception that Fill Type 4 can be reused as described in this section within the same county in which it was generated: Putnam, Westchester, Nassau and Suffolk.

(2) Placement of Fill Type 5 is prohibited in the following counties: Putnam, Westchester, Nassau and Suffolk.

(3) Use of Fill Type 4 or Fill Type 5 can only occur at a project that is authorized by an approved local building permit or other municipal authorization, if required. The material must be used within 30 days of arriving at the project site.

(4) Payment. A person must not receive payment or other form of consideration for allowing beneficial use of Fill Type 3, Fill Type 4 or Fill Type 5 on land under that person's control.

(5) Recordkeeping. The generator, processor, and receiver of fill subject to sampling under this section must retain records of fill quantities, with analytical data, for a minimum of three years after the fill is removed or received, as applicable. These records must be made available to the department upon request.

Section 360.14 (heading) is amended to read as follows:

360.14 Exempt facilities and activities.

Subdivision 360.14(a) remains unchanged.

Subdivision 360.14(b) remain is amended to read as follows:

(b) General exemptions. In addition to exemptions provided in Parts 361 to 365 of this Title, the following facilities or [person(s)] activities are exempt from this Part:

Paragraph 360.14(b)(1) is amended to read as follows:

(1) [A] transfer, storage, treatment, processing, or combustion [facility located] activities at the site of waste generation or at a location [in the State] under the same ownership or control as the site of waste generation. For the purposes of this Part, all locations under the ownership or control of municipal agencies and departments are considered under the ownership or control of the parent municipality. This exemption does not apply to the following facilities or activities:

Subparagraph 360.14(b)(1)(i) remains unchanged.

Subparagraph 360.14(b)(1)(ii) is amended to read as follows:

(ii) a composting facility for animal carcasses and parts [from a slaughterhouse][.];

Subparagraph 360.14(b)(1)(iii) is amended to read as follows:

(iii) a composting or other facility subject to Subpart 361-3 of this Title for municipal solid waste, [sewage sludge (or other sanitary waste), or other sludges] sanitary waste such as biosolids and septage, or industrial waste except for food processing waste[.];

Subparagraph 360.14(b)(1)(iv) through subparagraph 360.14(b)(vi) remain unchanged.

Subparagraph 360.14(b)(1)(vii) is amended to read as follows:

(vii) a surface impoundment for handling of coal ash or coal combustion residuals; [.] or

A new subparagraph 360.14(b)(1)(viii) is added to read as follows:

(viii) a facility storing waste tires, including a waste tire generator storing waste tires.

Paragraph 360.14(b)(2) is repealed and a new paragraph 360.14(b)(2) is added to read as follows:

(2) A transfer, storage, treatment, or combustion facility located at a sewage treatment plant and used in conjunction with the treatment of sewage, including acceptance of food scraps or other organics waste for addition to a digester or other device that also treats biosolids. This exemption does not include a composting or other facility subject to Subpart 361-2 or 361-3 of this Title.

Paragraph 360.14(b)(3) remains unchanged.

Subparagraph 360.14(b)(3)(i) is amended to read as follows:

(i) the property where the storage occurs is owned or leased by [the] a transporter;

Subparagraph 360.14(b)(3)(ii) is amended to read as follows:

(ii) if trailers, containers and roll-offs are used, they must remain on or attached to the vehicles that transported them unless the activity is otherwise allowed by either United States Department of Transportation or section 372.3(a)(6) of this Title and meets the requirements of section 372.3(a)(7)(iii) of this Title;

Subparagraph 360.14(b)(3)(iii) is amended to read as follows:

(iii) no container, roll-off, trailer, or transport vehicle can be opened or uncovered for any purpose including transfer or treatment, unless the activity is otherwise allowed by either United States Department of Transportation or section 372.3(a)(6) of this Title and meets the requirements of section 372.3(a)(7) of this Title; and

Subparagraph 360.14(b)(3)(iv) remains unchanged.

Paragraph 360.14(b)(4) is amended to read as follows:

(4)The storage of putrescible waste on a vehicle overnight or over a weekend, provided:

Subparagraph 360.14(b)(4)(i) through subparagraph 360.14(b)(8)(iii) remain unchanged.

Paragraph 360.14(b)(9) is amended to read as follows:

(9) [Facilities that store]Storage alone or with transfer of less than 1,000 waste tires at any one time.

New paragraph 360.14(b)(10) is added to read as follows:

(10) Transfer of solid waste from vehicle to vehicle for the purpose of consolidating loads as part of the initial collection process, provided the transfer occurs along the collection route where the point of transfer changes from day to day and litter and spillage are prevented.

Section 360.15 through paragraph 360.15(a)(4) remain unchanged

Subdivision 360.15(b) is amended to read as follows:

(b) A registration can be denied or revoked based upon the unsuitability of the owner, operator or applicant, as set forth in this subdivision. In addition to any other available grounds, the department may, consistent with the ~~[policies]~~provisions of article 23-A of the Correction Law and the provisions of section 70-0115 of the ECL, deny, suspend, revoke or modify any registration after determining in writing that [such]this action is required to protect the public health or safety. Some of the factors which the department may consider in arriving at [such] a determination include:

Paragraph 360.15(b)(1) through paragraph 360(b)(4) remain unchanged.

Subparagraph 360.15(b)(4)(i) is amended to read as follows:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if [such]the corporation, partnership, association or organization applied for a permit or registration pursuant to this Part; or

Subparagraph 360.15(b)(4)(ii) is amended to read as follows:

(ii) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if [such]the corporation, partnership, association or organization applied for a permit or registration pursuant to this Part; or

Subparagraph 360.15(b)(4)(iii) is amended to read as follows:

(iii) a corporation, partnership, association or organization, or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, if such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part had [such]the other corporation, partnership, association or organization applied for a permit or registration under this Part.

Subdivision 360.15(c) is amended to read as follows:

(c) Submission, signature, and verification of applications for facility, transporter, or collection events registrations.

Paragraph 360.15(c)(1) remains unchanged

Paragraph 360.15(c)(2) is amended to read as follows:

(2) The owner or operator must declare both the intended storage volumes for the facility based on the size and orientation of the site and the maximum throughput limits for the facility on a registration form acceptable to the department. This requirement does not apply to household hazardous waste collection events.

Paragraph 360.15(c)(3) is renumbered paragraph 360.15(c)(4) and is amended to read as follows:

([3]4) The owner or operator must furnish to the department any information requested by the department to determine compliance with the registration requirements. This information must include, at a minimum, a site plan which describes the management of solid waste at the facility. [and, if appropriate, a Certificate under Seal

of the Department of State.] If the owner or operator is a corporation or a limited liability corporation, the owner or operator must submit a certificate of status with the seal of the New York State Department of State and the certificate of doing business under assumed name (“D/B/A”) filed with the county clerk in the county where the facility is located. The name of the facility owner and operator on any registration filed with the department must appear exactly as it does on the certificate of status provided by the New York State Department of State and the certified copy of the certificate of doing business under assumed name (“D/B/A”) provided by the county clerk’s office if one has been filed.

A new paragraph 360.15(c)(3) is added to read as follows:

(3) All applications for registrations must be submitted in either an electronic format acceptable to the department or print. They must be signed by the applicant as follows:

- (i) corporations: by a duly authorized principal executive officer of at least the level of vice president;
- (ii) partnership or limited partnership: by a general partner;
- (iii) sole proprietorship: by the proprietor; or
- (iv) a municipal, State or other government entity: duly authorized executive officer or duly authorized elected official;
- (v) for any other legal entity authorized to do business in the State of New York, any person who performs policy or decision-making functions and is authorized to legally bind that entity: upon submission of documentation to the department of the person’s authorization to sign an application on behalf of the entity.

Subdivision 360.15(d) through section 360.16 (heading) remain unchanged. Subdivision 360.16(a) is amended to read as follows:

- (a) Submission, signature and verification of applications for facility [or waste transporter] permits. All applications for permits must be submitted in either an electronic format acceptable to the department or print. They must be signed by the applicant as follows:

Paragraph 360.16(a)(1) through paragraph 360.16(a)(2) remain unchanged.

Paragraph 360.16(a)(3) is amended to read as follows:

(3) sole proprietorship: by the proprietor; [or]

Paragraph 360.16(a)(4) is amended to read as follows:

(4) a municipal, State, or other governmental entity: by a duly authorized [principal] executive officer or duly authorized elected official[.]; or

A new paragraph 360.16(a)(5) is added to read as follows:

(5) for any other legal entity authorized to do business in the State of New York, any person who performs policy or decision-making functions and is authorized to legally bind that entity: upon submission of documentation to the department of the person's authorization to sign an application on behalf of the entity.

Subdivision 360.16(b) through paragraph 360.16(c)(1) remain unchanged.

Subparagraph 360.16(c)(1)(i) is amended to read as follows:

(i) the name and address of the owner and of the operator of the proposed facility.[:]

Subparagraph 360.16(c)(1)(ii) is amended to read as follows:

(ii) the name and address of the owner of the property on which the proposed facility is to be located.[:]

Subparagraph 360.16(c)(1)(iii) is amended to read as follows:

(iii) written permission from the owner(s) of [land] the real property on which the facility is located or [on

which] the proposed facility [is to]would be located[; and] for unaccompanied access

by department representatives to the property occupied by the facility or proposed facility, including any

adjacent areas, during normal business hours (7:00 am to 7:00 pm Monday through Friday). If the property is

posted with "keep out" signs or fenced with an unlocked gate, department representatives may still enter the

property. Department representatives may traverse the property, inspect the facility, take measurements,

analyze physical site characteristics, take soil and vegetation samples, sketch and photograph the property and

conduct other activities necessary to evaluate the permit application or assess the facility's compliance with the permit and any other applicable statutory or regulatory requirements.

Subparagraph 360.16(c)(1)(iv) is repealed and a new subparagraph 360.16(c)(1)(iv) is added to read as follows:

(iv) Any facility owner or facility operator that is a corporation, limited liability company, limited liability partnership or other entity that must file with the New York State Department of State (DOS) to conduct business in the State, must submit a certificate of status with the seal of DOS at the time it submits an application for a new permit pursuant to this section. Upon submission of an application to renew a permit or, at the department's discretion, to modify a permit, a facility owner or operator required to file with DOS may submit a print-out of the business entity information maintained by the New York State Department of State showing active status in lieu of a certificate under DOS seal so long as the information shown on the certificate of status has not changed since it was submitted to the department.

A new subparagraph 360.16(c)(1)(v) is added to read as follows:

(v) Any facility owner or facility operator that is required to file a certificate of doing business under an assumed name ("D/B/A") with the county clerk in the county where the facility is located, including but not limited to general partnerships and sole proprietorships, must submit a certified copy of such certificate provided by the county clerk's office.

A new subparagraph 360.16(c)(1)(vi) is added to read as follows:

(vi) The name of the facility owner and operator on any application filed with the department must appear exactly as it does on the certificate of status provided by the New York State Department of State and the certified copy of the certificate of doing business under assumed name ("D/B/A") provided by the county clerk's office.

A new subparagraph 360.16(c)(vii) is added to read as follows:

(vii) written permission from the owner(s) of the real property on which the proposed facility is to be located that the facility can be constructed and operated on the real property.

Paragraph 360.16(c)(2) through subparagraph 360.16(c)(3)(i) remains unchanged

Subparagraph 360.16(c)(3)(ii) is amended to read as follows:

(ii) A noise assessment, if required by the department, to demonstrate compliance with the Leq Energy Equivalent Sound Levels proscribed in subdivision 360.19(j)[, below] of this section. If the noise assessment indicates the Leq Energy Equivalent Sound Levels will be exceeded, a noise monitoring and control plan to mitigate or monitor sound levels must be included in the application as part of the facility manual.

Paragraph 360.16(c)(4) through clause 360.16(c)(4)(v)(‘d’) remains unchanged.

Subparagraph 360.16(c)(4)(vi) is amended to read as follows:

(vi) Closure plan. A closure plan that specifically identifies how the facility will comply with the requirements for closure in section 360.21 of this Part and any closure requirements in Parts 361, 362, 363, and 365, and Subpart 374-2 of this Title. If financial assurance is required under section 360.22 of this Part, a closure cost estimate must be included in the closure plan.

Paragraph 360.16(c)(5) through subdivision 360.16(d) remains unchanged.

Subdivision 360.16(e) is amended to read as follows:

(e) In addition to the criteria outlined in [subdivision] section 621.3(e) of this Title, a permit can be denied or revoked based upon the unsuitability of the owner, operator or applicant, as set forth in this subdivision. In addition to any other available grounds, the department can, consistent with the [policies] provisions of article 23-A of the Correction Law, and the provisions of section 70-0115 of the ECL, deny, suspend, revoke or modify any permit, renewal or modification after determining in writing that such action is required to protect

the public health or safety. Some of the factors the department can consider in arriving at [such]a determination include:

Paragraph 360.16(e)(1) is amended to read as follows:

(1) whether the owner or operator has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL or other environmental law administered by the department, any order or determination of the commissioner, any regulation of the department, or any similar statute, regulation, order or permit condition of the federal, other state, or local government agency, on one or more occasions the violation that was the basis for the action posed a potential for significant adverse impacts to public health or the environment, or represents a pattern of noncompliance;

Paragraph 360.16(e)(2) is amended to read as follows:

(2) whether the owner or operator provides materially false or inaccurate information or statements in the permit application;

Paragraph 360.16(e)(3) is amended to read as follows:

(3) whether the owner, operator or applicant has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact, knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department;

Paragraph 360.16(e)(4) is amended to read as follows:

(4) whether the owner, operator or applicant, except [for Part 364] a transporter[s] of hazardous waste and regulated medical waste who is registered pursuant to Part 364 of this Title, is either:

Subparagraph 360.16(e)(4)(i) is amended to read as follows:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or

failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if [such]the corporation, partnership, association or organization applied for a permit pursuant to this Part;

Subparagraph 360.16(e)(4)(ii) is amended to read as follows:

(ii) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if [such]the corporation, partnership, association or organization applied for a permit pursuant to this Part;

Subparagraph 360.16(e)(4)(iii) is amended to read as follows:

(iii) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part had [such]the other corporation, partnership, association or organization applied for a permit under this Part; or

Paragraph 360.16(e)(5) is amended to read as follows:

(5) whether, for a [Part 364] transporter of hazardous waste or regulated medical waste (RMW) registered pursuant to Part 364 of this Title:

Subparagraph 360.16(e)(5)(i) through subparagraph 360.16(f)(1)(i) remain unchanged.

Subparagraph 360.16(f)(1)(ii) is amended to read as follows:

(ii) in the absence of a minor project designation under [paragraph] section 621.4(m)(2) of this Title, an expansion or acceptance rate increase at any facility except those subject to regulation under Subparts 361-2, 361-3, or 361-4 of this Title.

Paragraph 360.16(f)(2) through subparagraph 360.16(g)(2)(iii) remain unchanged.

Subparagraph 360.16(g)(2)(iv) is amended to read as follows:

(iv) submission of an updated [Operations and Maintenance] facility [M]manual.

Paragraph 360.16(g)(3) through subdivision 360.18(c) (heading) remain unchanged.

Paragraph 360.18(c)(1) is amended to read as follows:

(1) disposal of waste at a facility that would require a permit for a disposal facility regulated under Part 363 of this Title; [or]

Paragraph 360.18(c)(2) is renumbered paragraph 360.18(c)(3)

A new paragraph 360.18(c)(2) is adopted to read as follows:

(2) the project involves sanitary waste; or

Newly renumbered paragraph 360.18(c)(3) through subparagraph 360.19(c)(1)(i) remain unchanged.

Subparagraph 360.19(c)(1)(ii) is amended to read as follows:

(ii) inspecting incoming loads of waste; [and]

Subparagraph 360.19(c)(1)(iii) remains unchanged.

Subparagraph 360.19(c)(1)(iv) is amended to read as follows:

(iv) identifying materials intended for beneficial use, a marketing plan for those materials, and a plan for disposal or alternative use of materials that fail to meet the criteria for the intended beneficial use[.]; and

Subparagraph 360.19(c)(1)(v) through clause 360.19(c)(1)(v)(‘b’) remain unchanged.

Paragraph 360.19(c)(2) is amended to read as follows:

(2) Except for facilities regulated under sections 360.17 and [section]360.18 of this Part or Part 361, Part 365, [or] Subpart 362-4 or Subpart 362-5 of this Title, a facility must not accept waste from New York State that is generated within a municipality that is not included in a department-approved comprehensive recycling analysis (CRA) or a department-approved local solid waste management plan (LSWMP).

Paragraph 360.19(c)(3) through paragraph 360.19(c)(6) remain unchanged.

Paragraph 360.19(c)(7) is amended to read as follows:

(7) If a facility provides a residential drop-off area for non-commercial vehicles to unload waste and recyclables, the owner or operator must provide a separate, designated area for that activity [and must provide for collection of source-separated recyclables, if other collection is not provided to residents].

Paragraph 360.19(c)(8) through paragraph 360.19(c)(10) remain unchanged.

Paragraph 360.19(c)(11) is amended to read as follows:

(11) The owner or operator of a facility must ensure that storage volumes and throughput limits established by the requirements of this Part [360,] or Part 361, 362, 363, or 365 of this Title or by the volumes and throughput declared on the registration form for the facility are not exceeded.

Paragraph 360.19(c)(12) through paragraph 360.19(k)(3) (heading) remain unchanged.

Subparagraph 360.19(k)(3)(i) is amended to read as follows:

(i) The owner or operator of a facility must submit a completed annual report in a format acceptable to the department no later than March 1 of each year for the previous calendar year, on forms prescribed by the department. A copy of the most recent annual report must be maintained at the facility and be available for inspection.

Subparagraph 360.19(k)(3)(ii) is amended to read as follows:

(ii) The owner or operator of a facility required to report to the department related to the facility's compliance under this Part or Parts 361, 362, 363, or 365 of this Title, or under the terms of any permit issued under this Part, must make, sign, and submit with the report the following certification:

I certify, under penalty of law, that the data and other information identified in this report have been prepared under my direction and supervision in compliance with [the] a system designed to ensure that qualified personnel properly and accurately gather and evaluate this information. I am aware that any false statement I

make in [such] this report is punishable pursuant to section 71-2703(2) of the Environmental Conservation Law and section 210.45 of the Penal Law.

Subdivision 360.19(1) through subparagraph 360.19(n)(3)(iii) remain unchanged.

A new subdivision 360.19(o) is added to read as follows:

(o) In addition to the financial assurance requirements in Parts 361, 362, 363, and 365, the department may require the owner or operator of the facility to maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified in sections 360.21 and 360.22 of this Title.

Section 360.20 (heading) through subparagraph 360.22(b)(1)(ii) remain unchanged.

New subparagraph 360.22(b)(1)(iii) is added to read as follows:

(iii) The total closure cost estimate must be increased by a contingency factor of at least 15 percent for estimates up to \$100,000, 10 percent for estimates between \$100,000 and \$1 million, and five percent for estimates above \$1 million.

A new subparagraph 360.22(b)(1)(iv) is added to read as follows:

(iv) The supporting documentation used to substantiate the closure cost estimates must be submitted to the department for review with the cost estimates.

A new subparagraph 360.22(b)(1)(v) is added to read as follows:

(v) The closure cost estimates must be submitted to the department for approval.

Paragraph 360.22(b)(2) through subparagraph 360.22(b)(2)(vi) remain unchanged.

Paragraph 360.22(b)(2)(vii) is amended to read as follows:

(vii) The [department must approve] closure, post-closure care, custodial care, and corrective measures cost estimates must be submitted to the department for approval.

Subdivision 360.22(b)(3) (heading) through clause 360.22(b)(3)(iii)(‘a’) remain unchanged

Clause 360.22(b)(3)(iii)(‘b’) is amended to read as follows:

(‘b’) using an inflation factor [described in 6 NYCRR section 373-2.8(c)(2)] derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S Department of Commerce in its Survey of Current Business, as specified in subclauses (‘1’) and (‘2’) of this clause. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

New subclause 360.22(b)(3)(iii)(‘b’)(‘1’) is added to read as follows:

(‘1’) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted estimate.

New subclause 360.22(b)(3)(iii)(‘b’)(‘2’) is added to read as follows:

(‘2’) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

Subparagraph 360.22(b)(3)(iv) through subdivision 360.22(c) (heading) remain unchanged.

Paragraph 360.22(c)(1) is amended to read as follows:

(1) The terms of any financial assurance mechanisms provided to the department to satisfy compliance with any financial [security] assurance obligation imposed by this Part or Parts 361, 362, 363, and 365 of this Title must ensure that:

Subparagraph 360.22(c)(1)(i) through subparagraph 360.22(c)(1)(vi) remain unchanged.

Paragraph 360.22(c)(2) is amended to read as follows:

(2) The department may reduce, to zero if appropriate, the amount of financial assurance required under this section by the amount of financial assurance obtained by a facility for the benefit of the municipality for closure, post-closure, custodial care or corrective measures, [for the benefit of a municipality] provided this financial assurance is sufficient to meet the requirements of any closure, post-closure, custodial care or corrective measures plan required under this Part or Parts 361, 362, 363 and 365 and Subpart 374-2 of this Title. In the event that the amount of financial assurance obtained by a facility for the benefit of the

municipality is sufficient to meet the requirements of these Parts, no additional financial assurance mechanism is required under subdivision 360.22(d). In the event that the financial assurance obtained for the benefit of the municipality is not sufficient to meet the requirements of these Parts, a separate financial assurance mechanism meeting the requirements of subdivision 360.22(d) is required.

Subdivision 360.22(d) is amended to read as follows:

(d) Allowable financial assurance mechanisms. Except where otherwise indicated in [sub]paragraph

(c)[(1)(vi)](2) of this section, owners and operators must choose from the options specified in paragraphs (1) through (9) of this subdivision for closure.

Paragraph 360.22(d)(1) (heading) remains unchanged.

Subparagraph 360.22(d)(1)(i) is amended to read as follows:

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by establishing an irrevocable trust fund that conforms to the requirements of this paragraph. The trustee must be an entity [with the authority] that is authorized by the State of New York, another state, or the federal government to act as a trustee. A document indicating such authorization must be submitted to the department. If an attorney is acting as a trustee, then the attorney must not represent the owner or operator in other legal matters. An original, signed duplicate of the trust agreement must be submitted to the department along with evidence or a certification by the trustee that the trustee meets the requirements of this paragraph.

Subparagraph 360.22(d)(1)(ii) through clause 360.22(d)(1)(ii)(‘a’) remain unchanged.

Clause 360.22(d)(1)(ii)(‘b’) is amended to read as follows:

(‘b’) The owner or operator of a landfill constructed on or after [the effective date of this section] November 4, 2017 must make payments into the trust fund at least annually over the term of ten years after the initial permit is issued.

Subclause 360.22(d)(1)(ii)(‘b’)(‘1’) through subparagraph 360.22(d)(2)(iii) remain unchanged.

Subparagraph 360.22(d)(2)(iv) is amended to read as follows:

(iv) For bonds which are valued at \$50,000 or more for an individual facility, the owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph (1) of this subdivision except the requirements for initial payment and subsequent payments specified in subparagraph (ii) of paragraph (1) of this subdivision. The provisions in the trust agreement, as specified in paragraph (1) of this subdivision, for submitting annual valuations and notices of nonpayment also do not apply to a standby trust agreement established pursuant to this subparagraph until payments from the bond or other sources are deposited into the trust fund.

Subparagraph 360.22(d)(2)(v) through subparagraph 360.22(d)(3)(iii) remain unchanged.

Subparagraph 360.22(d)(3)(iv) is amended to read as follows:

(iv) [The owner or operator who uses a letter of credit with a value greater than \$50,000 to satisfy the requirements of this paragraph must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the department will be made in compliance with instructions from the department.] If the letter of credit is valued at \$50,000 or more for an individual facility, the owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph (1) of this subdivision, except for initial payment and subsequent annual payments specified in subparagraph (ii) of paragraph (1) of this subdivision. The provisions in the trust agreement, as specified in paragraph (1) of this subdivision, for submitting annual valuations and notices of nonpayment also do not apply to a standby trust agreement established pursuant to this paragraph unless and until payments from the letter of credit or other sources are actually deposited into the trust fund.

Subparagraph 360.22(d)(3)(v) through Subparagraph 360.22(d)(3)(vii) remain unchanged.

Subparagraph 360.22(d)(3)(viii) is amended to read as follows:

(viii) [Payments made under the terms of the letter of credit will be deposited by the surety directly into the standby trust fund, or as otherwise directed by the department.] Under the terms of the letter of credit, all amounts paid pursuant to the draft will be deposited directly into the standby trust fund, or as otherwise directed by the department. Payments from the standby trust fund must be approved in advance by the department in writing.

Paragraph 360.22(d)(4) through subclause 360.22(d)(4)(ii)(‘c’)(‘4’) remains unchanged.

Subparagraph 360.22(d)(4)(iii) is amended to read as follows:

(iii) Public notice component. The municipality must place a reference to any closure costs, post-closure care costs, or custodial care costs that may apply and that are assured through the financial test into its next comprehensive annual financial report (CAFR) after [the effective date of this section] November 4, 2017 or before the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure, post-closure care and custodial care requirements, the reported liability at the balance sheet date, the estimated total closure, post-closure care, and custodial care cost remaining to be recognized, and, in the case of a landfill, the percentage of landfill capacity used to date and the estimated remaining landfill life in years. In the instance where the local government financial test is used to satisfy the requirements of any corrective measures required at a landfill, a reference to corrective measures costs must be placed in the CAFR no later than 120 days after the corrective measures have been approved in compliance with the requirements of Part 363 of this Title. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operating record until issuance of the next available CAFR, if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.

Subparagraph 360.22(d)(4)(iv) through subclause 360.22(d)(4)(iv)(‘d’)(‘2’) remains unchanged.

Clause 360.22(d)(4)(iv)(‘e’) is amended to read as follows:

(‘e’) A municipality must satisfy the requirements of the local government financial test at the close of each fiscal year. If the municipality no longer meets the requirements of the local government financial test it must, within 300 days following the close of the municipality's fiscal year, establish alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the department that the municipality no longer satisfies the requirements of the local government financial test and that alternate financial assurance has been obtained. If the alternative financial assurance is a trust fund or reserve fund, the municipality may consider the facility to have been constructed on or after [the effective date of this Part] November 4, 2017 for purposes of the pay-in period calculations of subparagraph 360.22(d)(1)(ii) of this subdivision.

Clause 360.22(d)(4)(iv)(‘f’) through clause 360.22(d)(5)(iii)(‘a’) remains unchanged.

Clause 360.22(d)(5)(iii)(‘b’) is amended to read as follows:

(‘b’) If a local government guarantor no longer meets the requirements of paragraph (d)(4) of this subdivision, the owner or operator must, within 90 days, establish alternate financial assurance, place evidence of the alternate assurance in the facility’s operating record, and notify the department. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate financial assurance within the next 30 days. If the alternative financial assurance is a trust fund or reserve fund, the municipality may consider the facility to have been constructed on or after [the effective date of this Part] November 4, 2017 for purposes of the pay-in period calculations of subparagraph 360.22(d)(1)(ii) of this section.

Paragraph 360.22(d)(6) through paragraph 360.22(d)(7) remain unchanged.

Paragraph 360.22(d)(8) is amended to read as follows:

(8) Use of multiple financial mechanisms. An owner or operator required to provide financial assurance may satisfy the requirements of this subdivision by establishing more than one financial assurance mechanism per

facility. [The mechanisms must be as identified in paragraphs (1) through (6) of this subdivision, except that if it is a combination of mechanisms, rather than the single mechanism, which it must provide financial assurance for an amount at least equal to the current cost estimate for closure, post closure care, custodial care or corrective measures, whichever is applicable.] The mechanisms established must be those identified in paragraphs (1) through (6) of this subdivision and the total amount of the mechanisms must be at least equal to the sum of the current cost estimates for closure, post-closure care, custodial care or corrective measures, whichever is applicable. If the owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund, if required, may be established for two or more mechanisms. The department may allow the use of any or all of the mechanisms to provide for closure, post-closure care, custodial care or corrective measures of the facility.

Paragraph 360.22(d)(9) is amended to read as follows:

(9) Use of a financial mechanism for multiple facilities. An owner or operator required to provide financial assurance may use a financial assurance mechanism identified in subdivision (d) of this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanisms must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. If the owner or operator uses a surety bond or a letter of credit for multiple facilities, a standby trust fund must be established for any individual facility having a cost estimate of \$50,000 or more. In directing funds available through the mechanisms for closure, post-closure care, custodial care or corrective measures of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for the facility, unless its owner or operator agrees to the use of additional funds available under the mechanism.

Subdivision 360.22(e) (heading) through paragraph 360.22(e)(3) remain unchanged

Paragraph 360.22(e)(4) repealed and a new paragraph 360.22(e)(4) is adopted to read as follows:

(4) A surety bond, as identified in paragraph (d)(2) of this section, must be worded exactly as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

SURETY BOND

(Financial Guarantee Bond)

Bond Number:

Date bond executed:

[If more than one Surety, identify bond number with respective Surety]

Effective date:

Principal:

[Legal name and business address of owner or operator]

Type of organization:

[Insert "individual," "joint venture," "partnership," or "corporation"]

State of Incorporation:

Surety(ies):

[Name(s) and business address(es) of Surety(ies)]

Obligee: New York State Department of Environmental Conservation (hereinafter referred to as "Department")

Department identification numbers, name, address, and closure, post-closure, custodial care, and/or corrective measures amount(s) for each facility guaranteed by this bond [indicate facility and closure, post-closure, custodial care and corrective measures amounts separately]:

Total penal sum of bond: \$ _____ (payable in good and lawful money of the United States of America)

NOW, THEREFORE, Know All Persons By These Presents, that we, the Principal and Surety(ies) hereto are held and firmly bound to the Department in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under Environmental Conservation Law (ECL) Article 27, to have a permit in order to operate each solid waste management facility identified above; and

WHEREAS said Principal is required to provide financial assurance for closure, post-closure care, custodial care and/or corrective measures as referred to above, as a condition of the permit(s); and

WHEREAS said Principal shall establish a standby trust fund or other mechanism as directed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's duly appointed designee (hereinafter referred to as the "Commissioner") as is required when a surety bond is used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully perform and complete [insert "closure", "post-closure care", "custodial care" "and/or corrective measures"] whenever required to do so at each facility for which this bond guarantees payment for ["closure", "post-closure care", "custodial care" "and/or corrective measures"] in compliance with the ["closure plan", "post-closure care plan", "custodial care plan" "and/or corrective measures plan"] and other requirements of the permit, applicable rules, regulations, and orders of the department, and applicable provisions of the laws of the State of New York, OR, if the Principal shall faithfully, before the beginning of final closure of each facility for which this bond guarantees payment, fund the standby trust fund or other mechanism as directed by the [Commissioner or Regional Director] in the amount(s) identified above for each facility,

OR, if the Principal shall fund the standby trust fund or other mechanism as directed by the [Commissioner or Regional Director] in such amount(s) within 15 days after an order to begin closure is issued by the Commissioner or a United States district court or other court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance, as identified in 6 NYCRR Section 360.22(d), as applicable, and obtain the [Commissioner's or Regional Director's] written approval of such assurance, within 90 days after the date the notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the [Commissioner or Regional Director] that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall provide funds up to the amount guaranteed for the facility(ies) into the standby trust fund or as otherwise directed by the [Commissioner or Regional Director].

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) hereby waive(s) notifications of amendments to closure, post-closure, custodial care and/or corrective measures plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate the Surety's obligation on this bond.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail, return receipt requested, to the Principal and the [Commissioner or Regional Director], provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the [Commissioner or Regional Director], as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the [Commissioner or Regional Director].

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees the current closure, post-closure, custodial care and/or corrective measures amount, provided that no decrease in the penal sum takes place without the written permission of the [Commissioner or Regional Director].

IN WITNESS WHEREOF, the Surety(ies) has affixed their seal on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording identified in 6 NYCRR Section 360.22(e)(4), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

CORPORATE SURETY(IES)

[Name and Address]

State of Incorporation:

Liability Limit: (For each facility, and in the aggregate)

\$ _____

(Signature(s)) _____

(Name(s) and Title(s))

(Corporate Seal)

[For every co surety, provide signature(s), corporate seal if appropriate, and other information in the same manner as for Surety above.]

Bond Premium: \$ _____

(ACKNOWLEDGMENT BY PRINCIPAL, UNLESS IT BE A CORPORATION)

STATE OF _____ :

_____ : SS.:

COUNTY OF _____ - :

On this ____ day of _____, 20__ , before me personally came _____ to me known and known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that (s)he executed the same.

Notary Public

(ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION)

STATE OF _____ :

_____ : SS.:

COUNTY OF _____ :

On the _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____ (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they is (are) the (president or other officer or director or attorney in fact duly appointed) of the _____ (name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Signature and office of person taking acknowledgment

Notary Public

(ACKNOWLEDGMENT BY SURETY COMPANY; PREPARE SEPARATE ACKNOWLEDGMENT FOR EACH SURETY)

STATE OF _____ :

_____ : SS.:

COUNTY OF _____

On the _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____ (if the place of residence is in a city, include the street and street number, if any, thereof); that he/she/they is (are) the (president or other officer or director or attorney in fact

duly appointed) of the _____ (name of corporation), the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Signature and office of person taking acknowledgment

Notary Public

Paragraph 360.22(d)(5) remains unchanged.

Part 361 is amended to read as follows:

Subpart 361-1 (heading) through Section 361.1-1(heading) remains unchanged.

Subdivision 361-1.1(a) is amended to read as follows:

(a) This Subpart applies to [facilities] any facility that [process] receives source-separated nonputrescible recyclables for the purpose of processing. The requirements contained in Part 360 of this Title also apply to any facility that is subject to this Subpart.

Subdivision 361-1.1(b) through paragraph 361-1.1 (b)(7) remain unchanged.

Paragraph 361-1.1(b)(8) is amended to read as follows:

(8) a facility that is a redemption center regulated under Part 367 of this Title and article 27, title 10 of the Environmental Conservation Law (ECL), which limits its activities to the collection, sorting, and packaging of empty beverage containers from redeemers, in bags and boxes for return to the deposit initiator or agent of the deposit initiator, without further processing, except through a reverse vending machine after the deposit initiator has authorized, in writing, [such] processing through the reverse vending machine at the redemption center's facility[.];

A new paragraph 361-1.1(b)(9) is added to read as follows:

(9) a facility, or a portion of a facility, engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap metal, which is regulated under Subpart 361-7 of this Title;

A new paragraph 361-1.1(b)(10) is added to read as follows:

(10) a facility, or portion of a facility, that receives source-separated recyclables for the purpose of transfer.

That type of facility, or a portion thereof, is regulated under Subpart 362-3 of this Title.

Section 361-1.2 is amended to read as follows:

Section 361-1.2 Exempt facilities

In addition to the exemptions provided for in section 360.14 of this [Part] Title, the following facilities are exempt from this Subpart:

Subdivision 361-1.2(a) through subdivision 361-1.2(b) remain unchanged.

A new subdivision 361-1.2(c) is added to read as follows:

(c) Recyclables handling and recovery facilities that are owned or operated by a municipality, or contracted by or on behalf of a municipality that accept less than 20 cubic yards of source-separated nonputrescible recyclables per day, provided the following criteria are met:

- (1) the facility must only accept residential source-separated nonputrescible recyclables;
- (2) the facility must be owned or leased by the municipality or a contractor working on behalf of the municipality;
- 3) all source-separated nonputrescible recyclables must be transferred manually from incoming vehicles to the containers;
- (4) the facility must only accept source-separated nonputrescible recyclables when an attendant is on duty;
- (5) the source-separated nonputrescible recyclables must be placed in containers during operation of the facility;
- (6) the source-separated nonputrescible recyclables must be stored in rigid leak-proof containers and covered at the end of the operating day; and
- (7) the source-separated nonputrescible recyclables must be stored separately by waste type. Nonputrescible recyclables may be stored for up to 90 calendar days.

Section 361-1.3 (heading) remains unchanged.

Subdivision 361-1.3(a) is amended to read as follows:

(a) Unless otherwise exempt or required to obtain a permit pursuant to this Part, the following facilities must register with the department as specified in this Subpart, and are subject to section 360.15 of this Title. [Each

facility must comply with the criteria outlined in Part 360 of this Title and the recordkeeping and reporting requirements in section 361-1.6 of this Subpart.]

Paragraph 361-1.3(a)(1) is amended to read as follows:

(1) Recyclables handling and recovery facilities that [accept no more than 5 tons per day of source-separated, nonputrescible recyclables based on a weekly average and] have residue below 15 percent of their intake based on a full year of operation.

Paragraph 361-1.3(a)(2) is repealed.

Subdivision 361-1.3(b) is amended to read as follows:

(b) Each facility subject to this section must comply with the [operating requirements specified in section 361-1.5 of this Subpart, except that recyclables handling and recovery facilities that meet paragraph (a)(1) of this section are not required to comply with section 361-1.5(g) of this Subpart.] criteria outlined in Part 360 of this Title and the applicable requirements of this Subpart.

Subdivision 361-1.3(c) through paragraph 361-1.5(c)(1) remain unchanged.

Paragraph 361-1.5(c)(2) is amended to read as follows:

(2) the facility has sufficient storage area to prevent a negative impact to public health or the environment; [and]

Paragraph 361-1.5(c)(3) is amended to read as follows:

(3) the facility implements an inventory control system, including daily logs, to ensure that the processed recyclables do not remain at the facility for longer than the period approved[.]; and

Paragraph 361-1.5(c)(4) through Subdivision 361-1.5(f) remain unchanged.

Subdivision 361-1.5(g) is amended to read as follows:

(g) All recyclables and waste delivered to or leaving [the] a facility that receives more than 5 tons per day must be weighed and recorded.

Section 361-1.6 remains unchanged.

Subpart 361-2 is amended to read as follows:

Subpart 361-2 (heading) remains unchanged.

Section 361-2.1 is amended to read as follows:

Section 361-2.1 Applicability

This Subpart applies to the application of septage, biosolids, food processing waste, [and]or other organic wastes onto or in the soil to improve soil quality [and/]or provide plant nutrients [on agricultural soils]. This Subpart applies to any combination of these activities or materials. This Subpart also applies to the storage of these wastes before land application. The definitions and other criteria contained in Part 360 of this Title [also] apply to this Subpart. The criteria applicable to digestate are found in section 361-3.3 of this Part.

Section 361-2.2 (heading) remains unchanged.

Section 361-2.2 (opening paragraph) is amended to read as follows:

In addition to the exemptions found in section 360.14 of this Title, the following facilities or activities are exempt from this Subpart, [provided that]if odor migration is minimized, and vectors are controlled.

Subdivision 361-2.2(a) is amended to read as follows:

(a) A land application facility or storage facility, for animal manure and associated bedding material except at facilities that must register pursuant to section 361-2.3(b) and (c) of this Part. For purposes of this exemption, bedding material includes hay, straw, sawdust, wood shavings, shredded newsprint, sand, and materials approved pursuant to a case specific beneficial use determination under section 360.12 of this Title.

Subdivision 361-2.2(b) is amended to read as follows:

(b) A land application facility or storage facility for food processing wastes that are visually recognizable. The waste must be applied at or below agronomic rates. The storage is limited to a maximum of 20 cubic yards at any one time on any farm and for a maximum period of six months.

Subdivision 361-2.2(c) remains unchanged.

Subdivision 361-2.2(d) is repealed and a new subdivision 361-2.2(d) is added to read as follows:

(d) A land application facility or manure storage facility for food processing waste located on a farm covered by a CAFO permit provided:

- (1) the facility is not located in the New York City watershed or on Long Island;
- (2) the storage structure is built and operated in compliance with the National Resource Conservation Service (NRCS) code NY313;
- (3) the waste does not contain human fecal matter (sewage sludge, septage, etc.) or industrial waste other than food processing waste; and
- (4) the amount of food processing waste placed in the storage facility does not exceed 50 percent of the total volume of waste placed in the storage facility on an annual basis.

Subdivision 361-2.2(e) is amended to read as follows:

(e) A land application facility, including associated storage at the facility, for leaves [and/or], grass, or other similar vegetation, provided:

- (1) physical contaminants (such as plastic bags and branches) are removed before land application [of the waste,] and these contaminants are properly recycled or disposed;
- (2) grass or other similar vegetation:
 - (i) is not shredded at the site of application;
 - (ii) is not stored [at any one]on-site for more than three calendar days or in an amount exceeding 30 cubic yards;
 - (iii) is incorporated below the soil surface on the day it is land applied;
 - (iv) is applied at a rate not to exceed 20 tons per acre or a depth of one inch annually, whichever is less, and does not exceed 40 tons per acre during any three-year period; and
- (3) leaves:
 - (i) are applied at a maximum depth of four inches per year;

- (ii) are incorporated below the soil surface within seven calendar days after application to the soil; [and]
- (iii) must not be stored for more than 30 calendar days; and
- (4) [measures are taken to minimize]the blowing of grass, [and]leaves, or vegetation is minimized.

Subdivision 361-2.1(f) is amended to read as follows:

- (f) Land application of a mixture of manure and food processing waste or food scraps from a storage facility[, as outlined in subdivision 361-2.3(a) of this Part] that qualifies for registration under section 361-2.3(b) of this Subpart.

Section 361-2.3 is repealed and a new Section 361-2.3 is added to read as follows:

361-2.3 Registered facilities

(a) Applicable requirements

- (1) Unless otherwise exempt, the facilities and applicers listed in subdivisions (b) and (c) of this section must obtain a registration under section 360.15 of this Title.
- (2) Facilities registered under this section are not required to have a closure plan or to obtain financial assurance.
- (3) Each facility must comply with the criteria in section 360.19 of this Title, including the annual report requirement outlined in section 360.19(k)(3) of this Title.
- (4) Written permission from the owner of real property on which the facility is located, if not the applicant, must be provided with the registration application.

(b) The following facilities must be registered.

- (1) A storage facility on a farm, provided the following conditions are satisfied:
 - (i) the facility contains more than 20 cubic yards of recognizable food processing waste;
 - (ii) if the facility is a surface impoundment for liquid waste, the facility must be designed and built in accordance with NRCS code NY313; and

(iii) the facility meets the buffer areas specified in section 361-2.7(a) of this Subpart.

(2) A manure storage facility that also accepts uncontaminated food scraps or food processing wastes, provided the following conditions are satisfied:

(i) no sanitary waste is included in any waste stream.

(ii) no more than 10 percent of the total volume of waste entering the facility on an annual basis can consist of non-manure unless liner construction verification is provided.

(iii) up to 40 percent of the total volume of waste entering the facility on an annual basis can consist of non-manure, if the storage facility was designed and built in accordance with NRCS code NY313 and documentation is provided to the department.

(3) A land application facility for unrecognizable food processing wastes or papermill residuals (including temporary field storage), provided the following conditions are satisfied:

(i) the operating requirements of section 361-2.5(b) of this Subpart are met, except section 361-2.5(b)(2) and (3) do not apply to papermill residuals. The buffer zones may be reduced for low volume applications or low odor waste, as determined by the department;

(ii) three representative analyses of the waste for fecal coliform, total Kjeldahl nitrogen, ammonia, nitrate, total phosphorus, total potassium, total solids, total volatile solids, and pH must be submitted with the registration application and one analysis must be submitted annually during operation, unless the amount applied is 10,000 gallons per year or less. Application of 10,000 gallons per year or less require one analysis with the registration application and one every two years thereafter. In addition, waste with lime value must also be analyzed for calcium carbonate equivalence and waste with salt content must also be analyzed for chlorides. Additional analyses may be required, as determined by the department;

(iii) the volume of waste land-applied does not cause ponding, except for temporary conditions within 12 hours of application;

- (iv) the application rate of waste does not exceed the agronomic rate, a chloride loading of 170 pounds per acre per year, or results in an organic matter content above eight percent in the plow layer, whichever is more restrictive;
- (v) the waste is beneficial to the crop grown and does not contain any human sanitary waste (*e.g.*, domestic sewage, biosolids, septage) or it is demonstrated that pathogen content is below detectable levels in the waste;
- (vi) for papermill residuals, the residuals are 20 percent solids or greater and must not contain secondary treatment (biological) residuals;
- (vii) the facility submits an odor management plan to the department prior to land application and implements the plan when needed;
- (viii) land application in the New York City water supply watershed or in Nassau or Suffolk county is addressed in a CNMP; and
- (ix) the temporary field storage of papermill residuals and dry food processing waste prior to land application is allowed, provided the following criteria are met:
 - (‘a’) the storage period is a maximum of 30 days or six months if under covered storage;
 - (‘b’) unless stored under covered storage, the residuals are stored on the field where they will be applied, and the amount stored does not exceed the amount that will be land applied on the site;
 - (‘c’) the storage area must not be located on areas with a slope greater than three percent;
 - (‘d’) the residuals must have sufficient solids content that they will retain their shape if stacked three feet high and must be formed so that precipitation is shed from the pile;
 - (‘e’) any run-off from the stockpile must be contained within the land application site; and
 - (‘f’) after removal of the residuals, the storage area must be reseeded or returned to active cropland.

(4) A land application facility for septage from a transporter using no more than two vehicles at any one time for collection related to land application, or for the residuals from a composting toilet (liquid and solids) or source separated urine, provided the following conditions are satisfied:

- (i) the operating requirements of section 361-2.5(b) of this Subpart are met, except section 361-2.5(b)(4) and (12) of this Subpart;
- (ii) prior to land application, septage is screened to remove visible nondegradable debris such as plastics, etc., and the larger nondegradable debris is disposed in a landfill or by other means approved by the department;
- (iii) at least 15 acres are available for each vehicle, except for composting toilet residuals;
- (iv) vegetation is grown at the application site that is sufficient to use all the available nitrogen provided from waste application;
- (v) the liquid septage application rate does not exceed 25,000 gallons per acre per year, or the rate determined by the following calculation, whichever is less.

Application Rate (gallons/acre/year) = Crop nitrogen needs (pounds nitrogen/acre) x 385

The department can alter the allowed application rate if the septage is dewatered or is otherwise different than a typical septage;

- (vi) the application rate for the composting toilet residuals does not exceed the agronomic rate;
- (vii) for pathogen reduction, the pH of the waste is raised to 12 or higher by alkali addition and remains at 12 or higher for 30 minutes or analyses demonstrate an equivalent or greater level of pathogen reduction has been achieved. In addition, the following restrictions must be followed:

(‘a’) public access must be restricted during land application and for at least one year after land application by the posting of signs, or the use of fences, gates or other department-approved means of preventing access;

(‘b’) food crops with harvested parts that touch the soil and are totally above the land surface must not be grown for 14 months after land application. Food crops with harvested parts below the surface of the land must not be grown for 38 months after land application;

(‘c’) feed crops, fiber crops, and food crops grown above the soil with harvested parts that do not touch the soil must not be grown for at least 30 days after land application;

(‘d’) animals must not be grazed on the land for at least 30 days after land application; and

(‘e’) turf grown on land where waste has been applied must not be grown for one year after land application when the harvested turf will be placed on either land with a high potential for public exposure or a lawn.

(5) A tank used for septage storage prior to land application, from a single transporter using no more than two vehicles for collection or for the residuals from a composting toilet (liquids and solids) or source separated urine, provided the following conditions are satisfied:

(i) the minimum horizontal separation distances from the perimeter of the tank(s) must meet the requirements found in section 361-2.5(b)(1) of this Subpart;

(ii) surface water must be directed away from the storage facility;

(iii) open tanks must be properly fenced and posted or otherwise constructed to prevent unauthorized access;

(iv) the tank(s) must be completely emptied, cleaned, and inspected at least once every 12 months or a leak detection process approved by the department must be used. The department must be notified at least one week before any internal tank inspection. Any damage or deterioration revealed must be repaired before the facility begins receiving waste again;

(v) the storage tank must be constructed of a material (*e.g.*, concrete, steel, or fiberglass) that prevents leakage; and

(vi) a minimum of two feet of freeboard must be maintained at all times.

(c) Registration requirements for third-party CAFO land appliers. The following persons must be registered.

(1) A person, other than the owner or employee of a CAFO, who land applies manure or process wastewater from a CAFO onto land that is under the control of a CAFO, referred to hereinafter as the manure applier, provided the following conditions are satisfied:

- (i) the land application must be done in accordance with the CAFO's field-specific current nutrient management plan;
- (ii) the manure applier must submit the signed contractor certification statement required by the CAFO permit to the CAFO prior to the initial land application on the date of service;
- (iii) quantity of manure applied and fields used must be provided to the involved CAFO(s) within 21 days after the last day of consecutive service, or within 24 hours upon the request of the department;
- (iv) applicator equipment must be calibrated annually, in a manner acceptable to the department; and
- (v) in addition to other information that may be required by the department, the annual report required by section 360.19(k)(3) of this Title must include:
 - ('a') the names of the CAFO(s) where the manure and/or process wastewater was generated;
 - ('b') the quantity of manure and process wastewater applied from each CAFO;
 - ('c') the name of the CAFO(s) where land application occurred;
 - ('d') the source and total amount of manure and process wastewater applied on each CAFO; and
 - ('e') a description of how the applicator equipment was calibrated.

Section 361-2.4 (heading) through subdivision 361-2.4(a) remains unchanged.

Subdivision 361-2.4(b) is amended to read as follows:

- (b) Information concerning the depth to bedrock and groundwater₁ and the source of the data.

Subdivision 361-2.4(c) is amended to read as follows:

- (c) A land application operation plan that includes:

- (1) the amount of land that will be used and the crops to be grown;

- (2) timing of planting and harvesting;
- (3) [timing and amount of waste delivery,]application rate[,] and any supplemental waste or fertilizer that will be used (including manure);
- (4) description[s] of field stockpile storage, if applicable;
- (5) provisions for waste storage or disposal when land application is restricted (e.g., due to weather or other site conditions); and
- (6) a description of how the design and operating requirements in section 360.19 of this Title and section 361-2.5 of this Subpart will be satisfied.

Subdivision 361-2.4(d), (e) and (f) are renumbered subdivision 361-2.4(e), (f), and (g).

A new subdivision 361-2.4(d) is added to read as follows:

- (d) Written permission from the landowner is required for use of the land for land application, unless the landowner is the applicant.

Newly renumbered subdivision 361-2.4(e) through newly renumbered clause 361-2.4(f)(1)(ii)('d') remain unchanged.

Newly renumbered subdivision 361-2.4(f)(1)(i) is amended to read as follows:

- (i) a description of each source including the name of the wastewater treatment plant, annual biosolids production, the amount of biosolids to be land applied and a description of the f[F]ederal or s[S]tate pretreatment program, where applicable. Wastewater and partially treated biosolids that are generated at one treatment plant and are treated at another wastewater treatment facility before land application are not considered separate sources;

Newly renumbered clause 361-2.4(f)(1)(ii)('e') is amended to read as follows:

- (e) analyses for other pollutants can be required by the department, on a case-specific basis, based on information from the pretreatment program and other sources;

Newly renumbered clause 361-2.4(f)(1)(ii)(‘f’) through newly renumbered paragraph 361-2.4(f)(2) remain unchanged.

Newly renumbered paragraph 361-2.4(f)(3) is amended to read as follows:

(3) Calculations showing the proposed nutrient loading rates, including nitrogen, phosphorus, and potassium.

The loading rate calculations must be based on the biosolids analyses, impacts of previous waste applications, addition of supplemental nutrients, and the nutrient requirements of the crops grown.

(i) The following formulas must be used to calculate plant-available nitrogen, unless the use of an alternative formula is approved by the department:

NI = percent inorganic nitrogen = percent ammonia + percent nitrate

NO = percent organic nitrogen = percent total Kjeldahl nitrogen - percent ammonia

NH₃ = percent ammonia

NO₃ = percent nitrate

N = nitrogen

A = value based on treatment method employed

A values: A = 2 for composted biosolids

A = 4 for anaerobically digested biosolids

A = 6 for aerobically digested, lime stabilized and air dried biosolids

For waste incorporated into the soil:

Pounds available N per dry ton biosolids = (NI x 20) + (NO x A)

For waste surface applied:

Pounds available N per dry ton biosolids = (NH₃ x 10) + (NO₃ x 20) + (NO x A)

(ii) If the soil has received biosolids in the past two years, the residual nitrogen in the soil must be included in the nutrient loading calculation. The residual nitrogen must be subtracted from the nitrogen needs of the crop

grown before determining the appropriate application rate. The following [table]values must be used to determine the release rate of residual nitrogen:

Release of Residual Nitrogen

during Biosolids

Decomposition in Soil

Years since last

AR Values

biosolids application

_____A=2	A=4	A=6
1 _____0.90	1.60	2.10
2 _____0.51	0.72	0.95

AR = Residual Nitrogen

Factor

Residual Available N (pounds

N per acre) =

Original Application Rate

(dry ton per acre) x Original

NO (percent) x AR

(iii) The value(s) used for the nutrient needs of the crop(s) grown must be based on the results of a soil test and resulting nutrient recommendation, or equivalent justification for the value chosen. Copies of the nutrient recommendations must be submitted.

(iv) For phosphorus, 30 percent of the phosphorus applied with the biosolids must be assumed to be available for plant use. For potassium, 100 percent of the potassium applied with the biosolids must be assumed to be available for plant use.

Newly renumbered paragraph 361-2.4(f)(4) remains unchanged.

Newly renumbered paragraph 361-2.4(f)(5)(i) is amended to read as follows:

(i) A minimum of one[1] analysis is required for every 50 acres, or fraction thereof.

Newly renumbered subparagraph 361-2.4(f)(5)(ii) through newly renumbered subparagraph 361-2.4(f)(5)(iii) remain unchanged.

Newly renumbered subparagraph 361-2.4(f)(5)(iv) is amended to read as follows:

(iv) The criteria in clauses 361-2.4([e]f)(1)(ii)('f'), ('g'), and ('j') of this section must be followed.

Newly renumbered paragraph 361-2.4(f)(6) through subparagraph 361-2.4(f)(6)(ii) remain unchanged.

Newly renumber subdivision 361-2.4(g) is amended to read as follows:

(g) Industrial waste and other waste land application. In addition to the requirements outlined in subdivisions 361-2.4(a) [through]-(d) of this section, the application for a permit for a land application facility involving waste other than biosolids must contain the following information:

(1) A detailed description of each waste to be land applied, including, at a minimum, the following information:

(i) the source, process, or treatment systems from which the waste originates, including a list and the quantity of all chemicals added during these processes. Material safety data sheets or other data sources providing information specific to these chemicals must be included; and

(ii) treatment or processing techniques used before land application.

(2) Analyses of the waste in accordance with the frequency, parameters, and protocol outlined in paragraph 361-2.4(e)(1) of this section.

(3) In addition to the analyses required in paragraph 361-2.4(e)(1) of this section, the following analyses, in whole or part, may be required, as determined by the department:

(i) fecal coliform, salmonella sp., enteric viruses, viable helminth ova, or other applicable pathogens; and

(ii) any or all of the pollutants identified in Part 375 of this Title or by the department.

(4) An outline of the proposed application rates and justification for the values chosen.

(5) For waste containing any domestic sewage or septage, a detailed description of the processes to reduce pathogenic organisms and vector attraction or sufficient data to demonstrate that human pathogenic organisms are not present in the waste.

(6) A waste monitoring, sampling, and analysis plan that outlines:

(i) the location, purpose, frequency and method for waste sampling;

(ii) the analytical parameters;

(iii) the protocol used to obtain representative samples and for the preparation and preservation of samples; and

(iv) [and] the laboratory that will be used for analyses.

Section 361-2.5(heading) remains unchanged.

Section 361-2.5 (opening paragraph) is amended to read as follows:

A land application facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

For facilities permitted under this section, a closure plan and financial assurance are not required.

Subdivision 361-2.5(a)(heading) through paragraph 361-2.5(a)(1) remains unchanged.

Paragraphs 361-2.5(2) and (3) are renumbered as subparagraph 361-2.5(a)(1)(i) and paragraph 361-2.5(a)(2).

Newly renumbered subparagraph 361-2.5(a)(1)(i) through subdivision 361-2.5(b) (heading) remains unchanged.

Paragraph 361-2.5(b)(1) is amended to read as follows:

(1) The minimum horizontal distance from the perimeter of the land application area must comply with the values found in the following table with respect to listed features that exist at the time the initial permit application is submitted to the department.

Feature	Minimum horizontal separation distance (in feet)
Property line	50
Residence, place of business, or public contact area when waste is not injected*	500
Residence, place of business, or public contact area when waste is injected*	200
Potable water well	200
Surface water and State regulated wetland when waste is not injected**	200
Surface water and State regulated wetland when waste is injected	100
Drainage swale	25

*Excludes owner's or operator's residence.

The separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas after

the permit application has been submitted to
the department.

****For food processing waste: 100 feet**

Paragraph 361-2.5(b)(2) is amended to read as
follows:

(2) Land application is prohibited in areas where groundwater is within 24 inches of the ground surface at the time of application. Verification of depth to groundwater prior to application [can] may be required by the department. If the field is tiled, the top of the tile must be at least 24 inches below the ground surface and the discharge of the tile must be at least 200 feet from a potable well, surface water, and State-regulated wetland. In areas where carbonate bedrock is present, a greater depth to groundwater may be required by the department.

Paragraph 361-2.5(b)(3) through paragraph 361-2.5(b)(4) remain unchanged.

Paragraph 361-2.5(b)(5) is amended to read as follows:

(5) Land application is prohibited on land with a slope exceeding 15 percent. Land application of waste with a total solids content of less than 15 percent is prohibited on land with a slope greater than eight percent, unless incorporated within one hour of application along paths parallel to contour lines[for the land].

Paragraph 361-2.5(b)(6) is amended to read as follows:

(6) Land application is prohibited in special flood hazard areas, unless approved by the department.

Paragraph 361-2.5(b)(7) remains unchanged.

Paragraph 361-2.5(b)(8) is amended to read as follows:

(8) [In all cases, t]The waste must be incorporated into the soil within 24 hours after application, unless a cover crop would be damaged by incorporation and concerns regarding odor and run-off can be mitigated by other

means approved by the department. If incorporation is used for vector attraction reduction, the period before incorporation is limited to six hours or less.

Paragraph 361-2.5(b)(9) remains unchanged.

Paragraph 361-2.5(b)(10) is amended to read as follows:

(10) Land application is permitted on all soil types that ~~[are capable of supporting]~~can support the robust growth of the crop grown. The use of active farmland is sufficient to demonstrate compliance with this requirement. Otherwise, sufficient information must be provided to demonstrate compliance.

Paragraph 361-2.5(b)(11) remains unchanged.

Paragraph 361-2.5(b)(12) is amended to read as follows:

(12) The temporary field stacking of biosolids prior to land application is allowed, provided the following criteria are met:

(i) the storage period is a maximum of 30 days;

(ii) the ~~[residuals]~~biosolids are stored on the field where they will be applied and the amount stored does not exceed the amount that will be land applied on the site;

~~[(iii) the storage area complies with the site criteria outlined in paragraphs (1), (2), (3), (6) and (10) of this subdivision;]~~

~~[(iv)]~~iii) the storage area must not be located on areas with a slope greater than three percent;

~~[(v)]~~ iv) the ~~[residuals]~~biosolids must have sufficient solids content that ~~[they]~~it will retain ~~[their]~~its shape if stacked three feet high and must be formed so that precipitation is shed from the pile;

~~[(vi)]~~v) any run-off from the stockpile must be contained within the land application site; and

~~[(vii)]~~ vi) after removal of the residuals, the storage area must be reseeded or returned to active cropland.

A new paragraph 361-2.5(b)(13) is added to read as follows:

(13) Written permission from the landowner is required for use of the land for land application, unless the landowner is the applicant.

Subdivision 361-2.5(c) (heading) through subparagraph 361-2.5(c)(2)(vi) remain unchanged.

Subparagraph 361-2.5(c)(2)(vii) is repealed and subparagraphs 361-2.5(c)(2)(viii) and (ix) are renumbered (vii) and (viii).

Newly renumbered subparagraph 361-2.5(c)(2)(vii) is amended to read as follows:

(vii) a description of any difficulties encountered during land application, any complaints arising [as a result] because of the land application operation and the corrective measures taken; and

Newly renumbered subparagraph 361-2.5(c)(2)(viii) through (ix)

[ix](viii) a revised management plan for land application for the next year based on previous application rates and crop planting patterns for the next year. The plan must include an identification of the crops to be grown, fields to be used, and revised nutrient and hydraulic loading rates. All calculations must be included.

Subdivision 361-2.5(d) is amended to read as follows:

(d) Biosolids application.

In addition to the requirements identified in subdivisions 361-2.5(a) [through]-(c) of this [Subpart]section, a land application facility including biosolids must comply with the following criteria:[]

Paragraph 361-2.5(d)(1) is amended to read as follows:

(1) Land application criteria.

(i) Soil pH must be adjusted to 6.0 standard units or higher before land application unless lime-stabilized biosolids is used. If lime-stabilized biosolids is used, the soil pH must be 6.0 standard units or higher after [waste]biosolids application.

(ii) Land application must not adversely affect a threatened or endangered species or its designated critical habitat.

[(iii) The annual cadmium application rate must not exceed 0.45 pound per acre.]

Paragraph 361-2.5(d)(2) (heading) through subclause 361-2.5(d)(2)(i)(‘a’)(‘3’) remain unchanged.

Subclause 361-2.5(d)(2)(i)(‘a’)(‘4’) is amended to read as follows:

(‘4’) Composting. Using the within-vessel, aerated static pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher and remains at 40° C or higher for five consecutive days. For at least [4] four consecutive hours during the five days, the temperature in the compost pile must exceed 55° C;

Subclause 361-2.5(d)(2)(i)(‘a’)(‘5’) through clause 361-2.5(d)(2)(‘j’) remain unchanged.

Subparagraph 361-2.5(d)(2)(iii) is amended to read as follows:

(iii) Access and crop restrictions:

(‘a’) public access to land must be restricted during land application and for at least one year after land application. Access must be controlled during that period [by the use of] using posted signs, [the use of] fences, [and] gates or other appropriate means;

(‘b’) food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface must not be grown for at least 14 months after land application. Food crops with harvested parts below the surface of the land must not be grown for at least 38 months after land application;

(‘c’) feed crops, fiber crops, and food crops grown above the soil with harvested parts that do not touch the biosolids/soil mixture[, feed crops and fiber crops] must not be grown for at least 30 days after land application;

(‘d’) animals must not be grazed on the land for at least 30 days after land application; and

(‘e’) turf grown on land where biosolids has been applied must not be grown for one year after land application when the harvested turf will be placed on either land with a high potential for public exposure or a lawn.

Paragraph 361-2.5(d)(3) (heading) through clause 361-2.5(d)(3)(i)(‘b’) remain unchanged.

Clause 361-2.5(d)(3)(i)(‘c’) is amended to read as follows:

(c) with the exception of pH and total solids, all results must be reported on a dry weight basis. The analyses must comply with the criteria found in clauses[section] 361-2.4(e)(1)(ii)(‘f’), (‘g’), (‘i’) and (‘j’) of this Subpart. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department [can]may reduce the annual number of analyses required if the quality is consistently significantly below the quality standards; and

Clause 361-2.5(d)(3)(i)(‘d’) through subparagraph 361-2.5(d)(3)(ii) remain unchanged.

Subparagraph 361-2.5(d)(3)(iii) is amended to read as follows:

(iii) Annual soil sampling is required. Criteria applicable to annual soil sampling are found in paragraph[section] 361-2.4(e)(5) of this Subpart. Only the fields used for biosolids land application in the previous year must be sampled.

Subdivision 361-2.5(e) is amended to read as follows:

(e) Land application of other waste. In addition to the requirements identified in subdivisions 361-2.5(a) [through]-(c) of this [Subpart]section, [a facility for]land application of waste other than biosolids [or septage]must comply with the following criteria:

(1) Domestic sewage or septage content. If there is any domestic sewage or septage contribution to the [treatment facility generating the] waste, the waste treatment process must satisfy the pathogen and vector attraction reduction requirements of this Subpart unless it can be demonstrated that the sanitary waste is a minor portion of the waste stream and that Salmonella sp. bacteria, enteric viruses, and viable helminth ova are below detectable levels.

(2) Nutrient or lime content. The waste must contain at least one percent total Kjeldahl nitrogen, [or]contains at least 50 percent calcium carbonate equivalence, or provide sufficient documentation to demonstrate in some other manner that the [material]waste is a benefit to the soil or plant grown.

(3) Monitoring, recordkeeping, and reporting. Annual waste monitoring [can be]is required, depending on the characteristics of the waste. The parameters for analysis and the frequency will be determined by the department depending on the quantity and quality of the waste.

Section 361-2.6 (heading) through subdivision 361-2.6(b) remain unchanged.

Subdivision 361-2.6(c) is amended to read as follows:

(c) A description of how the facility will comply with the operating requirements in [Part 360]section 360.19 of this Title and section 361-2.7 of this Subpart.

Section 361-2.7 (heading) remains unchanged.

Section 361-2.7 (opening paragraph) is amended to read as follows:

A storage facility required to obtain a permit must, in addition to the requirements identified in [Part 360] section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

Subdivision 361-2.7(a) through subdivision 361-2.7(b) remain unchanged.

Subdivision 361-2.7(c) is amended to read as follows:

(c) All storage facilities must be completely emptied, cleaned, and inspected at least once every 12 months or an acceptable leak detection procedure is employed. The department must be notified at least five business days before [the cleaning operation is begun] any internal tank inspection begins. Any damage or deterioration revealed by the inspection must be repaired before the storage facility [again] begins receiv[es] ing waste again.

Subdivision 361-2.7(d) through subdivision 361-2.7(g) remains unchanged.

Subdivision 361-2.7(h) is amended to read as follows:

(h) A minimum of one upgradient and two downgradient monitoring wells, or more as determined by the department, must be installed at a surface impoundment facility. If multiple surface impoundments are used and

are not [in close proximity to]near each other, then each impoundment must have separate monitoring well arrays.

Subdivision 361-2.7(i) remains unchanged.

Subdivision 361-2.7(j) is repealed and subdivision 361-2.7(k) is renumbered (j).

Newly renumbered subdivision 361-2.7(j) remains unchanged.

A new subdivision 361-2.7(k) is added to read as follows:

(k) Storage facilities other than surface impoundments may be constructed of concrete, steel, or other approved material. The storage facility must be designed to maintain a minimum of two feet of freeboard.

Subpart 361-3(heading) remains unchanged.

Section 361-3.1 is amended to read as follows:

361-3.1 Applicability

This Subpart applies to composting and other organics [processing]recycling facilities for municipal solid waste, source-separated organics (SSO), biosolids, septage, yard trimmings [and]or other organic waste[and the resultant products]. [An organics processing facility treats the readily biodegradable organic components in waste to produce a mature product for use as a source of nutrients, organic matter, liming value, or other essential constituent for a soil or to help sustain plant growth. The processes include, but are not limited to, composting, vermiculture, anaerobic digestion, fermentation, and Class A processes (see Section 361-3.7 for Class A processes). An organics waste processing facility also includes processes to convert biodegradable organic components in food scraps into animal feed including pet food.] This Subpart also applies to any combination of these activities or materials. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 361-3.2 (heading) remains unchanged.

Subdivision 361-3.2(a) is amended to read as follows:

(a) Exempt facilities.

In addition to the exemptions listed in section 360.14 of this Title, [T]the following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department, and when no waste accepted remains on-site for more than 36 months. [No more than one exempt facility specified in this Section can be located on geographically contiguous land owned or operated by the same person.] For geographically contiguous land owned or operated by the same person, if the land area exceeds 50 acres, one exempt facility can be located for every 50 acres, provided the exempt facilities are at least 1000 feet apart. For facilities located on a farm where the product will only be used on that farm as a soil amendment, multiple exempt facilities may be located on that farm, provided the exempt facilities are at least 500 feet apart. Multiple exempt facility types can be commingled on the same site and still considered to be an exempt facility, such as a mixture of yard trimmings and SSO.

(1) A composting facility located at a site controlled by the waste generator, in accordance with paragraph[section] 360.14([c]b)(1) of this Title.

(2) A composting facility that accepts, measured on a monthly average, no more than 1,000 pounds or one cubic yard, whichever is greater, of SSO per week provided no more than 2,000 pounds are accepted in any one week. Sufficient bulking agent must be used to provide proper aeration and control leachate migration.

(3) A composting facility that accepts no more than 3,000 cubic yards of yard trimmings per year. This quantity does not include tree debris that is not intended for composting. For these facilities, precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant product is not considered leachate; however, it must be managed within the site and must not enter a surface waterbody or a conveyance to a surface waterbody[,]or cause a violation of water quality standards promulgated in Part 750 of this Title.

- (4) A composting facility located on a farm for animal carcasses. If the [farm is not located on a concentrated animal feeding operation (CAFO)]composting facility is not covered by a CAFO permit, no more than [10]five tons of carcasses per year can be from off-site sources and the animal carcasses must be placed within the compost pile on the day received.
- (5) A composting facility on property controlled by a [s]State agency or a municipal entity for animal carcasses generated on properties under their control.
- (6) A composting facility for animal manure and bedding or crop residues.
- (7) A composting facility [located] on a farm covered by a CAFO permit, provided the waste accepted is limited to manure, food processing waste, [fats, oil, grease, and other organics wastes without] and/or SSO. The waste cannot contain sanitary content.

Subdivision 361-3.2(b) is amended to read as follows:

(b) Registered facilities.[Facilities of the following types are subject to the registration provisions of section 360.15 of this Title unless otherwise exempt.] Unless otherwise exempt, the following facilities are subject to the registration provision of section 360.15 of this Title and must register with the department. Each facility registered pursuant to this subdivision must comply with the criteria in section 360.19 of this Title and the operational criteria in subdivision [(b) of this section]361-3.2(c).

(1) A composting facility that accepts more than 3,000 cubic yards but not more than 10,000 cubic yards of yard trimmings per year[, either processed or unprocessed]. This quantity does not include tree debris that is not intended for composting. For windrow systems, [T]the windrows must be turned a minimum of two times per year. [For these facilities, p]Precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant compost is not considered leachate[.] but must be managed in a manner acceptable to the department.

(2) A composting facility that accepts no more than 5,000 cubic yards or 2,500 wet tons, whichever is less, of SSO per year, provided that no more than 800 cubic yards are accepted in any month. The facility must [have, and]use[,] [at least twice as much bulking agent, by volume, as organic waste. The facility must effectively remove non-processible material that can be present with the SSO.] enough bulking agent to provide proper aeration and control leachate migration, with the amount of bulking agent, by volume, equal to or greater than the amount of organic waste.

(3) A composting facility for [road-killed animals or routine] animal mortalities (including their parts), provided a sufficient amount of woodchips or other acceptable bulking agent are used, and no more than 100 large animals (or equivalent) are composted per acre at any given time. No more 1000 large animals (or equivalent) are composted on any site at any given time.

[(4) A composting facility for digestate, if allowed under section 361-3.3 of this Subpart.]

Subdivision 361-3.2(c) is amended to read as follows:

(c) Operating criteria for registered facilities.

A registered facility must be operated in compliance with section 360.19 of this Title and the following conditions.

(1) The maximum detention time, from material acceptance to compost distribution, is 24 months.

(2) Only tree debris and wood debris can be used as a wood source for use as an amendment or bulking agent.

(3) Methods of composting that result in a mature product must be followed.

(4) The facility must have a written run-on and run-off plan that is acceptable to the department, that outlines the methods that will be used to prevent run-on from entering and run-off from leaving the site and minimizing the movement of organic matter into the soil under the site.

(5) Storage facilities used for leachate collection must be designed in accordance with the Natural Resources Conservation Services (NRCS) code NY313 standards for liner specification, or an equivalent , as incorporated by reference in section 360.3 of this Title.

[(6) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.]

[(7)6] The facility must be at least 200 feet from the nearest surface water body, potable water well and state-regulated wetland, unless provisions are implemented to prevent leachate from leaving the boundaries of the site, in a manner acceptable to the department.

[(8)7] The facility must be at least 200 feet[, or 500 feet for more than 1000 cubic yards of SSO per year,] from the nearest residence or place of business. This requirement does not apply to the generating business or the operator's residence, or any residence or place of business built after the facility began operation. The buffer area can be reduced if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.

[(9)8] The facility must keep written records that demonstrate compliance with the registration criteria.

[(10)9] All waste received must be source-separated. Food and beverages received in their original packaging (off-spec bakery items, etc.) that will be depackaged prior to composting are allowed. If compostable products are accepted, they must comply with a standard acceptable to the department.

[(11)10] The facility must not produce odors that unreasonably impact [sensitive] receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

[(12)11] Other than leaves or packaged products, all bulk organic waste must be processed into compost piles on the day received. If the organics are received in, or placed directly in, closed containers (*e.g.*, totes, etc.), the waste can be stored up to [three]10 days, provided odors are controlled.

(12) The product must meet criteria outlined in subparagraph 361-3.2(e)(3)(ii) -(vi). If required by the department, the product must be analyzed for physical contaminants and maturity.

(13) In addition to the other requirements outlined in this subdivision, registered composting facilities located in Nassau and Suffolk Counties must comply with the criteria outlined in section 361-4.6 of this Part.

Subdivision 361-3.2(d) through paragraph 361-3.2(d)(1) remain unchanged.

Paragraph 361-3.2(d)(2) is amended to read as follows:

(2) A design and operation plan that includes:

(i) a description of how the facility will comply with the operating requirements in [Part 360]section 360.19 of this Title and the requirements of subdivision 361-3.2(e) [of this Subpart];

(ii) a description and the capacity of the storage facilities used for waste, bulking agent or amendment, and product;

(iii) a description of all equipment used, including preprocessing and post-processing methods and equipment used to identify and remove nonprocessable materials, and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;

(iv) a description of the storage and [disposal location]receiving facility for recyclables (if applicable) and nonprocessable materials;

(v) a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

(vi) an outline of the processing duration, including the time period from acceptance of waste to completion of composting, through distribution of the product;

(vii) windrow dimensions including width, length, and height, if used;

(viii) a description of the air emission collection and control equipment, if used;

(ix) a description of the method used to control surface water run-on, run-off and to manage leachate, including the method for treatment or disposal of leachate generated. For uncovered facilities, calculations of the run-off and leachate that must be handled [at]by the facility, based on a rainfall intensity of one-hour duration and a [ten]10-year return period; and

(x) for facilities that will use a low-permeability soil to minimize leachate release, a construction quality assurance/construction quality control plan as outlined in Part 363 of this Title.

Paragraph 361-3.2(d)(3) is amended to read as follows:

(3) An odor control and response plan. The plan must describe how odors will be controlled, monitored and how any odor problems will be addressed.

Paragraph 361-3.2(d)(4) through subparagraph 361-3.2(d)(4)(i) remain unchanged.

Subparagraph 361-3.2(d)(4)(ii) is amended to read as follows:

(ii) a description of the ultimate use for the finished compost, including the approximate quantity of product each type of user (such as residents or landscapers) is[are] expected to take, the frequency of distribution, the expected use of the product, and the source of this information (such as contract or phone survey);

Subparagraph 361-3.2(d)(4)(iii) is amended to read as follows:

(iii) the method(s) for removing compost from the facility;

Subparagraph 361-3.2(d)(4)(iv) through paragraph 361-3.2(d)(5) remain unchanged.

Paragraph 361-3.2(d)(6) is amended to read as follows:

(6) Yard trimmings composting. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this [section]Subpart, an application for a permit for a composting facility for yard trimmings must include the following information:

(i) A description and identification of the surface soil characteristics for the proposed facility and depths to the seasonal high groundwater table and bedrock[.];

- (ii) A description of the source and composition of the yard trimmings, including the anticipated quantity of each type of material (e.g., grass clippings, leaves, branches) and how each will be handled at the facility[.]; and
- (iii) A description of all activities at the facility including those portions of the facility that would otherwise qualify as an exempt facility or a registered facility under this [Subp]Part.

Paragraph 361-3.2(d)(7) is amended to read as follows:

(7) [Source-separated organics] SSO composting. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this section, an application for a permit for a composting facility for SSO must include the following information:

(i) For residential SSO, a description of the service area. For commercial and institutional SSO, the description must include a list of all types of generating facilities and the type and approximate quantity of waste[s] that will be collected from each type of generator.

(ii) A detailed description of the source-separation program at the point of generation, including how unacceptable wastes are separated from the SSO stream. For residential SSO, this must include a copy of all educational literature or other information provided to residents, and a description of the container(s) that will be used. For commercial and institutional SSO, this must include a copy of any agreements or information concerning what can be accepted from the generator and the collection containers that will be used. If compostable products will be accepted, a description of the criteria that will be used to determine which products will be allowed for acceptance.

(iii) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction (see section 361-3.7 of this Subpart), if required, including:

(‘a’) the methods that will be used for pathogen reduction and vector attraction reduction; and

(‘b’) the monitoring and data gathering that will be used to demonstrate compliance including type, location, and frequency.

Paragraph 361-3.2(d)(8) is amended to read as follows:

(8) Biosolids, septage, and other sludges. [In addition to the requirements outlined in paragraphs 361-3.2(d)(1) - (5) of this subdivision, an application must include the following information.] Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before composting are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for composting are subject to this paragraph. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this subdivision, an application that includes biosolids, septage, or other sludges must include the following information.

Subparagraph 361-3.2(d)(8)(i) through clause 361-3.2(d)(8)(ii)(‘e’) remain unchanged.

Clause 361-3.2(d)(8)(ii)(‘f’) is amended to read as follows:

(‘f’) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

Clause 361-3.2(d)(8)(ii)(‘g’) through clause 361-3.2(d)(8)(ii)(‘j’) remain unchanged.

Subparagraph 361-3.2(d)(8)(iii) is amended to read as follows:

(iii) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction, (see section 361-3.7 of this Subpart), if required, including:

Clause 361-3.2(d)(8)(iii)(‘a’) through clause 361-3.2(d)(9)(i)(‘d’) remain unchanged.

Clause 361-3.2(d)(9)(i)(‘e’) is amended to read as follows:

(‘e’) the ultimate management method for HHW collected; and

Clause 361-3.2(d)(9)(i)(‘f’) remains unchanged.

Subdivision 361-3.2(e) is amended to read as follows:

(e) Design and operating requirements for permitted facilities. A composting facility required to obtain a permit must, in addition to the requirements identified in [Part 360]section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

(1) Site criteria.

[(1)i] Unlined yard trimmings compost areas located on soils with a coefficient of permeability greater than six inches per hour may require installation of groundwater monitoring wells or other monitoring devices and perform groundwater monitoring, as determined by the department.

[(2)ii] For yard trimmings composting facilities without a low-permeability pad, composting must not occur in areas where the seasonal high groundwater table is less than 24 inches from the ground surface or where bedrock lies less than 24 inches below the ground surface.

[(3)iii] The bottom of any surface impoundment at a yard trimmings composting facility with a capacity of 10,000 gallons or more must be a minimum of five feet above both the seasonal high groundwater table and the top of bedrock. Impoundments with a capacity less than 10,000 gallons must be a minimum of two feet above both the seasonal high groundwater table and the top of bedrock.

[(4)iv] Stormwater must be diverted away from the composting area.

[(5)v] Precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant compost is not considered leachate but must be managed in a manner acceptable to the department. Drainage must be controlled to prevent run-off from the facility and organic matter from entering surface water or groundwater. For uncovered facilities, the design of the facility must be adequate to handle the quantity of liquid generated at the facility based on a rainfall intensity of one-hour duration and a ten-year return period.

[(6)vi] All leachate must be collected and disposed in a manner approved by the department. For uncovered composting facilities, the leachate collection and treatment system must be adequate to manage the quantity of

leachate generated at the facility based on a rainfall intensity of one-hour duration and a ten-year return period.

All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

([7]vii) For composting facilities other than those for yard trimmings alone, the waste storage area, composting area, leachate storage and product storage area at the facility must be located on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate surface impoundments[storage structures], other than tanks, must be designed in accordance with Subpart 361-2 of this Part or [code] NRCS code NY313 standards, as incorporated by reference in section 360.3 of this Title. The following criteria also apply:

([i]'a') If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in Part 363 of this Title must be met.

([ii]'b') If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363 of this Title.

([iii]'c') If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

([iv]'d') Compost storage beyond the 50-day detention time requirement is not required to occur on a low-permeability surface.

(viii) In addition to the other requirements outlined in this subdivision, permitted composting facilities located in Nassau and Suffolk Counties must comply with the criteria outlined in section 361-4.6 of this Part.

[(8)]ix) All unloading, storage and composting areas, except those handling yard trimmings alone, at facilities that have an average capacity of 100 wet tons per day or greater must be enclosed. For SSO composting facilities, the incoming SSO must be under cover or otherwise enclosed, regardless of quantity accepted.

[(9)]x) If used, windrow construction, composition, and operational procedures must be sufficient to maintain aerobic conditions and to produce a compost product in the time-frame desired.

[(10)]xi) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

[(11)]xii) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet for yard trimmings [or SSO,] and 500 feet for other wastes. [In addition] The following criteria also apply:

[(i)]'a') yard trimmings composting facilities without a pad and leachate collection system must maintain a minimum separation of 200 feet to a potable water well or surface water body and 25 feet to a drainage swale;

[(ii)]'b') the separation distance requirement from a public contact area [can]may be reduced for totally enclosed facilities or other mitigating landscape features, as determined by the department;

[(iii)]'c') the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas [subsequent to]after the permit application is submitted to the department; and

[(iv)]'d') the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(2) Waste acceptance and operations.

((12)i) The operation of the facility must follow acceptable methods of composting that results in the decomposition of the organic material received. For yard trimmings composting, leaves in bags must be debagged or otherwise incorporated into the process within 60 days of receipt, unless stored in a manner that does not produce odors. Bags containing primarily grass clippings must be debagged and mixed with a bulking agent within 24 hours of receipt.

((13)ii) The facility can only accept SSO from a generator that has a collection program designed to collect organic waste separate from other recyclables and waste materials [and to remove inorganic and nonprocessable materials from the SSO generated]. This does not prohibit the facility from accepting packaged products that will be processed prior to composting. The composting facility must also have provisions for inspection and removal of nonprocessable materials received.

((14)iii) The facility is prohibited from accepting wastes that do not positively contribute to the composting process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, construction and demolition debris, and ash from the combustion of municipal solid waste. Any compostable products accepted must meet a standard acceptable to the department.

((15)iv) Compost [ready for the designated market] cannot be stored at the facility for more than 24 months unless it is being held for a designated market.

((16)v) Noncompostable waste and unacceptable product must be disposed at least weekly unless the [material]waste generated in a week is less than 15 cubic yards. Biweekly disposal is allowed if the weekly [material]waste generated is less than 15 cubic yards.

((17)vi) For facilities accepting municipal solid waste:

((i)'a') a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility;

((ii)'b') recyclables must be removed from the waste stream before active composting;

((iii)'c') a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. [In addition] The following criteria also apply:

((a')'1') the investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times background radiation levels;

((b')'2') the concentration of radium-226 in any waste composted at the facility cannot exceed 25 pCi/g;

((c')'3') background radiation readings at the facility must be measured and recorded at least daily;

((d')'4') field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

((e')'5') the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

((f')'6') each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

((iv)'d') all waste storage and composting areas must be enclosed.

((18)'e') Facilities that accept [SSO,]municipal solid waste, sanitary waste (biosolids, septage, etc.) and other wastes with potential pathogen concern, as determined by the department, are required to comply with the pathogen and vector attraction reduction criteria outlined in section 361-3.7 of this Subpart.

(3) Product quality and use.

((19)i) A compost product that does not meet the criteria in [paragraphs (19)-(24) of]this [section]subdivision is considered a waste and must be disposed or reprocessed (if feasible).

((20)ii) [The compost can be distributed for use for food crops, feed crops, and fiber crops.] Any type of vegetation or crops may be grown with the compost.

((21]iii) The product must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of sawdust, soil, or other materials to the process or product for dilution purposes is not allowed. As outlined in subparagraph 361-3.2(e)(4)(i), routine analyses of yard trimmings compost are not required

((22]iv) The product must not contain more than [two] 0.5 percent total [gross] physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

((23]v) The product must be able to pass through a one-inch screen, except for wood particles derived from the use of wood chips as a bulking agent or amendment.

((24]vi) The compost product must be mature and must be used in a legitimate manner as a soil amendment, for erosion control, etc. The process must have a minimum detention time (including active composting and curing) of 50 days, unless an alternate means for achieving sufficient maturity is approved by the department.

((25]vii) Except for products derived solely from yard trimmings, an information label must be affixed to the product packaging or, for bulk, an information sheet, sign, [or]brochure, or website page must be used, containing:

((i]'a') the name and address of the generator of the product;

((ii]'b') the type of waste from which the product was derived; and

((iii]'c') recommended safe uses, application rates and storage practices.

((26]viii) For facilities that accept biosolids, septage, or other sludges, each waste source must not exceed the pollutant concentrations found in Table 6 of section 361-3.9 of this Subpart, unless the waste source is a minor (less than ten percent of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to products used outside New York State.

((i)'a') If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.9, the waste cannot be accepted at the facility until the generator has implemented a pollutant identification and abatement program and compliance [with the requirements of this paragraph] has been demonstrated for waste representing a period of at least six continuous months. At least six analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

((ii)'b') Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before composting are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for composting are subject to this paragraph.

((27)ix) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.9 of this Subpart.

(4) Monitoring requirements.

((28)i) Analysis of the product, other than yard trimmings compost, is required for the parameters in Table 1 of section 361-3.9 of this Subpart. The frequency of sampling is specified in Tables 4 and 5 of section 360-3.9 of this Subpart. All samples must be representative of the product that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis. [Copies of the original laboratory results must be included.]

((i)'a') Each sample must be a composite of at least five grab samples.

((ii)'b') After the product has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the product quality consistently meets the product quality standards in Table 6 of section 361-3.9 of this Subpart.

([29]ii) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, will be determined by the department. At a minimum, if temperature monitoring is required, it must occur [on a daily basis]daily in the coldest part of the waste mass.

([30]iii) The department can require, on a case-specific basis, testing of the compost for maturity before distribution. This can include, but is not limited to, potential for reheating, organic matter reduction, plant growth impact, or oxygen consumption.

([31]iv) Each biosolids, septage, and sludge source must be analyzed each year in accordance with the following:

([i]'a') The required parameters for analysis are found in Table 1 of section 361-3.9 of this Subpart.

([ii]'b') The minimum number of analyses required depends on the quantity of waste composted, as outlined in Table 3 of section 361-3.9 of this Subpart.

([iii]'c') With the exception of pH and total solids, all results must be reported on a dry weight basis. All analyses must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the waste quality consistently meets the quality standards.

([iv]'d') Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated are subject to this paragraph.

([32]v) For [other]wastes other than sanitary waste, annual analyses of the input waste [can]may also be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling will be determined by the department.

(5) Reporting requirements.

([33]i) The annual report required by paragraph 360.19(k)(3) of this Title, must include:

([i]'a') all information and analyses, including copies of the original laboratory sheets, required by this Subpart;

([ii]'b') the type and quantity of the waste, and other materials such as bulking agents, being composted, including the source of the material;

([iii]'c') process operational information including monitoring data and significant facility operational problems and any actions taken to correct problems;

([iv] for facilities that accept biosolids, the following certification statement must be signed by an authorized representative of the facility, with an indication of the name and title of the individual signing:

“I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in Subpart 361-3 of 6 NYCRR Part 361 has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that false statements made herein are punishable pursuant to section 210.45 of the penal law.”]

([v]'d') the quantity, by weight and volume, of product generated at the facility and the quantity of product and other waste, including unacceptable product, removed from the facility; and

([vi]'e') a description of the end-product distribution and disposal methods.

Section 361-3.3 (heading) remains unchanged.

Subdivision 361-3.3(a) is amended to read as follows:

(a) Exempt facilities. The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. [The digestate must be stored and used in a manner that is protective of the environment.]

(1) An anaerobic digestion facility located at a site controlled by the waste generator, in accordance with paragraph[section] 360.14([b]c)(1) of this Title. The digestate must be stored and used in a manner acceptable to the department.

(2) An anaerobic digestion facility that accepts only animal manure and bedding. Additionally, the storage and use of the digestate is exempt.

(3) An anaerobic digestion facility that accepts no more than 1,000 pounds or one cubic yard, whichever is greater, of SSO per week on a monthly average. No more than 2,000 pounds can be accepted in any week. The digestate must be stored and used in a manner acceptable to the department.

(4) An anaerobic digestion facility located on a farm covered by a CAFO permit and operated by the farm, [or a farm with an approved CNMP]provided that the waste accepted is limited to manure, food processing waste, FOG (fats, oil, grease from food sources), and [other organic wastes]other similar non-industrial source separated organics, without sanitary content. The resultant digestate contains no more than 0.5 percent physical contaminants greater than 4 millimeters by weight (dry weight basis) with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass, metal, and plastic. Analyses may be required by the department to confirm compliance. The non-manure waste received must not exceed 50 percent, by volume, of waste placed in the anaerobic digest[er]ion facility on an annual basis. If multiple digestion units are located on a farm, the 50 percent restriction applies to the total entering the farm, not entering each digestion unit[.]; [Anaerobic digestion facilities that are not owned by the farm must be covered by the farm's CAFO approvals.] Digestate[is managed as follows]managed in one of the following methods is exempt:

- (i) land application or storage of the digestate on a farm covered by a CAFO permit[, provided the nutrient loading is addressed in a CNMP is exempt]. Otherwise, registration under [subdivision]paragraph 361-3.3(b)(2) of this Part is required;
- (ii) use of dewatered solids for animal bedding[is exempt];
- (iii) use of blended dewatered solids as a topsoil (no more than 50 percent digestate in the mix), provided the material does not cause odors when stored or used[is exempt];
- (iv) a composting facility for the dewatered solids located on a farm[is exempt]. Otherwise, registration is required and the criteria of [under paragraph 361-3.2(b)(4) of this Subpart is required.] subdivision 361-3.2(c) must be followed; [and]
- [(v) storage of liquid digestate, other than at a CAFO or a farm that otherwise has an approved CNMP, must be in compliance with National Resource Conservation Service (NRCS) code NY313.]; and
- (v) other methods approved by the department.

Subdivision 361-3.3(b) is amended to read as follows:

(b) Registered facilities. Facilities of the following types are subject to the registration provisions of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title[and the operational criteria in subdivision 361-3.3(c) of this section].

(1) An anaerobic digestion facility that accepts less than 50 tons of waste per day or covered by a CAFO permit[or is located on a CAFO or a farm with an approved CNMP]. The waste must not contain sanitary content. Incoming waste must be stored in a vessel or other enclosed device and odors must be controlled. The facility must comply with subdivision 361-3.3(c) of this Part. Digestate must be managed as follows:

- (i) land application or storage of the digestate on a farm covered by a CAFO permit is exempt. Otherwise, registration under paragraph 361-[2]3.3(b)(2) of this Part is required;
- (ii) use of the dewatered solids for animal bedding is exempt;

(iii) use of the blended dewatered solids as a topsoil (no more than 50 percent digestate in the mix) is exempt, provided [they] the material does not cause odors when stored or used;

(iv) for a composting facility for the dewatered solids [located on a farm]on a farm covered by a CAFO permit is exempt. Otherwise, registration [under paragraph 361-3.2(b)(4) of this Subpart] is required and the criteria in subdivision 361-3.2(c) must be followed; and

[(v) storage of liquid digestate, other than at a CAFO or a farm that otherwise has an approved CNMP, must be in compliance with National Resource Conservation Service (NRCS) code NY313.]

(v) other methods approved by the department.

[(2) A manure storage facility that is not covered by a CAFO permit, that also accepts digestate. No more than 10 percent of the total volume of waste entering the facility on an annual basis can consist of non-manure unless liner construction verification is provided. Up to 40 percent of the total volume of waste entering the facility on an annual basis can consist of non-manure, if the storage facility was designed and built in accordance with NRCS code NY313. The land application of this mixture is exempt.]

(2) A storage or land application facility for digestate that is not covered by CAFO permit, provided the facility complies with the following conditions:

(i) the operating requirements of subdivision 361-2.5(b) of this Part are met for land application;

(ii) for land application, a minimum of three representative analyses of the waste for total Kjeldahl nitrogen, ammonia, nitrate, total phosphorus, total potassium, total solids, total volatile solids, and pH must be submitted with the registration application and one analysis must be submitted annually during operation. In addition, waste with salt content must be analyzed for chlorides. Additional analyses may be required, as determined by the department;

(iii) the volume of waste land-applied does not cause ponding, except for temporary conditions within 12 hours of application;

(iv) the application rate of waste does not exceed the agronomic rate;

(v) land application in the New York City water supply watershed or in Nassau or Suffolk county must be addressed in a CNMP; and

(vi) the storage facility is built and operated in compliance with NRCS code NY313 standards[, as incorporated by reference in section 360.3 of this Title].

Subdivision 361-3.3(c) is amended to read as follows:

(c) Operating criteria for registered anaerobic digestion facilities. A registered facility must be operated in compliance with section 360.19 of this Title [and the]. An anaerobic digestion facility registered under paragraph 361-3.3(b)(1) of this Subpart must comply with the following conditions[.]:

(1) Material accepted cannot remain at the facility for more than 24 months.

(2) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.

(3) Waste accepted must be stored in a vessel or in an enclosed area.

(4) All wastes accepted must not contain pollutants at a level of concern, as determined by the department.

Department approval is required prior to acceptance for wastes other than manure, food processing waste, FOG, or other similar non-industrial SSO.

[(4)]5 The facility must be at least 200 feet from the nearest surface water body, potable water well and state-regulated wetland, unless other means to protect water resources are approved by the department.

[(5)]6 The facility must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the waste generating business or any residence or place of business built after the facility began operation. [The buffer area can be reduced by the department if means acceptable to the department are used to reduce the potential for odor transmission.]

[(6)]7 The facility must keep written records of all materials entering and leaving the facility and the corresponding dates.

([7]8) All waste received must be source-separated. Food and beverages[material] received in their[its] original packaging (for example, off-spec drinks) that will be depackaged at the digestion facility prior to digestion [is]are allowed. If biodegradable products are to be digested, they must comply with a standard acceptable to the department.

([8]9) Digestate must be used in a manner that does not cause negative animal health or environmental impacts. If used as a soil amendment, agronomic rates must be followed.

([9]10) The facility must not produce odors that unreasonably impact sensitive receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

(11) The product must meet criteria outlined in subparagraphs 361-3.2(e)(3)(ii), and (v). If required by the department, the product must be analyzed for physical contaminants.

Subdivision 361-3.3(d) is amended to read as follows:

(d) Permit application requirements.

An anaerobic digestion facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this [section]subdivision and section 360.16 of this Title. The application must include the following:

Paragraph 361-3.3(d)(1) through paragraph 361-3.3(d)(2) remains unchanged.

Subparagraph 361-3.3(d)(2)(i) is amended to read as follows:

(i) a description of how the facility will comply with the operating requirements in [Part]section 360.19 of this Title and subdivision [361-3.3](e) of this [Subpart]section;

Subparagraph 361-3.3(d)(2)(ii) through subparagraph 361-3.3(d)(2)(viii) remain unchanged.

Paragraph 361-3.3(d)(3) is amended to read as follows:

(3) An odor control and response plan. The plan must describe how odors will be controlled, monitored and how any odor problems will be addressed.

Paragraph 361-3.3(d)(4) is amended to read as follows:

(4) A digestate use plan that includes:

(i) a description of the use(s) for the digestate (liquid, solids, or combined), including any storage prior to use, the approximate quantity of each type of user, the frequency of distribution, the expected use of the material, and the source of this information (such as contract or phone survey);

(ii) for agricultural use, a description of how nutrient loading, odor, and run-off will be controlled;

~~(ii)~~iii) the method for removing digestate from the facility and any off-site storage;

~~(iii)~~iv) a description of the proposed management of digestate that cannot be used in the expected manner due to poor quality or change in market conditions; and

~~(iv)~~v) a copy of the label or other information source for the digestate.

Paragraph 361-3.3(d)(5) through subparagraph 361-3.3(d)(5)(ii) remain unchanged.

Paragraph 361-3.3(d)(6) is amended to read as follows:

(6) Biosolids, septage, and other sludges. In addition to the requirements outlined in [subdivisions 361-3.3(d)]paragraphs (1)-(5) of this subdivision, the application must include the following information.

Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before digestion are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for digestion are subject to this paragraph.

Subparagraph 361-3.3(d)(6)(i) through clause 361-3.3(d)(6)(ii)(‘e’) remain unchanged.

Clause 361-3.3(d)(6)(ii)(‘f’) is amended to read as follows:

(f) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

Clause 361-3.3(d)(6)(ii)(‘g’) through subparagraph 361-3.3(d)(7)(ii) remain unchanged.

Subdivision 361-3.3(e) is amended to read as follows:

(e) Design and operating requirements for permitted anaerobic digestion facilities.

An anaerobic digestion facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

[Facility criteria](1) Site criteria.

([1]i) Stormwater must be diverted away from the operating area.

([2]ii) All leachate must be collected and disposed in a manner approved by the department. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

([3]iii) The waste storage area, processing area, leachate storage and liquid digestate storage area must be [located] in tanks or on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate or liquid digestate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate or liquid digestate storage structures, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or [Code]NRCS code NY313 standards[, as incorporated by reference in section 360.3 of this Title]. The following criteria also apply[.]:

([i]’a’) If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in Part 363 of this Title must be met.

((ii)'b') If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363 of this Title.

((iii)'c') If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

((iv)'d') Dewatered digestate solids must be stored in a manner that will minimize run-off. All run-off generated must be contained on-site.

[(4)iv) All incoming waste must be stored in a tank or in an enclosed storage area.

[(5)v) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

[(6)vi) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet for SSO, and 500 feet for other wastes. [In addition]The following criteria also apply:

((i)'a') the separation distance requirement from a public contact area can be reduced for totally enclosed facilities or other mitigating landscape features, as determined by the department;

((ii)'b') the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas [subsequent to]after the permit application is submitted to the department; and

((iii)'c') the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(2) Waste acceptance and operations.

[(7)]i) The operation of the facility must follow acceptable methods of anaerobic digestion that results in the biochemical decomposition of the organic material received.

[(8)]ii) If the facility accepts SSO, the generator must have active collection programs designed to collect organic waste separate from other recyclables and waste materials[and to remove inorganic and nonprocessable materials from the SSO generated]. The facility must also have provisions for inspection and removal of nonprocessable materials received.

[(9)]iii) The facility is prohibited from accepting wastes that do not positively contribute to the digestion process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, C&D debris, and ash from the combustion of municipal solid waste.

[(10)]iv) Storage of digestate at the facility must not exceed 12 months.

[(11)]v) Nonprocessable waste and unacceptable product must be disposed at least weekly.

[(12)]vi) For facilities accepting municipal solid waste:

[(i)]'a') a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility;

[(ii)]'b') recyclables must be removed from the waste stream before digestion;

[(iii)]'c') a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. [In addition]The following criteria also apply:

[(a)]'1') the investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times background radiation levels;

[(b)]'2') the concentration of radium-226 in any waste digested at the facility cannot exceed 25 pCi/g;

[(c)]'3') background radiation readings at the facility must be measured and recorded at least daily;

(([d]'4') field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

(([e]'5') the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

(([f]'6') each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(([13]vii) The anaerobic digestion facility must comply with the pathogen and vector attraction reduction criteria outlined in section 361-3.7 of this Subpart unless the potential for pathogen content is very low compared to biosolids, as determined by the department, or a facility that accepts sanitary waste operates as Class B pathogen reduction in conjunction with a permit for land application under [section]Subpart 361-2 of this Part.

(3) Product quality and use.

(([14]i) Digestate that does not meet the criteria in this section is considered a waste and must be disposed or reprocessed, if feasible.

(([15]ii) Digestate can be distributed for use for food crops, feed crops, and fiber crops.

(([16]iii) Digestate must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of materials to the process or digestate for dilution purposes is not allowed.

(([17]iv) The digestate must not contain more than [two] 0.5 percent total [gross] physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

(([18]v) The digestate must be able to pass through a one-inch screen.

((19][vi) If distributed to the public, the material product must be mature and must be used in a legitimate manner as a soil amendment.

((20][vii) Digestate derived from sanitary waste or other waste with pathogen content that has not met Class A pathogen reduction and vector attraction reduction standards can only be land applied in accordance with a permit under Subpart 361-2 of this Part or composted under a permit according to section 361-3.2 of this Subpart.

((21][viii) Use of the digestate, other than the scenario outlined in [paragraph 361-3.3(d)(20) of this Subpart, is subject to the following criteria.]subparagraph 361-3.3(e)(3)(vi) of this Part must be handled as follows:

[i](‘a’) land application or storage [of the solids and/or liquid produced by the anaerobic digestion facility]of the digestate on a farm covered by a CAFO permit is exempt[,provided the nutrient loading is addressed in a CNMP]. Otherwise, registration under subdivision[paragraph] 361-[2]3.3(b) of this Part is required;

[ii](‘b’) use of the dewatered solids for animal bedding is exempt;

[iii](‘c’) use of the blended dewatered solids as a topsoil (no more than 50 percent digestate in the mix) is exempt, provided [they do] it does not cause odors when stored or used;

[iv](‘d’) [composting of the dewatered solids at an exempt composting facility is also exempt provided the solids do not exceed 25 percent (by volume) of the incoming waste annually. A composting facility for the dewatered solids with an amendment or bulking agent requires registration under paragraph 361-3.2(b)(4) of this Subpart.]a composting facility for the dewatered solids on a farm covered by a CAFO permit is exempt.

Otherwise, registration under paragraph 361-3.2(b)(4) of this Subpart is required; and

(‘e’) other methods approved by the department.

((22][ix) An information label must be affixed to the packaging or, for bulk, an information sheet, sign, [or]brochure or website page must be used, containing:

[[i]’a’) the name and address of the generator of the material;

((ii)'b') the type of waste from which the material was derived; and

((iii)'c') recommended safe uses, application rates and storage practices.

(4) Monitoring requirements.

([23]i) For anaerobic digestion facilities that accept biosolids, septage, or other sludges, each waste source must not exceed the pollutant concentrations found in Table 6 of section 361-3.9 of this Subpart, unless the waste source is a minor (less than 10 percent of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to digestate that will be used outside New York State.

([i]'a') If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.9 of this Subpart, the waste cannot be accepted at the facility until the generator has implemented a pollutant identification and abatement program and compliance with the requirements of this paragraph has been demonstrated for waste representing a period of at least six continuous months. At least six analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

([ii]'b') Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before digestion are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for digestion are subject to this paragraph.

([24]ii) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.9 of this Subpart.

([25]iii) Analysis of the digestate is required for the parameters in Table 1 of section 361-3.9 of this Subpart. The frequency of sampling is specified in Tables 4 and 5 of section 360-3.9 of this Subpart. All samples must be

representative of the material that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis. [Copies of the original laboratory results must be included.]

(([i]’a’)) Each sample must be a composite of at least five grab samples.

(([ii]’b’)) After the digestate has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the material quality consistently meets the standards in Table 6 of section 361-3.9 of this Subpart.

(([iii]’c’)) For digestate derived from non-sanitary waste, the required analyses can be reduced depending on the use of the material, as determined by the department.

(([26]iv’)) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, will be determined by the department.

(([27]v’)) The department can require analyses of the material for maturity before distribution. This can include, but is not limited to, organic matter reduction, plant growth impact, or oxygen consumption.

(([28]vi’)) Each biosolids, septage, and sludge source must be analyzed in accordance with the following:

(([i]’a’)) The required parameters for analysis are found in Table 1 of section 361-3.9 of this Subpart.

(([ii]’b’)) The minimum number of analyses required depends on the quantity of waste digested, as outlined in Table 3 of section 361-3.9 of this Subpart.

(([iii]’c’)) With the exception of pH and total solids, all results must be reported on a dry weight basis. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the waste quality consistently meets the quality standards.

(([iv]’d’)) Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered separate

waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for beneficial use are subject to this paragraph.

([29]vii) For other wastes, analyses of the input waste can be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling and acceptable concentrations will be determined by the department.

(5) Reporting requirements.

([30]i) The annual report required by paragraph 360.19(k)(3) of this Title, must include:

([i]'a') all information and analyses, including copies of the original laboratory sheets, required by this Subpart;

([ii]'b') the type and quantity of the waste digested, including the source of the material;

([iii]'c') process operational information including monitoring data and significant facility operational problems and any actions taken to correct problems;

[(iv) for facilities that accept biosolids, the following certification statement must be signed by an authorized representative of the facility, with an indication of the name and title of the individual signing:

“I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in Subpart 361-3 of 6 NYCRR Part 361 has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that false statements made herein are punishable pursuant to section 210.45 of the penal law.”]

([v]'d') the quantity, by weight and volume, of digestate generated at the facility and the quantity of material removed from the facility; and

([vi]'e') a description of the use of the digestate.

Section 361-3.4 (heading) remains unchanged.

Subdivision 361-3.4(a) is amended to read as follows:

(a) Exempt facilities. The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. The byproducts of fermentation must be used in a manner acceptable to the department.

(1) A fermentation facility located at a site controlled by the waste generator, in accordance with paragraph [section] 360.14([c]b)(1) of this Title.

(2) A fermentation facility that accepts no more than 1,000 pounds or one cubic yard of SSO per week, whichever is greater, based on a monthly average.

Subdivision 361-3.4(b) is amended to read as follows:

(b) Registered facilities. Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title and the operational criteria in subdivision (c) of this section.

(1) A fermentation facility that accept less than ten tons of [waste]SSO per day. The waste must not contain sanitary content. Incoming waste must be stored in a container or other enclosed device and odors must be controlled.

Subdivision 361-3.4(c) is amended to read as follows:

(c) Operating criteria for registered fermentation facilities. A registered facility must be operated in compliance with section 360.19 of this Title and the following conditions:

(1) Material accepted cannot remain at the facility for more than 24 months.

(2) The byproducts of fermentation can be used as a soil amendment, for animal feed, or in another manner acceptable to the department. Use of the byproduct as animal feed also requires a beneficial use determination under Part 360 of this Title.

(3) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.

- (4) The facility must be at least 200 feet from the nearest surface water body, potable water well and State-regulated wetland.
- (5) The facility must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the waste generating business or operator's residence, or any residence or place of business built after the facility began operation. The buffer area can be reduced by the department if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.
- (6) The facility must keep written records of all materials entering and leaving the facility and the corresponding dates.
- (7) All waste received must be source-separated. Material received in its original packaging (for example, off-spec drinks) that [has been]will be depackaged prior to treatment is allowed.
- (8) The facility must not produce odors that unreasonably impact sensitive receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

Subdivision 361-3.4(d) is amended to read as follows:

(d) Permit application requirements. A fermentation facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this [section]subdivision and section 360.16 of this Title. The application must include the following:

- (1) A detailed description of the source, quality, and quantity of all [food scraps]SSO to be processed. The description must include the annual input and any seasonal variations in the waste type and quantity, and the appropriate quality data, as determined by the department.

Paragraph 364-3.4(d)(2) through subparagraph 361-3.4(d)(2)(vi) remain unchanged.

Subparagraph 364-3.4(d)(2)(vii) is amended to read as follows:

(vii) a description of the air emission collection and control equipment, if used; and

Subparagraph 361-3.4(d)(2)(viii) through paragraph 361-3.4(d)(3) remain unchanged.

Paragraph 361-3.4(d)(4) is amended to read as follows:

(4) A description of the ultimate use for the byproduct, including the approximate quantity of byproduct each type of user (such as residents, landscapers, and animal feed markets) are expected to use, the frequency of distribution, the expected use of the product, and the source of this information (such as contract or phone survey)[;].

Paragraph 361-3.4(d)(5) is amended to read as follows:

(5) A description of the method for removing byproduct from the facility[; and].

Paragraph 361-3.4(d)(6) is amended to read as follows:

(6) [a]A description of the proposed use or disposal of byproduct that cannot be used in the expected manner due to poor quality or change in market conditions.

Subdivision 361-3.4(e) is amended to read as follows:

(e) Design and operating requirements for permitted fermentation facilities.

A fermentation facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

(1) Site criteria

[(1)]i) Stormwater must be diverted away from the operating area.

[(2)]ii) All leachate must be collected and disposed in a manner approved by the department. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

[(3)]iii) The waste storage area, processing area, leachate storage and liquid byproduct storage area at the facility must be [located] in tanks or on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that

have underdrains for leachate collection. All leachate or liquid digestate storage structures, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or [Code]NRCS code NY313 standards], as incorporated by reference in section 360.3 of this Title]. The following criteria also apply:

[(i)'a') If a surface impoundment is used for leachate or liquid byproduct storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

[(ii)'b') Byproduct must be stored in a manner that will minimize run-off. All run-off generated must be contained on-site.

[(4)iv) For uncovered processing facilities, the facility must be able to manage the quantity of leachate generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

(2) Waste acceptance and operations.

[(5)i) All incoming waste must be stored in a tank or under cover.

[(6)ii) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

[(7)iii) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet. [In addition]The following criteria also apply:

[(i)'a') the separation distance requirement from a public contact area can be reduced for totally enclosed facilities or other mitigating landscape features, if approved by the department;

[(ii)'b') the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction

of nearby residences, places of business or public contact areas [subsequent to] after the permit application is submitted to the department; and

((iii)'c') the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

((8)iv) The facility can only accept food scraps from a generator that has a collection program designed to collect organic waste separate from other recyclables and waste materials and to remove inorganic and nonprocessable materials from the food scraps generated. This does not prohibit the facility from accepting packaged products if depackaging will occur at the facility. The facility must also have provisions for inspection and removal of nonprocessable materials received.

((9)v) Storage of the byproduct at the facility must not exceed 24 months.

(3) Product quality and use.

((10)i) Nonprocessable waste and unacceptable product must be disposed at least weekly, unless less than five cubic yards are generated per week. For amounts less than five cubic yards per week, the material can be stored for up to one month, provided offensive odors are not present.

((11)ii) A byproduct that does not meet the criteria in this section is considered a waste and must be disposed.

((12)iii) The byproduct can be distributed for [use for food crops, feed crops, feed crops, and fiber crops] uses approved by the department.

((13)iv) The byproduct must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart.

((14)v) The byproduct must not contain more than [two] 0.5 percent total [gross] physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

([15]v) The byproduct must be able to pass through a one-inch screen, except for wood particles derived from the use of wood chips as a bulking agent or amendment.

([16]vi) If distributed to the public, the byproduct must be mature and must be used in a legitimate manner as a soil amendment.

([17]vii) Use of the byproduct as a soil amendment or animal feed is acceptable.

([18]viii) Use of the primary product (alcohol, etc.) requires an approved beneficial use determination under [Part]section 360.12 of this Title.

(4) Monitoring requirements.

([19]i) The department can require annual analyses of the byproduct for maturity before distribution. This can include, but is not limited to, potential for reheating, organic matter reduction, plant growth impact, or oxygen consumption.

(5) Reporting requirements.

([20]i) The annual report required by paragraph 360.19(k)(3) of this Title, must include:

([i]'a') all information and analyses, (including copies of the laboratory sheets), required by this Subpart;

([ii]'b) the type and quantity of the food scraps being processed, including the source of the material;

([iii]'c') process operational information including monitoring data and significant facility operational problems and any actions taken to correct any problems; [and]

([iv]'d') the quantity, by weight and volume, of byproduct generated at the facility and the quantity of byproduct removed from the facility[.]; and

([v]'e') a description of the byproduct distribution and disposal methods.

Section 361-3.5 (heading) remains unchanged.

Subdivision 361-3.5(a) is amended to read as follows:

(a) Exempt facilities. The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. All incoming food scraps must be stored in an enclosed area. Use of the product requires a beneficial use determination, in accordance with section 360.12 of this Title.

(1) An animal feed production facility located at a site controlled by the waste generator, in accordance with paragraph[section] 360.14[c](b)(1[10])(1) of this Title.

(2) An animal feed production facility that only accepts bread, [and] other similar grain products (spent brewery grains, etc.) as outlined in section 360.12 of this Title.

(3) An animal feed production facility that accepts no more than 1,000 pounds or one cubic yard of food scraps per week based on a monthly average, whichever is greater.

Subdivision 361-3.5(b) is amended to read as follows:

(b) Registered facilities. Facilities of the following types are subject to the registration provisions of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title.

(1) Animal feed production facilities, provided the following criteria are satisfied:

(i) all incoming food scraps are stored in an enclosed area;

(ii) all incoming food scraps are processed within seven calendar days of acceptance;

(iii) leachate is managed in a manner acceptable to the department; and

(iv) odors are controlled. ; and]

[(v) unless only grain products are accepted, a beneficial use determination is obtained for the animal feed product in accordance with section 360.12 of this Title.]

Section 361-3.6 (heading) remains unchanged.

Subdivision 361-3.6(a) is amended to read as follows:

(a) Exempt facilities. The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. [The]A product generated must be used in a beneficial manner that is protective of human health and the environment.

(1) A facility located at a site controlled by the waste generator, in accordance with paragraph[section] 360.14([c]b)(1) of this Title.

(2) A facility that accepts only animal manure and bedding.

(3) A facility that accepts no more than 1,000 pounds or one cubic yard, whichever is greater, of SSO per week based on a monthly average.

(4) A facility [located on]covered by a CAFO permit provided that the waste accepted is limited to manure, food processing waste, [fats, oil, grease]FOG, and [other]non-industrial organic wastes without sanitary content. The non-manure waste received must not exceed 50 percent, by volume, of waste managed on an annual basis. Facilities that are not owned by the farm must be covered by the farm's CAFO approvals.

Subdivision 361-3.6(b) is amended to read as follows:

(b) Registered facilities. Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title and the operational criteria in subdivision (c) of this section.

(1) A facility that accepts less than ten tons of SSO per day. The waste must not contain sanitary content.

Incoming waste must be stored in a vessel or other enclosed device and odors must be controlled. Incoming industrial waste must be acceptable to the department.

Subdivision 361-3.6(c) through paragraph 361-3.6(c)(4) remain unchanged.

Paragraph 361-3.6(c)(5) is amended to read as follows:

(5) The facility must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the waste generating business or the operator's residence, or any residence or place of business built after the facility began operation. The buffer area can be reduced by the department if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.

Paragraph 361-3.6(c)(6) remains unchanged.

Paragraph 361-3.6(c)(7) is amended to read as follows:

(7) All waste received must be source-separated. Material received in its original packaging (for example, off-spec drinks) that will be depackaged prior to [digestion]processing are allowed.

Paragraph 361-3.6(c)(8) through paragraph 361-3.6(c)(9) remain unchanged.

Subdivision 361-3.6(d) is amended to read as follows:

(d) Permit application requirements. A facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this [section]subdivision and section 360.16 of this Title. The application must include the following:

Paragraph 361-3.6(d)(1) through paragraph 361-3.6(d)(2) remain unchanged.

Subparagraph 361-3.6(d)(2)(i) is amended to read as follows:

(i) a description of how the facility will comply with the operating requirements in Part 360 of this Title and [subdivision 361-3.6(e) of this Subpart] subdivision e of this section;

Subparagraph 361-3.6(d)(2)(ii) through subparagraph 361-2.6(d)(2)(viii) remain unchanged.

Paragraph 361-3.6(d)(3) is amended to read as follows:

(3) An odor control and response plan. The plan must describe how odors will be controlled, monitored and how any odor problems will be addressed.

Paragraph 361-3.6(d)(4) remains unchanged.

Subparagraph 361-3.6(d)(4)(i) is amended to read as follows:

(i) a description of the use(s) for the product, including the approximate quantity of each type of use[r], the frequency of distribution, the expected use of the material, and the source of this information (such as contract or phone survey);

Subparagraph 361-3.6(d)(4)(ii) through subparagraph 361-3.6(d)(5)(ii) remain unchanged.

Paragraph 361-3.6(d)(6) is amended to read as follows:

(6) Biosolids, septage, and other sludges. In addition to the requirements outlined in [subdivisions]paragraphs 361-3.[3]6(d)(1)-(5) of this [section]Subpart, the application must include the following information.

Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before processing are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for processing are subject to this paragraph.

Subparagraph 361-3.6(d)(6)(i) is amended to read as follows:

(i) A description of each proposed source of waste including the name of the generator, the annual quantity of waste produced, the amount of waste to be processed, and any seasonal variations in the quantity or quality during the year. Also, a description of the f[F]ederal or [S]tate pretreatment program, if required; and

Subparagraph 361-3.6(d)(6)(ii) through clause 361-3.6(d)(6)(ii)(‘e’) remain unchanged.

Clause 361-3.6(d)(6)(ii)(‘f’) is amended to read as follows:

(f) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

Clause 361-3.6(d)(6)(ii)(‘g’) through 361-3.6(d)(6)(ii)(‘j’) remain unchanged.

Paragraph 361-3.6(d)(7) is amended to read as follows:

(7) Municipal solid waste. In addition to the requirements outlined in paragraphs 361-3.6(d)(1)-(5) of this [section]subdivision, the application must include:

Subparagraph 361-3.6(d)(7)(i) through subparagraph 361-3.6(d)(7)(ii) remain unchanged.

Subdivision 361-3.6(e) is amended to read as follows:

(e) Design and operating requirements for permitted facilities. A facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(1) Site criteria.

[(1)i] Stormwater must be diverted away from the operating area.

[(2)ii] All leachate must be collected and disposed in a manner approved by the department. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

[(3)iii] The waste storage area, processing area, leachate storage and liquid product storage area at the facility must be [located] in tanks or on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate [or liquid digestate]storage structures, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or [Code]NRCS code NY313 standards[, as incorporated by reference in section 360.3 of this Title]. The following criteria also apply:

[(i)'a'] If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in Part 363 of this Title must be met.

[(ii)'b'] If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363 of this Title.

((iii)'c') If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

((4)iv) Product must be stored in a manner that will minimize run-off. All run-off generated must be contained on-site.

((5)v) For uncovered processing facilities, the facility must be able to manage the quantity of leachate generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

((6)vi) All incoming waste must be stored in a tank or under cover.

((7)vii) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

((8)viii) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet for SSO, and 500 feet for other wastes. In addition:

((i)'a') the separation distance requirement from a public contact area can be reduced for totally enclosed facilities or other mitigating landscape features, as determined by the department;

((ii)'b') the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas [subsequent to]after the permit application is submitted to the department; and

((iii)'c') the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(2) Waste acceptance and operations.

[(9)]i) If the facility accepts SSO, the generator must have active collection programs designed to collect organic waste separate from other recyclables and waste materials and to remove inorganic and nonprocessable materials from the SSO generated. The facility must also have provisions for inspection and removal of nonprocessable materials received.

[(10)]ii) The facility is prohibited from accepting wastes that do not positively contribute to the process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, C&D debris and ash from the combustion of municipal solid waste.

[(11)]iii) Storage of product at the facility must not exceed 12 months.

[(12)]iv) Nonprocessable waste and unacceptable product must be disposed at least weekly, unless less than five cubic yards are generated per week. For amounts less than five cubic yards per week, the material can be stored up to one month, provided offensive odors are not present.

[(13)]v) For facilities accepting municipal solid waste:

[(i)]'a') a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility;

[(ii)]'b') recyclables must be removed from the waste stream before processing;

[(iii)]'c') a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. [In addition]The following criteria also apply:

[(a)]'1') the investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times background radiation levels;

[(b)]'2') the concentration of radium-226 in any waste recycled at the facility cannot exceed 25 pCi/g;

[(c)]'3') background radiation readings at the facility must be measured and recorded at least daily;

[(d)]'4') field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

[(e)]'5') the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

[(f)]'6') each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

[(14)]'d') The facility must comply with the pathogen and vector attraction reduction criteria outlined in section 361-3.7 of this Subpart unless the potential for pathogen content is very low, compared to biosolids, as determined by the department.

(3) Product quality and use.

[(15)]i) Product that does not meet the criteria in this section is considered a waste and must be disposed.

[(16)]ii) Product can be distributed for use for food crops, feed crops, and fiber crops.

[(17)]iii) Product must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of materials to the process or [digestate]product for dilution purposes is not allowed.

[(18)]iv) The product must not contain more than [two] 0.5 percent total [gross] physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

[(19)]v) The product must be able to pass through a one-inch screen.

[(20)]vi) If distributed to the public, the product must be mature and must be used in a legitimate manner as a soil amendment.

((21]vii) Use of the product must be acceptable to the department and will be dependent on the maturity and other characteristics of the product.

((22]viii) An information label must be affixed to the packaging or, for bulk, an information sheet, sign, [or]brochure, or website page must be used[available to the user,] containing [the following information]:

(([i]'a') the name and address of the generator of the material;

(([ii]'b') the type of waste from which the material was derived; and

(([iii]'c') recommended safe uses, application rates and storage practices.

(4) Monitoring requirements.

((23]i) For facilities that accept biosolids, septage, or other sludges, each waste source must not exceed the pollutant concentrations found in Table 6 of section 361-3.9 of this Subpart, unless the waste source is a minor (less than 10 percent of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to product that will be used outside New York State.

(([i]'a') If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.9 of this Subpart, the waste cannot be accepted at the facility until the generator has implemented a pollutant identification and abatement program and compliance with the requirements of this paragraph has been demonstrated for waste representing a period of at least six continuous months. At least six analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

(([ii]'b') Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before digestion are not considered waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for digestion are subject to this paragraph.

([24]ii) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.9 of this Subpart.

([25]iii) Analysis of the product is required for the parameters in Table 1 of section 361-3.9 of this Subpart. The frequency of sampling is specified in Tables 4 and 5 of section 360-3.9 of this Subpart. All samples must be representative of the product that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis. Copies of the original laboratory results must be included.

([i]'a') Each sample must be a composite of at least five grab samples.

([ii]'b') After the product has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the product quality consistently meets the product quality standards in Table 6 of section 361-3.9 of this Subpart.

([iii]'c') For product derived from non-sanitary waste, the required analyses can be reduced depending on the use of the material, as determined by the department.

([26]iv) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, must be approved by the department. At a minimum, temperature monitoring must occur [on a] daily [basis] in the coldest part of the waste mass.

([27]v) The department can require analysis of the product for maturity before distribution. This can include, but is not limited to, organic matter reduction, plant growth impact, or oxygen consumption.

([28]vi) Each biosolids, septage, and sludge source must be analyzed in accordance with the following:

([i]'a') The required parameters for analysis are found in Table 1 of section 361-3.9 of this Subpart.

([ii]'b') The minimum number of analyses required depends on the quantity of waste digested, as outlined in Table 3 of section 361-3.9 of this Subpart.

[(iii)'c') With the exception of pH and total solids, all results must be reported on a dry weight basis. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the waste quality consistently meets the quality standards.

[(iv)'d') Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for beneficial use are subject to this paragraph.

[(29)'vii) For other wastes, analyses of the input waste can be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling will be determined by the department on a case-specific basis.

(5) Reporting requirements

[(30)'i) The annual report required by paragraph 360.19(k)(3) of this Title must include:

[(i)'a') all information and analyses, including copies of the laboratory sheets, required by this Subpart;

[(ii)'b') the type and quantity of the waste processed, including the source of the material;

[(iii)'c') process operational information including monitoring data and significant facility operational problems and any actions taken to correct problems;

[(iv) for facilities that accept biosolids, the following certification statement must be signed by an authorized representative of the facility, with an indication of the name and title of the individual signing:

“I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in Subpart 361-3 of 6 NYCRR Part 361 has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that false statements made herein are punishable pursuant to section 210.45 of the penal law.”]

([v]'d') the quantity, by weight and volume, of product generated at the facility and the quantity of material removed from the facility; and

([vi]'e') a description of the use of the product.

Section 361-3.7 (heading) through clause 361-3.7(a)(1)(i) remain unchanged.

Clause 361-3.7(a)(1)(i)('a') is amended to read as follows:

(a) Composting. Using the windrow composting method, the waste is maintained under aerobic conditions during the compost process. A minimum of 5 turnings is required during a period of 15 consecutive days when the temperature of the waste is not less than 55° C. Using the aerated static pile composting method or the within-vessel composting method, the temperature of the waste is maintained at 55° C or higher for at least three[3] consecutive days.

Clause 361-3.7(a)(1)(i)('b') through clause 361-3.7(a)(1)(i)('h') remain unchanged.

Subparagraph 361-3.7(a)(1)(ii) is amended to read as follows:

(ii) Class A - Alternative 2. [Treatment by thermophilic aerobic or anaerobic digestion.] At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the product must be less than [3]three most probable number per [4]four grams of total solids (dry weight basis). In addition, the temperature of the waste must be maintained at a specific value for a period of time, as follows:

Clause 361-361-3.7(a)(1)(ii)('a') through clause 361-361-3.7(a)(1)(ii)('d') is amended to read as follows:

(a) When the percent solids of the waste is [7]seven percent or higher, the temperature of the waste must be 50° C or higher, the time period must be 20 minutes or longer, and the temperature and time period must be determined using the following equation, except when small particles of waste are heated by either warmed gases or an immiscible liquid.

$$D = 131,700,000/10^{0.1400 t}$$

Where,

D = time in days.

t = temperature in degrees Celsius.

(b) When the percent solids of the waste is [7]seven percent or higher and small particles of waste are heated by either warmed gases or an immiscible liquid, the temperature and time period must be determined using the equation in clause (a) of this subparagraph. The temperature of the waste must be 50° C or greater and the time period must be 15 seconds or longer.

(c) When the percent solids of the waste is less than [7]seven percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period must be determined using the equation in clause (a) of this subparagraph.

(d) When the percent solids of the waste is less than [7]seven percent, the temperature of the waste is 50° C or higher, and the time period is 30 minutes or longer, the temperature and time period must be determined using the following equation:

$$D = 50,070,000/10^{0.1400 t}$$

Where,

D = time in days.

t = temperature in degrees Celsius.

Subparagraph 361-3.7(a)(1)(iii) is amended to read as follows:

(iii) Class A - Alternative 3. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the product must be less than [3]three Most Probable Number per [4]four grams of total solids (dry weight basis). In addition, the following conditions must be satisfied:

Clause 361-3.7(a)(1)(iii)(‘a’) through clause 361-3.7(a)(1)(iii)(‘c’) remain unchanged.

Subparagraph 361-3.7(a)(1)(iv) is amended to read as follows:

(iv) Class A - Alternative 4. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product must be less than [3]three Most Probable Number per [4]four grams of total solids (dry weight basis). In addition, the following conditions must be satisfied:

Clause 361-3.7(a)(1)(iv)(‘a’) through 361-3.7(b) is amended to read as follows:

(a) The density of enteric viruses in the product must be less than [1]one plaque-forming unit per four grams of total solids (dry weight basis).

(b) The density of viable helminth ova in the product must be less than [1]one per [4]four grams of total solids (dry weight basis).

Paragraph 361-3.7(b)(1) is amended to read as follows:

(1) One of the following vector attraction reduction methods must be achieved before the material leaves the facility. Vector attraction reduction methods, except the methods found in subparagraphs 361-3.[5]7(b)(2)(vi)-(viii) of this Subpart, must be met either after meeting the pathogen reduction requirements or at the same time the pathogen reduction requirements are met.

Subparagraph 361-3.7(b)(1)(i) remains unchanged.

Subparagraph 361-3.7(b)(1)(ii) is amended to read as follows:

(ii) If the volatile solids reduction requirement in subparagraph (i) cannot be met for an anaerobically digested waste, vector attraction reduction can be demonstrated by anaerobically digesting a portion of the previously digested waste in a laboratory bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 17 percent reduction in volatile solids content.

Subparagraph 361-3.7(b)(1)(iii) is amended to read as follows:

(iii) If the volatile solids reduction requirement in subparagraph (i) cannot be met for an aerobically digested waste, vector attraction reduction can be demonstrated by aerobically digesting a portion of the previously digested waste that has a percent solids of two percent or less in a laboratory bench-scale unit for an additional 30 days at 20 degrees Celsius. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 15 percent reduction in volatile solids content.

Subparagraph 361-3.7(b)(1)(iv) through 361-3.7(b)(1)(v) remains unchanged.

Subparagraph 361-3.7(b)(1)(vi) is amended to read as follows:

(vi) The pH of the waste must be raised to 12 standard units or higher by alkali addition and, without the addition of more alkali, must remain at 12 or higher for [2]two hours, and then must remain at 11.5 or higher for an additional 22 hours.

Subparagraph 361-3.7(b)(1)(vii) through Section 361-3.8 (heading) remains unchanged.

Section 361-3.8 (opening paragraph) is amended to read as follows:

A product derived from biosolids, septage, or municipal solid waste, which is generated outside New York State, and which is offered for sale, sold, or given away within New York State, is not a waste for purposes of section 360.12 of this Title if the following conditions are satisfied:

Subdivision 361-3.8(a) is amended to read as follows:

(a) Request for product distribution. Before distribution of the product in New York State, the distributor [of the organics-derived product] must submit a written request to the department[to distribute an organics-derived product] and must obtain approval of the request[corresponding written confirmation must be obtained] from the department[prior to distribution]. The request must[be submitted to the department's central office and] contain, at a minimum, the following:

Paragraph 361-3.8(a)(1) through paragraph 361-3.8(a)(5) remain unchanged.

Paragraph 361-3.8(a)(6) is amended to read as follows:

(6) [for products used in bulk on a farm,] a description of any storage facilities for product that are located in New York State, including location, quantity stored, storage facility construction and duration of storage; and Paragraph 361-3.8(a)(7) through subdivision 361-3.8(b) remain unchanged.

Subdivision 361-3.8(c) is amended to read as follows:

(c) Contaminant limits and product use.

(1) The product quality and product use must comply with the criteria found in [subdivision][section] paragraphs 361-3.2(e)(20)-(26) and (30) of this [Part] Subpart.

(2) The duration, location, or quantity of stored product may be limited by the department to address potential odor or runoff concerns.

Subdivision 361-3.8(d) is amended to read as follows:

(d) Monitoring, recordkeeping, and reporting.

(1) A minimum of one analysis of the product is required for each 1,000 cubic yards of product distributed in New York State. The parameters of the analysis [and associated requirements] are found in Table 1 of section 361-3.9 of this Subpart.

(2) An annual report must be submitted to the department[‘s central office] by March 1st of each year. The report must include:

(i) all information and analytical results, including copies of the laboratory sheets, required by this section;

(ii) the quantity of product distributed in New York State;

(iii) a description of the product storage and product use; and

(iv) an outline of any problems encountered, complaints received, actions taken to mitigate any problems, and the outcomes.

Section 361-3.9, Table 1 is amended to read as follows:

Table 1

Parameters for Analysis

Total Kjeldahl Nitrogen	Arsenic (As)	Products must also analyze for:
Ammonia	Cadmium (Cd)	Fecal coliform or Salmonella sp. Bacteria
Nitrate	Chromium (total) (Cr)	<u>Physical contaminants</u>
Total Phosphorous	Copper (Cu)	
Total Potassium	Lead (Pb)	
pH	Mercury (Hg)	
Total Solids	Molybdenum (Mo)	
Total Volatile Solids	Nickel (Ni)	
	Selenium (Se)	
	Zinc (Zn)	

Section 361-3.9, Table 2 through Table 6 remains unchanged.

Subpart 361-4 (heading) remains unchanged.

Section 361-4.1 is amended to read as follows:

361-4.1 Applicability.

(a) This Subpart applies to [facilities]any facility that processes yard trimmings (other than grass clippings), tree debris, [and]or wood debris into mulch. [This Subpart does not govern the processing of construction and demolition (C&D) debris into mulch. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to:]This Subpart also applies to any facility that processes any

combination of these materials. In addition, in Nassau and Suffolk Counties, this Subpart applies to the storage of mulch even if no processing is occurring.

(b) This Subpart does not apply to the following facilities:

([a]1) a facility that composts yard trimmings. That type of facility, or portion thereof, is regulated under Subpart 361-3 of this Part;

([b]2) a facility for combustion or thermal treatment. That type of facility, or portion of one, is regulated under Subpart 362-1 of this Title; and

([c]3) a facility that processes wood that is C&D debris. That type of facility, or portion thereof, is regulated under Subpart 361-5 of this Part.

Section 361-4.2 (heading) through subdivision 361-4.2(a) remains unchanged.

Subdivision 361-4.2(b) is amended to read as follows:

(b) A facility with [less than] a maximum of 10,000 cubic yards total of material onsite, including storage of incoming material and processed material, provided the piles adhere to the size and spacing restrictions found in paragraphs[section] 361-4.3([a]b)(4) and ([5]6) of this Subpart[and ten feet is maintained between files].

Subdivision 361-4.2(c) is amended to read as follows:

(c) A facility used for the storage and processing of yard trimmings or [wood debris]tree debris that is considered storm debris from an area designated as a disaster area by the governor of New York State, provided criteria specified by the department are followed.

Subdivision 361-4.2(d) is repealed.

Section 361-4.3 is amended as follows:

361-4.3 Registered facilities

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with the operating requirements specified in this section.

([a]1) A facility with more than 10,000 cubic yards[of material] but less than 25,000 cubic yards of material onsite, including storage of incoming material and processed material, provided the following design and operating criteria are followed.

(b) For registered facilities, the following design and operating criteria apply.

(1) For wood debris, the facility has a program to preclude the acceptance of contaminated wood for mulch production and to inspect and remove any contaminated wood that arrives at the site. If the facility accepts pallets, the facility must have equipment to remove nails or other metal fasteners and must operate the equipment whenever pallets are being processed.

(2) The facility does not accept C&D debris, unless managed on a separate part of the property, in accordance with department criteria.

(3) Material does not remain on-site unprocessed for more than 12 months.

(4) All piles of material [that contain unprocessed material or material that has gone through a primary rough grind (4 to 6 inch pieces)]do not exceed 25 feet high and 30 feet wide at the base[and piles are triangular in cross section], except in Nassau and Suffolk Counties. In Nassau and Suffolk Counties, [pile sizes]the piles of material do not exceed 15 feet high and 30 feet wide at the base. [In all cases, primary grind material is not stored for more than 180 days.]

[(5) All piles of double or finely ground mulch do not exceed 15 feet high and 30 feet wide at the base and piles are triangular in cross section. Double or finely ground mulch is not stored for more than 90 days.]

(5) The mulch product is not stored for more than 180 days.

(6) For all piles of double or finely ground mulch, the temperature in the piles must be monitored at least [once] twice per week [, twice per month for other piles]. For all other piles, the temperature in the piles must be monitored twice per month. Multiple points in the piles are monitored with emphasis placed on areas that appear to be the hottest, such as vents and areas of fungal growth. Probing must be done cautiously to avoid introducing air into a hot spot and causing a flash fire. If the temperature is above 140 degrees Fahrenheit or a portion of the pile shows an increasing trend in temperature, the affected material must be immediately broken down and cooled.

(7) All piles of material, both unprocessed and processed, are separated by at least ten feet.

(8) Restacking of piles must occur when winds are blowing away from sensitive receptors.

[(8)9) Piles of processed material must be restacked as necessary to avoid temperatures above 140[F] degrees Fahrenheit [, piles are restacked at least once in a 180 day period].

[(9) Restacking of piles must occur when winds are blowing away from sensitive receptors.]

(10) Piles of processed material are piled loosely and not compacted in any manner.

(11) If a fire occurs, the affected portion of the pile must be dismantled and watered to douse the fire or managed in a manner recommended by a local fire department.

(12) Standing water on the storage area is minimized.

(13) For the purposes of Part 360 and this Part, precipitation, surface water, and groundwater that has come in contact with wood debris, tree debris, and yard trimmings, both incoming and processed, is not considered leachate, but must be managed in a manner acceptable to the department. The facility must have a written run-on and run-off plan, submitted with the registration request, that is acceptable to the department that outlines the methods that will be used to prevent run-on from entering and run-off from leaving the site and to minimize the movement of organic matter into the soil at the site.

(14) The following buffer areas from processing and storage are followed:

Feature	Minimum horizontal separation distance (in feet)
Property line	25
Residence*	200
Potable water well	200
Surface water and State regulated wetland	200

*Excludes owner's or operator's residence or a [residence]facility that existed prior to [the effective date of this Subpart]November 4, 2017 . The facility is required to comply with this requirement at the time the facility applies for a registration or permit. The facility is not required to comply with this requirement with respect to construction of nearby residences after the registration or permit application is submitted to the department.

(15) Facilities located in Nassau and Suffolk counties must comply with section 361-4.6 of this Subpart.

Section 361-4.4 is amended to read as follows:

361-4.4 Permit application requirements

A mulch processing facility [that is not an exempt facility or subject to the registration provisions of section 361-4.3 of this Title]with 25,000 cubic yards or more of material onsite, including storage of incoming material and processed material, must obtain a permit, and must submit an application that[demonstrates compliance with] includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title and sections 361-4.5 and 4.6 of this Subpart.

Section 361-4.5 is amended to read as follows:

361-4.5 Design and operating requirements for permitted mulch processing facilities

A mulch processing facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design and operate the facility in compliance with the design and operating

requirements specified in section 361-4.3(b) and section 361-4.6 of this Subpart and the recordkeeping and reporting requirements of section 361-4.[3]7 of this [Part]Subpart. [Also, the facility must have stormwater and run-off controls that minimize the potential for organic matter to reach groundwater and surface water resources.]

Section 361-4.6 is renumbered Section 361-4.7 and a new Section 361-4.6 is added to read as follows:

361-4.6 Groundwater Protection Requirements for Facilities Located in Nassau and Suffolk Counties

In addition to the other requirements outlined in this Subpart, the following criteria apply to registered and permitted mulch processing facilities located in Nassau and Suffolk Counties.

(a) Groundwater monitoring.

(1) A minimum of one upgradient and two downgradient monitoring wells must be installed and maintained at the facility. The department may require installation and operation of additional groundwater monitoring wells, based on site specific conditions. Siting and installation of wells must be consistent with acceptable criteria, as outlined in subdivision [section]363-4.4(k) of this Title.

(2) Groundwater monitoring wells must be sampled quarterly. Results of the analyses must be submitted to the department within 60 days after the sampling event. The parameters for analysis are: groundwater elevation; total dissolved solids (TDS); conductance, turbidity; pH, oxidation reduction potential (ORP); dissolved oxygen; chemical oxygen demand (COD); Total Kjeldahl nitrogen (TKN); nitrate nitrogen; sodium; chloride; ammonia; iron; and manganese. After the first year of monitoring, the facility owner or operator may request a reduced sampling frequency, if the water quality consistently meets the applicable groundwater standards.

(b) Site water management. Compliance with the following criteria is required if groundwater monitoring indicates that significant degradation of groundwater quality has occurred, as determined by the department.

Construction must be completed within one year after notification from the department.

(1) Run-off management criteria.

(i) The areas used for the receiving, processing, and storing of incoming materials and product must be designed, constructed, operated, and maintained to:

(‘a’) direct site water drainage and minimize ponding by sloping or crowning pads;

(‘b’) transmit run-off generated during the storage and processing of materials to a treatment and/or containment structure to minimize the potential for waste constituents to enter groundwater or surface water;

(‘c’) control and manage all run-off and precipitation that falls onto and within the boundaries of those areas from a 25-year, 24-hour peak storm event at a minimum; and

(‘d’) prevent stormwater, which has come in contact with waste, from impacting surface waters or groundwater, or causing conditions that reduce the ability to use neighboring properties.

(ii) Working surfaces must be sized appropriately and constructed to allow year-round equipment access to the piles without damage to the working surfaces, and treatment and containment structures.

(iii) Working surfaces must be constructed with a hydraulic conductivity of 1.0×10^{-5} cm/sec or less, and must consist of one of the following:

(‘a’) compacted soils, at least one foot thick;

(‘b’) asphalt concrete or Portland cement; or

(‘c’) an equivalent engineered material approved by the department.

(iv) Run-off must be treated by one of the following methods, unless other engineering controls are approved by the department.

(‘a’) Vegetative filters in combination with ponds or alone (for limited flow situations). The vegetative filter must consist of a mix of grasses and forbs, etc. and be designed to promote sheet flow. They need to be monitored periodically to:

(‘1’) remove accumulated sediment and organic matter that affects flow;

(‘2’) identify rill erosion and regrade; and

(‘3’) identify vegetative species with low survival rates and replace them with more successful native species to maintain dense vegetative coverage.

(‘b’) Detention and infiltration ponds. Run-off must be directed to a treatment pond system consisting of a minimum of three cells. Two cells must be detention ponds designed and operated in accordance with paragraph 361-4.6(b)(6) of this Subpart to allow for maintenance. The bottom of any infiltration pond used must be at least five feet above the seasonal high groundwater table.

(v) Use of run-off and treated run-off. Run-off and treated run-off (emanating from vegetative strips or a pond system) can be used for site dust suppression, to add moisture to the piles, or for other means approved by the department. Run-off should be applied in a manner that does not result in erosion. Treated run-off can also be managed through infiltration ponds. Any run-off that cannot be effectively managed on-site must be handled in a manner approved by the department.

(2) Storage and containment criteria.

(i) Detention ponds, if used, must:

(‘a’) have a liner having a hydraulic conductivity of 1.0×10^{-6} cm/sec or less, and must consist of one of the following:

(‘1’) a liner system consisting of a minimum of a 60-mil high density polyethylene liner, underlain by either one foot of compacted clay or a geosynthetic clay liner installed over a prepared base;

(‘2’) a liner system that includes Portland cement concrete, designed to minimize cracking and infiltration, underlain by a minimum of a 60-mil high-density polyethylene liner; or

(‘3’) an equivalent engineered material approved by the department;

(‘b’) have a leak detection system acceptable to the department;

(‘c’) at a minimum, be designed, constructed, and maintained to prevent overflowing or overtopping, based on the containment of all diverted site run-off in addition to precipitation that falls into the detention pond from a 25-year, 24-hour peak storm event;

(‘d’) be at least two feet above the seasonal high groundwater table;

(‘e’) be managed to maintain a dissolved oxygen concentration in the upper zone (one foot) of at least 1.0 milligram per liter (mg/l). Sediment-free water meeting this dissolved oxygen level can be discharged to an infiltration pond or equivalent;

(‘f’) be monitored quarterly, if sufficient water is available, for pH, dissolved oxygen, total dissolved solids, fixed dissolved solids, total nitrogen, and specific conductance using methods acceptable to the department; and

(‘g’) be cleaned at least once every year.

(ii) Tanks, if used, must be designed, constructed, and operated in compliance with the criteria in section 361-2.7.

(iii) Drainage ditches, if used to convey site water to storage or treatment, must:

(‘a’) be able to effectively convey the run-off from a 25-year, 24-hour peak storm event, at a minimum;

(‘b’) have a liner having a hydraulic conductivity of 1.0×10^{-5} cm/sec or less, and must consist of one of the following:

(‘1’) compacted soils, at least one foot thick;

(‘2’) asphalt concrete or Portland cement; or

(‘3’) an equivalent engineered material approved by the department;

(‘c’) be properly sloped to minimize ponding, kept free and clear of debris to allow continuous flow of liquid, be adequately protected from erosion; and

(‘d’) be cleaned at least once every year.

(3) Run-on management criteria.

(i) Surface water run-on must be controlled by diversion swales that are constructed on the site perimeter to collect potential run-on and direct it to an engineered outlet structure (riprap aprons, etc.) that minimizes erosion; or berms that are constructed on the site perimeter to divert potential run-on to an engineered outlet structure (riprap aprons, etc.) that minimizes erosion. Berms must be built from fine grained material that can be compacted sufficiently and vegetated with a mix of grasses and forbs to prevent erosion and washout.

Vegetation must be mowed no less than once per year.

(ii) Diversion swales and berms must be designed, constructed, and maintained to prevent run-on from a 25-year, 24-hour peak storm event, at a minimum.

(4) Inspection and reporting.

(i) All wells, working surfaces, berms, ditches, and any other run-on and run-off control or treatment devices must be inspected at least quarterly. Results of the quarterly inspections must be included in the annual report required by paragraph[section] 360.19(k)(3) of this Title, and must include:

(‘a’) date and time of inspection and name of inspector;

(‘b’) evidence of deficiencies such as cracking, subsidence, erosion, etc.;

(‘c’) evidence of ponding on the working surface and within the ditches;

(‘d’) effectiveness of erosion control procedures;

(‘e’) maintenance that has occurred to control run-off and run-on;

(‘f’) evidence of any liquid leaving or entering the site, including location, size, and quantity;

(‘g’) integrity of all drainage and treatment systems;

(‘h’) descriptions of all deficiencies and corrections implemented; and

(‘i’) any other analyses required by this Subpart.

(ii) All site water management and treatment devices must be inspected within seven days of all major storm events, and any necessary repairs must be made within 30 days. This information must be included in the annual report required by paragraph[section] 360.19(k)(3) of this Title.

(5) General site criteria.

(i) Piles of material must not be placed in topographic depressions that act as either run-off conveyance channels or where run-off accumulates. Piles or windrows must be placed in locations where the ground surface is crowned or otherwise sloped sufficiently to avoid ponding of water at the bases of the piles. Windrows should be oriented parallel to the slope, so that precipitation landing between the windrows can flow freely off the processing area.

Newly renumbered Section 361-4.7 is amended to read as follows:

Section 361-4.7 Recordkeeping and reporting requirements for registered and permitted mulch processing facilities

The following criteria apply to both registered and permitted facilities:

- (a) The facility must keep records as required by subdivision[section] 360.19(k) of this Title.
- (b) The facility must submit an annual report as required by paragraph[section] 360.19(k)(3) of this Title.

Subpart 361-5 is repealed and a new Subpart 361-5 is added to read as follows:

Subpart 361-5. Construction And Demolition Debris Handling And Recovery Facilities

Section 361-5.1 Applicability

This Subpart applies to any facility that processes or stores construction and demolition (C&D) debris in order to extract recyclable or reusable materials. This Subpart also applies to any combination of these activities. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 361-5.2 Exempt facilities

In addition to the exemptions provided for in section 360.14 of this Title, the following facilities are exempt from this Subpart:

(a) The storage of the materials listed in paragraphs 361-5.2(a)(1)-(3) of this subdivision located within the New York City Metropolitan Area Waste Impact Zone and under the control of the generator or the person designated by the generator to be responsible for the generation of the material which is anticipated to be reused under a beneficial use determination. The material listed in paragraphs 361-5.2(a)(1)-(4) of this subdivision must be stored separately and no more than 500 cubic yards in total of the materials on-site at any one time. Material that is no longer considered a solid waste under a beneficial use determination can be stored in any quantity.

(1) Fill Type 1;

(2) Fill Type 2;

(3) Fill Type 3; and

(4) recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings or mixtures of only the materials in this paragraph.

(b) The storage of the materials listed in paragraphs 361-5.2(b)(1)-(2) of this subdivision located outside of the New York City Metropolitan Area Waste Impact Zone and under the control of the generator or the person designated by the generator to be responsible for the generation of the material and which is anticipated to be reused under a beneficial use determination. The materials listed in paragraphs 361-5.2(b)(1)-(2) of this subdivision must be stored separately and no more than 10,000 cubic yards in total of the material on-site at any one time. Storage of greater than 2,500 cubic yards requires notification to the department on an annual basis. Material that is no longer considered a solid waste under a beneficial use determination can be stored in any quantity.

- (1) Fill Type 3; and
- (2) recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings or mixtures of only the materials in this paragraph.
- (c) a site authorized by the City of New York to temporarily stage C&D debris.

Section 361-5.3 Registered facilities

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with the applicable requirements of sections 361-5.5 and 361-5.6 of this Subpart.

(1) Facilities that receive a combination of the following recognizable, uncontaminated wastes: concrete and other masonry materials (including reinforcing embedded in concrete), brick, rock, and asphalt pavement or millings.

(2) Facilities that receive a combination of uncontaminated asphalt roofing shingles and roofing paper that do not contain friable asbestos-containing materials.

(3) Facilities that receive uncontaminated, unadulterated gypsum wallboard.

(4) Facilities that receive unadulterated, uncontaminated wood.

(5) Facilities that receive a combination of soil, sand, gravel, or rock directly from the site of excavation. The soil must have no visual or other indicators (odors, etc.) of chemical or physical contamination such as impacts from spill events and must not originate from any location within the five boroughs of New York unless the facility is owned or controlled by the City of New York.

(6) Facilities that receive a combination of other uncontaminated, source-separated recyclables generated from C&D debris for use under an approved case-specific beneficial use determination in accordance with section 360.12 of this Title.

(b) Facilities of the following types are subject to the registration provision of section 360.15 and section 360.19(b), (g), (j), and (k)(3) of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with sections 361-5.5 and 361-5.6 of this Subpart.

(1) A facility that stores only the following uncontaminated material: concrete and other masonry materials (including reinforcing embedded in concrete); brick, rock; asphalt pavement; or mixtures of these materials. Processing at this facility is prohibited.

Section 361-5.4 Permit application requirements

A C&D debris handling and recovery facility that is not exempt or subject to the registration provisions of section 361-5.3 of this Subpart must obtain a permit and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in section 360.19 of this Title and the design and operating requirements in section 361-5.5 of this Subpart.

Section 361-5.5 Design and operating requirements for registered and permitted facilities.

A C&D debris handling and recovery facility required to obtain a registration or permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

(a) All receiving, processing, and sorting activities must be conducted in an enclosed building unless otherwise specified in this Subpart or in the transition provisions of section 360.4(b)(4) of this Title. An enclosed building is not required for concrete and other masonry material (including reinforcing embedded in concrete), asphalt pavement, asphalt millings, brick, rock, excavated material, roofing shingles or unadulterated wood.

(b) All waste and recovered material delivered to and leaving the facility must be weighed or otherwise measured and recorded in cubic yards and tons.

(c) Friable asbestos-containing waste must not be accepted at the facility. Non-friable asbestos-containing waste, if received at the facility, must not be handled or processed in any way that would cause the material to become crumbled, pulverized, or reduced to powder.

(d) The facility must not accept C&D debris, excavated material, or similar material from a site being remediated pursuant to a program administered by the department or EPA unless accompanied by written approval from the department or EPA.

(e) Any Fill Type 4, Fill Type 5 or its residue leaving the facility for reuse must be analyzed in accordance with the sampling and analysis requirements in section 360.13(e) of this Title, except a minimum of one analysis is required for every 1,000 cubic yards of material produced. Any Fill Type 1, Fill Type 2 or Fill Type 3 leaving the facility for reuse must be analyzed at least four times per year in accordance with the sampling and analysis requirements in section 360.13(e) of this Title. The department may direct that this sampling be performed at any time during the calendar year.

(f) Storage requirements.

(1) Storage of processed and unprocessed C&D debris is limited as follows:

(i) Unprocessed asphalt pavement, asphalt millings, concrete and other masonry materials (including reinforcing embedded in concrete), brick, excavated material, rock, or wood can be stored uncovered, but in all cases storage is limited to 365 calendar days unless the following criteria are satisfied to justify a longer storage period.

(‘a’) There is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 365-day intervals or volumes that may take longer than 365 days to acquire.

(‘b’) The facility has sufficient storage area to prevent a negative impact to public health or the environment.

(‘c’) The facility implements an inventory control system, including daily logs, to ensure that the processed recyclables do not remain at the facility for longer than the period approved.

(‘d’) Prior to storing unprocessed and processed recyclables for longer than 365 calendar days, the facility must notify the department of its intent and include justification based on the requirements of this subdivision.

(ii) Storage of any other unprocessed C&D debris must be in an enclosed or covered storage area for a period not to exceed 30 calendar days unless written approval from the department is obtained.

(iii) Storage of material at the site must not exceed the declared volume identified in the application or registration documents.

(iv) Source-separated or processed and separated material that meets a beneficial use determination as specified in section 360.12 or 360.13 of this Title can be stored without time restriction so long as the storage volume conforms with the declared storage volume identified in the application or registration documents.

(2) Processed and unprocessed C&D debris must not be stored in excavations or below normal grade level of the facility.

(3) With the exception of concrete, asphalt pavement or cuttings, brick, or rock, a minimum separation distance of 10 feet must be maintained between adjacent storage piles unless the piles are stored in bins or other structures which separate piles. Storage piles must not extend over property boundaries.

(4) Storage area floors must be constructed of concrete or asphalt paving material and must be equipped with adequate drainage and retention structures. However, concrete or asphalt storage area floors are not required for the separate storage of processed or unprocessed uncontaminated concrete, other masonry waste, asphalt pavement, asphalt millings, unadulterated wood, brick, excavated material or rock.

(g) A permitted facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

(h) All C&D debris leaving the facility must meet the appropriate waste tracking document requirements of section 364-5.1 of this Title. Waste tracking documents are considered records pursuant to section 361-5.6 of this Subpart.

Section 361-5.6 Recordkeeping and reporting requirements

The following criteria apply to both registered and permitted facilities:

(a) The facility must keep records in accordance with section 360.19(k) of this Title. In addition to the requirements of section 360.19 of this Title, all C&D debris handling and recovery facilities must maintain daily records of the quantity of recyclables sent from the facility by material type, including the quantity and destination of material used as alternative operating cover as described in section 363-6.21 of this Title. The facility must keep generator copies of waste tracking documents received from transporters pursuant to paragraph 364-5.1(b)(6) of this Title.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title.

Subpart 361-6 (heading) remains unchanged

Section 361-6.1 is amended to read as follows:

Section 361-6.1. Applicability

This Subpart applies to [facilities which] any facility that stores, handles [and/]or processes waste tires. This Subpart also applies to any combination of these activities. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to a facility, or a portion of a facility, that is used for combustion or thermal treatment of waste tires, which is regulated under Subpart 362-1 of this Part.

Section 361-2 is amended to read as follows:

Section 361-6.2 Exempt facilities.

The following facilities and activities are exempt from this Subpart:

(a) [Facilities that are exempt] Storage and transfer of waste tires under [paragraph] section 360.14(b)(9) of this Title.

(b) Facilities that are registered under Subpart 361-7 of this Part and that [store] transfer tires with storage of less than 1,000 waste tires at any time. Tires that are mounted on vehicles or that are used to support vehicles (no more than six tires per vehicle) are not included in the total.

(c) The processing of waste tires at a farm by the owner of the farm for the purpose of producing a product which meets the beneficial use provisions of section 360.12(c)(2)(iv) of this Title.

(d) A waste tire stockpile site undergoing abatement pursuant to the New York State Waste Tire Stockpile Abatement Plan which processes tires for the purpose of producing a product meeting any requirement of Parts 360, 362, or 363 of this Title.

Section 361-6.3 (heading) through subparagraph 361-6.3(a)(1)(v) remain unchanged

Subparagraph 361-6.3(a)(1)(vi) is amended to read as follows:

(vi) [The facility is enclosed by a security fence] [i]If [more than] storage is in two or more enclosed trailers, [are located at the facility;]the facility or storage is secured to prevent unauthorized access by the use of fencing, gates, signs, natural barriers, or other suitable means as determined by the department.

Subparagraph 361-6.3(a)(1)(vii) through subparagraph 361-6.3(a)(2)(iv) remain unchanged.

Subparagraph 361-6.3(a)(2)(v) is amended to read as follows:

(v) if storage is in two or more enclosed trailers, the facility or storage area is [enclosed by a security fence;] secured to prevent unauthorized access by use of fencing, gates, signs, natural barriers, or other suitable means as determined by the department; and

Subparagraph 361-6.3(a)(2)(vi) through section 361-6.4 remain unchanged.

Section 361-6.5 (heading) is amended to read as follows:

Section 361-6.5 Design and operating requirements for permitted facilities.

Section 361-6.5 (opening paragraph) remains unchanged.

Subdivision 361-6.5(a) is amended to read as follows:

(a) for facilities that process tires, the storage of [whole] waste tires [is] received must be no greater than the 30-day production capacity of the facility [, and the storage of processed, cut or shredded tires is no greater than the 90-day production capacity of the facility];

Subdivisions 361-6.5(b) through (g) are renumbered subdivisions 361-6.5(c) through (h).

A new subdivision 361-6.5(b) is added to read as follows:

(b) for facilities that are only receiving waste tires for storage, the waste control plan must include a market analysis which identifies available and potential markets for waste tires.

Newly renumbered 361-6.5(c) through 361-6.5(h) remain unchanged.

Subdivisions 361-6.5(h) through (i) are renumbered subdivisions 361-6.5(j) through (k)

A new subdivision 361-6.5(i) is added to read as follows:

(i) facilities having a planned or actual storage capacity of 2,500 or more waste tires must be enclosed by a woven wire, chain-link or other fence material, at least six feet in height, with access controlled by locking gates.

Newly renumbered 361-6.5(j) through section 361-6.6 remain unchanged.

Subpart 361-7 (heading) is amended to read as follows:

Subpart 361-7 Scrap Metal Processing and Vehicle Dismantling Facilities

Section 361-7.1 (heading) remains unchanged.

Subdivision 361-7.1(a) is amended to read as follows:

(a) This Subpart applies to [facilities] any facility that receives, decommissions, processes, dismantles, stores, [and] or recycles any metal, discarded metal-containing products (e.g., appliances) [and] or end-of-life vehicles.

This Subpart also applies to any combination of these activities or materials. The requirements contained in Part 360 of this Title also apply to this Subpart.

Subdivision 361-7.1(b) through section 361-7.2 (opening paragraph) remain unchanged.

Subdivision 361-7.2(a) is amended to read as follows:

(a) Motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store no more than [25] 50 end-of-life vehicles on-site at any one time.

Subdivision 361-7.2(b) is amended to read as follows:

(b) Scrap metal processors that store no more than 1,000 cubic yards of metal on-site at any one time. [Storage of metal inside of a building is not included in this volume.]

A new subdivision 361-7.2(c) is added to read as follows:

(c) Vehicle dismantling facilities that receive no more than 25 end-of-life vehicles per year and store no more than 50 end-of-life vehicles on-site at any one time.

Section 361-7.3 (heading) remains unchanged.

Subdivision 361-7.3(a) is amended to read as follows:

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless they are otherwise exempt facilities. In lieu of the requirements of section 360.19 of this Title [and the operating requirements of section 361-7.4 of this Subpart], each facility must comply with the operating requirements of section 361-7.5 of this Subpart and the recordkeeping and reporting requirements in section 361-7.[5]6 of this Subpart.

Paragraph 361-7.3(a)(1) is repealed.

Paragraph 361-7.3(a)(2) is repealed.

Paragraph 361-7.3(a)(3) is renumbered 361-7.3(a)(1).

Newly renumbered paragraph 361-7.3(a)(1) is amended to read as follows:

(1) Scrap metal processors that store more than 1,000 cubic yards of metal on-site at any one time.

Subdivision 361-7.3(b) is amended to read as follows:

(b) The following vehicle dismantling facilities are subject to the registration provisions of section 360.15 of this Title. In addition to the criteria outlined in Part 360 of this Title, each facility must comply with the operating requirements specified in section 361-7.4 of this Subpart and the recordkeeping and reporting requirements in section 361-7.[5]6 of this Subpart.

Paragraph 361-7.3(b)(1) through paragraph 361-7.3(b)(3) remain unchanged.

Section 361-7.4 (heading) is amended to read as follows:

Section 361-7.4 Design and operating requirements for vehicle dismantling facilities

Section 361-7.4 (opening paragraph) is amended to read as follows:

[Except for facilities identified in section 361-7.3(a) of this Subpart, a facility] A vehicle dismantling facility required to obtain a registration under this Subpart must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

Subdivision 361-7.4(a) through subdivision 361-7.4(j) remain unchanged.

Section 361-7.5 is renumbered Section 361-7.6.

A new section 361-7.5 is added to read as follow:

Section 361-7.5 Operating requirements for scrap metal processors.

A scrap metal processor required to obtain a registration under this Subpart must, in addition to the requirements identified in Part 360 of this Title, maintain and operate the facility in compliance with the following criteria:

(a) All metal shavings and cuttings must be collected inside a building or within a secondary containment area with an impermeable surface and be properly disposed. The secondary containment area must be cleaned at a minimum on a weekly basis or at the end of a shift the day before a precipitation event. As part of the cleaning, all oily liquid must be drained and properly disposed or otherwise managed for reuse.

(b) All fluids must be drained, removed, collected and stored for appropriate use, treatment, or disposal to the maximum extent possible, utilizing best management practices. Small PCB capacitors, mercury switches, other mercury-containing devices, and refrigerants must be removed prior to crushing or shredding. If hazardous wastes are present, they must be disposed in compliance with Part 370 of this Title.

Newly renumbered section 361-7.6 through Subpart 361-8 (heading) remains unchanged.

Section 361-8.1 is amended to read as follows:

Section 361-8.1 Applicability.

This Subpart applies to [facilities] any facility that accepts used cooking oil or yellow grease for processing to produce ingredients for manufactured products (such as animal feed, etc.) or biofuels, including biodiesel. This Subpart also applies to any combination of these activities or materials. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to a facility solely used for combustion of used cooking oil and/or yellow grease or portion of a facility which is regulated under Subpart 362-1 of this Part.

Section 361-8.2 through subdivision 361-8.3(b) remain unchanged.

Subdivision 361-8.3(c) is amended to read as follows:

(c) Documentation is available at the facility that demonstrates fire prevention and protection systems are in accordance with State and local building and fire codes.

Subdivision 361-8.3(d) through paragraph 361-8.3(d)(5) remain unchanged.

Section 361-8.4 is amended to read as follows:

361-8.4 Permit application requirements.

A processing facility that is not an exempt facility or a facility subject to the registration provisions of section 361-8.3 of this Title must obtain a permit[,] and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating

requirements in Part 360 of this Title,² [and] the operating requirements in section 361-8.5 of this Subpart, and the recordkeeping and reporting requirements in section 361-8.6 of this Subpart.

Section 361-8.5 through Subpart 361-9 (heading) remain unchanged.

Section 361-9.1 is amended to read as follows:

Section 361-9.1 Applicability

This Subpart applies to [facilities] any facility that handles, stores [and/]or processes navigational dredged material (NDM). This Subpart also applies to any combination of these activities. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 361-9.2 through subdivision 361-9.3(a) remain unchanged.

Section 361-9.4 (heading) is amended to read as follows:

Section 361-9.4 Design and operating requirements for registered and permitted facilities

Section 361-9.4 (opening paragraph) is amended to read as follows:

An NDM handling and recovery facility required to obtain a registration or permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

Subdivision 361-9.4(a) through paragraph 361-9.4(b)(2) remain unchanged.

Paragraph 361-9.4(b)(3) is amended to read as follows:

(3) Processed and unprocessed NDM [shall] must not be stored in excavations or below normal grade level of the facility.

Paragraph 361-9.4(b)(4) through subdivision 361-9.4(c) remain unchanged.

Subdivision 361-9.4(d) is amended to read as follows:

(d) Processed and unprocessed NDM from a facility authorized pursuant to this Subpart may be [relocated to other sites pursuant to subdivision 360.13(d),] used pursuant to a case-specific BUD approved pursuant to

[subdivision]section 360.12([d]e) of this Title, or as alternative daily cover pursuant to [subdivision] section 363-6.21(c) of this Title.

Section 361-9.5 through subdivision 361-9.5(b) remain unchanged.

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Part 362 (heading) is amended to read as follows:

COMBUSTION, [THERMAL] TREATMENT, TRANSFER, AND COLLECTION FACILITIES

Subpart 362-1 (heading) is amended to read as follows:

COMBUSTION FACILITIES AND [THERMAL] TREATMENT FACILITIES

Section 362-1.1 (heading) remains unchanged.

Subdivision 362-1.1(a) is amended to read as follows:

(a) This Subpart applies to [facilities]any facility that uses combustion, chemical treatment or thermal treatment to treat solid waste. Facilities regulated by this Subpart include, but are not limited to: mass burn, modular, and fluidized bed combustors; thermal treatment facilities that utilize plasma arc, pyrolysis and gasification; low-temperature thermal desorption units such as thermal strippers and soil roasters; and facilities that combust refuse-derived fuel. The requirements contained in Part 360 of this Title also apply to this Subpart.

Subdivision 362-1.1(b) through subdivision 362-1.2(b) remain unchanged.

Subdivision 362-1.2(c) is amended to read as follows:

(c) A facility that combusts a traditional fuel or an alternative fuel[authorized by the department pursuant to 6

NYCRR Part 212 or 227] unless the fuel is stored at the facility prior to combustion.

A new subdivision 362-1.2(d) is added to read as follows:

(d) A facility or activity that combust solid wastes that are authorized under 6 NYCRR Section 215.3.

Section 362-1.3(heading) through subdivision 362-1.3(a) remain unchanged.

Paragraph 362-1.3(a)(1) is amended to read as follows:

(1) the process feedrate does not exceed [ten]10 tons per day;

Paragraph 362-1.3(a)(2) through paragraph 362-1.3(a)(6) remain unchanged.

Subdivision 362-1.3(b) is repealed and subdivisions (c) and (d) are renumbered subdivisions (b) and (c).

Newly renumbered subdivision 362-1.3(b) through newly renumbered paragraph 362-1.3(b)(2) remain unchanged.

Newly renumbered paragraph 362-1.3(b)(3) is amended to read as follows:

(3) a secondary containment system is in place for all storage of unprocessed and processed used cooking oil and yellow grease. The secondary containment system must be at least 110 percent of the volume of the largest

tank or the total volume of all interconnected tanks, whichever is greater. All storage [devices]tanks must have an overfill prevention system;

Newly renumbered paragraph 362-1.3(b)(4) through newly renumbered 362-1.3(b)(5)(i) remain unchanged.

Newly renumbered subparagraph 362-1.3(b)(5)(ii) is amended to read as follows:

(ii) inventory procedures to ensure that no unprocessed oil or grease is stored at the facility for more than 30 days, no processed oil or grease is stored longer than 12 months, and no residue is stored longer than [7]seven days;

Newly renumbered subparagraph 362-1.3(b)(5)(iii) through newly renumbered subparagraph 362-1.3(b)(5)(v) remain unchanged.

Newly renumbered subdivision 362-1.3(c) is amended to read as follows:

(c) a facility that stores, prior to combustion, a traditional fuel or an alternative fuel[authorized by the department pursuant to 6 NYCRR Part 212 or 227], where the traditional or alternative fuel is stored in an enclosed building, enclosed trailers, or other enclosed portable containers.

Section 362-1.4 (heading) through section 361-1.4 (opening paragraph) remain unchanged.

Subdivision 362-1.4(a) is repealed and a new subdivision 362-1.4(a) is added to read as follows:

(a) An engineering report that includes the total electric power to be consumed and generated at the facility in kilowatt-hours.

Subdivision 362-1.4(b) is amended to read as follows:

(b) A waste control plan that must include, in addition to the requirements of section 360.16([d]c)(4)(i) of this Title, the following:

Paragraph 362-1.4(b)(1) through subdivision 362-1.5(b) (heading) remain unchanged.

Paragraph 362-1.5(b)(1) is amended to read as follows:

(1) The facility must only receive and treat waste in accordance with the facility's approved waste control plan submitted in accordance with section 360.16(c)(4)(i) of this Title. The metal that is extracted subsequent to combustion is not considered to be a part of the facility's approved design capacity.

Paragraph 362-1.5(b)(2) through paragraph 362-1.5(b)(8) remain unchanged.

Paragraph 362-1.5(b)(9) is repealed and a new paragraph 362-1.5(b)(9) is added to read as follows:

(9) Regulated medical waste or source-separated pharmaceutical waste can only be accepted if it is:

(i) handled separately from other waste when received;

(ii) unloaded directly into the waste receiving pit;

- (iii) managed in a manner that ensures controlled substances are placed directly into the combustor and not placed in the waste receiving pit with other waste;
- (iv) handled in a manner that ensures the integrity of the containers until combustion;
- (v) combusted within a 24 hour-period; and
- (vi) identified in the facility's waste control plan.

Subdivision 362-1.5(c) (heading) through paragraph 362-1.5(c)(1) remain unchanged.

Paragraph 362-1.5(c)(2) is amended as follows:

(2) Toxicity characteristic testing requirements.

- (i) Residue must be tested for toxicity characteristic using the toxic characteristic leaching procedure found in 'EPA Method 1311 of Test Methods for Evaluating Solid Waste, Physical/Chemical Methods', as incorporated by reference in section 360.3 of this Title. Testing must be performed by a laboratory that has an Environmental Laboratory Approval Program (ELAP) certification from the New York State Department of Health. All residue analyses used to comply with the requirements of this Subpart must be done in accordance with 'EPA Method 1311 of Test Methods for Evaluating Solid Waste, Physical/Chemical Methods' and must be performed without site specific changes to these procedures. The details of the sample collection[, and analytical parameters[, and data deliverables] must be described in a site-specific sampling and analysis plan as described in section 362-1.4(c)(4) of this Subpart.
- (ii) Testing must begin within one month [after]following the commencement of operation and must be conducted biannually. Tests [much]must be conducted at least four, but no more than eight, months apart.
- (iii) After a minimum of four sampling rounds, a facility can [petition]submit a request for approval to the

department to reduce the parameters and/or frequency of testing required under this paragraph. Frequency of testing will not be reduced to less than one sampling round every five years.

Paragraph 362-1.5(c)(3) is amended as follows:

(3) Total metals testing requirements.

(i) Residue must be tested for the total content of arsenic, barium, beryllium, cadmium, chromium (total and hexavalent), copper, lead, mercury, nickel, silver, zinc, calcium, iron, aluminum, chloride, sulfate, and any other parameters determined by the department to be necessary. Testing must be performed by a laboratory that has an Environmental Laboratory Approval Program (ELAP) certification from the New York State Department of Health. All residue analyses used to comply with the requirements of this Subpart must be done in accordance with the approved EPA Method identified in the residue sampling and analysis plan and must be performed without site specific changes to these procedures. The details of the sample collection[,] and analytical parameters[, and data deliverables] must be described in a site-specific sampling and analysis plan as described in section 362-1.4(c)(4) of this Subpart.

(ii) Testing must begin within one month following the commencement of operation, and must be conducted at least four, but no more than eight, months apart[continue at six-month intervals].

(iii) After a minimum of four sampling rounds, a facility can [petition]submit a request for approval to the department to reduce the parameters and/or frequency of testing required under this paragraph. Frequency of testing will not be reduced to less than one sampling round every five years.

A new paragraph 362-1.5(c)(4) is added to read as follows:

(4) Residue analytical results must be submitted to the department as required by subdivision 362-1.6(c) of this Subpart. The results of all ash residue analyses performed to demonstrate compliance with this subdivision must be submitted, including any results that lead to the ash being reanalyzed. In the event that the ash residue is reanalyzed, an explanation must be included in the submittal.

Subdivision 362-1.5(d) through subdivision 362-1.5(f) remain unchanged.

A new subdivision 362-1.5(g) is added to read as follows:

(g) Food scraps.

After January 1, 2022, combustion facilities must take all reasonable precautions to not accept food scraps from designated food scraps generators required to send their food scraps to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department.

Section 362-1.6 (heading) remains unchanged.

Subdivision 362-1.6(a) is amended to read as follows:

(a) In addition to the recordkeeping requirements of section 360.19(k) of this Title, combustors and thermal treatment facility records must include records [associated with the]of its radioactive waste detection [plan]procedures required by section 362-1.5(b)(7) of this Subpart.

Subdivision 362-1.6(b) remains unchanged.

A new subdivision 362-1.6(c) is added to read as follows:

(c) Residue analytical results must be submitted to the department within 30 days of receipt of the result. The results of all ash residue analyses performed to demonstrate compliance with section 362-1.5(c) and the facility's residue sampling and analysis plan required under 362-1.4(c)(4) must be submitted, including any results that lead to the ash being reanalyzed. In the event that the ash residue is reanalyzed, an explanation must be included in the submittal.

Subpart 362-2 (heading) remains unchanged.

Section 362-2.1 is amended to read as follows:

362-2.1 Applicability

[In addition to Part 360 of this Title, t]This Subpart applies to [facilities]any facility that performs post-collection separation [and/]or processing of municipal solid waste to recover recyclables or to produce a refuse-derived fuel. This Subpart also applies to any combination of these activities. Post-collection separation does not satisfy the source-separation requirements of General Municipal Law section 120-aa or local recycling laws or ordinances.

Section 362-2.2 through subpart 362-3 (heading) remain unchanged.

Section 362-3.1 is repealed and a new section 362-3.1 is added to read as follows:

Section 362-3.1 Applicability

(a) This Subpart applies to any facility that receives solid waste, including source-separated recyclables, for the purpose of transfer to another facility for processing, treatment, disposal or further transfer. This Subpart also applies to any combination of these activities and materials. The requirements contained in Part 360 of this Title also apply to facilities subject to this Subpart. In addition to Part 360 of this Title, and this Subpart, facilities that process and separate construction and demolition debris are also regulated by Subpart 361-5 of this Title.

(b) This Subpart does not apply to:

- (1) a facility that receives regulated medical waste, which is regulated under Part 365 of this Title; and
- (2) a facility, or a portion of a facility that receives used oil. This type of facility, or portion of one, is regulated under Subpart 374-2 of this Title.

Section 362-3.2 (heading) through paragraph 362-3.2(a)(4) remain unchanged.

Subdivision 362-3.2(b) is amended to read as follows:

(b) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality that accepts no more than 20 cubic yards of waste per day [excluding] and no more than 20 cubic yards of source-separated recyclables per day, for the purpose of shipment to another authorized facility, provided the following criteria are met:

Paragraph 362-3.2(b)(1) through paragraph 362-3.2(b)(9) remain unchanged.

Subdivision 362-3.2(c) and 362-3.2(d) are renumbered to 362-3.2(d) and 362-3.2(e).

A new subdivision 362-3.2(c) is added to read as follows:

(c) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality, that accepts no more than 3,000 tons per year of yard trimmings for the purpose of shipment to another authorized facility, provided the following criteria are met:

- (1) only yard trimmings are accepted at the facility;
- (2) the transfer location and all vehicles are owned or leased by the municipality or a contractor working on behalf of the municipality;
- (3) the waste is not stored at the facility for more than five calendar days;
- (4) no more than 500 cubic yards of yard trimmings are on site at any time;
- (5) measures are taken to minimize the blowing of bags, grass, and leaves;
- (6) dust and odors are effectively controlled so that they do not constitute a nuisance, as determined by the department;
- (7) precipitation, surface water, and groundwater that has come in contact with yard trimmings must be managed within the site and must not enter a surface waterbody or a conveyance to a surface waterbody, or cause a violation of water quality standards promulgated in Part 750 of this Title; and
- (8) other activities regulated under Parts 360 through 365 of this Title are not conducted at the facility.

Newly renumbered subdivision 362-3.2(d) through newly renumbered paragraph 362-3.2(d)(1) remain

unchanged.

Newly renumbered paragraph 362-3.2(d)(2) is amended to read as follows:

(2) all organic waste is removed from the facility [on the day accepted or by the end of the next]within five business days; and

Newly renumbered paragraph 362-3.2(d)(3) through newly renumbered subdivision 362-3.2(e) remain unchanged.

A new subdivision 362-3.2(f) is added to read as follows:

(f) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality that accepts waste no more than five days per year, for the purpose of shipment to another authorized facility, provided the following criteria are met:

- (1) only residential waste is accepted at the facility;
- (2) the transfer location is owned or leased by the municipality or a contractor working on behalf of the municipality;
- (3) the waste is not placed on the ground at any time during the transfer;
- (4) all putrescible waste is removed from the facility once a container is full or at least once every seven days, whichever occurs first;
- (5) the waste is stored in rigid leak-proof containers and covered at the end of the operating day;
- (6) the municipality provides for the collection of source-separated recyclables at the facility;

- (7) waste received separately for recycling must be stored separately by waste type. Nonputrescible recyclables can be stored for up to 90 calendar days;
- (8) all waste is transferred manually from incoming vehicles to the waste containers; and
- (9) the facility accepts waste only when an attendant is on duty.

Section 362-3.3 (heading) through section 361-3.3 (opening paragraph) remain unchanged.

Subdivision 362-3.3(a) is amended to read as follows:

(a) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality, and receives less than 50 tons of waste per day, provided the following conditions are satisfied:

(1) a maximum of 250 tons or 1,000 cubic yards of waste[, excluding source-separated recyclables,] is located at the facility at any given time;

(2) all putrescible waste is removed from the facility [once a container is full or at least once every seven days]by the end of the next business day after the transfer container becomes full or within seven calendar days of receipt, whichever occurs first, and all nonputrescible [non-recyclable]waste is removed within 30 calendar days of receipt;

(3) the facility accepts waste only when an attendant is on duty; and

(4) the municipality provides for the collection of source-separated recyclables at the facility [and is authorized as a recyclables handling and recovery facility to accept source-separated recyclables under Subpart 361-1 of this Title. Waste received separately for recycling must be stored separately by type. Nonputrescible recyclables can be stored for up to 180 calendar days] unless alternative recyclables collection methods are available and the department agrees in writing that the alternative methods meet the requirements of this paragraph.

A new subdivision_362-3.3(b) is added to read as follows:

(b) A facility used for the transfer of septage from only one transporter who uses no more than two of the transporter's vehicles to collect residuals from a composting toilet (liquids and solids), provided the conditions of section 362-3.5(h)(1)-(5) of this Subpart are met.

A new subdivision 362-3.3(c) is added to read as follows:

(c) A facility that receives source-separated recyclables for transfer to another facility or point of reuse, provided the following conditions are satisfied:

- (1) the facility accepts putrescible recyclables only when an attendant is on duty;
- (2) recyclables must be stored separately from any other waste that is being accepted at the facility;
- (3) putrescible source-separated recyclables must be removed from the facility by the end of the next business day after the on-site storage container becomes full or within seven calendar days of receipt, whichever occurs first;
- (4) nonputrescible recyclables can be stored for up to 180 calendar days, unless the following criteria are satisfied to justify a longer storage period:
 - (i) there is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 180-day intervals or volumes that may take longer than 180 days to acquire;
 - (ii) the facility has sufficient storage area to prevent a negative impact to public health or the environment;
 - (iii) the facility implements an inventory control system, including daily logs, to ensure that the recyclables do not remain at the facility for longer than the period approved; and

(iv) prior to storing recyclables for longer than 180 days, the facility must notify the department of its intent and provide justification based on the requirements of this paragraph.

(5) recyclables are stored in a manner to ensure marketability is not adversely affected;

(6) all recyclables delivered to or leaving a facility that receives more than 5 tons/day must be weighed and recorded; and

(7) transfer facilities that receive food scraps from a designated food scraps generator after January 1, 2022 must ensure that the food scraps are transferred to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department. All reasonable precautions must be taken to not commingle the food scraps with any other solid waste unless such commingled waste can be processed by the facility regulated by Subpart 361-2 or 361-3 of this Title to which the commingled waste is transferred.

Section 362-3.4 through Section 362-3.5 (opening paragraph) remain unchanged.

Subdivision 362-3.5(a) is amended to read as follows:

(a) Source-separated [recyclables, source-separated]household hazardous waste, source-separated electronic wastes, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs in New York State must not be accepted by the facility.[Source-separated recyclables must only be accepted if the facility is also authorized as a recyclables handling and recovery facility under Subpart 361-1 of this Title.]

Subdivision 362-3.5(b) is amended to read as follows:

(b) All tipping, sorting, processing, compaction, storage, loading, and related activities, which the exception of those at residential drop-off locations for non-commercial customers, must be conducted in an enclosed building unless otherwise specified in the transition provisions of section 360.4(g) of this Title and with adequate odor controls to effectively control off-site nuisances. Nonputrescible waste may be stored in outdoor areas if it is stored in closed containers or covered trailers.

Subdivision 362-3.5(c) through subdivision 362-3.5(d) remain unchanged.

Subdivision 362-3.5(e) is amended to read as follows:

(e) Radioactive waste detection procedures and requirements.

Permitted transfer facilities from which MSW or drilling and production waste is transported out_of_state must meet the following requirements:

Paragraph 362-3.5(e)(1) through paragraph 362-3.5(g)(1) remain unchanged.

Paragraph 362-3.5(g)(2) is amended to read as follows:

(2) all transfer of friable asbestos-containing waste must be conducted in an enclosed structure equipped with systems to minimize the discharge of asbestos to the environment using the best available control technology (BACT) as defined in section 200.1([i]j) of this Title; and

Paragraph 362-3.5(g)(3) remains unchanged.

Subdivision 362-3.5(h) and subdivision 362-3.5(i) are renumbered to subdivision 362-3.5(i) and subdivision 362-3.5(j).

A new subdivision 362-3.5(h) is added to read as follows:

(h) Any septage waste accepted at the facility must be managed in accordance with the facility's waste control plan. At a minimum, the following requirements must be met:

(1) the storage, loading, and unloading areas must be constructed of concrete or asphalt paving material and must be equipped with adequate drainage structures that are directed to enclosed tanks that meet the requirements of section 360.19(n) of this Title or a sanitary sewer system.

(2) the minimum horizontal separation distances from the perimeter of the tank(s) must meet the requirements found in section 361-2.5(b)(1) of Part 361 of this Title;

(3) the tank(s) must be completely emptied, cleaned, and inspected or a leak detection test approved by the department must be performed, at least once every 12 months. The department must be notified at least one week before the inspection or leak detection test begins. Any damage or deterioration revealed must be repaired before the facility again receives waste;

(4) the tank must be constructed of concrete, steel, or other material approved by the department that prevents leakage. A minimum of two feet of freeboard must be maintained at all times; and

(5) all waste must be removed from the transfer facility by the end of the fifth business day after the tank becomes full.

Newly renumbered subdivision 362-3.5(i) through newly renumbered subdivision 362-3.5(j) remain unchanged.

A new subdivision 362-3.5(k) is added to read as follows:

(k) Food scraps requirements. After January 1, 2022, transfer facilities that receive food scraps from a designated food scraps generator must meet the following requirements:

(1) ensure that the food scraps are taken to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department.

(2) take all reasonable precautions to not commingle the food scraps with any other solid waste unless such commingled waste can be processed by the facility regulated by Subpart 361-2 or 361-3 of this Title to which the commingled waste is transferred.

Section 362-3.6 through subpart 362-4 (heading) remain unchanged.

Section 362-4.1 is amended to read as follows:

Section 362-4.1 Applicability.

This Subpart applies to the collection, storage [and]or disposal of household hazardous waste (HHW) [and]or hazardous wastes from conditionally exempt small quantity generators (CESQGs) as defined in Part 371 of this Title, managed at HHW collection facilities or HHW collection events. This Subpart also applies to any combination of these activities and materials. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 362-4.2 is amended to read as follows:

Section 362-4.2 Registered HHW events

The following events are subject to the registration provisions of section 360.15 of this Title. For purposes of this section, the site plan required in section 360.15(c)(4) of this Title must be available on-site while the collection event takes place and does not need to be submitted with the registration submission. Each [facility or]collection event must comply with the criteria outlined in this section[, section 360.19 of this Title] and section 362-4.5 of this Subpart. For purposes of this Subpart, registrations are valid for no more than one year.

Subdivision 362-4.2(a) through subparagraph 362-4.2(a)(4)(iii) remain unchanged.

Subparagraph 362-4.2(a)(4)(iv) is amended to read as follows:

(iv) the transportation of collection event waste must be accompanied by shipping documents[or manifests]. The identity of the program sponsor, the date(s) of collection, the intended receiving facility, the volume, the waste type, and the hazard class of the waste must be listed on the shipping document; and

Subparagraph 362-4.2(a)(4)(v) through subdivision 362-4.3(e) remain unchanged.

Section 362-4.4 is amended to read as follows:

Section 362-4.4 Design and operating requirements

A facility required to obtain a permit under this Subpart must, in addition to the requirements identified in [Part]section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria for HHW and CESQG waste. HHW collected that does not qualify as either type of waste must be disposed as solid waste.

Subdivision 362-4.4(a) through subdivision 362-4.4(g) remain unchanged.

Subdivision 362-4.4(h) is amended to read as follows:

(h) The transportation of HHW or CESQG waste, or both, must be accompanied by shipping documents[or manifests]. The identity of the program sponsor and date(s) of collection, the intended receiving facility, the volume, the waste type, and the hazard class of the waste must be listed on the shipping document.

Subdivision 362-4.4(i) through paragraph 362-4.4(k)(3) remain unchanged.

Paragraph 362-4.4(k)(4) is amended to read as follows:

(4) the transportation of HHW and CESQG waste from a satellite collection event must be accompanied by shipping documents[or manifests]. The identity of the program sponsor, the date(s) of collection, the intended receiving facility, the volume, the waste type and the hazard class of the waste must be listed on the shipping document;

Paragraph 362-4.4(k)(5) through paragraph 362-4.5(a)(3) remain unchanged.

Paragraph 362-4.5(a)(4) is amended to read as follows:

(4) copies of shipping documents[or manifests].

Subdivision 362-4.5(b) remains unchanged.

A new Subpart 362-5 is added to read as follows:

Subpart 362-5 Paint Collection Sites Collecting Postconsumer Architectural Paint Under a Department-Approved Postconsumer Paint Collection Program

Section 362-5.1 Applicability

(a) This Subpart applies to the collection and storage of postconsumer architectural paint from households or conditionally exempt small quantity generators (CESQGs) pursuant to a department-approved postconsumer paint collection program (PPCP) pursuant to Title 20 of Article 27 of the ECL.

(b) Any paint collection site that accepts household hazardous waste (HHW) or hazardous wastes from CESQGs as defined in Part 371 of this Title other than that generated from postconsumer architectural paint, must be authorized as required by Subpart 362-4 of this Part.

Section 362-5.2 Definitions

The following definitions apply to this Subpart:

(a) 'architectural paint' means interior and exterior architectural coatings sold in containers of five gallons or

less; provided, however, that "architectural paint" shall not include industrial, original equipment or specialty coatings.

(b) 'postconsumer paint' means architectural paint not used and no longer wanted by a consumer.

(c) 'producer' means a manufacturer of architectural paint who sells, offers for sale or distributes the architectural paint in the state.

(d) 'postconsumer paint collection program (PPCP)' means the postconsumer paint collection program established pursuant to section 27-2003 of the ECL.

(e) 'representative organization' means a not-for-profit organization established by producers to implement the postconsumer paint collection program.

Section 362-5.3 Exempt Sites

The following sites are exempt from this Subpart. Nothing in this section exempts paint collection sites that are subject to permit or registration requirements under another Subpart of this Title.

(a) A paint collection site that registered with the department to collect postconsumer paint under a department-approved PPCP plan, which collects and manages only latex paint wastes and other architectural paint wastes that do not meet the definition of HHW as defined in Section 360.2 or CESQG waste.

Section 362-5.4 Registered Paint Collection Sites

(a) A paint collection site that collects and manages architectural paint household hazardous wastes or wastes from CESQGs as part of a department-approved PPCP plan pursuant to Title 20 of Article 27 of the ECL is a registered facility under this Subpart and Part 360 of this Title. Such a facility is not subject to the requirements of section 360.15 of this Title. The registration is effective for so long as the PPCP plan remains effective and the site is operated in compliance with the PPCP plan and its registration.

Section 362-5.5 Operating Requirements

(a) A paint collection site registered under this Subpart is not subject to the requirements of section 360.19 of this Title. A paint collection site registered under this Subpart is authorized to accept HHW or CESWG waste generated from architectural paint pursuant to a department-approved PPCP plan provided the following requirements are met:

- (1) the authorized representative of the site completes and signs a Certification for Postconsumer Paint Collection Site, as prescribed by the department, and the Certification is submitted to the department either directly or via a paint producer or representative organization; and
- (2) the site is operated in compliance with the department-approved PPCP plan.

(b) A paint collection site must not accept HHW or CESQG waste generated from architectural paint under any of the following circumstances:

- (1) the site is not authorized to accept architectural paint under a department-approved PPCP plan.
- (2) the site is not operating in compliance with the PPCP plan under which it is registered;
- (3) the site is not operating in compliance with its registration; and
- (4) the site has been removed from participation in a department-approved PPCP plan.

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Part 363 is amended to read as follows:

Subpart 363-1 (heading) remains unchanged.

Section 363-1.1 is amended to read as follows:

Section 363-1.1 Applicability

(a) In addition to the requirements contained in Part 360 of this Title, this Part applies to new landfills, existing landfills both active and inactive, lateral [~~and~~]or vertical expansions of existing landfills, [~~or~~]and landfills undergoing subsequent development. This Part also applies to any combination of these activities. This Part also applies to inactive disposal facilities [required by section 363-3.1] subject to Subpart 363-3 of this Part [to notify the department].

Subpart 363-2 (heading) remains unchanged.

Section 363-2.1 (heading) remains unchanged.

Section 363-2.1 (opening paragraph) is amended to read as follows:

The following activities or facilities are exempt from this [Subpart]Part[.]:

Subdivision 363-2.1(a) through paragraph 363-2.1(a)(13) remain unchanged.

Subdivision 363-2.1(b) is amended to read as follows:

(b) The storage, processing, and disposal of solid waste generated from farm-related activities provided all storage, processing and disposal occurs on a farm, though not necessarily the generating farm, excluding construction and demolition (C&D) debris and wastes identified in subdivision (a) of this section. For animal mortalities:

(1) the animal carcass must be buried within 72 hours of death, unless a longer period is approved by the department;

(2) the burial pit must not be located in a special flood hazard area, and must be 200 feet from the property line, a residence (excluding the farmer's residence), a potable water well, a surface water body, and a state or federally-regulated wetland;

(3) the base of the burial pit must be at least two feet above seasonal high groundwater, four feet above bedrock or other confining layer, and the underlying soil must not exceed a permeability of one inch per hour;

(4) a maximum of three large animal carcasses (bovine, equine, etc.) are allowed in one pit. For small animals, a maximum depth of three foot of small animal carcasses in a 10-foot by 10-foot area burial pit is allowed;

(5) a minimum of 10 feet of undisturbed soil is required between burial pits and no more than 50 large animal carcasses (or equivalent) are allowed per acre;

(6) for mass mortalities caused by barn fires or other similar incidents, trenches may be allowed in lieu of the pits described in paragraphs 363-2.1(b)(4) and (5) of this Part, as determined by the department;

(7) a minimum of one-foot depth of absorbent natural material (sawdust, straw, bedding (other than sand), etc.) must be placed under the carcass and extend at least six inches around the carcass, unless the soils present are sufficiently impermeable, as determined by the department;

(8) at least three feet of soil must be placed above the carcass. A finished grade that is slightly above natural ground elevation, to accommodate settling and reduce ponding from precipitation, is required. The surface must also be vegetated to minimize run-off;

(9) run-off must be directed away from the pit(s);

(10) a pit cannot be reused unless the prior mortality has undergone complete tissue degradation; and

(11) the animals do not emanate from research or are otherwise subject to regulation under Part 365 of this Title.

Subdivision 363-2.1(c) is amended to read as follows:

(c) An individual grave, [including one at a pet cemetery]~~excluding one regulated under subdivision 363-2.1(b) of this Part~~, for the burial of one animal carcass. Animal cremains may be buried or spread on the soil surface provided the ash amount does not represent more carcasses in a given area than would be allowed if the animals were buried in individual graves.

Subdivision 363-2.1(d) is amended to read as follows:

(d) [A facility for] The disposal in the right-of-way of a State or municipal highway of up to ten road-killed animals[in the right-of-way of a public highway] provided the [facility] right-of-way is at least 200 feet from drinking water wells and 50 feet from any residence, surface water, or any other disposal area for road- killed animals. The animal[s] carcasses must be placed at least two feet above groundwater and must be covered with at least three feet of soil.

Subdivision 363-2.1(e) is amended to read as follows:

(e) [A disposal facility for]The disposal of drill cuttings generated by air- or water-based drilling methods, overburden, tailings, and other similar mining and drilling waste when generation and disposal occur at the same mine or well location subject to regulation under Parts 420-425 and 550-559 of this Title.

Subdivision 363-2.1(f) is amended to read as follows:

(f) [A disposal facility for]The burial of no more than ten cubic yards of religious items limited to paper, parchment, leather, and fabric in accordance with applicable religious practices and covered by at least two feet of soil from the same excavation.

Subdivision 363-2.1(g) through paragraph 363-2.1(g)(4) remain unchanged.

Subdivision 363-2.1(h) is repealed.

Subdivision 363-2.1(i) is renumbered subdivision 363-2.1(h).

Newly renumbered subdivision 363-2.1(h) is amended to read as follows:

(h) [A facility]The disposal of waste, except [those]in areas located in Nassau or Suffolk counties, where waste generated by state or municipal highway projects and managed on highway rights-of-way or municipally owned properties is accepted, consisting only of recognizable, uncontaminated concrete or concrete products (including

those that have embedded [steel or fiberglass]reinforcing [rods]material), asphalt pavement, asphalt millings, brick, [glass,]rock, [general fill, and restricted-use fill]or excavated material that complies with the physical criteria in Table 2 of section 360.13 of this Title for Fill Type 1, Fill Type 2, or Fill Type 3 from construction and demolition activities, and which complies with the following conditions:

- (1) the waste does not include residues from C&D debris handling and recovery facilities;[and]
- (2) waste is placed above the seasonal high groundwater table; and [no waste is placed in a surface water body.]
- (3) no waste is placed in a surface water body.

A new subdivision 363-2.1(i) is added to read as follows:

- (i) disposal within a state, municipal, or utility right-of-way of tree debris generated by the clearing of the right-of-way.

Subpart 363-3 (heading) through Section 363-3.1 (opening paragraph) remain unchanged.

Subdivision 363-3.1(a) is amended to read as follows:

- (a) any intent or plan to disturb [such]the disposal area. Notification to the department must be made prior to disturbance of the disposal area or, if applicable, any landfill cap; or

Subdivision 363-3.1(b) remains unchanged.

A new Section 363-3.2 is added to read as follows:

Section 363-3.2 End use

The owner or operator of a disposal facility where an end use is proposed must meet the requirements of section 363-9.7.

Subpart 363-4 (heading) through subparagraph 363-4.2(a)(3)(vii) remain unchanged.

Subparagraph 363-4.2(a)(3)(viii) is amended to read as follows:

(viii) the location and identification of special waste (such as, alternative operating cover materials or select fills[materials]) handling areas;

Subparagraph 363-4.2(a)(3)(ix) through subparagraph 363-4.3(c)(2)(iv) remain unchanged.

Paragraph 363-4.3(c)(3) is amended to read as follows:

(3) a demonstration that the design considers an appropriate selection of shear strengths based on the variability of materials the potential for mobilization of post-peak displacement shear strengths. The potential pore pressure regimes caused by liquid buildup, seepage forces, and landfill gas pressures should also be considered and the system should achieve[s] the following factors of safety under static stability conditions:

Subparagraph 363-4.3(c)(3)(i) through Subparagraph 363-4.3(c)(3)(iv) remain unchanged.

Subdivision 363-4.3(d) is amended to read as follows:

(d) a seismic stability analysis. Any facility located in a seismic impact zone, as defined in section 360.2, must include a seismic stability analysis. The seismic stability analysis must address the serviceable life of the landfill, its internal components and its related appurtenances and must demonstrate that:

Paragraph 363-4.3(d)(1) is amended to read as follows:

(1) all long-term containment structures, including liners, the leachate collection and removal system, and the surface water control system but excluding the cover system, are stable by utilizing either:

(i) a pseudo-dynamic analysis, requiring both the static and pseudo-static analyses to be based on large-displacement shear strengths (3 inch) along the critical surface, that demonstrates all long-term containment structures are designed to retain a minimum factor of safety of 1.0 using a seismic coefficient (expressed as a fraction of the acceleration of gravity) equal to [one-half]0.75 of the free field peak ground acceleration at the site for the design earthquake (i.e., the earthquake [induced maximum horizontal acceleration of 0.01g]that has a 10 percent or greater probability in 250 years or two percent or greater probability in 50 years in the lithified earth from the latest USGS seismic hazard map or site specific seismic hazard study); or

(ii) a displacement analysis that limits the calculated permanent seismic deformations to less than six inches using a decoupled seismic response/deformation analysis, to resist the maximum horizontal acceleration for the site. If the computed displacement is greater than 0.4 inch then large-displacement shear strengths (3 inch) must be used for both the static and the dynamic analysis.

Paragraph 363-4.3(d)(2) through subparagraph 363-4.3(e)(1)(i) remain unchanged.

Subparagraph 363-4.3(e)(1)(ii) is amended to read as follows:

(ii) an evaluation of impacts on the portion of the landfill's leachate collection and removal system, that does not have intermediate or final cover material placed, which would result from a 500-year storm and provide discussion of mitigating procedures to any[such] impacts; and

Subparagraph 363-4.3(e)(1)(iii) through subparagraph 363-4.3(e)(2)(i) remain unchanged.

Subparagraph 363-4.3(e)(2)(ii) is amended to read as follows:

(ii) allow for effective monitoring of leachate flow and liner system performance in accordance with paragraph (3) of this subdivision; and

Subparagraph 363-4.3(e)(2)(iii) through subdivision 363-4.3(f) remain unchanged.

Subdivision 363-4.3(g) is repealed and a new subdivision 363-4.3(g) is added to read as follows:

(g) a mined use plan.

(1) If the facility plans to use material excavated on-site as operating cover for the landfill, and construction of that landfill will not take place in the area from which the operating cover material is to be removed, the facility must submit a mined land use plan with information that demonstrates compliance with the applicable requirements of Part 422 of this Title.

(2) A mined land use plan is not required if the facility plans to perform on-site excavation of material to be used as operating cover for the landfill and the landfill footprint will be situated upon the area from which the operating cover material is to be removed.

(3) Material excavated on-site may not be used off-site unless the applicant has first obtained a mining permit pursuant to Part 421 of this Title;

Subdivision 363-4.3(h) through clause 363-4.4(a)(2)(ii)(‘b’) remain unchanged.

Clause 363-4.4(a)(2)(ii)(‘c’) is amended to read as follows:

(c) describe hydrogeologic conditions in sufficient detail to [construct]establish a comprehensive understanding of groundwater flow that can be quantified and verified through hydrologic, geochemical, and geophysical measurements;

Clause 363-4.4(a)(2)(ii)(‘d’) through subdivision 363-4.4(b) through remain unchanged.

Subdivision 363-4.4(c) is amended to read as follows:

(c) The applicant must employ current, standard, and generally accepted methods and procedures in obtaining the required hydrogeologic information.

Paragraph 363-4.4(c)(1) through subdivision 363-4.4(e) remain unchanged.

Subdivision 363-4.4(f) is amended to read as follows:

(f) Test pits. Test pits may be used to determine shallow stratigraphy. The test pits must be logged by a professional geologist or engineer licensed to practice in the State of New York, and with experience in similar hydrogeologic investigations. Logs must be kept and include: elevations; surface features before excavation; depth of the test pit and of all relevant horizons or features; moisture content of units; standard soil classifications, stratigraphy, soil structure, bedrock lithology, and brittle or secondary structures in soil and bedrock; active seepage; and a sketch showing these features for each test pit. Test pits must be promptly backfilled and compacted with the excavated materials. The department may require that undisturbed soil samples be taken and tested in accordance with paragraph 363-4.4(l)(2) of this section.

Subdivision 363-4.4(g) through subparagraph 363-4.4(k)(2)(i) remain unchanged.

Subparagraph 363-4.4(k)(2)(ii) is amended to read as follows:

(ii) Well screens are required for all wells and piezometers, unless otherwise approved by the department. All screens used must be factory-constructed, non-solvent welded/bonded, continuous-slot, wire-wrap screens of a material appropriate for long-term monitoring. The slot size of the screen must be compatible with the sand pack. Water table variations, site stratigraphy, expected contaminant behavior, and groundwater flow must be considered in determining the screen length, materials, and position. Where existing contamination is suspected or known, downhole geophysical techniques may be required by the department to aid in selecting well screen elevations.

Subparagraph 363-4.4(k)(2)(iii) through subparagraph 363-4.4(k)(6)(iii) remain unchanged.

Paragraph 363-4.4(k)(7) is amended to read as follows:

(7) Well extension. All well extensions must be constructed to ensure the future use of the well. [The outer casing and the concrete pad must be removed prior to extending the well casing.] Well extensions shall be designed to maintain the future integrity of the well casing and to prevent surface water intrusion into the well casing. Failure of a well extension will require well replacement.

Subdivision 363-4.4(l) through section 363-4.6 (opening paragraph) remain unchanged.

Subdivision 363-4.6(a) is amended to read as follows:

(a) Sustainability plan. The sustainability plan must describe how the landfill will be designed and operated in a manner that will conserve and sustain natural resources. The sustainability plan must describe how natural resources and airspace will be conserved through use of concepts such as front-end diversion of recyclables, reduced disposal of organic wastes, reduction in greenhouse gas emissions, utilization of alternative operating cover materials, alternative energy or materials resource production, promote rapid waste mass stabilization, utilize landfill reclamation, or other sustainable landfill management techniques. The sustainability plan must be updated and submitted to the department no less than every five years and at the time of permit renewal.

Subdivision 363-4.6(b) through paragraph 363-4.6(f)(1) remain unchanged.

Paragraph 363-4.6(f)(2) is amended to read as follows:

(2) a description of all proposed monitoring points, including leachate, condensate, underdrains, groundwater, surface water, and sediment;

Paragraph 363-4.6(f)(3) through subparagraph 363-4.6(f)(8)(iv) remain unchanged.

A new subparagraph 363-4.6(f)(8)(v) is added to read as follows:

(v) Condensate sampling. The location of all condensate sampling points at the facility must be described. Condensate sampling in new cells must be done semi-annually for expanded parameters for a minimum of five years. After five years, the department may consider reductions in the frequency of testing, number of parameters analyzed, and number of locations sampled if the owner or operator demonstrates constituent concentrations are stable as supported by statistical analysis and that the proposed remaining sampling locations will be representative of the locations previously sampled.

Paragraph 363-4.6(f)(9) through subclause 363-4.6(f)(9)(ii)(‘h’)(‘2’) remain unchanged.

Subparagraph 363-4.6(f)(9)(iii) is amended to read as follows:

(iii) Contingency water quality. A contingency water quality monitoring, as described in this paragraph, which must be conducted when a significant increase over the existing water quality value has been detected pursuant to clause (f)(9)(ii)([‘e’]’f) of this paragraph for one or more of the routine or baseline parameters listed in the

Water Quality Analysis Tables in subdivision (h) of this section. All contingency water quality monitoring plans are subject to department approval, and must include the following:

Clause 363-4.6(f)(9)(iii)(‘a’) through subclause 363-4.6(f)(9)(iii)(‘b’)(‘2’) remain unchanged.

Subclause 363-4.6(f)(9)(iii)(‘b’)(‘3’) is amended to read as follows:

(3) establish groundwater protection standards for all parameters that exceed trigger values calculated in accordance with item (f)(9)(i)(‘b’)(‘4’)(‘i’) of this paragraph. The groundwater protection standards must be established in accordance with clause ([‘f’]’c’) of this subparagraph.

Subclause 363-4.6(f)(9)(iii)(‘b’)(‘4’) remains unchanged.

Subclause 363-4.6(f)(9)(iii)(‘b’)(‘5’) is amended to read as follows:

(5) if the concentrations of any expanded parameters are above the applicable trigger values, but all concentrations are below the groundwater protection standard established under [subparagraph]clause ([vi]’c’) of this subparagraph, the owner/operator must continue contingency monitoring.

Subclause 363-4.6(f)(9)(iii)(‘b’)(‘6’) through subclause 363-4.6(f)(9)(iii)(‘b’)(‘7’) is repealed.

A new subclause 363-4.6(f)(9)(iii)(‘b’)(‘6’) is added to read as follows:

(6) if one or more parameters are detected at levels above the groundwater protection standard established under clause ('c') of this subparagraph in any sampling event, the owner or operator must notify the department within 24 hours to identify the expanded parameters that have exceeded the groundwater protection standard, and notify appropriate local government officials within seven days of detection. The owner or operator must also:

(i) demonstrate that a source other than the facility caused the contamination, or that the significant increase resulted from error in sampling or analysis, or from natural variation in groundwater quality. This report must be submitted for approval by the department. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the contingency water quality monitoring program pursuant to subparagraph (f)(9)(iii) of this section, and may return to operational monitoring if the expanded parameters are at or below the applicable trigger values established pursuant to item (f)(9)(i)(b)(4)(ii) of this section.

Unless and until a successful demonstration is made, the owner or operator must comply with subclause ('6') of this clause, including initiating an assessment of corrective measures; or

(ii) comply with the following:

('a') characterize the nature and extent of the release by installing additional monitoring wells as necessary;

('b') install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and establish the existing water quality for this well;

('c') notify all persons who own land or reside on land that is directly over or within 500 feet downgradient of any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with subclause ('1') of this clause; and

('d') initiate an assessment of corrective measures pursuant to the provisions of Subpart 363-10 of this Part;

Clause 363-4.6(f)(9)(iii)(c) through subclause 363-4.6(f)(9)(iii)(c)(1) remain unchanged.

Subclause 363-4.6(f)(9)(iii)(‘c’)(‘2’) is amended to read as follows:

(2) for parameters for which MCLs or[such] standards have not been established, the trigger value for the parameter established from wells in accordance with item (f)(9)([ii]i)(‘b’)(‘4’)(‘ii’) of this paragraph; or

Subclause 363-4.6(f)(9)(iii)(‘c’)(‘3’) is amended to read as follows:

(3) for parameters for which the trigger value established pursuant to item (f)(9)([ii]i)(‘b’)(‘4’)(‘ii’) of this section is higher than the MCL or[such] standard, the trigger value.

Paragraph 363-4.6(f)(10) through subdivision 363-4.6(h) remain unchanged.

Table 1 and footnotes in subdivision 363-4.6(h) are repealed and a new Table 1 and footnotes in subdivision 363-4.6(h) are added to read as follows:

TABLE 1: ROUTINE PARAMETERS¹

Common Name (and CAS number, as appropriate)²

Field Parameters:	Leachate Indicators:	Inorganic Parameters (total):
Static water level (in wells and sumps) ³	Total Kjeldahl Nitrogen	Arsenic
Specific Conductance	Ammonia (7664-41-7)	Cadmium

Temperature	Nitrate	Calcium
Floaters or Sinkers ⁴	Chemical Oxygen Demand	Iron
Temperature	Biochemical Oxygen Demand (BOD ₅)	Lead
pH	Total Organic Carbon	Magnesium
Eh	Total Dissolved Solids	Manganese
Dissolved Oxygen ⁵	Sulfate	Potassium
Field Observations ⁶	Alkalinity	Sodium
Turbidity	Phenols (108-95-2)	
	Chloride	
	Bromide (24959-67-9)	
	Total hardness as CaCO ₃	

Footnotes

1

This list contains parameters for which possible analytical procedures are provided in: ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods’, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. ‘Methods for Chemical Analysis of Water and Wastes’, USEPA-600/4-79-020, March 1983, incorporated by reference in section 360.3 of this Title.

2

Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals. "Total" indicates all species in the groundwater that contain this element.

3

Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

4

Any floaters or sinkers found must be analyzed separately for baseline parameters.

5

Surface water only.

6

Any unusual conditions (colors, odors, surface sheens, etc.) noticed during well development, purging, or sampling must be reported.

Table 2A and footnotes in subdivision 363-4.6(h) are repealed and a new Table 2A and footnotes in subdivision 363-4.6(h) are added to read as follows:

TABLE 2A: BASELINE PARAMETERS: Field Parameters, Leachate Indicators, and Inorganic Parameters¹

Common Name (and CAS number, as appropriate)²

Field Parameters:	Leachate Indicators:	Inorganic Parameters (total unless otherwise noted):
Static water level (in wells and sumps) ³	Total Kjeldahl Nitrogen	Aluminum
Specific Conductance	Ammonia (7664-41-7)	Antimony
Temperature	Nitrate	Arsenic
Floaters or Sinkers ⁴	Chemical Oxygen Demand	Barium
Temperature	Biochemical Oxygen Demand (BOD ₅)	Beryllium
pH	Total Organic Carbon	Cadmium
Eh	Total Dissolved Solids	Calcium
Dissolved Oxygen ⁵	Sulfate	Chromium
Field Observations ⁶	Alkalinity	Chromium (Hexavalent) ⁷
Turbidity	Phenols (108-95-2)	Cobalt

Chloride	Copper
Bromide (24959-67-9)	Cyanide
Total hardness as CaCO ₃	Iron
Color	Lead
Boron (7440-42-8)	Magnesium
	Manganese
	Mercury
	Nickel
	Potassium
	Selenium
	Silver
	Sodium
	Thallium
	Vanadium
	Zinc

Footnotes

1

This list contains parameters for which possible analytical procedures are provided in: ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods’, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), document number 955-001-00000-1), incorporated by reference in section

360.3 of this Title. ‘Methods for Chemical Analysis of Water and Wastes’, USEPA-600/4-79-020, March 1983, incorporated by reference in section 360.3 of this Title.

2

Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals. “Total” indicates all species in the groundwater that contain this element.

3

Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

4

Any floaters or sinkers found must be analyzed separately for baseline parameters.

5

Surface water only.

6

Any unusual conditions (colors, odors, surface sheens, etc.) noticed during well development, purging, or sampling must be reported.

7

The department may waive the requirement to analyze hexavalent chromium provided that total and hexavalent and trivalent chromium values do not exceed 0.05 mg/l.

Table 2B and footnotes in subdivision 363-4.6(h) are repealed and a new Table 2B and footnotes in subdivision 363-4.6(h) are added to read as follows:

TABLE 2B: BASELINE PARAMETERS: Organic Parameters¹

Common Name (and CAS number, as appropriate)²

Organic Parameters:

Acetone (67-64-1)	1,1-Dichloroethane; Ethylidene chloride (75-34-3)	Styrene (100-42-5)
Acrylonitrile (107-13-1)	1,2-Dichloroethane; Ethylene dichloride (107-06-02)	1,1,1,2-Tetrachloroethane (630-20-6)
Benzene (71-43-2)	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride (75-35-4)	1,1,2,2-Tetrachloroethane (79-34-5)
Bromochloromethane (74-97-5)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene (156-59-2)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene (127-18-4)

Bromodichloromethane (75-27-4)	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene (156-60-2)	Toluene (108-88-3)
Bromoform; Tribromomethane (75-25-2)	1,2-Dichloropropane; Propylene dichloride (78-87-5)	1,1,1-Trichloroethane; Methylchloroform (71-55-6)
Carbon disulfide (75-15-0)	cis-1,3-Dichloropropene (10061-01-5)	1,1,2-Trichloroethane (79-00-5)
Carbon tetrachloride (56-23-5)	trans-1,3-Dichloropropene (10061-02-6)	Trichloroethylene; Trichloroethene (79-01-6)
Chlorobenzene (108-90-7)	Ethylbenzene (100-41-4)	Trichlorofluoromethane; CFC-11 (75-69-4)
Chloroethane; Ethyl chloride (75-00-3)	2-Hexanone; Methyl butyl ketone (591-78-6)	1,2,3-Trichloropropane (96-18-4)
Chloroform; Trichloromethane (67-66-3)	Methyl bromide; Bromomethane (74-83-9)	Vinyl acetate (108-05-4)
Dibromochloromethane; Chlorodibromomethane (124-48-1)	Methyl chloride; Chloromethane (74-87-3)	Vinyl chloride; Chloroethene (75-01-4)
1,2-Dibromo-3-chloropropane; DBCP (96-12-8)	Methylene bromide; Dibromomethane (74-95-3)	Xylenes (1330-20-7)
1,2-Dibromoethane; Ethylene dibromide; EDB (106-93-4)	Methylene chloride; Dichloromethane (75-09-2)	

o-Dichlorobenzene; 1,2-Dichlorobenzene (95-50-1)	Methyl ethyl ketone; MEK; 2-Butanone (78-93-3)
p-Dichlorobenzene; 1,4-Dichlorobenzene (106-46-7)	Methyl Iodide; Iodomethane (74-88-4)
trans-1,4-Dichloro-2-butene (110-57-6)	4-Methyl-2-pentanone; Methyl isobutyl ketone (108-10-1)

Footnotes

1

This list contains parameters for which possible analytical procedures are provided in: ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods’, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998) document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. ‘Methods for Chemical Analysis of Water and Wastes’, USEPA-600/4-79-020, March 1983, incorporated by reference in 360.3 of this Title.

2

Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

Table 3A and footnotes in subdivision 363-4.6(h) are repealed and a new Table 3A and footnotes in subdivision

363-4.6(h) are added to read as follows:

TABLE 3A: EXPANDED PARAMETERS: Field Parameters, Leachate Indicators, Radionuclides, and Inorganic Parameters¹

Common Name (and CAS number, as appropriate) ²			
Field Parameters:	Leachate Indicators:	Inorganic Parameters: (total unless otherwise noted):	Radionuclides ³
Static water level (in wells and sumps) ⁴	Total Kjeldahl Nitrogen	Aluminum	Radium-226 per EPA 903.1
Specific Conductance	Ammonia (7664-41-7)	Antimony	Radium-228 per EPA 904.0
Temperature	Nitrate	Arsenic	Total Uranium per EPA 908.0
Floaters or Sinkers ⁵	Chemical Oxygen Demand	Barium	
Temperature	Biochemical Oxygen Demand (BOD ₅)	Beryllium	
pH	Total Organic Carbon	Cadmium	
Eh	Total Dissolved Solids	Calcium	
Dissolved Oxygen ⁶	Sulfate	Chromium	

Field Observations ⁷	Alkalinity	Chromium (Hexavalent) ⁸
Turbidity	Phenols (108-95-2)	Cobalt
	Chloride	Copper
	Bromide (24959-67-9)	Cyanide
	Total hardness as CaCO ₃	Iron
	Color	Lead
	Boron (7440-42-8)	Magnesium
		Manganese
		Mercury
		Nickel
		Potassium
		Selenium
		Silver
		Sodium
		Thallium
		Tin
		Vanadium
		Zinc

Footnotes

This list contains parameters for which possible analytical procedures are provided in: ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods’, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998) document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. ‘Methods for Chemical Analysis of Water and Wastes’, USEPA-600/4-79-020, March 1983, incorporated by reference in 360.3 of this Title. ‘Prescribed Procedures for Measurement of Radioactivity in Drinking Water’, USEPA-600/4-80-032, August 1980, incorporated by reference in section 360.3 of this Title.

2

Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals. “Total” indicates all species in the groundwater that contain this element.

3

Two sets of samples must be collected: one filtered and one unfiltered. Filtered samples must be filtered using a 0.45 micron filter via standard techniques.

4

Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

5

Any floaters or sinkers found must be analyzed separately for baseline parameters.

6

Surface water only.

7

Any unusual conditions (colors, odors, surface sheens, etc.) noticed during well development, purging, or sampling must be reported.

8

The department may waive the requirement to analyze hexavalent chromium provided that total and hexavalent and trivalent chromium values do not exceed 0.05 mg/l.

Table 3B and footnotes in subdivision 363-4.6(h) are repealed and a new Table 3B and footnotes in subdivision 363-4.6(h) are added to read as follows:

TABLE 3B: EXPANDED PARAMETERS: Organic Parameters¹

Common Name (and CAS number, as appropriate)²

Organic Parameters:

Acenaphthene (83-32-9)	2,4-Dichlorophenol (120-83-2)	Naphthalene (91-20-3)
Acenaphthylene (208-96-8)	2,6-Dichlorophenol (87-65-0)	1,4-Naphthoquinone (130-15-4)

Acetone (67-64-1)	1,2-Dichloropropane; Propylene dichloride (78-87-5)	1-Naphthylamine (134-32-7)
Acetonitrile; Methyl cyanide (75-05-8)	1,3-Dichloropropane; Trimethylene dichloride (142-28-9)	2-Naphthylamine (91-59-8)
Acetophenone (98-86-2)	2,2-Dichloropropane; Isopropylidene chloride (594-20-7)	o-Nitroaniline; 2-Nitroaniline (88-74- 4)
2-Acetylaminofluorene; 2-AAF (53-96-3)	1,1-Dichloropropene (563-58-6)	m-Nitroaniline; 3-Nitroaniline (99-09- 2)
Acrolein (107-02-8)	cis-1,3-Dichloropropene (10061-01-5)	p-Nitroaniline; 4-Nitroaniline (100- 01-6)
Acrylonitrile (107-13-1)	trans-1,3-Dichloropropene (10061-02- 6)	Nitrobenzene (98-95-3)
Aldrin (309-00-2)	Dieldrin (60-57-1)	o-Nitrophenol 2-Nitrophenol (88-75- 5)
Allyl chloride (107-05-1)	Diethyl phthalate (84-66-2)	p-Nitrophenol; 4-Nitrophenol (100- 02-7)
4- aminobiphenyl (92-67-1)	0,0-Diethyl 0-2-pyrazinyl	N-Nitrosodi-n-butylamine (924-16-3)
Anthracene (120-12-7)	cis-1,2-Dichloroethylene; cis-1,2- Dichloroethene (156-59-2)	
N-Nitrosodiethylamine (55-18- 5)		

Benzene (71-43-2)	trans-1,2-Dichloroethylene (156-60-2)	N-Nitrosodimethylamine (62-75-9)
Benzo[a]anthracene; Benzanthracene (56-55-3)	Phosphorothioate; Thionazin (297-97-2)	N-Nitrosodiphenylamine (86-30-6)
Benzo[b]fluoranthene (205-99-2)	Dimethoate (60-51-5)	N-Nitrosodipropylamine; N-Nitroso-N-dipropyl-amine; Di-n-propylnitrosamine (621-64-7)
Benzo[k]fluoranthene (207-08-9)	p-(Dimethylamino)azobenzene (60-11-7)	N-Nitrosomethylethylamine (10595-95-6)
Benzo[ghi]perylene (191-24-2)	7,12-Dimethylbenz[a]anthracene (57-97-6)	N-Nitrosopiperidine (100-75-4)
Benzo[a]pyrene (50-32-8)	3,3'-Dimethylbenzidine (119-93-7)	N-Nitrosopyrrolidine (930-55-2)
Benzyl alcohol (100-51-6)	2,4-Dimethylphenol; m-Xylenol (105-67-9)	5-Nitro-o-toluidine (99-55-8)
alpha-BHC (319-84-6)	Dimethyl phthalate (131-11-3)	Parathion (56-38-2)
beta-BHC (319-85-7)	m-Dinitrobenzene (99-65-0)	Pentachlorobenzene (608-93-5)
delta-BHC (319-86-8)	4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol (534-52-1)	Pentachloronitrobenzene (82-68-8)
gamma-BHC; Lindane (58-89-9)	2,4-Dinitrophenol (51-28-5)	Pentachlorophenol (87-86-5)
Bis(2-chloroethoxy)methane (111-91-1)	2,4-Dinitrotoluene (121-14-2)	Phenacetin (62-44-2)
Bis(2-chloroethyl) ether;	2,6-Dinitrotoluene (606-20-2)	Phenanthrene (85-01-8)

Dichloroethyl ether (111-44-4)		
Bis-(2-chloro-1-methyl-ethyl)ether; 2,2'-Dichlorodiisopropyl ether; DCIP ³	Dinoseb; DNBP; 2-sec- Butyl-4,6-dinitrophenol (88-85-7)	Phenol (108-95-2)
Bis(2-ethylhexyl)phthalate (117-81-7)	Di-n-octyl phthalate (117-84-0)	p-Phenylenediamine (106-50-9)
Bromochloromethane (74-97-5)	Diphenylamine (122-39-4)	Phorate (298-02-2)
Bromodichloromethane (75-27-4)	Disulfoton (298-04-4)	Polychlorinated biphenyls; PCBs; Aroclors ⁴
Bromoform (75-25-2)	Endosulfan I (959-98-8)	Polychlorinated dibenzo-p- dioxins; PCDDs ⁵
4-Bromophenyl phenyl ether (101-55-3)	Endosulfan II (33213-65-9)	Polychlorinated dibenzo- furans; PCDFs ⁶
Butyl benzyl phthalate; Benzyl butyl phthalate (117-81-7)	Endosulfan sulfate (1031-07-8)	Pronamide (23950-58-5)
Carbon disulfide (75-15-0)	Endrin (72-20-8)	Propionitrile; Ethyl cyanide (107-12-0)
Carbon tetrachloride (56-23-5)	Endrin aldehyde (7421-93-4)	Pyrene (129-00-0)
Chlordane ⁷	Ethylbenzene (100-41-4)	Safrole (94-59-7)
p-Chloroaniline (106-47-8)	Ethyl methacrylate (97-63-2)	Silvex; 2,4,5-TP (93-72-1)

Chlorobenzene (108-90-7)	Ethyl methanesulfonate (62-50-0)	Styrene (100-42-5)
Chlorobenzilate (510-15-6)	Famphur (52-85-7)	2,4,5-T; 2,4,5-trichloro- phenoxyacetic acid (93-76-5)
p-Chloro-m-cresol; 4-Chloro-3- methylphenol (59-50-7)	Fluoranthene (206-44-0)	1,2,4,5-Tetrachlorobenzene (95-94-3)
Chloroethane; Ethyl chloride (75-00-3)	Fluorene (86-73-7)	2,3,7,8-Tetrachlorodi- benzo-p- dioxin; 2,3,7,8-TCDD (1746-01-6)
Chloroform; Trichloromethane (67-66-3)	Heptachlor (76-44-8)	1,1,1,2-Tetrachloroethane (630-20-6)
2-Chloronaphthalene (91-58-7)	Heptachlor epoxide (1024-57-3)	1,1,2,2-Tetrachloroethane (79-34-5)
2-Chlorophenol (95-57-8)	Hexachlorobenzene (118-74-1)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene (127-18-4)
4-Chlorophenyl phenyl ether (7005-72-3)	Hexachlorobutadiene (87-68-3)	2,3,4,6-Tetrachlorophenol (58-90-2)
Chloroprene (126-99-8)	Hexachlorocyclopentadiene (77-47-4)	Toluene (108-88-3)
Chrysene (218-01-9)	Hexachloroethane (67-72-1)	o-Toluidine (95-53-4)
m-Cresol; 3-methylphenol (108- 39-4)	Hexachloropropene (1888-71-7)	Toxaphene ⁸
o-Cresol; 2-methylphenol (95- 48-7)	2-Hexanone; Methyl butyl ketone (591-78-6)	1,2,4-Trichlorobenzene (120-82-1)

p-Cresol; 4-methylphenol (106-44-5)	Indeno(1,2,3-cd)pyrene (193-39-5)	1,1,1-Trichloroethane; Methylchloroform (71-55-6)
2,4-D; 2,4-Dichlorophen- oxyacetic acid (94-75-7)	Isobutyl alcohol (78-83-1)	1,1,2-Trichloroethane (79-00-5)
4,4'-DDD (72-54-8)	Isodrin (465-73-6)	Trichloroethylene; Trichloroethene (79-01-6)
4,4'-DDE (72-55-9)	Isophorone (78-59-1)	Trichlorofluoromethane; R-11 (75-69-4)
4,4'-DDT (50-29-3)	Isosafrole (120-58-1)	2,4,5-Trichlorophenol (95-95-4)
Diallate (2303-16-4)	Kepone (143-50-0)	2,4,6-Trichlorophenol (88-06-2)
Dibenz[a,h]anthracene (53-70-3)	Methacrylonitrile (126-98-7)	1,2,3-Trichloropropane (96-18-4)
Dibenzofuran (132-64-9)	Methapyrilene (91-80-5)	0,0,0-Triethyl phosphorothioate (126-68-1)
Dibromochloromethane; Chlorodibromomethane (124-48-1)	Methoxychlor (72-43-5)	sym-Trinitrobenzene (99-35-4)
1,2-Dibromo-3-chloro- propane; DBCP (96-12-8)	Methyl bromide; Bromomethane (74-83-9)	Vinyl acetate (108-05-4)
1,2-Dibromoethane; Ethylene dibromide; EDB (106-93-4)	Methyl chloride; Chloromethane (74-87-3)	Vinyl chloride; Chloroethene (75-01-4)
Di-n-butyl phthalate (84-74-2)	3-Methylcholanthrene (56-49-5)	Xylene (total)

o-Dichlorobenzene; 1,2-Dichlorobenzene (95-50-1)	Methyl ethyl ketone; MEK; 2-Butanone (78-93-3)	Per- and polyfluoroalkyl substances ⁹
m-Dichlorobenzene; 1,3-Dichlorobenzene (541-73-1)	Methyl iodide; Iodomethane (74-88-4)	
p-Dichlorobenzene; 1,4-dichlorobenzene (106-46-7)	Methyl methacrylate (80-62-6)	1,4-Dioxane (123-91-1)
3,3'-Dichlorobenzidine (91-94-1)	Methyl methanesulfonate (66-27-3)	
trans-1,4-Dichloro-2-butene (110-57-6)	2-Methylnaphthalene (91-57-6)	
Dichlorodifluoromethane; CFC 12 (75-71-8)	Methyl parathion; Parathion methyl (298-00-0)	
1,1-Dichloroethane; Ethyldidene chloride (75-34-3)	4-Methyl-2-pentanone; Methyl isobutyl ketone (108-10-1)	
1,2-Dichloroethane; Ethylene dichloride (107-06-2)	Methylene bromide; Dibromomethane (74-95-3)	
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride (75-35-4)	Methylene chloride; Dichloromethane (75-09-2)	

Footnotes

1

This list contains parameters for which possible analytical procedures are provided in: 'Test Methods for Evaluating Solid Waste, Physical/Chemical Methods', EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998) document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. 'Methods for Chemical Analysis of Water and Wastes', USEPA-600/4-79-020, March 1983, incorporated by reference in section 360.3 of this Title.

2

Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

3

This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2"-oxybis[2]-chloro- (CAS RN 39638-32-9).

4

Polychlorinated biphenyls (1336-36-3): This category contains congener chemicals, including constituents of Aroclor 1016 (12674-11-2), Aroclor 1221 (11104-28-2), Aroclor 1232 (11097-69-1), and Aroclor 1260 (11096-82-5).

5

Polychlorinated dibenzo-p-dioxins: This category contains congener chemicals, including tetrachlorodibenzo-p-

dioxins, pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

6

Polychlorinated dibenzofurans: This category includes congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

7

Chlordane: This entry includes alpha-chlordane (5103-71-9), beta-chlordane (5103-74-2), gamma-chlordane (5566-34-7), and constituents of chlordane (57-74-9; 12789-03-6).

8

Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), *i.e.*, chlorinated camphene.

9

Per- and polyfluoroalkyl substances (PFAS): This category contains congener chemicals, including but not limited to perfluorooctanoic acid, perfluorooctanesulfonic acid, perfluorononanoic acid, perfluorohexanesulfonic acid, perfluoroheptanoic acid, perfluorobutanesulfonic acid.

Subdivision 363-4.6(i) through paragraph 363-4.6(j)(3) remain unchanged.

Paragraph 363-4.6(j)(4) is amended to read as follows:

(4) operational and design-related recommendations that can be implemented upon detection of odor control problems, including impervious membranes and interim covers in conjunction with other landfill gas control methods. The odor control plan may include but not be limited to, gas control systems that are appropriately connected to the landfill liner system's primary leachate collection and removal system (including the drainage area on the landfill's side slopes), use of [a] horizontal gas collection lines, [which may include]or the rejection or mitigation of odiferous wastes that are determined to be contributing to off-site odors.

Subdivision 363-4.6(k) through paragraph 363-4.6(k)(1) remain unchanged.

Paragraph 363-4.6(k)(2) is amended to read as follows:

(2) a description of any air quality monitoring, including monitoring for fugitive landfill odor and air emissions;
[and]

Paragraph 363-4.6(k)(3) is amended to read as follows:

(3) for a landfill with an appurtenant landfill gas-to-energy facility or other landfill gas recovery facility, a discussion of how the landfill's odor and air emission controls are integrated with a recovery facility; and[.]

A new paragraph 363-4.6(k)(4) is added to read as follows:

(4) a description of any applicable requirements developed pursuant to Part 208 of this Title as approved by EPA in the State Plan.

Subdivision 363-4.6(l) through subdivision 363-5.1(i) remain unchanged.

A new subdivision 363-5.1(j) is added to read as follows:

(j) Wetlands

New landfills and lateral expansions of existing landfills must not be located within the boundary of either state or federally-regulated wetlands, unless the required permits are obtained from the U.S. Army Corps of Engineers and/or the department, and unless the owner or operator can demonstrate the following to the satisfaction of the department.

(1) No practicable alternative to the proposed landfill is available which does not involve state or federally-regulated wetlands.

(2) The construction and operation of the landfill will not:

(i) cause or contribute to violations of any applicable water quality standard;

(ii) violate any applicable toxic effluent standard or prohibition;

(iii) jeopardize the continued existence of endangered or threatened species;

(iv) result in the destruction or adverse modification of a critical habitat of any endangered or threatened species; and

(v) violate any requirement for the protection of a marine sanctuary under the Marine Protection, Research, and Sanctuaries Act of 1972, as incorporated by reference in section 360.3 of this Title.

(3) The landfill will not cause or contribute to significant degradation of federally-regulated wetlands. The owner or operator must demonstrate the integrity of the landfill and its ability to protect ecological resources by addressing the following factors:

- (i) erosion, stability and migration potential of native wetland soils, muds, and deposits used to support the landfill;
 - (ii) erosion, stability and migration potential of dredged and fill materials used to support the landfill;
 - (iii) the volume and chemical nature of the waste managed in the landfill;
 - (iv) potential impacts from the release of the solid waste on fish, wildlife, and other aquatic resources and their habitat;
 - (v) potential effects of a catastrophic release of waste to the federally-regulated wetland and the resulting potential impacts on the environment; and
 - (vi) any additional factors, as necessary, to demonstrate that ecological resources in the federally-regulated wetland are sufficiently protected.
- (4) Steps have been taken to attempt to achieve no net loss of federally-regulated wetlands to the extent required under federal or state law (as defined by acreage and function) by:
- (i) first avoiding impacts to federally-regulated wetlands to the maximum extent practicable; then
 - (ii) minimizing unavoidable impacts to the maximum extent practicable; and then
 - (iii) by offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of new wetlands).
- (5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

A new subdivision 363-5.1(k) is added to read as follows:

(k) School and residence.

Excluded from the below requirements are residences and schools that are owned by or which have entered into legal agreement with the landfill owner or operator. In terms of residences, the 1,000 feet distance in the below requirements is measured from the closest location on the landfill property where waste will be placed to the

residence building and managed landscape. In terms of schools, the 1,000 feet distance in the below requirements is measured from the closest location on the landfill property where waste will be placed to the school building and associated outdoor recreation areas.

(1) A new landfill, which submits an initial permit application after the effective date of this rulemaking, cannot be located within 1,000 feet of a school or residence. Schools or residences constructed after an initial Part 360 permit for a landfill has been deemed complete by the department are excluded from this requirement.

(2) A lateral or vertical expansion of a landfill is prohibited within 1,000 feet of a school or residence. Schools or residences constructed within 1,000 feet of a proposed expanded footprint of a landfill after a Part 360 permit modification application has been submitted are excluded from this requirement.

(3) A Part 360 permit modification application for a landfill expansion that has been deemed complete by the department prior to the effective date of this rulemaking is not subject to this requirement.

Subpart 363-6 (heading) through section 363-6.3 remain unchanged.

Section 363-6.4 is amended to read as follows:

Section 363-6.4 Bedrock separation.

A minimum of ten feet of vertical separation is required between bedrock and the base of the constructed liner at all points along the liner system, except as provided in section 363-6.11(a)(4) of this Part. The material between the base of the constructed liner and bedrock, whether natural or backfilled[and], is subject to department approval. The material must consist of low permeability soils with silty and clayey characteristics and with the ability to attenuate and absorb contaminants[and is subject to department approval].

Section 363-6.5 (heading) through subdivision 363-6.5(d) (opening paragraph) remain unchanged.

Paragraph 363-6.5(d)(1) is amended to read as follows:

(1) the project engineer must inspect the exposed surface to evaluate the suitability of the subgrade[and] to ensure that the surface is properly compacted, smooth, and uniform[,] and [must ensure]that elevations are consistent with the department-approved drawings; and

Paragraph 363-6.5(d)(2) through section 363-6.6 (heading) remain unchanged.

Subdivision 363-6.6(a) is amended to read as follows:

(a) Double composite liner system. Except as otherwise described in this Part[for monofills and C&D debris landfills], all landfills regulated under this Part must have a double composite liner system that consists of a primary leachate collection and removal system, a geocushion, a primary composite liner constructed of a geomembrane liner and a GCL, a secondary leachate collection and removal system, a geocushion, and a secondary composite liner system constructed of a geomembrane liner and two feet of low permeability soil.

The landfill must be designed and constructed to meet or exceed the following liner system requirements:

(1) On slopes less than or equal to 10 percent, the liner system must consist of a double composite liner system which meets the following requirements:

(i) the primary composite liner must be comprised of a nominal [60]80 mil or thicker high density polyethylene (HDPE) geomembrane placed above and in direct and uniform contact with an appropriately specified GCL[. In landfills located within the deep recharge area of Nassau or Suffolk County, the primary geomembrane must be

a nominal 80 mil or thicker HDPE geomembrane]; and

(ii) the secondary composite liner must be comprised of a nominal 60 mil or thicker HDPE geomembrane placed above and in direct and uniform contact with a minimum two-foot-thick low-permeability soil layer that has a remolded hydraulic conductivity of 1×10^{-7} centimeter per second or less.

(2) On slopes greater than ten percent, the liner system must consist of a double liner system which meets the following requirements:

(i) from the toe of the slope to five vertical feet up the side slope, the primary liner must meet the double composite liner requirements of subparagraph (1)(i) of this subdivision. Above five vertical feet up the side slope, the primary liner may be constructed of a nominal [60]80 mil HDPE or thicker geomembrane[. For landfills located within the deep recharge area of Nassau or Suffolk County, the primary geomembrane must be a nominal 80 mil or thicker HDPE geomembrane]; and

(ii) the secondary composite liner must meet the requirements of subparagraph (1)(ii) of this subdivision.

(3) The liner system must include a primary leachate collection and removal system that is designed to maintain no more than 12 inches of leachate depth (head) above the primary liner, except during 24-hour, 25-year storm events and except in sump areas. The leachate collection and removal system must be designed to function with proper maintenance throughout the active life, post-closure period, and custodial care period of the landfill.

(i) The primary leachate collection and removal system must be a minimum of two feet thick.

(ii) On slopes less than or equal to ten percent, the 24 inches of primary leachate collection and removal system must have a hydraulic conductivity of 1.0 centimeter per second or greater. Alternatively, the upper 12 inches of primary leachate collection and removal system may have a hydraulic conductivity of 0.1 centimeter per second or greater if the lower 12 inches has a hydraulic conductivity of [one]1.0 centimeter per second or greater.

(iii) On slopes greater than ten percent, the entire 24inch thickness of the primary leachate collection and removal system must have a hydraulic conductivity of 0.1 centimeter per second or greater.

(4) The liner system must include a secondary leachate collection and removal system placed between the primary and secondary liners with a design capacity of at least 1,000 gallons per acre per day and a maximum detection time of 24 hours using steady state flow calculations in a saturated medium.

(i) On slopes less than or equal to ten percent, the secondary leachate collection and removal system must include a geosynthetic drainage layer and a minimum of one foot of soil drainage media with a hydraulic conductivity of 0.1 centimeter per second or greater[,] and designed to have a maximum leachate depth (head) of one inch.

(ii) On all slopes greater than ten percent, the secondary leachate collection system may be constructed of a geosynthetic drainage layer system designed to meet the hydraulic and mechanical needs of the landfill with a head that does not exceed the thickness of the confined drainage layer.

Subdivision 363-6.6(b) is repealed.

Subdivision 363-6.6(c) and 363-6.6(d) are renumbered to subdivision 363-6.6(b) and subdivision 363-6.6(c).

Newly renumbered subdivision 363-6.6(b) is amended to read as follows:

(b) C&D debris landfills, papermill sludge monofills, municipal waste combustor ash monofills, and [O]other industrial waste monofills. [Except in Nassau or Suffolk County, monofills]

Landfills used solely for the disposal of C&D debris, papermill sludge, municipal waste combustor ash, or solid waste resulting from industrial operations other than those described above are subject to the double composite liner requirements described in subdivision (a) of this section and section 363-6.7 of this Subpart, unless the applicant demonstrates that an alternative liner system is justified and will not adversely impact groundwater

quality. The department may impose additional or less stringent requirements on these [monofills]types of landfills based on the pollution potential of the waste. An alternative liner system with less stringent requirements cannot be used in landfills located in Nassau or Suffolk Counties. For those [monofills]landfills where the applicant demonstrates that an alternative liner system is justified, the need for a formal variance is waived.

Newly renumbered paragraph 363-6.6(b)(1) is amended to read as follows:

(1) Liner system designs for C&D debris landfills, papermill sludge monofills, municipal waste combustor ash monofills, and industrial waste monofills that do not meet the requirements of this section and section 363-6.7 of this Subpart must [be] demonstrate[d] [to adequately prevent a negative impact on]that they will not adversely impact groundwater quality. The demonstration must, at a minimum, address the following factors:

Newly renumbered subparagraph 363-6.6(b)(1)(i) through newly renumbered subparagraph 363-6.6(b)(1)(iv) remain unchanged.

Newly renumbered subparagraph 363-6.6(b)(1)(v) is amended to read as follows:

(v) justification that the C&D debris, papermill sludge, municipal waste combustor ash or industrial wastes' chemical characterization was accurately defined and that there are no reasons to anticipate significant changes in the concentrations of compounds that could increase the wastes' pollution potential in the future;

Newly renumbered subparagraph 363-6.6(b)(1)(vi) through newly renumbered paragraph 363-6.6(b)(2) remain

unchanged.

Newly renumbered subdivision 363-6.6(c) is amended to read as follows:

(c) Final cover system. Except as otherwise described in this Part, all landfills must have at a minimum a final cover system that consists of a composite barrier layer, barrier protection and drainage layer, and topsoil layer meeting the requirements of sections 363-6.15 through 363-6.18 of this Subpart and Subpart 363-[10] 9 of this Part. The final cover system must be designed to preclude precipitation from entering the landfill and be capable of preventing landfill gas migration to the atmosphere.

Section 363-6.7 (heading) through subdivision 363-6.7(a) (heading) remain unchanged.

Paragraph 363-6.7(a)(1) is amended to read as follows:

(1) Primary composite liner. The primary composite liner must be constructed using a GCL [which restricts flow through the GCL equal to or better than a compacted soil liner]with a hydraulic conductivity of [1×10^{-7}] 1×10^{-8} centimeters per second or less and which is constructed with bentonite demonstrating chemical and physical stability. The GCL must be placed below and in direct and uniform contact with the primary geomembrane liner. The carrier geotextile of the GCL must be a material that will inhibit the migration of bentonite into the secondary leachate collection and removal system.

Paragraph 363-6.7(a)(2) through subdivision 363-6.7(b) (opening paragraph) remain unchanged.

Paragraph 363-6.7(b)(1) is amended to read as follows:

(1) GCL [liner]components.

Subparagraph 363-6.7(b)(1)(i) through subparagraph 363-6.7(b)(1)(iv) remain unchanged.

A new subparagraph 363-6.7(b)(1)(v) is added to read as follows:

(v) All rolls of GCL materials received and stored at the landfill must be enclosed in protective wrapping such as the original, unopened packaging or an opaque, waterproof tarpaulin to ensure protection from direct sunlight, ultraviolet radiation, precipitation, flames or welding sparks, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. All rolls must be stored off of the ground on a surface that is free of sharp objects. The storage location must be stable, dry, and well-drained. Rolls of GCL materials must not be stored in stacks more than three tiers high. Extended outdoor storage of rolls must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, GCL rolls must be placed in a well ventilated, enclosed structure. The temperature of the enclosed structure must not exceed 95° F.

Paragraph 363-6.7(b)(2) through section 363-6.8 (heading) remain unchanged.

Subdivision 363-6.8(a) is amended to read as follows:

(a) Materials required. The geomembrane base liner material must be constructed of HDPE polymer that is acceptable to the department. [Geomembrane base liners constructed of other polymers may be approved by the department based on the equivalent design requirements of section 363-6.21 of this Subpart if demonstrated to have equivalent chemical resistance, construction durability, and service life expectancy.]

Subdivision 363-6.8(b) (heading) remains unchanged.

Paragraph 363-6.8(b)(1) is amended to read as follows:

(1) The geomembrane in both the primary and secondary composite liner systems must be installed in direct and uniform contact with the underlying low-permeability soil layer or GCL in a manner that [eliminates]minimizes waves and avoids creases and must be field seamed to control fluid migration from the landfill. Any waves must be less than two inches in height.

Paragraph 363-6.8(b)(2) through subparagraph 363-6.8(b)(5)(iii) remain unchanged.

Subparagraph 363-6.8(b)(5)(iv) is amended to read as follows:

(iv) field seaming is prohibited when either the ambient air temperature measured one meter above the geomembrane or [sheet]the temperature of the surface of the geomembrane is below 32° F, when the [sheet] temperature of the surface of the geomembrane exceeds 158° F, when the ambient air temperature measured one meter above the geomembrane is above 120° F, during periods of sustained winds in excess of 20 miles per hour, or during periods of precipitation; and

Subparagraph 363-6.8(b)(5)(v) remains unchanged.

A new paragraph 363-6.8(b)(6) is added to read as follows:

(6) All rolls of geomembrane materials stored at the landfill must be enclosed in protective wrapping, such as the original, unopened packaging or covered with an opaque tarpaulin, to ensure protection from direct sunlight, ultraviolet radiation, flames or welding sparks, temperatures in excess of 160° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of smooth geomembrane must not be stored in stacks more than four tiers high and rolls of textured geomembrane must not be stored in stacks more than three tiers high. Extended outdoor storage of geomembrane materials must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, geomembrane rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

Subdivision 363-6.8(c) through subparagraph 363-6.8(c)(3)(vi) remain unchanged.

Subparagraph 363-6.8(c)(3)(vii) is amended to read as follows:

(vii) After placement of the soil drainage layer, an electrical resistivity leak location evaluation, and/or other geomembrane liner integrity evaluation approved by the department, must be conducted on areas of both the

primary and secondary liners with slopes of ten percent or less by a person independent of the geomembrane installer. When conducting a leak location evaluation, the soil drainage layer above the geomembrane being tested for defects must have adequate electrical isolation from the surrounding ground or adjacent material. The evaluation must not be performed during or after periods of heavy rains that result in run-off that could impact the isolation of the soil drainage layer. When the tie-in area connecting a new cell with an existing cell is unable to be evaluated by electrical leak location testing due to an inability to effectively isolate the tie-in area, the tie-in area may be evaluated for liner defects using an exposed geomembrane electrical testing method. All discovered liner defects must be repaired, and a written report of the findings, which includes, at a minimum, a GPS-based electrical map of the survey area documenting the spatial results of electrical testing throughout the survey area, a description of the number of defects and their cause, and verification of repairs must be submitted to the department with the construction certification report required in section 363-6.19 of this Subpart.

Section 363-6.9 (heading) through section 363-6.9 (opening paragraph) remain unchanged.

Subdivision 363-6.9(a) is amended to read as follows:

(a) Materials requirements.[Only n]Needle-punched, nonwoven geocushion material [may]must be used.

Documentation must be provided by the manufacturer indicating that each roll has been inspected at the point of manufacturing for the presence of broken needles using an in-line metal detector. Every roll accepted at the site must be labeled with the manufacturer's name, including geotextile style and type, lot and roll numbers, and roll dimensions (length, width, and gross weight). The geocushion material must be demonstrated to be chemically compatible with waste and leachate with which it will come in contact.

Subdivision 363-6.9(b) (heading) remains the same.

Paragraph 363-6.9(b)(1) is repealed.

Paragraphs 363-6.9(b)(2) through paragraph 363-6.9(b)(4) are renumbered to paragraph 363-6.9(b)(1) through paragraph 363-6.9(b)(3).

Newly renumbered paragraph 363-6.9(b)(1) through paragraph 363-6.9(b)(3) remain unchanged.

A new paragraph 363-6.9(b)(4) is added to read as follows:

(4) All rolls of geocushion materials received and stored at the landfill must be enclosed in protective wrapping such as the original, unopened packaging or an opaque, waterproof tarpaulin to ensure protection from direct sunlight, ultraviolet radiation, precipitation, flames or welding sparks, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of geocushion materials must not be stored in stacks more than three tiers high. Extended outdoor storage of rolls must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, geocushion rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

Subdivision 363-6.9(c) through paragraph 363-6.9(c)(2) remain unchanged.

Paragraph 363-6.9(c)(3) is amended to read as follows:

(3) certification that applicable geosynthetic quality control testing was performed in accordance with the requirements of section 363-6.8(c)(1) of this Subpart for any geocushion materials.

Section 363-6.10 (heading) through subparagraph 363-6.10(c)(1)(ii) remain unchanged.

Subparagraph 363-6.10(c)(1)(iii) is amended to read as follows:

(iii) The project engineer must certify that the requirements of subdivision 363-6.10(a) and section 363-6.6(a)(3) and (4) of this Subpart are met.

Paragraph 363-6.10(c)(2) through paragraph 363-6.10(c)(3) remain unchanged.

Section 363-6.11 (heading) is amended to read as follows:

Section 363-6.11 Leachate collection and gas condensate pipes

Subdivision 363-6.11(a) is amended to read as follows:

(a) The following requirements apply to leachate collection and gas condensate pipes:

Paragraph 363-6.11(a)(1) through paragraph 363-6.12(b)(4) remain unchanged.

A new paragraph 363-6.12(b)(5) is added to read as follows:

(5) All rolls of geosynthetic drainage materials received and stored at the landfill must be enclosed in protective wrapping, such as the original, unopened packaging or an opaque tarpaulin, to ensure protection from direct sunlight, ultraviolet radiation, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of geosynthetic drainage material must not be stored in stacks more than three tiers high. Extended outdoor storage of geosynthetic drainage materials must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

Subdivision 363-6.12(c) through paragraph 363-6.13(b)(3) remain unchanged.

Subdivision 363-6.13(c) is amended to read as follows:

(c) Construction requirements. [Geosynthetic filters must not be damaged during installation and must be installed in a manner that does not reduce their ability to function as designed.]

A new paragraph 363-6.13(c)(1) is added to read as follows:

(1) Geosynthetic filters must not be damaged during installation and must be installed in a manner that does not

reduce their ability to function as designed.

A new paragraph 363-6.13(c)(2) is added to read as follows:

(2) All rolls of geosynthetic filters received and stored at the landfill must be stored enclosed in protective wrapping, such as the original, unopened packaging or an opaque tarpaulin, to ensure protection from direct sunlight, ultraviolet radiation, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of geosynthetic filter materials must not be stored in stacks more than three tiers high. Extended outdoor storage of rolls must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

Subdivision 363-6.13(d) through section 363-6.16 (heading) remain unchanged.

Subdivision 363-6.16(a) is amended to read as follows:

(a) After a landfill ceases to accept waste as specified in section 363-[10]9.3 of this Part, a final cover consisting of a composite barrier must be installed. The project engineer must consider the projected service life of the final cover system, settlement, erosion, and seepage forces in the overall stability of the final cover system.

Paragraph 363-6.16(a)(1) is amended to read as follows:

(1) The composite barrier layer must consist of a GCL [and]overlain by a separate geomembrane, unless the department approves an alternative geosynthetic barrier designed to serve as the uppermost layer of the final cover system.

Subparagraph 363-6.16(a)(1)(i) through subdivision 363-6.16(c) remain unchanged.

Section 363-6.17 is amended to read as follows:

Section 363-6.17 Final cover — barrier protection and drainage layer

A barrier protection layer must be constructed in accordance with the provisions of this section, unless the department approves a geosynthetic designed final cover system. The barrier protection layer must protect the geomembrane barrier layer from root penetration, be stable for the specified slopes and resist erosion.

Subdivision 363-6.17(a) is amended to read as follows:

(a) Construction requirements. The barrier protection layer, including any drainage layer, must consist of a minimum of 12 inches of soil where cool season vegetation is specified or a minimum of 18 inches of soil where warm season vegetation is specified. [One hundred percent of t]The soil used to construct the lower six inches of this layer must pass a two-inch sieve.

Subdivision 363-6.17(b) through section 363-6.20 (heading) remain unchanged.

Subdivision 363-6.20(a) is amended to read as follows:

(a) Except as described in the transition requirements in section 360.4 of this Title, only a storage tank system may be used to store leachate. The aboveground and on-ground leachate storage tank system must be capable of containing a minimum of three consecutive months combined primary and secondary leachate flow based on calculations required by section 363-4.3(e) of this Part unless an alternate storage and transport system is approved by the department[,] and must have a secondary containment system capable of retaining leachate in the event of a leachate spill.

Paragraph 363-6.20(a)(1) through subparagraph 363-6.21(b)(1)(vi) remain unchanged.

Subparagraph 363-6.21(b)(1)(vii) is amended to read as follows:

(vii) demonstrate that the final thickness of the combined soil and waste tire-derived aggregate layers after compression will be a minimum of 24 inches.

Subdivision 363-6.21(c) (heading) remains unchanged.

Paragraph 363-6.21(c)(1) is amended to read as follows:

(1) The department may approve the use of waste as an alternative operating cover (AOC) if the material is

capable of meeting the performance criteria for operating cover as specified in [subdivision] section 363-7.1(b) of this Part[; and]. Approval of the use of waste as an AOC is not subject to the variance requirements of section 360.10 of this Title.

Paragraph 363-6.21(c)(2) through subparagraph 363-6.21(c)(2)(i) remain unchanged.

Subparagraph 363-6.21(c)(2)(ii) is amended to read as follows:

(ii) All proposals to use C&D debris [residues]as AOC must demonstrate that the concentration of sulfate does not exceed 0.5 percent by weight.

Subdivision 363-6.21(d) is amended to read as follows:

(d) Use of other non-waste materials as [AOC]an alternative to operating cover. The department may approve the use of materials as AOC upon demonstration that the materials meet the requirements of section 363-7.1(b) of this Part. Approval of [these materials]the use of non-waste materials as an AOC is not subject to the variance [procedures]requirements of section 360.10 of this Title.

Section 363-6.22 through paragraph 363-7.1(b)(3) remain unchanged.

Paragraph 363-7.1(b)(4) is amended to read as follows:

(4) The total annual tonnage of [A]alternative operating cover approved pursuant to section 363-6.21(c) of this

Part must be identified separate from the total annual tonnage for disposal in the facility's permit[as a separate annual tonnage and] to operate. The facility must not exceed the total annual tonnage of alternative operating cover. Any exceedance of the total annual tonnage of alternative operating cover must be reported to the department in accordance with the permit and with section 363-8.2 of this Part.

Paragraph 363-7.1(b)(5) through subdivision 363-7.1(d) remain unchanged.

Subdivision 363-7.1(e) is amended to read as follows:

(e) Decomposition gases. Decomposition gases generated within a landfill must be controlled to prevent safety issues and off-site odors. Measures to control decomposition gases must be undertaken in accordance with the following requirements:

Paragraph 363-7.1(e)(1) is amended to read as follows:

(1) [I]n landfills which receive putrescible waste or construction and demolition debris, horizontal landfill gas lines must be installed in the waste mass at a horizontal spacing of not more than 100 feet and a vertical spacing of not more than 20 feet and [shall]must extend across the entire waste mass except that they must terminate [at least] not more than 100 feet from the exterior slope of the waste mass.[;] The department may approve site-specific spacing of the landfill gas collection lines in landfills that receive only construction and demolition debris with the condition that if nuisance odor issues occur the landfill will be required to meet the spacing requirements specified in this paragraph.

Paragraph 363-7.1(e)(2) through paragraph 363-7.1(f)(1) remain unchanged.

Paragraph 363-7.1(f)(2) is amended to read as follows:

(2) Leachate depth (head) above the primary liner system may not exceed 12 inches, except during and within a seven-day period following storm events and in designed sump areas. Both the primary and secondary leachate collection and removal systems must be operated in a free-draining manner so as not to cause a leachate head buildup above the respective liner system.

Paragraph 363-7.1(f)(3) through subparagraph 363-7.1(f)(7)(vi) remain unchanged.

Subparagraph 363-7.1(f)(7)(vii) is amended to read as follows:

(vii) within 30 days after the notification that the allowable leakage rate has been exceeded, submit to the department the results of the determinations specified in subparagraphs (ii), (iv), (v), and (vi) of this paragraph, the results of the actions taken, and actions planned. Monthly thereafter, [as]so long as the flow rate in the secondary leachate collection and removal system exceeds the allowable leakage rate, a report must be submitted to the department summarizing the results of any remedial actions taken and actions planned in order to reduce the leakage to an allowable level; and

Subparagraph 363-7.1(f)(7)(viii) through subdivision 363-7.1(i) remain unchanged.

Subdivision 363-7.1(j) is amended to read as follows:

(j) Biosolids. All biosolids accepted for disposal must be stabilized, dewatered to a minimum of 20 percent solids, and exhibit no free liquid as defined by SW-846 Method 9095 - Paint Filter Liquids Test, incorporated by reference in section 360.3 of this Title. Biosolids that are disposed of must meet the following stabilization criteria, except if it can be demonstrated to the department's satisfaction that the equivalent level of odor reduction can be achieved through alternative methods:

Paragraph 363-7.1(j)(1) through paragraph 363-7.1(o)(10) remain unchanged.

Subdivision 363-7.1(p) is amended to read as follows:

(p) Industrial waste or drilling and production wastes disposal. Industrial waste or drilling and production wastes, if accepted, must be included in the landfill's waste control plan, which must describe any special handling or disposal procedures associated with the waste.

Subdivision 363-7.1(q) through paragraph 363-7.1(q)(2) remain unchanged.

Subdivision 363-7.1(r) is repealed.

A new subdivision 363-7.1(r) is added to read as follows:

(r) Deed restriction. The landfill owner must place a deed restriction on the property. The deed restriction must run with the land in perpetuity as long as any waste disposed at the landfill remains.

(1) All landfill owners must submit to the department for approval a proposed deed restriction within one year of the effective date of the permit. The proposed deed restriction must include a discussion of the planned site life for the landfill operation with a general description of the types of waste received and description of the proposed landfill end use. The proposed deed restriction must include a survey and a map, that clearly indicates the existing and proposed limits of the disposal areas within the property boundary. The landfill owner shall record the deed restriction within 30 days of approval by the department, in the office of the recording officer for the county or counties where the property is situated in a manner prescribed by Article 9 of the Real Property Law. The landfill owner must submit to the department a certified copy of the filed deed restriction with the indexing information from the appropriate county clerk's office within 30 days of its recording.

(2) An updated property deed restriction must be submitted with the facility closure plan to the department for approval in accordance with section 363-9.3(e). This updated deed restriction must indicate the period of time during which the property has been used as a landfill, describe the wastes contained within the landfill, and must note that records for this facility have been filed with the department. The updated deed restriction must indicate that the closed landfill is subject to a post-closure care plan and a custodial care plan filed with the department and must include a survey and a map, that clearly indicates the limits of the disposal areas within the property boundary. The landfill owner shall record the deed restriction within 30 days of approval by the department, in the office of the recording officer for the county or counties where the property is situated in a manner prescribed by Article 9 of the Real Property Law. The landfill owner must submit to the department a certified copy of the filed deed restriction with the indexing information from the appropriate county clerk's office within 30 days of its recording.

Subdivision 363-7.1(s) is amended to read as follows:

(s) Financial assurance. The landfill must maintain financial assurance in an amount sufficient to cover the cost of closure, post-closure care, [custodial care,]and corrective measures, if required, as specified by this Subpart and section 360.22 of this Title.

A new subdivision 363-7.1(t) is added to read as follows:

(t) Food scraps disposal. After January 1, 2022, landfills must take all reasonable precautions to not accept food scraps from designated food scraps generators required to send their food scraps to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department.

Section 363-7.2 through paragraph 363-8.1(a)(3) remain unchanged.

Paragraph 363-8.1(a)(4) is amended to read as follows:

(4) Records associated with the radioactive waste detection procedures required by section 363-7.1(a)(~~4~~5) of this Part must be kept at the facility.

Section 363-8.2 through Subpart 363-9 (heading) remain unchanged.

Section 363-9.1 is amended to read as follows:

Section 363-9.1 Applicability

All landfills subject to regulation under this Part, except landfills that ceased accepting waste before November

4, 2017, must conform to the requirements for closure, post-closure care, and custodial care set forth in this Subpart. Closure, [and]post-closure care and custodial care activities must be conducted under a permit issued in accordance with the permitting requirements of section 360.16 of this Title. All landfills, including landfills that closed prior to November 4, 2017 or were not subject to closure, post-closure care or custodial care requirements must conform to the end use requirements in section 363-9.7.

Section 363-9.2 through subdivision 363-9.3(c) remains unchanged.

Paragraph 363-9.3(c)(1) is amended to read as follows:

(1) meets the requirements of this Subpart and section 363-4.6([n]p) of this Part;

Paragraph 363-9.3(c)(2) through subdivision 363-9.3(d) remain unchanged.

A new subdivision 363-9.3(e) is added to read as follows:

(e) An updated deed restriction that meets the requirements of section 363-7.1(r) must be submitted to the department with the facility closure plan.

Section 363-9.4 through clause 363-9.6(a)(1)(iv)(‘c’) remain unchanged.

Subparagraph 363-9.6(a)(1)(v) is amended to read as follows:

(v) The leachate collection system must be maintained and operated in accordance with section 363-7.1(f) and (g) of this Part. Leachate management activities include proper maintenance of all leachate controls, recording of the total volume of leachate stored at and removed from the facility, evaluation of liner performance, and leachate sampling and analysis.

Subparagraph 363-9.6(a)(1)(vi) is amended to read as follows:

(vi) Any installed active landfill gas collection system must be maintained and operated in accordance with section 363-7.1(e). [Landfill gas must be destroyed in a flare or equivalent equipment in accordance with Parts 201, 208 and 212 of this Title.]

Subparagraph 363-9.6(a)(1)(vii) through subparagraph 363-9.6(a)(1)(viii) remain unchanged.

Subparagraph 363-9.6(a)(1)(ix) is amended to read as follows:

(ix) An annual report must be submitted as required by section 360.19 of this Title, and must include the results of maintenance, monitoring, quarterly inspections, and inspections after seismic events of sufficient intensity which may adversely affect the integrity of the final cover system and major rainfall events[inspections] required in this subdivision.

Subparagraph 363-9.6(a)(1)(x) remains unchanged.

A new subparagraph 363-9.6(a)(1)(xi) is added to read as follows:

(xi) The landfill must maintain financial assurance in an amount sufficient to cover the cost of post-closure care, custodial care, and corrective measures, if required, as specified by this Subpart and section 360.22 of this Title.

Paragraph 363-9.6(a)(2) through subparagraph 363-9.6(b)(1)(v) remain unchanged.

Subparagraph 363-9.6(b)(1)(vi) is amended to read as follows:

(vi) Annual inspections and inspections after seismic events of sufficient intensity which may adversely affect the integrity of the final cover system and major rainfall events (24-hour, five-year storms) must be performed on all facility components.

Subparagraph 363-9.6(b)(1)(vii) remains unchanged.

A new subparagraph 363-9.6(b)(1)(viii) is added to read as follows:

(viii) The landfill must maintain financial assurance in an amount sufficient to cover the cost of custodial care and corrective measures, if required, as specified by this Subpart and section 360.22 of this Title.

Subparagraph 363-9.6(b)(2) through section 363-9.7 (heading) remain unchanged.

Subdivision 363-9.7(a) is amended to read as follows:

(a) The owner or operator of a closed landfill where an end use is proposed, including landfills that were closed prior to [the effective date of this Part]November 4, 2017 or were not subject to closure, post-closure care, or custodial care requirements, must demonstrate that the proposed end use:

Paragraph 363-9.7(a)(1) through subparagraph 363-10.1(a)(2)(iv) remain unchanged.

Subparagraph 363-10.1(a)(2)(v) is amended to read as follows:

(v) an identification of any [S]state and local permits or other public health or environmental requirements that may affect the corrective measure implementation.

Paragraph 363-10.1(a)(3) through subparagraph 363-10.1(b)(2)(iii) remain unchanged.

Subparagraph 363-10.1(b)(2)(iv) is amended to read as follows:

(iv) comply with other applicable [S]state and [F]federal requirements.

Paragraph 363-10.1(b)(3) through subparagraph 363-10.1(b)(5)(iii) remain unchanged.

Paragraph 363-10.1(b)(6) is amended to read as follows:

(6) A determination by the department under paragraph (5) of this subdivision does not affect the authority of the department to require the facility owner or operator to undertake source control measures or other measures

that may be necessary to eliminate or minimize further contamination of groundwater or to mitigate the groundwater contamination to concentrations that are technically practical and significantly reduce threats to public health and the environment, nor does it diminish the department's authority to seek civil or criminal penalties or other damages or relief as part of an enforcement action under [S]state or [F]federal law.

Subdivision 363-10.1(c) through subparagraph 363-10.1(c)(4)(i) remain unchanged.

Subparagraph 363-10.1(c)(4)(ii) is amended to read as follows:

(ii) complies with applicable [S]state and federal requirements.

Paragraph 363-10.1(c)(5) through subparagraph 363-10.1(c)(5)(ii) remain unchanged.

Paragraph 363-10.1(c)(6) is amended to read as follows:

(6) Within 14 days of the completion of the corrective measure, [T]the facility owner or operator must certify to the department that the corrective measure has been completed according to the requirements of paragraph (5) of this subdivision. The certification must be signed by the facility owner or operator and [be approved by]submitted to the department for approval.

Paragraph 363-10.1(c)(7) is amended to read as follows:

(7) When, upon review of the certification, the department determines that the corrective measure has been

completed in accordance with the requirements under paragraph (5) of this subdivision, the department will approve the certification and may allow the facility owner or operator ~~[may]~~to be released from the requirements for financial assurance for corrective measures.

Subpart 363-11 (heading) through section 363-11.2 (heading) remain unchanged.

Subdivision 363-11.2(a) is amended to read as follows:

(a) An owner or operator of a landfill must not conduct a reclamation feasibility study or landfill reclamation [of a landfill] without a registration issued pursuant to section 360[-].15 of this Title and this Subpart. Facilities registered pursuant to this Part must comply with section 360.15 of this Title if not otherwise permitted under this Part.

Subdivision 363-11.2(b) through section 363-11.4 (heading) remain unchanged.

Subdivision 363-11.4(a) is amended to read as follows:

(a) Drawings and work plans for demonstration projects or landfill reclamation must be submitted to the department for approval prior to the commencement of reclamation activities and must include the following:

Paragraph 363-11.4(a)(1) through paragraph 363-11.4(a)(3) remain unchanged.

Paragraph 363-11.4(a)(4) is amended to read as follows:

(4) A description of procedures to excavate, process, store, transfer, use, and dispose of excavated material. The off-site reuse of soil components or residues must be approved by the department in advance in accordance with section 360.[11]12 of this Title.

Paragraph 363-11.4(a)(5) through subdivision 363-11.6(a) remain unchanged.

Subdivision 363-11.6(b) is amended to read as follows:

(b) A site health and safety coordinator must be designated on a full-time basis during excavation. The site health and safety coordinator must be trained in hazardous waste operations and emergency response[
operations] as referenced in 29 CFR [Part]section 1910.120, as incorporated by reference in section 360.3 of this Title.

6 NYCRR PART 364

Part 364 is amended to read as follows:

Subpart 364-1 (heading) thorough paragraph 364-1.2(e)(9) remain unchanged.

Paragraph 364-1.2(e)(10) is amended to read as follows:

(10) construction and demolition (C&D) debris generated or transported by an industrial or commercial business, including excavated material;

Paragraph 364-1.2(e)(11) is repealed and paragraph (12) is renumbered paragraph (11).

Newly renumbered paragraph 364-1.2(e)(11) remains unchanged.

Subdivision 364-1.2(f) through subdivision 364-1.2(g) remain unchanged.

Subdivision 364-1.2(h) is amended to read as follows:

(h) Regulated medical waste (RMW), and other infectious wastes regulated under Subpart 365-3 of this Title.

Subdivision 361-1.2(i) remains unchanged.

Subdivision 364-1.2(j) is repealed and subdivision (k) is renumbered subdivision (j).

Newly renumbered 364-1.2(j) remains unchanged.

Section 364-2.1 is repealed and a new section 364-2.1 is added to read as follows:

364-2.1 Exempt transport.

In addition to the exemptions provided in section 360.14 of this Title, the following are exempt from this Part:

(a) Transport of waste by rail, water and air carriers.

(b) Transport of the following wastes, provided no other regulated waste is intermixed, contained in or otherwise included with the waste:

(1) Residential and institutional waste unless it is raw sewage, septage, sludge from a sewage or water supply treatment plant, low-level radioactive waste, waste tires, or waste oil.

(2) Source-separated HHW self-transported from a household to a HHW collection event or permitted HHW collection facility. Source-separated HHW transported in any quantity by any other method is not exempt.

(3) Waste generated from agricultural operations provided any waste pesticides are transported by the farmer to a department-approved HHW or pesticide collection event site.

(4) Waste transported by farm vehicles for use on a farm.

(5) Tree debris.

(6) Regulated waste in quantities less than or equal to 2,000 pounds in any single shipment, except as follows:

(i) C&D debris in quantities less than or equal to 10 cubic yards in any single shipment.

(ii) Hazardous waste as defined in Part 371 of this Title in any quantity.

(iii) Universal waste as defined in Section 370.2 of this Title in quantities less than 500 pounds in any single shipment, unless otherwise specified in this Part.

(iv) Waste generated and transported by a conditionally exempt small-quantity generator pursuant to section 371.1(f) of this Title, provided that no more than a total of 500 pounds of hazardous waste or no more than 2.2 pounds of acute hazardous waste are transported in any single shipment.

(v) RMW in quantities less than 50 pounds in a single vehicle by private parcel delivery systems or by the United States Postal Service, provided the transporting entities comply with the packaging, labeling, tracking document and other transport requirements of the USDOT for the waste.

(vi) RMW in quantities less than 50 pounds in a single vehicle, contaminated with a radioisotope and transported by an employee or courier of a radiopharmacy registered in accordance with Part 365 of this Title, provided that the RMW is returned to the dispensing radiopharmacy.

(vii) Household sharps in quantities less than 50 pounds in a single vehicle, provided the vehicle is owned and operated by a participant in the NYSDOH's New York State Safe Sharps Collection Program.

(viii) Waste tires in loads of 20 or fewer waste tires.

(ix) Waste oil in quantities of 55 gallons or less in a single shipment.

(7) C&D debris leaving a construction and demolition debris handling and recovery facility except for fill, residues, and material which does not meet the requirements of a beneficial use determination (BUD) specified in section 360.12 of this Title.

(8) Elemental mercury and dental amalgam waste regulated pursuant to Subpart 374-4 of this Title, generated at dental facilities and destined for mercury recovery.

(9) Electronic waste directed for scrap metal recycling under section 371.1(g)(1)(iii)('b') or (e)(1)(xiii) of this Title.

(10) Lead-acid batteries destined for recycling as authorized in Part 370 of this Title.

(11) Consumer products in transit that have been determined by an appropriate state or federal official or agency to be unsuitable for their intended use and for which the official or agency has directed the immediate transport of those products for management at an authorized facility.

(12) Material that has an approved BUD in accordance with sections 360.12 and 360.13 of this Title, at the point that the BUD approval indicates that the material is no longer a solid waste, except the following fill is excluded from this exemption:

(i) Transport of Fill Type 1, Fill Type 2, Fill Type 3, Fill Type 4 or Fill Type 5 within the New York City Metropolitan Area Waste Impact Zone; and

(ii) Transport of Fill Type 4 or Fill Type 5 outside of the New York City Metropolitan Area Waste Impact Zone.

(13) Concrete or concrete products (including those that have embedded reinforcement), asphalt pavement, asphalt millings, brick, and rock or mixtures of these materials, except that transport of the material within the New York City Metropolitan Area Waste Impact Zone is subject to the requirements of this Part.

(14) Oil, gas, solution mining, stratigraphic, brine disposal and geothermal well cuttings that are rock chips, fragments and/or fines generated during drilling which are uncontaminated by drilling and completion fluids including any additives.

(15) Non-hazardous bottom and fly ash from municipal solid waste combustors.

(16) RMW transported by emergency rescue vehicles, a blood service collection vehicle or a vehicle operated by a public health nurse or veterinarian in the conduct of routine business, where the transportation of the waste is incidental to the primary function of the vehicle. The RMW must be transported to a RMW management

facility regulated by the department or the Department of Health.

(17) Medical devices intended to be reprocessed or remanufactured provided the transportation complies with USDOT regulations.

(18) Regulated waste transported by a law enforcement agency to an authorized facility.

(19) Regulated waste transported during an explosives or munitions emergency response as defined in section 370.2(b) of this Title conducted in accordance with section 373-1.1(d)(1)(xiii)(‘a’)(‘4’) of this Title.

(20) Regulated waste transported by a public utility, public railroad service, or public transportation agency when the transportation of the waste is incidental to the primary function of the transport vehicle. This exemption extends to entities contracted to conduct work for a public utility, public railroad service or public transportation agency when the work is conducted in accordance with that agency’s contract documents and specifications.

(21) Waste transported wholly on-site at the point of origination, generation, or occurrence of the waste.

(22) Waste transported on or across privately or publicly owned parcels that does not result in travel on any highway, road, street, avenue, alley, public place, public driveway or any other public way.

Subpart 364-3 (heading) thorough section 364-3.1(opening paragraph) remain unchanged.

Subdivision 364-3.1(a) is amended to read as follows:

(a) A transporter of a single shipment of less than 50 pounds of RMW per month per location, provided:

Paragraph 364-3.1(a)(1) through subdivision 364-3.1(b) remain unchanged.

Subdivision 364-3.1(c) is amended to read as follows:

(c) A transporter of commercial [solid] waste, other than C&D debris [including restricted-use fill, limited-use fill and contaminated fill material and general fill generated in the City of New York] in quantities greater than 2,000 pounds in a single shipment.

Subdivision 364-3.1(d) is amended to read as follows:

(d) A transporter of C&D debris in quantities greater than [ten] 10 cubic yards in a single shipment, except that Fill Type 1, Fill Type 2 and Fill Type 3 only require transport by a transporter registered under this Part if they are transported in the New York City Metropolitan Area Waste Impact Zone.

Subdivision 364-3.1(e) remains unchanged.

New subdivision 364-3.1(f) is added to read as follows:

(f) A transporter of waste tires in quantities greater than 20 but less than 80 waste tires in a single shipment.

New subdivision 364-3.1(g) is added to read as follows:

(g) A transporter of waste oil in quantities greater than 55 gallons but less than or equal to 275 gallons in a single shipment.

Section 364-3.2 is amended to read as follows:

364-3.2 Registration requirements and standards

[The requirements contained in Part 360.15 of this Title do not apply to this Subpart.]

Subdivision 364-3.2(a) through section 364-3.3(opening paragraph) remain unchanged.

Subdivision 364-3.3(a) is amended to read as follows:

(a) The transporter must be in possession of [carry in the transport vehicle] a legible paper copy, or other format approved by the department, of the most recent registration issued pursuant to this Part. The transporter must present the registration, [and] any required waste tracking documentation relating to the waste being transported, or justification that the waste being transported does not require a Part 364 registration or permit to authorized representatives of the department or to any law enforcement officer upon request.

Subdivision 364-3.3(b) through subdivision 364-3.3(d) remain unchanged.

Subdivision 364-3.3(e) is amended to read as follows:

(e) Each receiving facility located within New York State must be [a facility] authorized to accept the waste pursuant to the requirements of the ECL and applicable regulations [or a facility outside the jurisdiction of New York State authorized to operate within the state or jurisdiction where the facility is located or otherwise exempt within that State or jurisdiction].

Subdivision 364-3.3(f) is amended to read as follows:

(f) [The transporter of RMW, C&D debris including, restricted-use fill, limited-use fill, and contaminated fill material, and general fill generated in the City of New York, and non-exempt drilling and production waste must comply with the tracking documentation requirements in Subpart 364-5 of this Part.] Each receiving facility located outside the jurisdiction of New York State must be authorized to operate within the state or jurisdiction where the facility is located or otherwise be exempt within that state or jurisdiction.

Subdivision 364-3.3(g) is amended to read as follows:

(g) [A certificate of treatment form must accompany treated RMW.

Treated RMW is considered commercial waste for the purposes of this Part.] A registered transporter may return regulated waste to the generator when an authorized receiving facility cannot be located or a receiving facility refuses to accept the regulated waste.

Subdivision 364-3.3(h) is amended to read as follows:

(h) A certificate of treatment form must accompany treated RMW. Treated RMW is considered commercial waste for the purposes of this Part. [The transporter must comply with the recordkeeping and reporting requirements in Subpart 364-5 of this Part.]

A new subdivision 364-3.3(i) is added to read as follow:

(i) The transporter must comply with the recordkeeping and reporting requirements in Subpart 364-5 of this Part.

Subpart 364-4(heading) through paragraph 364-4.2(a)(3) remain unchanged.

Paragraph 364-4.2(a)(4) is amended to read as follows:

(4) a municipal, s[S]tate, or other governmental entity: by a duly authorized principal executive officer or elected official.

Subdivision 364-4.2(b)(heading) through paragraph 364-4.2(b)(2) remain unchanged.

Paragraph 364-4.2(b)(3) is amended to read as follows:

(3) as appropriate, proof of incorporation, doing business as (dba [DBA]) filing, or other appropriate documentation identifying the name under which the applicant may legally conduct business;

Paragraph 364-4.2(b)(4) through paragraph 364-4.2(b)(7) remain unchanged.

Paragraph 364-4.2(b)(8) is amended to read as follows:

(8) documentation necessary to demonstrate that the proposed receiving facilities are authorized as identified in section 364-4.8(d) or (e) [364-4.6(e)] of this Subpart;

Paragraph 364-4.2(b)(9) remains unchanged.

Paragraph 364-4.2(b)(10) is amended to read as follows:

(10) proof[s] of insurance from an authorized insurance company including automobile and general liability insurance and additional environmental liability insurance, if required;

Paragraph 364-4.2(b)(11) through paragraph 364-4.2(b)(12) remain unchanged.

Subdivision 364-4.2(c) is amended to read as follows:

(c) The department may require or conduct inspections of transport vehicles as a condition of application approval [or during the life of the permit].

Section 364-4.3 through paragraph 364-4.5(a)(2) remain unchanged.

Subdivision 364-4.5(b) is amended to read as follows:

(b) Only transporters that can demonstrate to the department that they are able to comply with this Subpart may be issued emergency waste transporter permits or emergency waste transporter permit modifications.

Subdivision 364-4.5(c) remains unchanged.

Subdivision 364-4.5(d) is amended to read as follows:

(d) Emergency waste transporter permits may include additional requirements with respect to waste handling, training, transport, storage and final disposal of the waste. The department may attach conditions to emergency waste transporter permits and enforce them to assure compliance with the authorization and other regulatory standards that would apply to these [such] actions absent an emergency. These requirements will be determined by the department on a case-by-case basis prior to issuance of the permit.

Subdivision 364-4.5(e) through subdivision 364-4.6(c) remain unchanged.

Subdivision 364-4.6(d) is repealed and a new subdivision 364-4.6(e) is added to read as follows:

(d) Denial, suspension, revocation or modification. The department may deny a permit application or may suspend, revoke or otherwise modify a permit once issued, for reasons including, but not limited to, the following:

(1) failure to pay the required environmental regulatory fees annually, submit copies of current insurance certificates, permit modifications, annual reports, or a timely permit renewal;

(2) failure to request a permit modification to add additional vehicles, change vehicle storage locations, or change receiving facilities;

(3) violation of any law, rule or regulation or permit condition related to the operation of a receiving facility or if the receiving facility is not authorized to receive the types of waste listed on the application;

(4) A determination that the applicant was unsuitable pursuant to ECL sections 27-0305 and 27-0913; or

(5) a determination that the transporter violated any terms of the permit, the ECL, or any regulation or standard promulgated pursuant thereto.

Subdivision 364-4.6(e) through subdivision 364-4.6(h) are repealed.

Section 364-4.7 is amended to read as follow:

364-4.7 Insurance requirements for permitted transporters

The following insurance requirements apply to transporters subject to the permitting requirements of this Part:

Subdivision 364-4.7(a) through subdivision 364-4.7(e) remain unchanged.

Section 364-4.8 is repealed and a new section 364-4.8 is added to read as follows:

364-4.8 Operating requirements for permitted transporters.

The following operating requirements apply to transporters subject to the permitting requirements of this Part:

- (a) Transport vehicles for regulated waste must include a cargo-carrying portion that is enclosed and secured except when loading or unloading regulated waste.
- (b) Except for self-transport described in section 364-2.1(b)(2) of this Part, source-separated HHW must be transported by a transporter permitted to transport hazardous waste.
- (c) Regulated waste must only be delivered to a receiving facility authorized to accept the waste and the receiving facility must be designated on the transporter permit.
- (d) Each receiving facility located within New York State must be authorized to accept the waste pursuant to the requirements of the ECL and applicable regulations.
- (e) Each receiving facility located outside the jurisdiction of New York State must be authorized to operate within the state or jurisdiction where the facility is located or otherwise be exempt within that state or jurisdiction.

(f) Transporters must only deliver waste to the receiving facility identified on the waste tracking document, if a waste tracking document is required. In cases where the receiving facility specified on the waste tracking document is unable to accept the waste, the transporter may elect, upon notification to the generator, to either deliver the waste to an alternate receiving facility for that waste type listed on the transporter's permit or to return the shipment to the generator.

(g) Waste requiring a tracking document must be kept separate from waste not requiring a tracking document.

(h) The operator of any transport vehicle used for activities covered by this Part must carry a legible paper copy, or other format approved by the department, of the most recent permit issued in the transport vehicle. The operator must present the permit, together with associated waste tracking documents or justification that the waste being transported does not require a Part 364 registration or permit, to authorized representatives of the department or to any law enforcement officer upon request.

(i) Each transport vehicle used by a permitted transporter for activities regulated under this Part, must display the name of the permitted transporter in a prominent position on both sides of the permitted transport vehicle and the permit number of the transporter in prominent position on both sides and the rear of the transport vehicle in numbers and letters at least three inches high and in a color which contrasts with the background color.

(j) A permittee must conspicuously mark or placard every transport vehicle, in a manner consistent with Article 2, Section 14-f of the New York State Transportation Law and any rules and regulations promulgated thereunder and any related federal requirements, related to the transportation of the regulated waste and its

principal hazard.

(k) All wastes must be properly contained during transport to prevent any type of discharge to the environment.

(l) All waste must be properly secured within the transport vehicle during transport to prevent movement or leakage within the transport vehicle during transport.

(m) All waste containers must be oriented in an appropriate manner, as marked on any container, to ensure proper transportation and to avoid spillage or leakage during transport.

(n) The operator of any transport vehicle used for activities covered by this Part must remain with the transport vehicle while it is being loaded or unloaded unless otherwise approved by the department.

(o) Permitted transport vehicles, other than the driver's compartment, are restricted to the transportation of materials not intended for human or animal consumption or for other use by the general public except when properly cleaned or disinfected in accordance with all applicable federal and state regulations governing decontamination.

(p) Any transporter of hazardous waste must also comply with all applicable requirements of Part 372 of this Title. Prior to transport of hazardous waste from a hazardous waste generator, the transporter must provide in writing, to the generator, a statement or proof that the transporter is authorized to deliver the hazardous waste to the designated treatment, storage, or disposal facility. Any transporters who provide a pre-printed manifest to a generator, shipper, or offeror of regulated waste must ensure that all information is correct and clearly legible

on all copies of the manifest.

(q) All transport vehicles, including bulk packages and containers used in transporting regulated waste must be kept in a sanitary condition.

(r) Each transporter must also comply with applicable USDOT hazardous materials requirements set forth in 49 CFR 173.196 and 173.197, and 173.199, as incorporated by reference in section 360.3 of this Title, including but not limited to, packaging, labeling, marking and use of appropriate tracking documents pertaining to the regulated waste authorized for transport.

(s) The transporter must comply with the tracking documentation requirements in section 364-5.1 of this Part.

(t) The transporter must comply with the recordkeeping and reporting requirements in section 364-5.2 of this Part.

(u) The department may require or conduct inspections of transport vehicles during the life of the permit.

(v) The transporter must ensure that any vehicle used to transport regulated waste is listed on the permit.

(w) The transporter must ensure that any receiving facility to which regulated waste is delivered is listed on the permit.

(x) The transporter must comply with all applicable state and federal laws and all rules and regulations

promulgated thereunder.

Section 364-4.9 through section 364-5.1(heading) remain unchanged.

Subdivision 364-5.1(a) is amended to read as follows:

(a) Applicability. The provisions of this section apply to the following:

(1) All transporters registered or permitted pursuant to this Part that transport any of the following wastes [RMW, restricted-use fill, limited-use fill, and contaminated fill material, and non-exempt drilling and production waste] must comply with this Subpart.

(i) Fill Type 1, Fill Type 2 or Fill Type 3 transported in the New York City Metropolitan Area Waste Impact Zone;

(ii) Fill Type 4;

(iii) Fill Type 5;

(iv) excavated material that does not meet the requirements of section 360.12 or 360.13 of this Title for reuse;

(v) RMW; and

(vi) non-exempt drilling and production waste as provided in section 364-2.1(b)(14) of this Part.

(2) Transporters of C&D debris [, including general fill,] generated in the New York City Metropolitan Area Waste Impact Zone [City of New York must comply with this Subpart].

Subdivision 364-5.1(b) is repealed and a new subdivision 364-5.1(b) is added to read as follows:

(b) Requirements.

(1) A waste tracking document or equivalent must be completed for each shipment of waste. The waste tracking document or equivalent must be in a form prescribed or approved by the department.

(2) Transporters must not accept a shipment of waste from a generator unless accompanied by a properly completed waste tracking document or equivalent document approved by the department. The waste tracking document must be legible and the document certification must be signed and dated by an authorized representative of the generator. The waste tracking document certification shall state: I certify, under penalty of law, that the information provided in this waste tracking document has been prepared under my direction and supervision and further certify that the information contained herein is true and accurate. I am aware that any false statement on this form is punishable pursuant to section 210.45 of the Penal Law.

(3) Transporters must not accept a shipment of waste that does not match the quantity or type of waste listed on the waste tracking document. In cases where volume or weight of waste is unknown, waste tracking documents must reflect that the quantity of waste being shipped is estimated.

(4) Transporters must have the waste tracking document signed and dated by an authorized representative of the receiving location or facility, or obtain from the receiving location or facility an acknowledgement of receipt acceptable to the department, upon delivery of the waste.

(5) Transporters must provide a copy of the tracking document to the receiving location or facility.

(6) All transporters of waste listed in subparagraphs (a)(1) (ii), (iii), (iv), (v) and (vi) and those transporters subject to paragraph (a)(2) of this section must provide copies of waste tracking documents signed and dated by an authorized representative of the generator or containing an acknowledgement of generation acceptable to the department to both the generator and the department within 15 days of waste delivery to the receiving user or facility.

(7) Transporters of RMW that consolidate or re-manifest shipments of waste from multiple generators in a new single tracking document must retain a copy of each generator's original tracking document or maintain a consolidation log indicating all shipments consolidated or re-manifested on a separate tracking document. A copy of the generator's original tracking document and the log that includes the following information must accompany the new tracking document:

(i) name, address and telephone number of each generator;

(ii) quantity and date of shipment of RMW for each generator; and

(iii) if applicable, the names and permit numbers of all previous transporters.

(8) Transporters of RMW must return a copy of each tracking document (including any consolidated or re-manifested documents) to the generator within 15 days of receipt of the document from the receiving facility.

(9) Tracking document discrepancies. Discrepancies including variations in the waste shipment, number of containers or volume, compromised packaging, or waste unaccompanied by a tracking document must be resolved as follows:

(i) within 15 days of receiving the waste, a report must be filed with the department describing the discrepancy and the attempts the transporter has undertaken to reconcile it.

Section 364-5.2(heading) through paragraph 364-5.2(a)(2) remain unchanged.

Paragraph 364-5.2(a)(3) is amended to read as follows:

(3) the name and physical location of the receiving facility or user;

Paragraph 364-5.2(a)(4) through subdivision 364-5.2(b) remain unchanged.

Subdivision 364-5.2(c) is amended to read as follows:

(c) Transporters of regulated waste must submit an annual report to the department. Instead of submitting two separate annual reports, transporters with both permitted and registered vehicles may submit one annual report containing the information for all of its vehicles to comply with this Part.

The annual reports must include, at a minimum, a complete listing of the amount of each category of regulated waste transported to each receiving facility or user. Annual reports must be submitted to the department:

(1) by March 1 of each year for the previous calendar year; and

(2) in any year in which a transporter's registration or permit expires and is not renewed, no later than 30 days after the date of permit or registration expiration.

Subdivision 364-5.2(d) is amended to read as follows:

(d) Transporters of regulated waste required to report to the department under this Part, or under the terms of any registration or permit issued under this Part, must make, sign, and submit with the report a certification acceptable to the department. [the following certification:

I certify, under penalty of law, that the data and other information identified in this report have been prepared under my direction and supervision in compliance with the system designed to ensure that qualified personnel properly and accurately gather and evaluate this information. I am aware that any false statement I make in such report is punishable pursuant to section 210.45 of the Penal Law.]

Part 365 is amended to read as follows:

Subpart 365-1 (heading) through section 365-1 (heading) remain unchanged.

Section 365-1.1 is amended to read as follows:

[In addition to the requirements contained in Part 360 of this Title, t] This Subpart applies to generators of regulated medical waste (RMW) as defined in [S]section 360.2 of this Title. These regulations apply to veterinary practices, animal research facilities, radiopharmacies, waste management facilities, [and] or any other facilities or persons who generate RMW or other infectious waste. This Subpart also applies to any combination of these activities. This Subpart does not apply to hospitals, residential health care facilities, diagnostic and treatment centers (defined in section 2801 of the Public Health Law) and clinical laboratories (defined in section 571 of the Public Health Law) except to the extent hospitals use bulk packaging or accept RMW from off-site.

Section 365-1.2 (heading) through paragraph 365-1.2(b)(6) remain unchanged.

Paragraph 365-1.2(b)(7) is amended to read as follows:

(7) Sharps containers must be removed from [the] patient care or use areas to a room or area designated for RMW storage when: the container has reached the fill line indicated on the container,[,] is otherwise filled, or [the container] generates odors or other evidence of [putrification]putrefaction[;or within 90 days of use], whichever occurs first.

Paragraph 365-1.2(b)(8) is amended to read as follows:

(8) Other RMW containers,[except sharps, may be held in patient care areas for a period not to exceed 24 hours and] at a laboratory or other generation area [for a period not to exceed 72 hours, at which time the RMW shall] must be moved to an RMW storage area[. Notwithstanding these timeframes,] when the container has reached

the fill line indicated on the container, is otherwise filled, or [RMW that] generates odors or other evidence of [putrification]putrefaction, whichever occurs first [must be moved to a storage area as soon as practicable].

Paragraph 365-1.2(b)(9) through subparagraph 365-1.2(b)(10)(vi) remains unchanged.

Paragraph 365-1.2(b)(11) is amended to read as follows:

(11) RMW must not be stored in a storage area for a period exceeding 30 days, except for a generator of less than 50 pounds of RMW per month that does not accept RMW for treatment from other facilities may store RMW [for a period not exceeding 60 days] until the container has reached the fill line on the container, is otherwise filled, or generates odors or other evidence of putrefaction, whichever occurs first. For bulk packaging, storage must be in accordance with subparagraphs (14)(vi) and (vii) of this subdivision. For radiological RMW, the RMW may be stored for a period of time necessary to allow decay to a background radiation level, or if long lived must be managed as a prohibited radioactive material (including waste disposal).

Paragraph 365-1.2(b)(12) remains unchanged.

Subparagraph 365-1.2(b)(12)(i) is amended to read as follows:

(i) primary containers, except sharps containers, must be placed in a secondary container[,] and [must be] marked prominently with the universal biohazard symbol or the word Biohazard[;], and, if applicable, [with an] must be affixed with a label indicating that the contents require special handling (e.g., incinerate only, etc.); and

Subparagraph 365-1.2(b)(12)(ii) through subparagraph 365-1.2(b)(13)(iv) remain unchanged.

Subparagraph 365-1.2(b)(13)(v) is amended to read as follows:

(v) Only primary containers that have been approved for reuse by the United States Food and Drug Administration (FDA)[,] may be reused.

Subparagraph 365-1.2(b)(13)(vi) through paragraph 360-1.2(b)(14) remain unchanged

Subparagraph 365-1.2(b)(14)(i) is amended to read as follows:

(i) Secondary containers must comply with the standards prescribed by the USDOT found [at] at 49 CFR 173.134, 173.196, 173.197, and 173.199 as incorporated by reference in section 360.3 of this Title. Reusable secondary containers can include wheeled carts or roll-off bulk containers.

Subparagraph 365-1.2(b)(14)(ii) is amended to read as follows:

(ii) Reusable secondary containers must be inspected prior to return to use to verify that the containers are not defective [and are cleaned and disinfected,](i.e., have no cracks or other defects, [and] that the lid closes and, if available, the locking mechanism works) and are cleaned and disinfected. Reusable containers must be immediately cleaned and disinfected upon emptying if the liner is compromised, visual inspection yields evidence that the container's surface has come in contact with RMW prior to treatment, the contained waste includes cultures and/or stocks, or the contained waste has a highly infectious bioload.

Subparagraph 365-1.2(b)(14)(iii) through paragraph 365-1.2(c)(4) remain unchanged.

Paragraph 365-1.2(c)(5) is amended to read as follows:

(5) Any pharmaceutical waste that is unable to be separated at the site of generation must include a label that reads “Incinerate Only” on the secondary container and must be [incinerated at an authorized facility] disposed at a RMW or municipal waste combustor that is permitted to accept non-hazardous pharmaceutical waste, or at another approved facility. Most non-hazardous [P]pharmaceutical waste may not be disposed in sanitary sewers, septic systems or wastewater treatment systems. The following are the only types of pharmaceutical waste that may be disposed in sanitary sewers, septic systems or wastewater treatment systems: saline solution; lactate; nutrients such as glucose, vitamins, potassium or other salts; and electrolytes.

Paragraph 365-1.2(c)(6) is amended to read as follows:

(6) Secondary containers, except for non-hazardous pharmaceuticals, must be labeled in accordance with the definitions and applicable classification criteria (e.g., RMW, Infectious Substances or Used Healthcare Products) required by 49 CFR 173.134, as incorporated by reference in section 360.3 of this Title. Each label must be printed on or affixed to a surface (other than the bottom) of the container and be located on the same surface of the container near the proper shipping name marking. Each label, whether printed on or affixed to a container, must be durable and weather resistant.

Paragraph 365-1.2(c)(7) remains unchanged.

Subdivision 365-1.2(d) is repealed.

A new subdivision 365-1.2(d) is added to read as follows:

(d) Processing of RMW on-site.

(1) Unless otherwise exempt or required to obtain a permit under Subpart 365-2 of this Part, facilities (i.e. generators) described in this paragraph are subject to the registration provision of section 360.15 of this title. Each facility identified in this paragraph must obtain a registration from the Department but is not required to comply with section 360.19 of this Title:

(i) a facility that decontaminates or treats less than 500 pounds of RMW (including waste from a laboratory or other generation area operating at biosafety level 2 (BSL-2) per month of its own waste with autoclaves, a NYSDOH approved alternative treatment system; or with any Department-approved method of treatment of infectious waste regardless of how the waste is disposed; and,

(ii) a facility that decontaminates, inactivates or treats its own waste generated from a biosafety level 3 (BSL-3) or an animal biosafety level 3 (ABSL-3) laboratory or other generation area, subject to the following:

(‘a’) Decontamination and treatment is performed with autoclaves, a NYSDOH-approved alternative treatment system, or with any Department-approved method of inactivation of infectious waste,

(‘b’) The facility has a current registration number with the Federal Select Agent Program (FSAP) authorizing the facility to possess and work with select agents or toxins of biological origin listed in 7 CFR Part 331, 9 CFR Part 121 or 42 CFR Part 73 as incorporated by reference in section 360.3 of this Title, and

(‘c’) BSL-3 and ABSL-3 wastes generated at these facilities must be decontaminated, inactivated or treated on-site and must be disposed of as RMW at a permitted RMW treatment facility.

(2) The facility registered pursuant to subparagraph 365-1.2(d)(1)(ii) may include another BSL-3 or ABSL-3 laboratory or other generation area at the same institution as the FSAP-registered area which utilizes the biosafety protocols approved as part of the FSAP registration and is overseen by the same institutional biosafety committee and environmental health and safety office, provided decontamination, inactivation or treatment of RMW complies with the Department’s registration.

(3) Facilities subject to registration under paragraph 365-1.2(d)(1) of this subdivision must comply with the following operational requirements:

(i) A registered facility under this subdivision must have a written operation and maintenance plan that demonstrates that the RMW will be managed in accordance with this Subpart and sections 365-2.6 and 365-2.7 of this Part.

(ii) The operation and maintenance plan must identify the decontamination, inactivation or treatment locations, types and number of laboratories and types of devices (including devices used to treat waste water and pathological waste) that will be used to decontaminate or treat RMW. Decontamination, inactivation or treatment must comply with sections 365-2.6 and 365-2.7 of this Part.

- (iii) The facility must have procedures to segregate RMW to be treated and treated RMW from other waste.
- (iv) Each facility employee who will operate decontamination, inactivation or treatment equipment must be trained in the proper use of the equipment.
- (v) The facility must maintain records for the operation of each decontamination, inactivation or treatment unit. A log must be maintained that includes the date, time, name of the employee operating each unit, the type and amount of RMW treated, and the dates and results of calibration, validation and bio-challenge testing.
- (vi) The facility must maintain a contingency plan for emergencies and spill or release response and cleanup, which includes provisions for RMW storage during emergency situations. All spills and emergency situations must be immediately reported to the department.
- (vii) Decontaminated, inactivated and treated waste must be sent for additional treatment to a facility authorized to treat RMW or disposed at a facility authorized to accept treated RMW for disposal. Each load of waste must be accompanied by a NYSDOH certificate of treatment.

(4) The following types of facilities are subject to regulation under Subpart 365-2 of this Part:

- (i) a facility which decontaminates, inactivates or treats more than 500 pounds of RMW per month; and
- (ii) a facility operating a BSL-3 or an ABSL-3 laboratory or other generation area that is not registered with the FSAP to possess and work with select agents or toxins of biological origin, or whose FSAP registration is no longer in effect and
- (iii) a facility operating a BSL-4 or ABSL-4 laboratory or other generation area.

Subdivision 365-1.2(e) through subparagraph 365-1.2(e)(1)(ii) remain unchanged.

Subparagraph 365-1.2(e)(1)(iii) is amended to read as follows:

(iii) In addition, decontamination, inactivation and treatment facilities must comply with the recordkeeping requirements of Subpart 365-2 of this Part.

Paragraph 365-1.2(e)(2) through section 365-2.1 (heading) remains unchanged.

Subdivision 365-2.1(a) is amended to read as follows:

(a) This Subpart applies to [facilities] any facility that treats, stores [and] or transfers RMW other than [those]any facility located at and operated by a hospital (except Veterans Affairs medical facilities), residential health care facility, [and] diagnostic and treatment centers, [(defined in section 2801 of the Public Health Law) and]or a clinical [laboratories] laboratory [(defined in section 571 of the Public Health Law)] that manages [their] its own waste, which is regulated under the Public Health Law and 10 NYCRR Part 70.

New subdivisions 365-2.1(b) through (d) are added to read as follows:

(b) A facility operating a biosafety level 3 (BSL-3) or an animal biosafety level 3 (ABSL-3) laboratory or other generation area that does not hold a valid Federal Select Agent Program (FSAP) Registration is required to obtain a permit pursuant to this Subpart.

(c) A facility operating a BSL-3 or ABSL-3 laboratory or other generation area that holds a valid FSAP Registration may operate under a registration pursuant to Subpart 365-1 of this Part.

(d) A facility operating a BSL-4 or ABSL-4 laboratory or other generation area is required to obtain a permit pursuant to this Subpart.

Section 365-2.2 (heading) through subdivision 365-2.2(c) remains unchanged.

Section 365-2.3 (opening paragraph) is amended to read as follows:

Section 365-2.3 Registered facilities

[Facilities of the following types must register with the department prior to treatment, storage or transfer of RMW, unless otherwise exempt. Facilities required to register with the department are subject to Part 360.15 of this Title but are not subject to section 360.19 of this Title.]Unless otherwise exempt or required to obtain a permit under Subpart 365-2 of this Part, facilities of the following types are subject to the registration provision of section 360.15 of this title. Each facility identified in this section must obtain a registration from the Department but is not required to comply with section 360.19 of this Title.

Subdivision 365-2.3(a) remains unchanged.

Paragraph 365-2.3(a)(1) is amended to read as follows:

(1) In addition to the container requirements provided in Subpart 365-1 of this Part, radiological RMW [destined for disposal] must be stored at the radiopharmacy until radioisotopes have decayed to a background radiation level. Once decayed, the RMW can be stored for a maximum of 30 days.

Paragraph 365-2.3(a)(2) through paragraph 365-2.3(a)(5) remains unchanged.

Subdivision 365-2.3(b) through paragraph 365-2.3(b)(6) are repealed.

Subdivision 365-2.3(c) is renumbered subdivision 365-2.3(b) and is amended to read as follows:

([c]b) Healthcare facilities licensed pursuant to the Public Health Law that treat, store or dispose of RMW from other generators (pursuant to written agreements with or among other generators filed with the NYSDOH and the department) for treatment, or are not operated by the healthcare facility. The operator of the facility must have and adhere to an operation plan for the handling and disposal of RMW [approved by the department]. The operation plan is subject to department approval and must include the following:

Paragraphs 365-2.3(c)(1) through 365-2.3(c)(13) are renumbered paragraphs 365-2.3(b)(1) through 365-2.3(b)(13).

Newly renumbered paragraphs 365-2.3(b)(1) through 365-2.3 (b)(6) remain unchanged.

Newly renumbered paragraph 365-2.3(b)(7) is amended to read as follows:

(7) A new or revised operation plan for treatment, storage or disposal of RMW [shall] must be prepared whenever there is an increase of more than 25 percent in the maximum quantity of RMW receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

Newly renumbered paragraphs 365-2.3(b)(8) through 365-2.3 (b)(11) remain unchanged.

Newly renumbered paragraph 365-2.3(b)(12) is amended to read as follows:

(12) The facility must maintain a contingency plan for emergencies and spill cleanup, which includes provisions for RMW storage during emergency situations. All spills and emergency situations must be immediately reported to the department.

Newly renumbered paragraph 365-2.3(b)(13) remains unchanged.

Paragraph 365-2.3(b)(14) is renumbered section 365-2.3(c) and is amended to read as follows:

([14]c) As [a condition] part of approval of a registration, any person who operates a facility for the treatment, storage and disposal of RMW [shall] must provide proof of liability insurance or other form of financial security deemed sufficient by the department to meet all responsibilities in case of release of [such waste] RMW causing [damage]contamination.

Section 365-2.4 (opening paragraph) is amended to read as follows:

Section 365-2.4 Permit application requirements

A facility that treats, stores or transfers RMW[(including select agents or toxins of biological origin, and biocontainment facilities at a Biosafety Level 3 or 4 laboratory)], which is not exempt or subject to the registration provisions of Subpart 365-1 or section 365-2.[2]3 of this Part, must obtain a permit from the department. The permit application must include the requirements identified in this section and section 360.16 of this Title, and include a description of how the facility will comply with the operating requirements of section 360.19 of this Title, and sections 365-2.5, 365-2.6, 365-2.7, and 365-2.8 of this Subpart. An application for a permit under this section must include:

Subdivision 365-2.4(a) through subparagraph 365-2.4(a)(3)(iv) remain unchanged.

Subparagraphs 365-2.4(a)(3)(iv)-(v) are amended to read as follows:

(iv) wastes from a biosafety level 3 or 4 laboratory or other generation area; or

(v) waste containing select agents or toxins of biological origin listed in 7 CFR Part 331, 9 CFR Part 121 and 42 CFR Part 73, as incorporated by reference in section 360.3 of this Title, or other infectious wastes.

Paragraph 365-2.4(a)(4) through clause 365-2.4(b)(1)(iii)(‘a’) remain unchanged.

Clause 365-2.4(b)(1)(iii)(‘b’) is amended to read as follows:

(‘b’) for disinfection, exposure to hot water at a temperature of at least 180 degrees Fahrenheit (82 degrees Celsius) for a minimum of 15 seconds, or exposure to a chemical disinfectant or a pesticide registered for use by the department and used according to the [manufacturer’s] registered label directions.

Paragraph 365-2.4(b)(2) through paragraph 365-2.4(b)(8) remains unchanged.

Paragraph 365-2.4(b)(9) is amended to read as follows:

(9) a description of how all equipment, personal protective equipment (PPE), or other items that have contacted RMW will be disinfected including identification of the disinfectant or pesticide proposed to be used; and

Paragraph 365-2.4(b)(10) through paragraph 365-2.4(f)(2) remain unchanged.

Paragraph 365-2.4(f)(3) is amended to read as follows:

(3) a list of the operating parameters (e.g., temperature, pressure, time, irradiation or chemical levels, etc.) that will be attained for microbial inactivation and treatment;

Paragraph 365-2.4(f)(4) through paragraph 365-2.4(f)(6) remain unchanged.

Paragraph 365-2.4(f)(7) is amended to read as follows:

(7) for facilities using an alternative treatment system, a copy of the [New York State Department of Health ([NYSDOH[] approval issued to the system's manufacturer or operator.

Subdivision 365-2.4(g) through subdivision 365-2.4(h) remain unchanged.

Subdivision 365-2.4(i) is amended to read as follows:

(i) Closure plan. The plan must describe how all the equipment and facility surfaces will be disinfected, tested for microbial inactivation and decontamination, and how the facility will be properly closed.

Section 365-2.5 (heading) through paragraph 365-2.5(f)(7) remain unchanged.

New subdivision 365-2.5(g) is added to read as follows:

(g) The facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

New subdivision 365-2.5(h) is added to read as follows:

(h) The facility must provide proof of liability insurance or other form of financial security deemed sufficient by the department to meet all responsibilities in case of release of RMW waste to the environment causing contamination.

Section 365-2.6 (opening paragraph) is amended to read as follows:

Section 365-2.6 General treatment requirements.

In addition to the requirements in section 365-2.5 of this Subpart, a RMW treatment [facilities] facility must comply with the following criteria:

Subdivision 365-2.6(a) through paragraph 365-2.6(a)(2) remain unchanged.

Paragraph 365-2.6(a)(3) is amended to read as follows:

(3) decontamination or inactivation by autoclaving in conformance with the requirements of this Subpart;

Paragraph 365-2.6(a)(4) through paragraph 365-2.6(b)(3) remain unchanged.

Paragraph 365-2.6(b)(4) is amended to read as follows:

(4) An autoclave cannot be used for treatment of thermally resistant materials such as solidified liquids or bulk animal bedding having a volume of more than five cubic feet unless approved by the department [or] and NYSDOH as an alternative treatment system [by the NYSDOH].

Paragraph 365-2.6(b)(5) is amended to read as follows:

(5) An autoclave cannot be used for the treatment of toxins of biological origin [other than] unless autoclaving can be verified by identifying the scientific source documenting it as an effective and appropriate method for inactivating biological toxins or the method used for inactivating toxins of biological origin is one of those

listed by the Centers for Disease Control and Prevention in the ‘Biosafety in Microbiological and Biomedical Laboratories’ publication as incorporated by reference in section 360.3 of this Title.

Subdivision 365-2.6(c) (heading) remains unchanged.

Paragraph 365-2.6(c)(1) is amended to read as follows:

(1) Cultures and stocks containing select agents or non-exempt quantities of toxins of biological origin listed in 7 CFR Part 331, 9 CFR Part 121 and 42 CFR Part 73 as incorporated by reference in section 360.3 of this Title, must be treated on-site by incineration, autoclaving, use of an alternative treatment system approved by the NYSDOH, or inactivation in accordance with the Federal Select Agent Program. However, if the generating facility does not have a predictable need for on-site treatment and the waste is incidental to the delivery of medical care or research, the generating facility can arrange for transportation of the select agents and toxins of biological origin to a facility authorized by the department to treat the waste. If the waste is shipped off-site for treatment, the generator must comply with federal regulations regarding possession, use and transfer of select agents and toxins of biological origin found in 7 CFR Part 331, 9 CFR Part 121 and 42 CFR part 73 as incorporated by reference in section 360.3 of this Title.

Paragraph 365-2.6(c)(2) through paragraph 365-2.6(h)(3) remain unchanged.

Paragraph 365-2.6(h)(4) is amended to read as follows:

(4) for toxins of biological origin, the decontamination, inactivation and treatment must inactivate the toxin.

Subdivision 365-2.6(i) is amended to read as follows:

(i) Validation testing prior to equipment use. Prior to using an RMW treatment system, the facility must conduct validation testing. Written approval of validation and repeat validation test protocols and test results must be obtained from the department prior to acceptance of RMW for treatment. The department must be

notified before all validation testing is conducted, review and approve the scientific source documenting it as effective.

Paragraph 365-2.6(i)(1) through paragraph 365-2.6(j)(1) remain unchanged.

Paragraph 365-2.6(j)(2) is amended to read as follows:

(2) failure to achieve microbial inactivation and treatment in at least 95 percent of the biological indicators during each treatment cycle during validation;

Paragraph 365-2.6(j)(3) through subdivision 365-2.7(a) remain unchanged.

Subdivision 365-2.7(b) is amended to read as follows:

(b) A facility that seeks to operate an autoclave at other than the generally accepted operating parameters (i.e., time, temperature and pressure) outlined in this section must obtain approval from the [Department of Health] NYSDOH as an alternative treatment method.

Subdivision 365-2.7(c) through paragraph 365-2.7(d)(2) remain unchanged.

Paragraph 365-2.7(d)(3) is amended to read as follows:

(3) If an autoclave fails to attain no growth in viable spores concentration upon bio-challenge testing or indicators fail to show expected results (i.e., a color change), the load [shall] must be handled as untreated RMW, and the facility must demonstrate, through a repeat of bio-challenge testing, that the autoclave effectively treats RMW before resuming its use for treatment purposes.

Subdivision 365-2.7(e) remains unchanged.

Subdivision 365-2.7(f) is amended to read as follows:

(f) If the container or containment system does not, by design, allow steam to come into direct contact with the RMW, the facility must take actions to ensure contact.

Subdivision 365-2.7(g) through Subpart 365-3 (heading) remains unchanged.

Section 365-3.1 is amended to read as follows:

Section 365-3.1 Applicability

This subpart applies to:

(a) [This Subpart applies to any] Any incidental waste that is not RMW but that has come into contact [with] or is presumed to be contaminated with an infectious agent or toxins of biological origin. Incidental waste means any material[s] generated as a consequence of mitigating exposure to infectious agents or toxins of biological origin (e.g., including waste from work spaces, living spaces, and other similar locations prior to reoccupancy, etc.). For purposes of this Subpart, an infectious agent includes any agent classified as Risk Group 2, 3, or 4 by the National Institutes of Health in the NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules, incorporated by reference in section 360.3 of this Title[.];

Subdivision 361-3.1(b) is repealed and a new subdivision 361-3.1(b) is added to read as follows:

(b) Culture samples and devices that are contaminated with an infectious agent or toxins of biological origin (e.g., pathogenic micro-organisms or toxins that are causative agents of food or water-borne illness) that are likely to pose a health risk to humans or animals and that are not treated before disposal; and

A new subdivision 361-3.1(c) is added to read as follows:

(c) Facilities, including laboratories, conducting research on infectious agents, as defined in subdivision (a) of this section, are regulated by this Subpart.

Section 365-3.2 is amended to read as follows:

Section 365-3.2 Exempt facilities and activities

The following facilities and activities are exempt from this Subpart.

Subdivision 365-3.2(a) remains unchanged.

A new subdivision 365-3.2(b) is added to read as follows:

(b) A facility or activity that uses a material containing an infectious agent at a concentration naturally occurring in the environment.

A new subdivision 365-3.2(c) is added to read as follows:

(c) A facility or activity handling contaminated foodstuffs, samples of foodstuff sent for routine laboratory analyses, environmental samples, or quality control samples provided that contaminated culture samples and devices that are likely to pose a health risk to humans or animals are treated before disposal.

Section 365-3.3 (opening paragraph) remains unchanged.

Subdivision 365-3.3(a) is amended to read as follows:

(a) Storage of waste at the site of generation that has come into contact with an infectious agent or toxins of biological origin must [. The storage must] follow the criteria for RMW found in section 365-1.2 of this Part.

Subdivision 365-3.3(b) is amended to read as follows:

(b) Storage and transfer locations at locations other than at the site of the generation, [in compliance] must comply with the following:

Paragraph 365-3.3(b)(1) through paragraph 365-3.3(b)(8) remain unchanged.

Subdivision 365-3.3(c) is amended to read as follows:

(c) Temporary treatment devices used for 90 days or less, [used] to treat waste contaminated with infectious agents at the site of generation[, provided the following conditions are met] must meet the following conditions:

(1) [D]decontamination, inactivation or treatment reduces or destroys infectious agents and toxins of biological origin and tests are performed to confirm no growth of a viable infectious agent[.];

(2) [T]the on-site treatment technology (autoclave, freezing, fumigation, alkaline hydrolysis, etc.) is effective in treating each of the waste streams that are treated [.];

(3) [P]process efficacy [is] must be demonstrated with validation testing prior to commencement of operations on the first deployment and bio-monitoring in accordance with section 365-2.6 of this Part [.]; and

(4) [I]if elimination of the infectious agent or toxins of biological origin cannot be confirmed, the waste is packaged and transported in accordance with section 365-3.4 of this Subpart.

Section 365-3.4 (heading) through subdivision 365-3.4(a) remain unchanged.

Subdivision 365-3.4(b) is amended to read as follows:

(b) Storage, treatment, or transfer of the waste, other than storage facilities outlined in subdivisions 365-3.2([b]a) and 365-3.3(b) of this Subpart, must occur at an RMW treatment, storage, or transfer facility approved under Subpart 365-2 of this Part. The treatment system must be capable of treating the type and characteristics of the waste.

Subdivision 365-3.4(c) through subdivision 365-3.4(d) remain unchanged.

6 NYCRR PART 366

Part 366 is amended to read as follows:

Subpart 366-1 (heading) through paragraph 366-2.2(a)(4) remain unchanged.

Subdivision 366-2.2(b) is repealed and subdivision (c) is renumbered subdivision (b).

Newly renumbered subdivision 366-2.2(b) remains unchanged.

Section 366-2.3 is amended as follows:

Section 366-2.3 Existing solid waste management system.

A LSWMP must include a description of the solid waste management facilities and programs within the planning unit and/or serve the planning unit including:

(a) An identification and description of all known facilities (including any facilities outside the planning unit that receive[s] waste from the planning unit) including their location, size, capacity, and the type and amount of solid waste originating within the planning unit managed at each facility. The source of the data must be identified and can be a combination of data available from the department as well as other information available to the planning unit.

Paragraph 366-2.3(a)(1) through paragraph 366-2.3(c)(4) remain unchanged.

Paragraph 366-2.3(c)(5) is amended as follows:

(5) local [hauler]waste transporter licensing if applicable;

Paragraph 366-2.3(c)(6) through subparagraph 366-2.4(c)(1)(i) remain unchanged.

Subparagraph 366-2.4(c)(1)(ii) is amended as follows:

(ii) waste importation and/or disposal prohibitions, flow control or local [hauler]waste transporter licensing laws; and

Subparagraph 366-2.4(c)(1)(iii) through paragraph 366-2.5(a)(9) remain unchanged.

Paragraph 366-2.5(a)(10) is amended as follows:

(10) local [hauler]waste transporter licensing programs, including an assessment of laws preventing commingling of recyclables with waste;

Paragraph 366-2.5(a)(11) through paragraph 366-4.1(b)(1) remain unchanged.

Paragraph 366-4.1(b)(2) is amended as follows:

(2) If the department determines that the complete draft LSWMP does not adequately address all required

elements, the written notification provided by the department to the planning unit will identify[ing] the deficiencies and a revised complete draft LSWMP will be required to be resubmitted for review. For the second and any subsequent reviews of the revised complete draft LSWMP, the revised complete draft LSWMP will be considered approvable if written notification to the planning unit advising of any deficiencies is not provided from the department within 60 calendar days of receipt of the revised complete draft LSWMP.

Subdivision 366-4.1(c) through subparagraph 366-4.1(d)(2)(ii) remain unchanged.

Subparagraph 366-4.1(d)(2)(iii) is amended as follows:

(iii) submit [annual planning unit reports and] biennial updates as required by Subpart 366-5 of this Part.

Subdivision 366-4.1(e) through subdivision 366-5.1 (heading) remain unchanged.

Subdivision 366-5.1(a) is amended as follows:

(a) LSWMP biennial update submittal. A LSWMP biennial update must be submitted to the department for review and approval no later than [May]October 1st of every other year following approval of the LSWMP.

Subdivision 366-5.1(b) is amended as follows:

(b) LSWMP biennial update content. A[n] LSWMP biennial update consists of a summary report, solid waste and recyclables data, any updates to sections of the LSWMP that reflect changes to the LSWMP, and a revised

implementation schedule and associated projections incorporating any changes necessary to reflect the current program.

Paragraph 366-5.1(b)(1) through subparagraph 366-5.1(b)(1)(i) remain unchanged.

Subparagraph 366-5.1(b)(1)(ii) is amended as follows:

(ii) actual waste generation, recycling and disposal data [~~and~~]for MSW, C&D debris, industrial waste, biosolids, and any other waste streams evaluated in the original plan. At a minimum, comparisons with and reasons for deviations from projections for the MSW stream should be included;

Subparagraph 366-5.1(b)(1)(iii) through paragraph 366-5.1(c)(2) remain unchanged.

Section 366-5.2 is repealed and a new Section 366-5.2 is added to read as follows:

Section 366-5.2 Optional LSWMP planning period extension.

(a) Optional planning period extension. A planning unit may elect to add an additional two years to a planning period and extend their approved LSWMP expiration date by two years.

(b) Optional planning period extension submittal. An optional planning period extension submittal must be submitted to the department for review and approval no later than October 1st as part of their LSWMP biennial update submittal.

(c) Optional planning period extension submittal content. The planning unit must submit all the required information identified in sections 366-2.5 through 366-2.7 of this Part governing an additional two-year period.

Solicitation of public comment in accordance with Subpart 366-3 of this Part is not required as part of the optional planning period extension.

(d) Optional planning period extension submittal review and approval. The department will review the optional planning period extension submittal to determine whether it adequately addresses all required elements identified in this section and will provide written notification to the planning unit of its determination within 60 calendar days after receipt. If written notification is not provided within 60 calendar days, the optional planning period extension submittal will be considered approved.

(1) If the department determines that the optional planning period extension submittal adequately addresses all required elements, the department will provide written notification to the planning unit that the optional planning period extension submittal is approved.

(2) If the department determines that the optional planning period extension submittal does not adequately address all required elements, the planning unit will be advised in writing of the deficiencies and will be required to resubmit a revised optional planning period extension submittal for review. For the second and subsequent reviews of the optional planning period extension submittal, the optional planning period extension submittal will be considered approved if written notification to the planning unit advising of any deficiencies is not provided from the department within 45 calendar days.

(e) A maximum of five two-year planning period extensions from the expiration date of the approved LSWMP may be requested and approved by the department.

6 NYCRR PART 369

Part 369 is amended to read as follows:

Section 369-1.1 through subdivision 369-1.3(a) remain unchanged.

Subdivision 369-1.3(b) is amended to read as follows:

(b) Contracts for State assistance between the department and an eligible applicant [will] must be in a form provided by the department.

Subdivision 369-1.3(c) through subdivision 369-1.5(c) remain unchanged.

Subdivision 369-1.5(d) is amended to read as follows:

(d) is subject to final computation and determination by the department upon completion of the project[,] and cannot [will not] exceed the maximum eligible cost set forth in the contract.

Subdivision 369-1.6(a) is amended to read as follows:

(a) The following acts by a municipality constitute cause for the suspension or termination of any obligation of the department under a state assistance contract executed pursuant to this Part:

Paragraph 369-1.6(a)(1) through subdivision 369-2.3(d) remain unchanged.

Subdivision 369-2.3(e) is amended to read as follows:

(e) A copy of the municipality's local source separation laws or ordinances adopted pursuant to General Municipal Law (GML) section 120-aa and a description of efforts undertaken to date to implement the [such] law or ordinance.

Paragraph 369-2.3(e)(1) through subdivision 369-2.3(i) remain unchanged.

Subdivision 369-2.4(a) is repealed and a new subdivision 369-2.4(a) is added to read as follows:

(a) The following costs are ineligible for State assistance:

- (1) costs of vehicles or other equipment used for repair, cleaning or maintenance of roads, sewers, parks, municipal facilities or other public properties;
- (2) costs of general purpose vehicles, all-terrain vehicles, passenger cars, and other similar vehicles even if partially used in a recyclables collection program;
- (3) costs of maintenance or operational equipment, including but not limited to, hand tools, power tools, spare parts and backup equipment;
- (4) costs of road service or repair of equipment;
- (5) costs of engineering services related to individual equipment design, specification, or selection;
- (6) costs of deconstruction or demolition related to individual equipment;
- (7) non-principal charges for any municipally owned equipment or facilities purchased through a lease-purchase or other similar agreement;

- (8) costs of construction or improvements of facilities that are not directly related to waste reduction or recycling activities, household hazardous waste facilities or beverage container projects;
- (9) costs of general infrastructure (*e.g.*, roadways, water and sewer lines and facilities, exterior natural gas lines or exterior electric service), when the infrastructure is located outside the property boundaries of the applicable project site;
- (10) ordinary program and facility operating costs, including, but not limited to, purchase of leaf collection bags, office supplies and equipment, equipment service, office maintenance, internet service, telephone, utilities, mileage costs, travel expenses, and fuel, or other similar expenses;
- (11) costs of equipment used for the collection, processing, transportation, marketing or use of waste tires, used oil, construction and demolition debris, household batteries, antifreeze, refrigerant chemicals, or fluorescent bulbs;
- (12) bonus payments to contractors;
- (13) damage payments or settlements paid to claimants;
- (14) costs incurred in preparing and submitting an application for State assistance;
- (15) costs of bonding and interest payments;
- (16) costs required by the department as part of an enforcement settlement (*e.g.*, environmental benefit project, compliance schedule, or consent order); and
- (17) unnecessary or unreasonable costs as determined by the department.

Subdivision 369-3.1(a) through Paragraph 369-3.1(b)(1) remain unchanged.

Paragraph 369-3.1(b)(2) is amended to read as follows:

(2) Applications will be accepted by the department during the months of August, September and October of each calendar year for the following calendar year period. All applications must be received [postmarked] during this three-month period. Applications received [postmarked] after October 31st of each calendar year, other than those submitted pursuant to paragraph (3) of this subdivision, will not be accepted [and will be returned to the applicant]. All complete applications received by the department during the three-month period specified in this paragraph will be considered to have been received simultaneously.

Paragraph 369-3.1(b)(3) through subdivision 369-3.1(c) remain unchanged.

Section 369-3.2 is amended to read as follows:

Eligible projects for State assistance under this Subpart include planning, educational and promotional activities to increase public awareness of and participation in waste reduction and recycling. Projects may include salary and fringe benefit costs for recycling coordination, publications, education and outreach for recycling and waste reduction.

Subdivision 369-3.3(a) through paragraph 369-3.3(d)(1) remain unchanged.

Subparagraph 369-3.3(d)(1)(i) is amended to read as follows:

(i) recycling educator/coordinator costs, such as:

(a) personal services, limited to the salary of a [project] recycling educator/coordinator and other integral personnel. All personnel must be employees of the applicant and assigned to the project for no less than 50 percent of their full-time work schedule; and

(b) fringe benefits for the [project] recycling educator/coordinator and other integral personnel assigned to the project for no less than 50 percent of their full-time work schedule. Fringe benefit costs are limited to the employer cost of providing health/medical insurance to the recycling educator/coordinator, and the employer cost for contributions towards the retirement or pension plan of the recycling educator/coordinator. These costs must be documented and acceptable to the department. [These costs must be based on a percent factor, acceptable to the department, multiplied by the eligible salary amount.]

Subparagraph 369-3.3(d)(1)(ii) through paragraph 369-3.3(d)(3) remain unchanged.

Subdivision 369-3.3(e) is amended to read as follows:

(e) A copy of the municipality's local source separation law or ordinance adopted pursuant to General Municipal Law (GML) section 120-aa and a description of efforts undertaken to date to implement the [such] law or ordinance:

Paragraph 369-3.3(e)(1) through paragraph 369-3.4(a)(3) remain unchanged.

Paragraph 369-3.4(a)(4) is added to read as follows:

(4) costs incurred in preparing and submitting an application for State assistance; [and]

Paragraph 369-3.4(a)(5) is renumbered to 369-3.4(a)(6).

New paragraph 369-3.4(a)(5) is added to read as follows:

(5) costs required by the department as part of an enforcement settlement (*e.g.*, environmental benefit project, compliance schedule, or consent order); and

Newly renumbered paragraph 369-3.4(a)(6) through subdivision 369-4.1(a) remain unchanged.

Subdivision 369-4.1(b) is amended to read as follows:

(b) All applications received after November 4, 2017 [the effective date of this Part] are limited to eligible costs incurred during the previous calendar year.

Paragraph 369-4.1(c)(1) remains unchanged.

Paragraph 369-4.1(c)(2) is amended to read as follows:

(2) Applications will be accepted by the department during the months of January and February of each calendar year for the previous calendar year period. All applications must be received [postmarked] during this two-month period. Applications received [postmarked] after February 28th, or 29th in a leap year, of each calendar year, other than those submitted pursuant to the provisions of paragraph (3) of this subdivision, will not be accepted [and will be returned to the applicant].

Paragraph 369-4.1(c)(3) remains unchanged.

Paragraph 369-4.1(c)(4) is amended to read as follows:

(4) The department is authorized to require any additional information from an applicant as may be necessary to complete [update] a project application.

Paragraph 369-4.1(c)(5) through paragraph 369-4.4(a)(2) remain unchanged.

Paragraph 369-4.4(a)(3) is amended to read as follows:

(3) costs that were incurred outside of the calendar [fiscal] year for which the application was submitted to the

department;

Paragraph 369-4.4(a)(4) through paragraph 369-4.4(a)(9) remain unchanged.

Paragraph 369-4.4(a)(10) is amended to read as follows:

(10) costs incurred from the collection, handling, and disposal of types of waste that[,] except under extraordinary circumstances would not meet the definition of household hazardous waste, including, but not limited to, explosives, ammunition, emergency flares, empty containers, empty aerosol cans, [alkaline batteries, rechargeable] batteries, electronic waste, asbestos, bulk metal, white goods, construction and demolition debris, latex paint, empty paint cans, empty propane tanks, empty refrigerant cans, radioactive material, pharmaceutical waste, household medical waste, regulated medical waste, smoke detectors, fire extinguishers, tires, used oil, and any miscellaneous materials and packaging received;

Paragraph 369-4.4(a)(11) is amended to read as follows:

(11) costs of a household hazardous waste collection event or collection events required by the department as part of an enforcement settlement (e.g., environmental benefit project, compliance schedule [order], or consent order); and

Paragraph 369-4.4(a)(12) through paragraph 369-6.1(b)(4) remain unchanged.

Subparagraph 369-6.1(b)(4)(i) is amended to read as follows:

(i) Upon availability of funding, the department will contact applicants in the order they appear on the waiting list[,] and notify the next applicant that it is [they are] required to submit a complete final application within 60 calendar days. If the final application or a written request for an extension to submit the application is not received by the department within 60 calendar days, the department may determine the applicant is no longer eligible for funding.

Subparagraph 369-6.1(b)(4)(ii) through paragraph 369-7.1(b)(1) remain unchanged.

Paragraph 369-7.1(b)(2) is amended to read as follows:

(2) The department will establish and maintain a combined waiting list for qualifying municipal landfill gas management projects and landfill closure projects. The waiting list will be comprised of potentially eligible pre-applications and applications received by the department. An applicant's position on the waiting list is determined by the date on which the department receives the submitted pre-application or complete application.

Paragraph 369-7.1(b)(3) through subdivision 369-7.4 (i) remain unchanged.

6 NYCRR PART 371

Part 371 is amended to read as follows:

Subdivision 371.1(a) through clause 371.1(c)(5)(iii)(‘c’) remain unchanged.

Paragraph 371.1(c)(6) is amended to read as follows:

(6) Materials that are not solid waste when recycled, though they remain solid waste as defined under section 360.2 of this Title.

Subparagraph 371.1(c)(6)(i) through subparagraph 371.1(e)(2)(iv) remain unchanged.

Subparagraph 371.1(e)(2)(v) is amended to read as follows:

(v) drilling fluids, produced waters and other wastes associated with the exploration, development or production of [crude oil, natural gas or] geothermal energy;

Subparagraph 371.1(e)(2)(vi) through clause 371.1(f)(6)(iii)(‘d’) remain unchanged.

Clause 371.1(f)(6)(iii)(‘e’) is amended to read as follows:

(‘e’) permitted, licensed, or registered by New York State pursuant to Part 360 of this Title to manage municipal or industrial solid waste, and authorized to receive such wastes, or permitted, licensed, or registered by a state other than New York to manage municipal solid waste if managed in a solid waste landfill subject to 40 CFR part 258, as incorporated by reference in section 370.1(e) of this Title, or registered by a state to manage

industrial solid waste if managed in an industrial waste disposal unit subject to 40 CFR sections 257.5 through 257.30, as incorporated by reference in section 370.1(e) of this Title;

Clause 371.1(f)(6)(iii)('f') through clause 371.1(f)(7)(iii)('d') remain unchanged.

Clause 371.1(f)(7)(iii)('e') is amended to read as follows:

('e') permitted, licensed, or registered by New York State pursuant to Part 360 of this Title to manage municipal or industrial solid waste, and authorized to receive such wastes, or permitted, licensed, or registered by a state other than New York to manage municipal solid waste if managed in a solid waste landfill subject to 40 CFR Part 258, as incorporated by reference in section 370.1(e) of this Title, or registered by a state to manage industrial solid waste if managed in an industrial waste disposal unit subject to 40 CFR sections 257.5 through 257.30, as incorporated by reference in section 370.1(e) of this Title;

Clause 371.1(f)(7)(iii)('f') through section 371.5 remain unchanged.

6 NYCRR PART 377

Part 377 is amended to read as follows:

Subdivision 377.1(a) through subdivision 377.1(i) remain unchanged.

Subdivision 377.2(a) is amended to read as follows:

(a) No person shall initiate construction or operation of a new industrial hazardous waste facility without a certificate unless the proposed facility is exempted pursuant to subdivision [361.1(f)] 377.1(f) of this Part.

Subdivision 377.2(b) through subdivision 377.4(b) remain unchanged.

Subdivision 377.4(c) is amended to read as follows:

(c) At least 30 calendar days prior to the commencement of the hearing, the department, or the applicant at the direction of the department, shall give notice thereof in the same form and manner as provided for in subdivisions [361.3(g)] 377.3(g) and (h) of this Part.

Subdivision 377.4(d) through paragraph 377.4(f)(2) remain unchanged.

Paragraph 377.4(f)(3) is amended to read as follows:

(3) the facility does not conform to the siting criteria set forth in section [361.7] 377.7 of this Part; or

Paragraph 377.4(f)(4) through paragraph 377.7(c)(4) remain unchanged.