REVISED CONSOLIDATED REGULATORY IMPACT STATEMENT

To repeal existing:

6 NYCRR Part 360 Solid Waste Management Facilities
6 NYCRR Part 362 State Aid to Municipalities for Planning the Construction or Improvement of Solid Waste Disposal Facilities
6 NYCRR Part 363 State Aid for Planning for Collection, Treatment and Disposal of Refuse
6 NYCRR Part 364 Waste Transporter Permits
6 NYCRR Part 369 Municipal Reduction and Recycling Projects
6 NYCRR Subpart 373-4 Facility Standards for the Collection of Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Small Quantity Generators

To renumber:

6 NYCRR Part 361 Siting of Industrial Hazardous Waste Facilities as Part 377 Siting of Industrial Hazardous Waste Facilities

To adopt new:

6 NYCRR Part 360 Solid Waste Management Facilities
6 NYCRR Part 361 Material Recovery Facilities
6 NYCRR Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities
6 NYCRR Part 363 Landfills
6 NYCRR Part 364 Waste Transporters
6 NYCRR Part 365 Regulated Medical Waste and Other Infectious Wastes
6 NYCRR Part 366 Local Solid Waste Management Planning
6 NYCRR Part 369 State Assistance Projects

With minor amendments to:

6 NYCRR Part 621 Uniform Procedures
6 NYCRR Part 370 Hazardous Waste Management System-General
6 NYCRR Part 371 Identification and Listing of Hazardous Wastes
6 NYCRR Part 372 Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities
6 NYCRR Part 373 Hazardous Waste Management Facilities
6 NYCRR Part 374 Management of Specific Hazardous Waste

INTRODUCTION

The Department of Environmental Conservation (Department) is authorized to promulgate regulations to establish requirements for solid waste management in New York State pursuant to multiple statutes which provide general and specific authority. The regulations govern the full range of activities associated with the handling and disposal of solid waste, and will address the funding of costs associated with solid waste management, the development of local solid waste management plans, the transportation of waste, and the design and operation of solid waste management facilities. Solid waste is generated by virtually all public and private entities, including individuals, households, institutions, and businesses. The Department's statutory authority associated with the revisions to the solid waste management regulations is outlined in Section 1 below. Section 2 summarizes relevant legislative objectives, and Section 3 discusses the needs and benefits of the regulations. An assessment of the costs associated with the regulations is found in Section 4. Mandates on local government are described in Section 5, while Sections 6 through 8 address the paperwork requirements, whether the regulations duplicate other federal and state programs, and alternatives to the rules. Finally, Sections 9 and 10 describe the applicability of any federal programs to the activities covered by the regulations and the compliance schedule of the rules for the regulated community.

This rulemaking is a comprehensive revision to the Department's previous Part 360, 364 and 369 regulations. A component of this rulemaking is to subdivide the solid waste management facility regulations and group together regulations applicable to facilities that are similar in nature, such as facilities that recycle and recover materials. Therefore, the solid waste management regulations are now distributed into seven different parts: Parts 360, 361, 362, 363, 365, 366 and 369. The types of facilities covered by each part are described in more detail below and in the express terms themselves. This rulemaking also includes revisions to regulations governing waste transportation (Part 364), local solid waste management planning (Part 366) and state assistance grants to municipalities related to solid waste management (Part 369).

In addition to the amendments to previous Parts 360, 364, and 369, this rulemaking incorporates minor amendments to Parts 621, 362, 363, 370, 371, 372, 373 and 374 as outlined below:

- The amendments to Part 621, Uniform Procedures, specifically address paragraph 621.4(m)(2), which sets forth a list of facilities that are considered minor solid waste management facilities. This list has been revised to reflect revisions concerning permitting thresholds for certain facilities and includes a new provision which should help foster the development of anaerobic digestion facilities proposed to be located at the site of an existing municipal solid waste landfill.

- Previous Parts 362 and 363 are antiquated state aid regulations which are no longer funded or needed and have been repealed and replaced with the new Parts 362 and 363.

- Due to the significant reorganization of the previous Part 360 into a series format, minor revisions addressing renumbering have been made to the previous Parts 370-374 to ensure appropriate cross references.

- Revisions to the previous Part 360 also include removal of Subpart 360-14, regulatory criteria for used oil. The regulatory criteria and requirements for used oil are contained solely in Subpart 374-2, Standards for the Management of Used Oil. Permits and registrations for used oil handling facilities continue to be issued pursuant to Part 360. Used oil collection centers were previously subject to transfer facility regulation and Part 360 permitting. The revisions to Subpart 374-2 more closely follow EPA regulations in 40 CFR Part 279, and subject these entities to used oil generator standards and Part 360 registration. There are many benefits to this approach, especially for used oil generators located in rural areas of the state. It could increase the aggregation of used oil by small entities. However, there may be additional impacts on affected communities due to increased traffic and concerns about used oil burning. Used oil collection centers, and the generators from which they receive used oil, will continue to comply with the used oil marketing requirements of 6 NYCRR Section 374-2.8 if the collection centers burn the used oil in used oil fired space heaters. Used oil collection centers are subject to reporting requirements.

- This rulemaking includes specific amendments to 6 NYCRR Subpart 373-4, Facility Standards for the Collection of Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Small Quantity Generators. Under this rulemaking, Subpart 373-4 is repealed and the requirements of that Subpart are incorporated into the new Subpart 362-4.

In addition, Part 361, Siting of Industrial Hazardous Waste Facilities, is renumbered as Part 377.

1. STATUTORY AUTHORITY

The Department's statutory authority to undertake amendments to Part 360 is found in Environmental Conservation Law Sections 1-0101, 3-0301, 8-0113, Titles 3, 5, 7 and 8 of Article 17, 19-0301,19-0303,19-0306, Title 23 of Article 23, Titles 1, 3, 5, 7, 9, 10, 13, 15, 18, 21, 23, 25, 26, 27, 29 of Article 27, 27-1901, 27-1903, 27-1911, 54-0103, Titles

5 and 7 of Article 54, Title 1 of Article 70, 71-2201, Titles 27, 35,40 and 44 of Article 71, and 72-0502.

- ECL section 1-0101 declares a policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social well-being.

- ECL Section 3-0301 empowers DEC to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in Section 1-0101.

- ECL Section 8-0113 gives the Department the authority to implement regulations to implement the State Environmental Quality Review Act (SEQRA). This rulemaking includes minor amendments to Part 621, the implementing regulations for SEQRA.

- Titles 3, 5, 7, and 8 of Article 17 give the Department authority to regulate the classification of water in the State and control discharge of pollutants to water. Discharges of leachate from solid waste management facilities must be conducted in accordance with the requirements set forth in Article 17.

- ECL Sections 19-0301, 19-0303 and 19-0306 gives the Department authority to regulate air emissions. Solid waste management facilities may have air emissions, such as landfills and combustors.

- Article 23, Title 23 of the ECL, in concert with Article 3 and 27 of the ECL, empowers the Department to promote resource recovery in the State, and specifically, to encourage the use of rerefined oil.

- ECL Section 23-2305 directs the Commissioner to “promulgate rules and regulations governing used oil collectors and rerefiners, in conformance with article twenty-seven of this chapter.” In furtherance of this directive, the rulemaking makes necessary changes to the Department’s used oil regulations to conform the engineering, reporting and operational requirements applicable to used oil facilities to the solid waste regulatory program implemented pursuant to ECL Article 27.

- ECL Section 23-2307 specifically authorizes the Department to promulgate rules and regulations for the proper design and maintenance of a retention facility, as applied to both service and retail establishments. The regulations include application, reporting and design requirements for facilities subject to Title 23 of ECL Article 23.

- ECL Article 27, Title 1: Article 27 empowers the department to regulate the collection, treatment and disposal of solid waste and Title 1 provides for solid and hazardous waste management policy and planning. Section 27-0101 states the purpose of Article of 27 is, among other things, to encourage the development of economical projects for the past and future collection, treatment, and management of solid and hazardous waste in a manner that will assure full consideration of all aspects of planning for proper and effective solid and hazardous waste disposal, coordinated, so far as practicable with other related state, regional and local planning activities, and consistent with the protection of public health. It also states a further purpose to effect maximum resource recovery from solid waste on a cost-effective basis, with minimum environmental debit, energy-efficient materials recovery, prudent land use, maximum economic benefits and maximum effective private sector participation. Section 27-0103 designates the department as the official state agency with responsibility for preparing and updating the New York state solid waste management plan consistent with the state resource recovery policies declared in the New York state resource recovery policy act, and provides for biennial review and updates, and what amendments to the plan must include. Section 27-0105 provides the preferred statewide hazardous waste management practices hierarchy. Section 27-0106 establishes the state solid waste management policy and provides that this policy shall guide the solid waste management programs and decisions of the department and other state agencies and authorities. Section 27-0107 provides the purpose and scope of local solid waste management plans. Section 27-0109 provides for state assistance for local solid waste management plans.

- ECL Article 27, Title 3 empowers the department to regulate waste transporters and authorizes the department to issue waste transporter permits. Section 27-0301 provides that the intent and purpose of this Title is to protect the environment from mishandling and mismanagement of all regulated wastes transported from the site of generation to the site of ultimate treatment, storage or disposal and to prevent a discharge of wastes into the environment, whether accidental or intentional, except at a site approved for the treatment, storage or disposal of such wastes. Section 27-0303 defines the key terms used in this Title. Section 27-0305 provides, among other things, that, unless exempt, no person shall engage in the transportation of regulated waste originating or terminating at a location in this state without a permit, and sets forth who may be exempt, requirements for permit applications pursuant to this Title, conditions for permits, annual renewals, and when the department may suspend or revoke permits. This section also authorizes the department to adopt rules and regulations implementing this section. Section 27-0307 provides for notifications of waste transporter permit revocations.

- ECL Article 27, Title 4 contains provisions relating to the marketing of recyclable materials. Section 27-0401 defines secondary materials and provides for the

department to assist in providing consumer education on the benefits of solid waste management practices and the need for waste reduction. Sections 27-0403 and 27-0405 provide the legislative intent of this Title and specify what the state's local resource reuse and development program shall include.

- ECL Article 27, Title 5 contains provisions relating to state aid for implementation of resources recovery and improved solid waste management systems. Sections 27-0501 through Section 27-0509 include definitions of terms used in this Title; authorize the commissioner to make or contract to make a state grant for the payment to any municipality not more than fifty percent of the eligible cost of collection system development programs, preparation of contract documents and implementation feasibility projects; delineate the powers and duties of the commissioner in administering and enforcing the provisions of this Title, including the ability to promulgate rules and regulations to effectively carry out the provisions of this Title; specify the powers of municipalities under this Title; and provide for a technical assistance program.

- ECL Article 27, Title 7 authorizes the department to regulate solid waste management and resource recovery facilities. Section 27–0701 defines important terms used in Title 7. Section 27–0703 sets forth the powers and duties of the department with respect to solid waste management facilities, including the department's power to adopt rules and regulations governing the operation of solid waste management facilities. Section 27–0704 specifies special provisions for land burial and disposal in Nassau and Suffolk Counties. Section 27–0705 specifies that rules and regulations shall not be adopted until after public hearings are held, and provides when and how notice of hearings must be given and when regulations will become effective. Section 27–0706 sets forth closure requirements for certain landfills and recycling requirements for certain municipalities. Section 27–0707 sets forth requirements for permits for solid waste management facilities and states that rules and regulations adopted by the department to implement Article 27, along with the provisions of Article 70, shall govern permit applications, renewals, modification, suspensions, and revocations of solid waste management facilities. Section 27–0711 provides that local laws, ordinances and regulations that are not inconsistent with Article 27, Title 7 or any rule or regulation promulgated pursuant to such Title, shall not be superseded by it. Section 27–0712 provides that all vehicles transporting solid waste, including barges, must be covered. Section 27–0715 dictates that the department must conduct a program of solid waste management technical assistance to local governments, the private sector and individuals to enhance their capabilities to properly plan for and implement solid waste management programs consistent with the solid waste management policy set forth in Section 27-0106. Section 27–0717 provides for the establishment of a Bureau of Waste Reduction and Recycling at the department. Section 27–0719 sets forth

definitions and requirements for proper battery management and disposal in the state.

- ECL Article 27, Title 9 entitled “Industrial Hazardous Waste Management” authorizes the department to regulate the management of hazardous waste in this state in a manner consistent with federal law. Sections 27–0900 through 27-0911 contain provisions regarding the applicability of this Title; definitions; identification and listing of hazardous waste; a manifest system to monitor the transportation, storage, and disposal of hazardous waste; standards applicable to generators of hazardous waste; hazardous waste reduction plans; standards applicable to transporters of hazardous waste; standards applicable to marketers of hazardous waste fuel; and standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. Sections 27-0912 through 27-0926 contain provisions relating to land disposal of hazardous waste; permits and registrations for storage, transportation, treatment, or disposal of hazardous wastes; unauthorized possession, disposal and dealing in hazardous wastes; inspections and general reporting; department authority for cleanups; financial requirements for hazardous waste facilities; closure and post-closure plans; proprietary information; reports; short-term management; prohibitions on the use of waste oil or used oil or other material that is contaminated or mixed with any hazardous waste; special assessments on hazardous wastes generated; a hazardous materials enforcement training program; local assessments on hazardous waste treatment, storage and disposal facilities; and the use and recycling of elemental mercury and dental amalgam by dentists.

- ECL Article 27, Title 10 contains provisions concerning litter and solid waste control, specifically with respect to beverage containers. Section 27–1001 sets forth legislative findings and Section 27–1003 defines terms used in this Title, including the term “redemption center.” Sections 27–1005, 27-1007, 27-1009, and 27-1011 contain requirements for beverage containers sold in the state, specify requirements for the mandatory acceptance of redeemable beverage containers, and provides for the refusal of such beverage containers under certain circumstances. Sections 27-1013 and 27–1014 provide the department with authority to promulgate rules and regulations necessary and appropriate for the administration of Title 10. Section 27–1015 sets forth penalties for violations of this Title. Section 27–1016 states that the commissioner shall establish a public education program regarding implementation of Title 10. Section 27–1018 provides for a beverage container assistance program and authorizes the commissioner to make state assistance payments for the costs of equipment, real property, or structures related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of this Title.

- ECL Article 27, Title 13 authorizes the department to regulate inactive hazardous waste disposal sites. Sections 27–1301 through 27-1313 define terms used in

this Title and provide requirements for identification of sites, a state registry of sites, access to records and sites, confidentiality, and remedial programs. Section 27–1315 authorizes the department to promulgate rules and regulations necessary and appropriate to carry out the purposes of Title 13. Sections 27-1316 through 27-1323 contain provisions concerning citizen technical assistance grants; the new use of sites, institutional and engineering controls, the state superfund management board, protections against liability, and liability exemptions and defenses.

- ECL Article 27, Title 15, contains provisions concerning the storage, treatment, disposal and transportation of regulated medical waste. Section 27-1501 defines terms used in this Title. Section 27–1503 states that the requirements of this Title apply to any person engaged in the storage, containment, treatment, disposal or transfer of regulated medical waste off the site of the facility producing such waste and that this Title and the rules promulgated pursuant to this Title supersede all other state and local laws relating to the transportation of regulated medical waste. Section 27–1504 requires the department to promulgate regulations establishing a regulated medical waste tracking program. Sections 27–1505 through 27-1513 contain provisions relating to the storage and containment of regulated medical waste (RMW), the treatment and disposal of RMW, the transfer of RMW to off-site treatment and disposal facilities, standards applicable to generators of RMW, standards applicable to transporters of RMW, and requirements for RMW treatment, storage and disposal facilities. Section 27–1515 requires the department to promulgate rules and regulations in conformity with the standards for storage, containment, transportation and disposal of regulated medical waste and consistent with standards established by the department of health for decontamination and treatment of regulated medical waste pursuant to the provisions of Title 15. Section 27–1517 states that in order to assure that permits under this Title are not issued to or held by unqualified or unsuitable persons, the commissioner may deny, suspend, revoke or modify any permit, renewal or modification, upon written determination that such action is required to protect the public health and safety. Section 27–1519 requires the commissioner to cooperate with the commissioner of health to develop pilot projects to promote the safe handling, treatment and disposal of medical waste generated in private residences.

- ECL Article 27, Title 17 contains provisions concerning the collection and recycling of lead–acid batteries. Section 27–1701 defines terms used in this Title, provides legislative findings stating that improper disposal of lead-acid batteries is a direct threat to the health and safety of the citizens of the state, provides lead acid battery disposal prohibitions, and requirements for retailers, and distributors regarding the acceptance of lead acid batteries from consumers.

- ECL Article 27, Title 18 authorizes the department to regulate the recycling of

rechargeable batteries. Section 27–1803 defines key terms in this Article. Section 27–1805 prohibits any person from knowingly disposing of rechargeable batteries as solid waste at any time in the state. Section 27–1807 establishes a rechargeable battery recycling program and authorizes the department to promulgate any rules and regulations needed to implement this Title. Section 27–1809 provides for enforcement of this Title by the department and certain penalties to be assessed against violators. Section 27–1811 establishes that the state has exclusive jurisdiction in all matters pertaining to rechargeable battery recycling.

- ECL Article 27, Title 19 provides for the management and recycling of waste tires in the state. Section 27-1901 defines key terms used in Title 19. Section 27-1903 establishes the state's policy on the management of waste tires and lists the waste tire management priorities of the state, which includes reducing the number of waste tires generated and remediating waste tire stockpiles in noncompliance. Section 27-1911 prohibits the disposal of waste tires in a landfill.

- ECL Article 27, Title 21 regulates mercury-added consumer products. Section 27–2101 defines terms used in in this Title. Section 27–2103 specifies labeling requirements for mercury-added consumer products. Section 27–2105 prohibits the disposal of mercury-added consumer products in solid waste. Section 27–2107 contains several prohibitions on the sale and distribution of mercury-added products. Section 27–2109 calls for establishing an advisory committee on mercury pollution and Section 27-2115 authorizes the department to participate in the regional, multi-state clearinghouse. Section 27–2111 declares that the department shall promulgate and enforce any regulations necessary to implement to provisions of this Title. Section 27–2113 exempts certain products from the requirements of this Title. Section 27–2117 calls for the phase-out of mercury-added components in motor vehicles, but allows for a manufacturer to apply for an exemption.

- ECL Article 27, Title 23 (as added by chapter 180 of the laws of 2006) regulates vehicle dismantlers and vehicle dismantling facilities. Section 27-2301 defines terms used in this Title 23. Section 27-2303 specifies requirements for vehicle dismantlers owning or controlling a facility for the dismantling of end of life vehicles.

- ECL Article 27, Title 23 (as added by chapter 730 of the laws of 2006) regulates the recycling of wireless telephones. Section 27–2301 defines terms used in this Title; Section 27–2303 contains provisions for the collection of wireless telephones by wireless telephone service suppliers; Section 27–2305 provides that local laws or regulations governing the collection, return or recycling of wireless telephones are preempted.

- ECL Article 27, Title 25 governs the phase-out of creosote. Section 27–2501 defines terms used in this Title. Section 27–2503 prohibits the manufacture, sale, and use of creosote in this state. Section 27–2505 prohibits the disposal of creosote and products treated with or containing creosote, except at a landfill permitted and approved by the department to accept this material, and Section 27–2507 prohibits the combustion of creosote, except in a facility permitted pursuant to Article 27 and Article 19 to burn the specific type of creosote waste. Section 27–2509 delineates the powers and duties of the commissioner under this Title, including empowering the commissioner to adopt rules and regulations as deemed necessary for the implementation of this Title. Section 27–2511 delineates the powers and duties of the department of this Title, including the authority to administer and enforce this Title and any rules and regulations adopted pursuant to this Title. Section 27–2513 exempts certain entities, such as railroads, from the requirements of this Title.

- ECL Article 27, Title 26 governs the recycling and reuse of electronic equipment or "e-waste." Sections 27–2601 through 27-2609 define terms used in this Title; provide requirements for manufacturers of e-waste to collect, handle and recycle e-waste and require recycling surcharges for those that do not meet their acceptance standards; delineate registration requirements and responsibilities for manufacturers of e-waste; provide requirements for retailers; and specify labeling requirements. Section 26-2611 bans the disposal of e-waste at a solid or hazardous waste management facility and prohibits the placing of e-waste out for collection that is intended for disposal.

- Section 27–2613 delineates requirements for e-waste collection, consolidation and recycling. Section 27-2615 includes the department's responsibilities under this Title and authorizes the department to promulgate rules and regulations necessary to implement this Title.

- Section 27–2617 list reporting requirements; Section 27–2619 preempts local laws and regulations on all matters pertaining to e-waste recycling; and Section 27–2621 requires all fees and charges collected pursuant to this Title to be deposited into the environmental protection fund.

- ECL Article 27, Title 27 (as added by chapter 625 of the laws of 2008) governs drug management and disposal. Section 27–2701 defines terms used in this Title and Section 27–2703 requires the department, in consultation with the health department, to develop and implement a public information program on the proper disposal of drugs and to establish a notice containing information on the proper storage and disposal of drugs, which must be displayed in pharmacies.

- ECL Article 27, Title 27 (as added by chapter 641 of the laws of 2008) governs the reduction, reuse and recycling of plastic bags. Section 27–2701 defines terms used in this Title. Sections 27-2703 through 27-2713 contain provisions concerning store operator responsibilities, recycling program requirements, responsibilities of plastic bag manufacturers, and responsibilities of the department. Section 27–2711 authorizes the department to promulgate any rules and regulations necessary to implement the provisions of this Title. Section 27–2713 vests jurisdiction in all matters pertaining to plastic bag recycling exclusively in the state.

- ECL Article 27, Title 29 governs the collection and disposal of mercury thermostats. Section 27–2901 defines terms used in this Title. Sections 27–2903, 27–2905, and 27–2907, respectively, contain requirements for thermostat manufacturers for the collection, transportation, recycling, disposal and proper management of out-of-service mercury thermostats; requirements for thermostat wholesalers and retailers; and the department's responsibilities under this Title. Section 27–2909 prohibits several activities, including prohibiting transporters from commingling mercury-added thermostats with solid waste or recyclable materials and from delivering these materials to an incinerator, landfill, transfer station or anyone that will commingle the materials.

- ECL Section 54-0103 lists the powers and duties of the commissioner of the Department of Environmental Conservation or the New York State Secretary of State under Article 54, the Environmental Protection Act, including the ability of the commissioner to, in the name of the state, enter into contracts with not-for-profit corporations, public benefit corporations, and private contractors for services contemplated by Article 54, and to perform any other and further act as may be necessary, proper or desirable to carry out the provisions of article 54.

- Article 54, Title 5: Section 54-0501 defines the terms used in Title 5 relating to non-hazardous municipal landfill closure projects and municipal landfill gas management projects. Section 54-0503 provides eligibility criteria for municipalities to receive state assistance payments for municipal landfill closure projects. Section 54-0504 states which municipalities are eligible to receive state assistance payments for municipal landfill gas management projects and that applications for these projects must comply with all applicable regulations promulgated by the department. Section 54-0507 describes the state assistance application procedures and states that the commissioner shall review project applications and may approve, disapprove or recommend modifications to the application, consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Section 54-0509 dictates requirements for contracts for state assistance payments for municipal landfill closure projects and municipal landfill gas management projects. Section 54-0511 describes which municipalities are eligible for loans for municipal landfill closure projects and

municipal landfill gas management projects and requirements for such loans. Section 54-0513 declares the powers and duties of the commissioner in administering the provisions of Title 5 of Article 54. Section 54-0515 lists the powers and duties of a municipality under this Title.

- Article 54, Title 7: Section 54-0701 defines the terms used in Title 7 relating to municipal waste reduction or recycling projects. Section 54-0703 provides for commissioner approval of state assistance payments for municipal recycling or waste reduction projects, sets out criteria the commissioner will consider in reviewing applications, and provides for the maximum amount of such payments. Section 54-0705 dictates that the commissioner shall promulgate, in consultation with the director of the budget and the commissioner of economic development, rules and regulations that must include, among other things, criteria for determining eligible expenditures, application procedures, and project approval criteria. Section 54-0707 sets forth procedures for state assistance applications. Section 54-0709 dictates requirements for contracts for state assistance payments for waste reduction or municipal recycling projects.

- ECL Article 70, Title 1 establishes uniform review procedures for major regulatory programs of the department, such as the regulation of solid waste management facilities, and establishes time periods for department action on permits under such programs. Sections 71-0101 through 71-0105 provide the purpose, legislative finding and declarations, and definitions applicable to this Article. Section 70-0107 states that the department shall adopt rules and regulations to assure the efficient and expeditious administration of Article 70, and lists the regulatory programs that are subject to the procedures in this Article, including the collection, treatment and disposal of refuse and other solid waste (Article 27 of the ECL). Sections 70-0109 through 70-0119 sets out time periods for department action on permit applications; requirements pertaining to applications for minor projects; confidentiality; permit modification, suspensions, revocations, renewals, reissuances and re-certifications; emergency authorizations; special provisions; and public hearings.

- ECL Section 71-2201 provides civil and administrative sanctions for those persons that violate Article 23 as it relates to the management of used oil. This rulemaking includes minor amendments to 374-2, Standards for the Management of Used Oil.

- Titles 27, 35, 40 and 44 of Article 71 provides the Department with enforcement authority related to the provisions of Article 27, Collection, Treatment, and Disposal of Refuse and Other Solid Waste and Article 71 Enforcement. Title 40 sets forth criminal and civil penalties for the rules and regulations promulgated by the Department. Title 44 of Article 71 sets forth enforcement provisions for

violations related to the management of regulated medical waste which is regulated under Part 365.

- ECL Section 72-0502 sets forth the fees for the waste transporter program regulated under Part 364.

2. LEGISLATIVE OBJECTIVES

Since the last comprehensive revision to the 6 NYCRR Part 360 regulations, which became effective on October 9, 1993, only minor modifications have been made to the regulations to accommodate changes in the ECL and to make technical amendments. The effective dates of these subsequent revisions are as follows: December 14, 1994, January 14, 1995, November 26, 1996, September 29, 1997, November 21, 1998, November 24, 1999, March 10, 2003 and June 16, 2013. These changes concerned loans for municipal landfill closure projects, used oil, landfill gas, land application and composting, and minor technical amendments. The last revision of 6 NYCRR Part 364, albeit minor, occurred in May 2006, and 6 NYCRR Part 369 has not been revised since 1997.

The revisions in this rulemaking are primarily based on the Department's experience with implementing the solid waste regulations. The Department's experience has shown that revisions and enhancements to both the organization and substance of Part 360 are necessary and appropriate to advance the public policy objectives the legislature sought when the legislation was enacted. The overarching legislative objective of ECL Article 27 as it relates to solid waste management is found in ECL Section 27-0703, authorizing the Department to:

> Adopt and promulgate, amend and repeal rules and regulations governing the operation of solid waste management facilities. Such rules and regulations shall be directed at the prevention or reduction of (a) water pollution, (b) air pollution, (c) noise pollution, (d) obnoxious odors, (e) unsightly conditions, caused by uncontrolled release of litter, and (f) infestation of flies and vermin, and other conditions inimical to the public health, safety, and welfare. In promulgating such rules and regulations, the department shall give due regard to the economic and technological feasibility of compliance therewith. Any rule or regulation promulgated pursuant hereto may differ in its terms and provisions as between particular types of solid waste management facilities and as between particular areas of the state.

Through the regulations the Department can further this legislative objective by addressing new solid waste management technologies, such as those that recover energy or produce fuel, which do not fit squarely within the previous version of Part 360. In addition, amendments and new titles added to the ECL addressing such things as waste tires, mercury-added consumer products, medical waste and vehicle dismantlers have been incorporated into these regulations and will further this legislative objective.

3. NEEDS AND BENEFITS

The last comprehensive revisions to the regulations governing solid waste management in New York State occurred more than 20 years ago in 1993. Many legal and technological changes have occurred in that time period that dictate the need for an overhaul of the regulations. The Department has gained significant knowledge and expertise on the proper technical criteria for the construction and operation of landfills. The landfill as an open pit, a dump, where garbage is piled is a distant memory. Today's landfills are complex engineered facilities, with intricate double-liner and dual leachate collection and removal systems designed to prevent leachate from reaching groundwater and to provide a means to collect and remove that leachate effectively. In addition to leachate, landfills generate gas, primarily methane, which must be effectively collected and managed, both during and after the landfill's active life. Of course, there are also the routine issues during operation that are constant – odor, dust, litter, and traffic – which also require proper controls and management. Once a landfill is full, it must be appropriately covered, or capped, to minimize any additional leachate generation and facilitate the removal of gas. In the last two decades the Department has gained significant knowledge on the proper technical criteria for these facilities and this knowledge needs to be reflected in the regulations.

Although landfills may be the most obvious solid waste management facility to the public when the subject of solid waste management is broached, there are many other facilities that also manage solid waste, from combustors to transfer facilities and commercial medical waste treatment facilities. Some of these types of facilities did not even exist 20 years ago when the regulations were last revised or were much different than they are today. Therefore, new or revised regulations are needed at this time. The types of regulated facilities and their purposes include: recyclables handling and recovery; land application; composting and other organics recycling; mulch processing; construction & demolition debris handling and recovery; waste tire handling and recovery; metal processing and vehicle dismantling; used cooking oil and yellow grease processing; navigational dredged material handling and recovery; combustion and other thermal treatment; municipal solid waste processing; transfer; household hazardous waste collection; landfilling; and regulated medical waste and other infectious waste management. Each type of facility has its own potential environmental concerns and controls that need to be updated to ensure that public health and the environment are protected.

For landfills and other solid waste management facilities, updating the regulatory criteria does not mean more stringent criteria in all cases. If Department research and experience has found that a previous regulatory requirement was too stringent or afforded no environmental benefit or protection, the regulation justifiably relaxes the requirement on the regulated community. In all cases, the goal of the rulemaking is to ensure that the citizens of New York State are protected by the most up-to-date and appropriate solid waste management regulations.

To complete the regulatory package, the Department updated two related regulations – those governing state assistance grants to municipalities related to solid waste management and those related to waste transporters.

Since they were promulgated in 1988, the Part 360 regulations have been modified no less than 11 times. Each of those modifications added necessary and useful language to the regulations. However, none of those modifications involved a wholesale review and modification of the regulations in their entirety. Because of this, internal inconsistencies and ambiguities have developed. Unlike previous revisions, the regulations have been modified to eliminate those inconsistencies and ambiguities. The regulations are structured around four central principles: organization; precision; consistency; and necessity.

- Organization. As indicated above, the previous Part 360 is broken down into seven separate Parts. Each Part consists of several Subparts that group together regulatory criteria for facilities that are similar in nature. Part 360 includes general criteria applicable to all solid waste management facilities and the definitions applicable to all the subsequent parts of the series have been centralized in Part 360. Operating requirements have been separated from permit application requirements to the extent possible. Reorganization of the regulations also entailed minimizing repetition between the standard facility application and operating requirements now located in Part 360 and the requirements specific to particular facilities covered in the various Parts.

- Precision. The rulemaking more efficiently cites the criteria applicable to a given facility. Explanatory or guidance language was intentionally kept to a minimum.

- Consistency. The regulations use similar siting and operational criteria for like-kind facilities and minimizes the number of regulatory requirements that are unique to a specific waste stream or facility. Examples include facility siting requirements and waste pile size restrictions.

- Necessity. By reducing unnecessary requirements and language, the Department has reduced regulatory burdens on the regulated community while maintaining protection of public health and the environment.

In this rulemaking, the Department repealed 6 NYCRR Part 360 Solid Waste Management Facilities, Part 362 State Aid to Municipalities for Planning the Construction or Improvement of Solid Waste Disposal Facilities, Part 363 State Aid for Planning for Collection, Treatment and Disposal of Refuse, Part 364 Waste Transporter Permits, and Part 369 Municipal Waste Reduction and Recycling Projects.

Part 361, Siting of Industrial Hazardous Waste Facilities, is renumbered Part 377. Parts 362 and 363 are antiquated regulations which are no longer needed. 6 NYCRR Part 369 Municipal Waste Reduction and Recycling Projects regulations were repealed and replaced with a new Part 369 State Assistance Projects.

The rulemaking includes significant reorganization and subdivision of requirements contained in the previous 6 NYCRR Part 360 into a Part 360 series, which will include:

- Part 360 General Requirements
- Part 361 Material Recovery Facilities
- Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities
- Part 363 Landfills
- Part 365 Regulated Medical Waste and Other Infectious Wastes
- Part 366 Local Solid Waste Management Planning
- Part 369 State Assistance Projects

In addition, the rulemaking repeals and replaces previous 6 NYCRR Part 364 Waste Transporter Permits regulations to incorporate legal and policy developments and experience gained since the last major revision of these regulations.

The rulemaking includes the addition of solid waste management facilities, activities, and waste streams that are not addressed within the previous Part 360, to institute a level of control necessary to ensure protection of public health, safety, natural resources and the environment. Likewise, the rulemaking has relaxed or eliminated previous Part 360 requirements, such as landfill site selection reports, permits for all used cooking oil and yellow grease processing facilities, and permits for small organic waste collection transfer facilities, that have proven to be burdensome to the regulated community and have provided little or no benefit of environmental protection. The rulemaking also incorporates recommendations of various task forces that were convened to analyze specific solid waste issues which have been encountered by the Department over the past 20 years that were problematic to implement on a consistent basis statewide.

Many new or expanded solid waste management facilities, particularly recycling facilities and landfills, have been constructed since the last comprehensive revision in 1993, providing the Department with experience in applying those regulations. This experience has demonstrated that many areas of the regulations would benefit from

revision, clarification, or modification to allow for new, technically appropriate alternatives to the design and operation criteria for solid waste management facilities found in the previous regulations, and to streamline the regulatory process.

In December of 2010, the Department adopted a new State Solid Waste Management Plan, entitled *Beyond Waste: A Sustainable Materials Management Strategy for New York State* (http://www.dec.ny.gov/chemical/41831.html). This Plan sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling. One of the recommendations of the State Solid Waste Management Plan is revisions of the Part 360 regulations to:

- Update requirements for construction and operation of solid waste management facilities to better protect human health and the environment.
- Revise and update the Beneficial Use Determination (BUD) program regulations.
- Add new requirements for the management of fill material, including additional operational conditions for its use that protect neighboring areas, particularly in communities of disproportionate impact.
- Restrict the disposal of yard trimmings and source-separated recyclables in solid waste management facilities and other recyclable materials as product stewardship programs are established.
- Take a regulatory approach to ensure consistent implementation of the requirements to source separate recyclables, particularly in areas served by private collectors.
- Establish separate tracks and waiting lists for Environmental Protection Fund funding for recycling coordinators, educational activities, reuse programs, and other high-priority projects.
- Review state regulations to remove or address contradictory regulatory requirements that limit the creation or expansion of composting and other organics recycling facilities.

The rulemaking addresses the issues outlined in the State Solid Waste Management Plan as well as other relevant issues.

The following discussion outlines the significant changes contained in the rulemaking as compared to the previous rules, including the need for these changes and the benefit the changes will provide, organized by newly assigned Parts:

Part 360 General Requirements

Since the requirements for the various solid waste facilities have been moved to Parts 361, 362, 363, and 365, there is a need for a Part that sets the basis for all regulated facilities and provides the background information that applies to all facilities. Part 360 plays that role – to serve as the home for general requirements for all solid

waste management facilities. This includes definitions, general exemptions, variance criteria, financial assurance criteria, general permit application and operation standards, and provisions to petition the Department for a jurisdictional determination that a material is not a solid waste through a beneficial use determination and other means.

- Under Section 360.2, all definitions applicable to the facilities have been compiled in one location. The definitions have been updated – those that are no longer used have been deleted and those that have led to multiple interpretations have been clarified. For example, the term land clearing debris has been removed from the regulation and its two primary components, wood debris and inert wastes such as rock and soil are now handled under distinct subparts.

- Section 360.4 provides transition rules to bridge existing facilities, transporters and beneficial use determination holders to any new requirements. In some cases, facilities that are currently registered may need a permit to operate and section 360.4 provides the timeframes to submit an application to the Department. For beneficial use determinations, section 360.4 provides BUD holders with the opportunity to request a renewal with 180 days of the effective date of the rules. A timely request will allow an existing BUD to continue in effect until the Department makes a determination on the individual BUD. Additionally, the transition provisions in the revised draft regulations state that retrofitting of existing and registered facilities is not required in order to comply with applicable design and construction requirements.

- Section 360.9 explicitly prohibits brokers or other third-parties from arranging for disposal of waste at locations that are not authorized or exempt under the regulations. This addition is an important enhancement to the enforcement authority under Part 360 and should aid in reducing the illegal disposal of construction and demolition debris and other solid wastes in the state.

- Section 360.11 outlines the requirements for a Comprehensive Recycling Analysis (CRA). The new regulations align the requirements for CRAs more closely with the requirements for local solid waste management plans, and provide a more streamlined and clear pathway for municipalities to develop and implement the analysis.

- Section 360.12 outlines the requirements for beneficial use determinations (BUDs). BUDs are determinations of whether a material, used in a beneficial manner, is no longer considered a solid waste. The regulations contain both "pre-determined" BUDs – materials and uses that have already been found to qualify as BUDs and a procedure for considering case-specific BUDs, based on a petition to the Department for a determination. Since the last revision to Part 360, the BUD program has accumulated information that warrants changes to the provisions. Several new pre-determined beneficial uses have been added based

on case-specific BUDs that have been routinely approved over the past several years including wood pallets reused as pallets; use of street sweepings as fill; materials approved by the Department for remedial projects; the use of tires to hold down silage tarps; the use of up to 150 tires for planters; recycled concrete and asphalt that meets a Department of Transportation specification; and materials emanating from facilities regulated by the new Part 361 (recyclables, compost, etc.). Some uses are specifically excluded from BUDs, such as mass fills. Also, the use of coal ash as raw feed in the manufacture of cement was removed as a pre-determined BUD and will require a case-specific BUD. The criteria for petitioning for a BUD including the petition content and approval criteria has also been updated to make them clearer to the regulated community and other stakeholders. The requirements for case-specific BUDs have been modified to specify who can apply for a case-specific BUD. The regulations include a provision that all case-specific BUDs will be required to be renewed every 5 years and that previously approved BUDs will expire if a petition to renew the BUD is not received by the Department.

- The use of brine (salt water) from gas or oil wells for spreading on roads is a practice that has occurred in New York State and elsewhere for decades. The brine is used to suppress dust on unpaved roads and to melt snow and ice on paved roads. A case-specific BUD is required to spread brine from these sources. Criteria is included in Section 360.12 to address the use of brine. In addition to the beneficial properties of brine, trace contaminants can also be present. The criteria contained in the rulemaking addresses both contaminant limits and the need to adhere to good application practices. The contaminant limits for iron and sulfate in the regulations are similar to the rock salt brine already being used for ice control. Failing to make this adjustment could limit the brines available for use and increase costs to municipalities that would be forced to make rock salt brine. Further, the minimums for TDS, sodium, calcium and chlorides will be allowed to be reduced for brines used for dust control, as more dilute brines are sufficient for this use.

- The dredging of navigational channels and other water bodies is necessary for the economy of the State and the enjoyment of its natural resources. The potential for use of dredged material has been the focus of attention in recent years. To help clarify what information needs to be submitted with a BUD petition for the use of navigational dredged material and to include an exclusion for material that is known to be clean due to character or history, a new subdivision has been included in Section 360.12. The subdivision specifies the criteria for the use of navigational dredged material and includes the testing protocol to determine if the navigational dredged material is acceptable for use as fill.

- Section 360.13 has been added to describe special pre-determined beneficial

use requirements for the use of excavated materials. A new definition of "fill material" which encompasses all soil and soil-like materials excavated during construction and maintenance is used. The revised section categorizes three types of fill material by range of chemical and physical contamination, with corresponding allowable off-site beneficial uses. These types of fill include general fill, restricted-use fill, and limited-use fill. The provisions of the section allow use of non-hazardous materials within areas of similar physical characteristics on the same property without specific Department approval. For fill materials with suspected or observed contamination generated anywhere in the state, sampling and analysis is required before materials can be reused at other sites. In addition, fill material which exceeds 10 cubic yards from a single site and which is generated in the City of New York must be sampled and analyzed in accordance with the new requirements, either at the source or when it leaves the processing facility. The new procedures are designed to allow project owners or contractors to conduct their own sampling and evaluation of fill materials for reuse under an appropriate fill material category without specific Department review and approval, although any sample results must be provided to the Department. Owners or contractors must keep records of sampling and disposition of material for Department review on request, and in most cases must notify the Department of their intent to reuse fill material under the provisions of the section five days in advance of its transfer from its site of generation to the site of use.

- Under Section 360.14, exempt facilities have been revised and clarified. Exemptions related to disposal have been relocated to Part 363 Landfills. Several new exemptions have been added to include solid waste activities which have been found to be of minimal environmental concern.

- Under Section 360.15, the registration provisions have been modified to restrict the duration of registrations to a maximum of five years in most cases. Additionally, a permit is required for more than two facilities or collection events that would otherwise qualify for registration but that are located on geographically contiguous land under the control or ownership of the same person. The regulations governing registrations require the owner or operator of a registered facility to declare the intended storage volumes for the facility based on the size and orientation of the site as well as the maximum throughput limits for the facility on the registration form. A site plan for the proposed registered facility is also now required. Provisions have also been added to allow the Department to evaluate an applicant's compliance history when reviewing a registration application for the purpose of determining whether a registration is appropriate.

- Under Section 360.16, permit application requirements are clearly specified to ensure that an accurate assessment of the probable impacts the facility will have upon the environment can be made before a permit is granted. The regulations

support local solid waste management planning efforts by expanding the requirement for the demonstration of consistency with the goals and objectives of local solid waste management plans to all permit applications for new facilities instead of just those submitted by a municipality. The Department has for years been called upon by the planning units in the state to provide for this enhancement to support their long-standing solid waste management programs and planning efforts.

- Under Section 360.19, operating requirements have been revised to reflect current and best management practices, including a newly added requirement in the regulations that acceptance rates and storage volumes identified in registration documents be complied with. In addition, a noise assessment which evaluates the facility in comparison to noise requirements in Part 360.19(j) has been added. If the assessment indicates levels which exceed regulatory limits, the facility must develop a plan to mitigate impacts to surrounding residential properties.

- Under Section 360.20, the provisions related to on-site environmental monitors have been updated to reflect a more refined set of circumstances and limitations for environmental monitoring services.

- Under Section 360.22, financial assurance requirements have been consolidated in one location in the regulations with the intent to ease the understanding of and improve compliance with the requirements as well as to better ensure that funds will be available for closure, post-closure care, and/or custodial care activities. In addition to the consolidation of financial assurance language in one location, several changes are intended to strengthen financial assurance requirements where needed. These include clarifying the continuous provision of financial assurance on a rolling 30-year basis for landfills in post-closure care, allowing a surety mechanism pay-in period for municipalities that no longer qualify for the local government financial test due to a poor bond rating, and requiring that the surety mechanism provided by private operators of municipal landfills be transferred to the municipality upon the expiration of the municipality's contract with the private operator.

Part 361 Material Recovery Facilities

As outlined earlier, the regulations governing solid waste management facilities have been divided into multiple parts – Part 360, 361, 362, 363, and 365. As a starting point, the facilities were placed in these parts based on their location within the solid waste hierarchy – recycling facilities in Part 361, energy recovery and other management facilities in Part 362, and disposal facilities (landfills) in Part 363. Due to their unique nature, the criteria for all regulated medical waste facilities are placed together in Part 365.

Since the facilities found in Part 361 are recycling and recovery facilities, their operations are strongly encouraged by the Department. However, there can be environmental concerns with the operation of the facilities and use of the products in some cases, so regulation is needed. The Department has set the criteria and level of regulation - exemption, registration, or individual permit - based on the potential for environmental harm and impact on neighboring communities. Permits for recycling facilities are only required for those activities, based on size and/or waste managed, that warrant greater oversight.

Subpart 361-1 Recyclables Handling and Recovery Facilities

- Under this subpart, a recyclables handling and recovery facility which receives more than 250 tons per day, based on a weekly average, of recyclables will require a permit. This is based on the impacts that have been experienced at some existing facilities such as noise, dust, and truck traffic which large-volume facilities are likely to impose on their surrounding communities. Assessment of potential facility-specific environmental impacts like these is conducted during the permit review process, but is not conducted as part of the issuance of a registration. The regulations allow longer storage periods for recyclables in order to maximize marketability and minimize unnecessary disposal.

Subpart 361-2 Land Application and Associated Storage Facilities &
Subpart 361-3 Composting and Other Organics Processing Facilities

- Unlike most parts of Part 360 which have not been revised in over 20 years, the regulations governing these facilities were last comprehensively revised in 2003, with additional changes in June 2013. Accordingly, there are limited changes to the design and operating standards.

- Subpart 361-3 regulations separate the requirements for the various types of organics recycling facilities – composting, anaerobic digestion (AD), etc. Subpart 361-3 also includes additional criteria for the management of digestate from AD facilities, which is not clear in all cases in the previous regulations. Subpart 361-3 includes a section for animal feed production facilities that requires them to obtain a registration.

- One area of recent increased interest is the composting of limited amounts of food scraps, either on the community garden scale or on a limited commercial scale. To encourage these activities that have limited potential environmental impact, an exemption for small-scale food scrap composting is included, and the registration provisions for food scrap composting has been raised from 1000 cubic yards per year to 5000 cubic yards per year or 2,500 wet tons per year, whichever is less.

- Regulated radioactive wastes are prohibited under previous regulations from being processed at any solid waste management facility. The new regulations require any facilities that process municipal solid waste (MSW), including MSW composting facilities, to install and utilize fixed radiation detectors to monitor all incoming waste loads. Facilities that compost MSW are required to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g of radium 226 or are regulated radioactive wastes may not be accepted at the facility.

Subpart 361-4 Mulch Processing Facilities

- The shredding or grinding of tree limbs or other similar materials to produce mulch is a common practice. Facilities that produce and store mulch are not regulated under the previous Part 360. This practice has increasingly become a concern as the size of the facilities in some areas in the State have grown from an acre or two to dozens of acres, and piles of mulch have turned into mountains of mulch. These larger facilities have caused problems associated with odors, dust, runoff, and fires. Regulation is needed in order to protect public health and the environment. For these reasons, a new subpart has been added to address the processing of woody material from trees and yard trimmings. It includes restrictions on pile size and other criteria to control odor and fire. The level of regulation is dependent on the size of the site, and small sites will continue to be exempt from regulation.

Subpart 361-5 Construction and Demolition (C&D) Handling and Recovery Facilities

To address potential adverse environmental impacts and curtail unpermitted activity, the regulations provide the following:

- A registration for a facility that receives less than 500 tons per day, based on a weekly average, of any of the following materials. A combination of material may be accepted under registration in certain circumstances.
  - concrete and other masonry materials, brick, fill material, and rock
  - asphalt pavement or asphalt millings
  - asphalt roofing shingles and roofing paper (without asbestos)
  - gypsum wallboard
  - unadulterated, uncontaminated wood
  - separated general fill material
  - separated restricted-use and/or limited-use fill material
  - source-separated recyclables from C&D debris for use under a BUD

  A permit is required for the receipt of 500 tons per day based on a weekly average or greater of these materials. This is based on the impacts experienced at some existing facilities such as noise, dust, and truck traffic which large-

volume facilities are likely to impose on their surrounding communities. Assessment of environmental impacts like these are part of the permit review process, but are not conducted as part of the issuance of a registration.

- A requirement has been added that specifies that receiving, processing, and sorting of mixed C&D debris, except for materials that could otherwise qualify for registration, be performed within an enclosed building in order to minimize impacts on the surrounding community.

- Tracking form requirements for material leaving permitted C&D debris processing facilities are expanded to also include material leaving registered C&D debris processing facilities, to enable the Department to more easily investigate and enforce against those who illegally dispose of C&D debris. These tracking form requirements are associated with the Part 364 waste transporter requirements for transporters registered to transport certain fill material and C&D debris, and will be required for any material leaving a facility.

- The allowable storage period and storage volume for unprocessed or processed C&D debris of any kind will be restricted unless the material qualifies for a BUD. Unprocessed asphalt pavement, asphalt millings, concrete and other masonry materials, brick, fill material, rock or wood can be stored for up to 365 days. Other unprocessed C&D debris can be stored for 30 days unless written approval from the Department is obtained. Materials that qualify for a BUD can be stored without a time restriction as long as the facility does not exceed the volume specified in its permit or registration. A minimum of 10 feet between piles is required. These requirements better reflect operations at facilities that have not experienced problems.

- Enforcement efforts focused on restricting adulterated wood from these facilities have proven difficult, and there is a growing concern that adulterated wood is being processed and sold into the community as mulch. Facilities that process tree debris into mulch will now be regulated under Subpart 361-4, Mulch Processing Facilities, where they will be required to adhere to storage pile restrictions, facility size restrictions, and property line buffer areas, among other operational requirements intended to minimize the potential for fire and nuisance odors. Similar to the management of CARBS, the previous exemption for these wood wastes has led to facilities to amass vast quantities of processed tree debris and yard trimmings which have adversely impacted the environment. Mulch produced by C&D debris processing facilities is often contaminated with compounds found in adulterated wood. These compounds can then be introduced into settings where mulch is typically used, including residential neighborhoods and playgrounds. C&D debris processing facilities will no longer be allowed to produce mulch without being granted a case-specific BUD. This

reflects standard best management practices in the mulch manufacturing industry.

- Pre-determined beneficial uses for C&D debris and C&D debris residues which meet the requirements of a State or municipal standard or specification are required in Section 360.12. Pre-determined beneficial uses for recycled asphalt pavement and residues from processing of asphalt pavement have been restricted to use as an ingredient in asphalt pavement for roadways, parking lots, or other similar uses. Residue from the processing of asphalt pavement can impact environmental quality if used on the ground in an unbound form.

Subpart 361-6 Waste Tire Handling and Recovery Facilities

- To support the significant effort and financial commitment of the State in abating waste tire stockpiles and developing markets for waste tire recycling since 2003 through the administration of the Waste Tire Management and Recycling Act, this Subpart focuses on the recovery of used tires rather than the previous regulations focus on storage of waste tires. The regulations eliminate the previous allowance for storage of vast quantities of waste tires unassociated with the production of a marketable product.

- Waste tire handling and recovery facilities store used tires, sell used tires and retreaded used tires for reuse, and process used tires into useful products, feedstock, or fuel. The regulations require facilities that process tires into products or feedstocks to obtain a permit. Many of these facilities are currently registered and have experienced significant operational issues, including fires. Permits will now be required to more closely regulate this activity. The regulations provide that any storage of less than 1000 waste tires is exempt from registration and permitting.

Subpart 361-7 Metal Processing and Vehicle Dismantling Facilities

- This new Subpart provides exemption and registration provisions for scrap metal processors and vehicle dismantling facilities based on the amount of waste received and stored on-site. The subpart also incorporates and clarifies the requirements of the New York State Vehicle Dismantler Law. This Law was promulgated and went into effect in 2006 and was not previously incorporated into the regulations.

Subpart 361-8 Used Cooking Oil and Yellow Grease Processing Facilities

- The production and use of biodiesel has recently become more popular as use of alternative fuels become more prominent. Under the previous regulations, a

permit was required for facilities that process used cooking oil and yellow grease for the production of biofuel such as biodiesel because they fell under the provisions of a nonspecific facility. Although regulation of these facilities is needed due to the potential for spills or water impacts as a result of improper management of the liquids, a graduated approach is appropriate based on the quantity of waste managed. Therefore, the regulations provide regulatory relief for the smaller processors. Under the regulations, small operations (no more than 1000 gallons per year) are exempt, those greater than 500,000 gallons per year are subject to permit, and those in between are eligible for registration. The criteria includes standards for the proper storage and management of these putrescent liquid wastes.

Subpart 361-9 Navigational Dredged Material Handling and Recovery Facilities

- This new Subpart provides registration provisions for the processing and storage of navigational dredged material (NDM). It is common for NDM that is destined for use as fill to be stored temporarily to accommodate construction schedules. NDM can also require treatment, such as with the addition of cement, to obtain the proper physical characteristics for use. This new Subpart allows these operations under a registration provided applicable criteria are followed.

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

Subpart 362-1 Combustion Facilities and Thermal Treatment Facilities

- While the previous Part 360-3 regulations describe requirements for municipal waste combustors and pyrolysis facilities, several new technologies have been developed which are similar but not identical to combustion or pyrolysis. The regulations clarify that emerging thermal treatment technologies such as gasification and other non-combustion thermal processes are regulated under this Subpart.

- Registrations have been added for the combustion or thermal treatment of specific waste types, including waste tires, unadulterated wood, used cooking oil and yellow grease, and alternative fuels under specific feedrate limits, storage restrictions, and operating conditions. While some of these materials have previously received beneficial use determinations for these activities, the Department will now regulate these activities through facility registrations.

- The requirement to test for volatile matter in combustor ash residue has been removed because Division of Air Resources emissions regulations are sufficient to ensure maximum combustion efficiencies are maintained. In addition, the regulations allow for the reduction in testing frequency of combustor ash residue

for other parameters, but require confirmation testing to be performed no less than once every five years. This will reduce unnecessary ash testing while providing for periodic verification of the content of the ash residue.

- Regulated radioactive wastes are prohibited under the previous regulations from being processed at any solid waste management facility. The regulations now require municipal waste combustors and thermal treatment facilities that process MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Facilities that combust MSW are now required to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g or are regulated radioactive wastes are prohibited from being processed at the facility.

- Materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the regulations restrict several source-separated waste streams from being managed in municipal waste combustors or thermal treatment facilities that accept the full MSW stream. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs.

Subpart 362-2 Municipal Solid Waste Processing Facilities

- Under previous regulations, facilities that process MSW to produce a fuel for MSW combustors were regulated under Part 360-3, while facilities that process MSW in a similar way for other uses were regulated under previous Subparts 360-11 and 360-12. In order to provide the regulated community with a more consistent and centralized regulatory framework, a new Subpart for refuse-derived fuel processing facilities and post-collection recyclables recovery facilities has been created.

- As with combustors and other selected solid waste management facilities, the regulations require MSW processing facilities to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g or are regulated radioactive wastes are prohibited from being processed at the facility.

- As with combustors, materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the regulations restrict several source-separated waste streams from being processed at these facilities. These materials include source-separated recyclables, source-separated household hazardous waste, source-

separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs.

Subpart 362-3 Transfer Facilities

- This subpart provides relief from previous regulations by expanding exemptions for four specific transfer facility types, including vehicle to vehicle transfer, small municipally-owned transfer facilities, small source-separated organic waste transfer facilities, and retail or wholesale take-back sites.

- Additionally, as with combustors and other selected solid waste management facilities, all permitted transfer facilities that transport wastes out-of-state are required to install and utilize fixed radiation detectors to monitor all incoming waste loads.

- Materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the regulations will now allow transfer stations also authorized as recyclables handling and recovery facilities to accept particular source-separated waste streams for recycling. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs.

Subpart 362-4 Household Hazardous Collection Facilities and Events

- Previous regulations governing household hazardous waste collection facilities and collection events existed under both Part 360 and the hazardous waste regulations at 373-4 and included several overlapping provisions and requirements whose applicability depend upon the participants. Permits for household hazardous waste collection facilities were issued as nonspecific facility permits under previous Part 360 using the requirements of 373-4 while collection day events were administered via the requirements of Part 360. To consolidate program requirements, the household hazardous waste regulations located in Subpart 373-4 are repealed and the requirements of that Subpart are incorporated into this new Subpart.

- Registration and permit criteria, operational requirements, and recordkeeping and reporting requirements are contained in this Subpart. The individual collection event approval process in Part 360 is now replaced by a registration program streamlining the application and approval process for municipalities,

especially for those that sponsor frequent and ongoing programs.

Part 363 Landfills

- The regulations require the installation of horizontal gas collection pathways at regular intervals in the waste mass. In addition, as part of their permit applications, landfills are required to submit greenhouse gas reduction plans. These plans will not be restricted to gas collection and destruction but instead will provide wider options for reduction of greenhouse gas emissions from the landfills.

- The regulations include new language to clarify the responsibilities of landfill owners after landfill closure. Under the regulations, post-closure care activities including leachate collection and treatment; landfill cover maintenance and repair; regular landfill gas, groundwater, and surface water monitoring; and regular inspections are required until the owner or operator can demonstrate to the Department that the landfill's potential threat to public health or the environment has been reduced to a level where environmental monitoring and maintenance can be reduced. At that point, custodial care activities including landfill cap and vegetative cover maintenance; sampling of groundwater, surface water, and leachate at least every five years; maintenance of the landfill gas venting system; and periodic inspections must commence and continue while waste remains on-site. In keeping with these requirements, the facility manual for a landfill will now include a requirement for a custodial care plan. Throughout both the post-closure and custodial care periods, the owner or operator must maintain financial assurance to ensure that post-closure and custodial care activities will continue. A total of 30 years of financial assurance is required, whether it be 30 years of post-closure care, a combined 30 years of post-closure and custodial care, or 30 years of custodial care only.

- Disposal of land clearing debris has become problematic in some areas of the state, creating nuisance odors and reducing the amount of wood wastes that could be directed to reuse or recycling. Therefore, the previous registration and exemption for disposal of land clearing debris has been removed and replaced with an exemption for a facility no more than one acre in size for the disposal of tree debris. This exemption will not be available in Nassau and Suffolk counties.

- Outside of Long Island, previous C&D debris landfill construction requirements were based on the size of the landfill: facilities of less than three acres were allowed to utilize single liners without leachate collection, while greater than three-acre facilities could utilize single composite liners with leachate collection. The regulations now require that any C&D debris landfill utilize at minimum a single composite liner with leachate collection.

- Previous regulations exempted disposal of certain materials such as uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock. There were no volume or size restrictions associated with that exemption, and several areas of the state have experienced problems with large-volume exempt disposal sites which have impacted surrounding communities. In addition, non-exempt wastes such as processing residues have been found at exempt sites. The new regulations replace the previous exemption for the disposal of these materials with an exemption that prohibits disposal of processing residues at an exempt site, and restricts disposal to no more than 5,000 cubic yards of these materials. This exemption will not be available in Nassau and Suffolk counties. An additional exemption is included in the regulations which exempts disposal of recognizable, uncontaminated concrete, asphalt pavement, brick, general fill, limited-use fill, glass, and rock generated by state or municipal highway projects on highway right-of-ways or other municipally owned properties.

- Under previous regulations, landfills were required to register with the Department after final closure. To ensure that a closed landfill does not impact public health or the environment during post-closure care, the new regulations require a permit for post-closure care operations and maintenance.

- A number of revisions related to groundwater monitoring requirements have been included based on experience with monitoring well data which are intended to provide relief and flexibility to the regulated community. In addition to a reorganization in the regulations which moves the components of the former hydrogeologic subpart to appropriate sections of the permit application subpart, these revisions include the following:

  - Allowing a landfill owner or operator to demonstrate that a significant increase in groundwater monitoring data is not attributable to a problem with the landfill by allowing collection of verification samples and a demonstration to be included in quarterly monitoring reports.
  - Allowing semi-annual sampling of monitoring wells and other sampling points for baseline parameters upon approval by the Department after five years of acceptable quarterly monitoring data, rather than the previous requirement of quarterly sampling with one round of baseline parameters and three rounds of routine parameters.
  - Allowing baseline sampling to be conducted at the same time each year, rather than the previous requirement that baseline sampling rotate from quarter to quarter.

- All solid waste management activities, including landfill operations, should be conducted in a manner that minimizes impacts on the environment and that conserve and sustain natural resources. To that end, the regulations require that

a sustainability plan be included as a part of all landfill applications. The plan will require a description of operations that will conserve landfill airspace, encourage diversion of natural resources, reduce receipt of organic wastes, utilize alterative operating cover materials, enhance waste mass stabilization, include landfill reclamation techniques, and utilize other sustainable landfill management techniques. The plan must be updated every 5 years. As noted above, the plan requirements require a description of efforts by the landfill to reduce greenhouse gas emissions.

- In order to take into account increasingly intense precipitation events, applicants will now be required to evaluate the impacts of 500-year storms, rather than the previous requirement for 100-year storms, on leachate collection and removal systems and stormwater/run-off conveyance systems.

- Previous regulations describe the minimum criteria for the siting of a landfill, but also describe the actions that must be taken in order to site a landfill in an area that does not meet all siting requirements. Under this second scenario, the applicant must complete a site selection study which identifies a range of alternative sites, and describes the process used to select the proposed site. While this process may be useful for a municipality which has multiple available parcels from which to choose, a private applicant may find the process unworkable. The Department has concluded that the siting criteria in combination with SEQRA evaluation requirements are sufficient to ensure that a proposed site will have no adverse impact on public health or the environment, and that it is unnecessary to require a comparison of various proposed sites. Therefore, the regulations provide relief to applicants by removing the requirement for a site selection study from Part 363.

- Previous regulations required that a minimum of 10 feet of soil separate bedrock from the base of a constructed landfill liner. The initially proposed revisions had allowed that separation to be reduced to no less than 5 feet, based on Department approval, if the separating soil has a maximum hydraulic conductivity of $1x10^{-6}$ centimeters per second. Based on comments received on the initial draft regulations which argued that this reduction would be difficult to achieve because bedrock elevations normally vary more than 5 feet over areas that would typically be suited for landfill development in the vast majority of landfill sites. Because of these comments and information on bedrock elevations associated with landfill applications across the State which support bedrock separation in the regulation being returned to the previous minimum 10-foot separation to bedrock requirement, the requirement for 10-foot separation has been maintained in the new Part 363 regulations.

- The Department has long known that quality construction is directly related to good performance of any environmental containment system. This emphasizes

the need for up-to-date best management practices in the required construction quality assurance (CQA) plans that support a landfill liner and leachate collection system. Since the last major rule-making relating to landfill construction, the Department has learned that most defects in landfill liner geomembranes are caused by damage sustained during landfill construction activities. Under previous regulations, the CQA requirements are field seam focused and largely ignore the rest of the geomembrane surface. The previous regulation has relied on the competence of the landfill liner which is evaluated after construction by measurement of the allowable leakage rate (ALR). ALRs below 20 gallons/acre/day are considered to be acceptable. However, new technologies, known as liner integrity testing, have been developed which can pinpoint the location of defects in geomembranes immediately after placement of drainage layer material (one of the major causes of geomembrane defects) installation. These tests have been used successfully during the construction of many landfill cells in the State over the past decade and has greatly improved liner system containment performance of the landfill's upper liner system.

In the Department's experience, when liner integrity testing is specified in the landfill's CQA plan the number of performance-robbing defects found is drastically reduced. The literature on this subject indicates that when the integrity test is not specified in the CQA plan that typically as many as 6 to 9 major defects per acre are found. Conversely, what the department has learned from those landfills who either voluntarily employed integrity testing or were required by permit condition to perform the testing as specified in their CQA plans is the number of defects are significantly less in frequency and size than facilities where integrity testing was not specified. Therefore, the regulations require that liner integrity testing be conducted on both geomembrane liners of a double-composite liner system.

- Previous regulations allowed the use of either six inches of compacted clay or a geosynthetic clay liner (GCL) in the construction of the primary composite liner system. However, compacting a primary clay layer is often difficult and time consuming and has been primarily replaced by use of a GCL in the industry. The Part 363 regulations require that the primary composite liner be constructed of a GCL as a standard construction requirement. It should be noted that since the advent of the GCL, the vast majority of all double-lined landfills constructed in the state already use a GCL in lieu of the compacted clay barrier in the upper composite liner. Doing so removed the need for a 12-inch structural fill layer required in the previous regulations. As a result, use of a GCL provides landfill operators an additional one foot of air space of disposal capacity.

- The previous regulations did not specify any design criteria for the hydraulic design of the secondary leachate collection and removal system (commonly referred to as the landfill's upper liner's leak detection system). In order to assure

that leaks in the primary composite liner are detected quickly, the secondary leachate collection and removal system must be designed with a high hydraulic conductivity which will transport leachate rapidly to the secondary leachate observation point. To ensure this rapid detection, the Part 363 regulations require that the secondary leachate collection and removal system be designed to a minimum flowrate capacity of 1000 gallons per acre per day. This hydraulic design criteria is based on it being similar to typical average flow of a landfill's primary leachate collection and removal system. This is a highly conductive system which will ensure rapid detection of leaks and will provide continued environmental protection in the event of a catastrophic breach of the landfill's primary liner.

- Previous regulations required that destructive testing of geomembrane liner seams be conducted at least every 500 feet of seam length. Improved installation techniques and equipment have significantly reduced the failure rate observed in these tests. Therefore, to reduce the cost associated with destructive testing of geomembrane liner seams, the Part 363 regulations reduce destructive testing requirements for geomembrane liner seams from one sample every 500 feet of seam length to one sample every 1000 feet of seam length. This reduction in destructive seam testing optimizes landfill CQA testing while still maintaining sufficient attention to field seam quality.

- A 24-inch barrier protection layer was previously required immediately above the geocomposite liner of a landfill cover. The Department has issued several variances to this requirement based on the type of vegetation chosen to be grown on the cover. The Part 363 regulations establish this criteria in the landfill construction requirements by reducing the required thickness of the barrier protection layer of final cover system from 24 inches to either 12 or 18 inches depending on the vegetation selected and its average root length. This reduction is expected to reduce the cost associated with landfill cover construction.

- Under previous regulations, external slopes of final cover systems were not be constructed at slopes which exceed 33 percent. This requirement was intended to maintain the stability of the slope and reduce the chance for slope failures and cover failures. However, as waste degrades these slopes are often reduced to angles significantly below regulatory limits. This recovered airspace can be of significant value to the landfill owner or operator and helps to optimize existing landfill disposal capacity without increasing the landfill footprint. Another previous requirement is that final cover systems be installed within 210 days following the last receipt of waste in the cell. Waste degradation and the associated airspace recovery may take much longer than 210 days to come to completion. In order to allow landfill owners or operators to take advantage of the recovered airspace and avoid the cost of installing and subsequently removing a final cover system in order to effectively gain this airspace, the Part

363 regulations allow the initial external slopes of a landfill cell to be constructed at greater than 33 percent upon a demonstration to the Department by the owner or operator that the slope will be stable and that the slope will settle to 33 percent or lower prior to closure of the cell. In addition, the regulations allow up to five years after a landfill cell has reached final grade before construction of the final cover system is required. These changes are expected to greatly increase the opportunity for the owner or operator to utilize the full airspace of a given landfill cell.

- In order to increase consistency in implementation and interpretation of the regulations, the regulations incorporate the specific requirements associated with Long Island landfills which previously existed in Subpart 360-8 into the general landfill requirements found in Part 363.

- Previous regulations allowed the use of surface impoundments for the management of landfill leachate. Though most impoundments appear to perform well, it is difficult to identify leaks that may develop. Aboveground or on-ground storage tanks are a superior method of leachate storage and management. Therefore, while existing surface impoundments will be allowed to continue to be used, the Part 363 regulations require aboveground or on-ground leachate storage tanks to be used at any new landfills or subsequent development at existing landfills when additional leachate capacity is needed.

- Operating cover is required to be applied to the working face of a landfill cell at the end of each working day to minimize odors, vector impacts, fire potential, and blowing litter. Previous regulations allowed waste materials such as petroleum-contaminated soil, municipal waste combustor ash, automobile shredder residue or C&D debris processing residues to be used as alternative daily cover materials. Although landfill owners or operators often charge tipping fees for acceptance of these materials, because these materials are used in place of raw materials such as virgin sand they have not been counted toward a landfill's daily or annual waste acceptance limit established through permit. This allowance has inadvertently created circumstances where a landfill owner or operator can accept a combined quantity of material at the landfill which is in excess of the permitted acceptance rate. While the majority of the MSW landfills are not accepting an exceptional volume of these materials for daily cover, there have been some severe anomalies. The Part 363 regulations require that alternative operating cover be identified in the landfill's permit as a separate annual tonnage on a facility-specific basis.

- The continued performance of a landfill's leachate collection and removal systems is as equally important to the protection of groundwater as the landfill's liner system. To ensure that the primary and secondary leachate collection and removal systems remain in a free-flowing condition, the regulations require

annual cleaning of primary leachate collection and removal systems, and biennial video inspection of any primary or secondary leachate collection and removal systems.

- To minimize potential for exposure to radiation, the regulations include a landfill disposal prohibition for wastes which exhibit greater than 25 pCi/g of radium-226, regardless of the waste type.

- To ensure that fine material associated with waste from well drilling activities does not interfere with leachate collection and removal systems, and to ensure a minimum separation from the landfill surface, an operating requirement has been added to require that the material be place no closer than 6 feet to a leachate collection and removal system and no closer than 10 feet to a final cover.

- A prohibition on the disposal of flowback water and production brine in any form has been added to the regulations.

- Regulated radioactive wastes are prohibited under previous regulations from being processed at any solid waste management facility. The new Part 363 regulations require all landfills that accept MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Operating requirements associated with the fixed radiation detectors include daily background radiation readings, weekly field checks utilizing a known radiation source, annual detector calibration and staff training, minimum and maximum investigation alarm setpoint levels, and documentation requirements.

- Radionuclides, including radium-226, radium-228, and total uranium, as well as gamma spectrum analysis were added to the water quality analysis tables for expanded parameters. Based on further consideration and false positives that are typical from the analysis, the gamma spectrum analysis was removed from the regulation. In addition, perfluorinated compounds and 1,4-dioxane have been added to the list of baseline parameters.

- Materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the regulations restrict several source-separated waste streams from being disposed in a landfill. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs.

Part 364 Waste Transporters

Part 364 is unique to the Part 360 series in that it governs the transportation of waste instead of facilities and in that it also governs transportation of hazardous waste in addition to non-hazardous waste. Part 364 has not been comprehensively revised in over 25 years and the definitions and criteria are not always consistent with the definitions and criteria in Part 360. Part 364 has been revised to operate in concert with new Parts 360, 361, 362, 363 and 365 to include tracking of wastes that have been a problem or concern such as certain C&D debris, fill material which may contain contaminants, and drilling and production waste, and to exclude the permitting of wastes with little potential harm when transported. Regulated medical waste requires tracking under the previous Part 364 regulations, and that continues in the new Part 364 regulations.

- All non-transportation related regulated medical waste provisions of the previous Part 364, such as packaging requirements, have been moved to the new Part 365.

- All references to low-level radioactive waste (LLRW) have been removed, as the transport of this material is regulated under 6 NYCRR Part 381.

- Exemptions have been clarified and new exemptions added for electronics destined for recovery, elemental mercury and dental amalgam from dental facilities destined for mercury recovery, and regulated medical waste transported by emergency rescue vehicles. The regulations exempt transportation of regulated wastes by public utilities, public railroad services, public transportation agencies, and their contractors.

- The exemptions for small loads of most waste are increased from 500 pounds to 2000 pounds.

- Registration criteria are included in the regulations for the self-transport of regulated medical waste in quantities less than 50 pounds per month; the transport of less than 50 pounds of source-separated household hazardous waste; the transport of commercial solid waste in quantities greater than 2000 pounds; the transport of C&D debris or fill material in quantities greater than 10 cubic yards with the exception of general fill generated outside of New York City in any one shipment; and the transport of sharps from a household medical waste collection facility. The registration requirements are minimal as compared to the permitting requirements and do not include a regulatory fee, unique insurance requirements and amounts or individual vehicle identification requirements. The regulations require registered transporters to display the company name and registration number on outside of the vehicle. The requirements are limited to completion of an annual report and any tracking forms that may be required for certain waste types, and recordkeeping of load-specific information which must be available at the

department's request. For commercial solid waste and C&D debris including fill material, this will be the first time the transport of these waste streams is subject to Part 364, though registrations are a new component of the Part 364 regulations. The illegal disposal of C&D debris has been a significant problem in Regions 1, 2 and 3 and is now expanding into portions of Region 4. Registration under Part 364 and the associated operating requirements will provide an additional enforcement tool for managing these activities for use by field staff, legal staff and law enforcement personnel.

- The regulations require waste tracking forms for the transport of certain wastes including certain C&D debris (both to processing or disposal facilities as well as residues from C&D processing facilities), drilling and production waste, and fill material. The regulations have been enhanced to require tracking documents for the transportation of C&D debris and fill material which is generated within the City of New York, as well as other waste of concern generated anywhere in the state. Regulated medical waste will continue to require a tracking form.

Part 365 Regulated Medical Waste and Other Infectious Wastes

Previously, two Subparts in Part 360 and portions of section 364.9 contained regulations for the treatment and management of regulated medical waste (RMW). The new Part 365 consolidates all the treatment and management of RMW in one location, addresses all wastes that present a similar concern and contains the standards for treatment and management of those wastes. New Part 365:

- Includes criteria for regulated medical waste and other infectious wastes.
- Identifies standards for handling and storage of regulated medical waste at the site of generation.
- Provides operation requirements for autoclave and alternative treatment devices.

Part 366 Local Solid Waste Management Planning

- The previous requirement for updates, modifications and biennial compliance reports for local solid waste management plans (LSWMPs) has been replaced in the new Part 366 regulations with a requirement for a biennial update. These biennial updates will allow for evaluation and adjustment of the LSWMP, taking into account changes that will occur on a routine basis following initial LSWMP approval. Part 366 also clarifies the process in which the public is to be involved

in the preparation of a LSWMP to ensure consistent application across the state. The streamlining and reorganization of the LSWMP process is intended to make the preparation and implementation of LSWMPs less complicated for municipalities, yet at the same time assist them in reducing the amount of waste they are disposing and increase the percentages of recyclables removed from the waste stream. The regulations streamline the LSWMP development and approval process and allow for an optional two-year planning period extension as part of the biennial update process. Specific content required to be included in LSWMPs has been clarified, and specific time frames for review and response to comments have been added including Department review periods beyond which the LSWMP will be considered approvable.

Part 369 State Assistance Projects

Previously, state assistance programs for municipalities for waste reduction and recycling were guided by the Part 369 regulations. Landfill closure was governed by Subpart 360-9, landfill gas collection was administered through a program policy, and household hazardous waste was covered by Subpart 373-4. These various state assistance programs related to solid waste management are now consolidated into Part 369.

- There has been concern in the past regarding funding of waste reduction and recycling education and coordination projects and positions; the delay in reimbursement to municipalities can be problematic for municipal budgeting, and has even resulted in some municipalities eliminating these important positions. The Part 369 regulations establish separate funding categories for capital waste reduction, recycling and household hazardous waste projects, waste reduction and recycling education and coordination projects, household hazardous waste collection and disposal as well as establish an annual application process for education/coordination and household hazardous waste (HHW) collection programs to better control and direct available funding to municipalities in a timely manner. For the annually funded projects, should insufficient funds be available to provide 50% reimbursement, the department may either lower the percentage or set a dollar maximum on the funding level.

- Due to changing technologies and evolving priorities, the department needs to have flexibility to help advance certain waste reduction and recycling activities and projects in the state. To accomplish this, the regulations establish a targeted priority area assistance program that the Department can use as needed in accordance with available funding and program needs and priorities.

- In order to ensure that funded projects are well thought out and part of a reasonable and structured program consistent with state and local waste

reduction and recycling efforts, awarding of state assistance grants will be limited to municipalities guided by approved Local Solid Waste Management Plans (LSWMPs) or Comprehensive Recycling Analyses (CRAs) and those found to be making substantial progress toward completion of an LSWMP or CRA, unless unique circumstances prevent the municipality from completing an LSWMP or CRA in a timely fashion.

- To focus funding of waste reduction and recycling state assistance grants on new initiatives, the regulations limit capital funding to eligible costs incurred no more than one calendar year prior to the date an application is submitted to the Department.

- Provisions for the landfill closure grant program under the regulations allow funding only for landfills that stopped receiving waste prior to April 9, 1997. Any landfill operating after this date has been required to have a completely funded surety mechanism in place to pay for closure and post-closure care. There is no reason to apply limited state resources to fund landfill closure activities that have already been fully funded through the required regulatory mechanism that has been in place since 1993.

4. COSTS

For a limited number of facilities, such as mulch facilities and C&D debris handling and recovery facilities, the regulations will result in some additional costs for regulated parties, including local governments. For most facilities, no significant change from the previous regulatory program costs is anticipated.

For the construction industry in the City of New York, there will may be additional costs for testing and management of fill material and C&D debris if the material is not sent to a processing facility. For C&D debris handling and recovery facilities, there will be additional costs for testing material.

For a segment of the waste transportation industry, especially those that transport C&D debris and fill material, there will be additional costs for implementing the waste tracking system and registration and annual reporting requirements.

The majority of the regulations do not represent a change from how the Department previously regulated solid waste management facilities. In most cases, therefore, the ultimate costs associated with complying with the previous regulatory program will be similar to those for the program established under the action. The costs are addressed in greater detail below:

Costs to Industry:

Part 360 General Requirements:

- A noise assessment is now included as a requirement of the Part 360 permit application. Though the noise requirements associated with solid waste management facilities have not changed, the requirement for a noise assessment is new.

- Clarification of criteria for beneficial use determinations will help industry determine if their waste could be used in a beneficial manner, which will likely lead to cost savings through the sale of additional reused materials and avoided disposal costs.

- The most significant impact of the regulations will be the imposition of annual sampling and analysis for each brine source, which will add at least $500 to each brine user's expenses each year (based on analytical fees for one brine sample and a duplicate). In view of typical costs for commercial or manufactured brine of 21 cents per gallon (from sima.org), or roughly $1000 per tanker truck – many of which may be used in a summer dust control or winter de-icing season - it is unlikely this added analytical cost will discourage use of gas well brine if well brine is provided free of charge.

- Specifying criteria for the use of navigational dredged materials will facilitate the use of appropriate materials and reduce the significant cost associated with disposal. Sampling and analysis required for use of navigational dredged material as fill, does not exceed the scope of the same that is already required to obtain a department permit to dredge or department certification of a federal dredging permit. No added costs are expected to entities conducting dredging.

- New requirements for sampling and analysis of fill material for reuse only apply in circumstances where such characterization is already required, namely at industrial sites or other areas with suspect contamination, or in New York City. Small quantities in New York City are exempted. Industry commenters have noted that suspected contaminated soils already require testing for hazardous characteristics and other disposal-related parameters; such costs may exceed $8,000 for a typical-scale construction project in which at least 10,000 cubic yards excess fill may be generated. Compared to this figure, costs to sample the same volume of fill material for beneficial use would total slightly over $5000. Together with an avoided disposal cost of $150,000 - $300,000, the option of beneficial use of fill material will cost the construction industry less than disposal in nearly all instances. This cost avoidance will encourage environmentally appropriate reuse of fill material in place of illegal disposal.

Part 361 Material Recovery Facilities:

361-1 Recyclables Handling and Recovery Facilities

Potential increase in costs:
- Permit requirement for greater than 250 tons

The regulations require RHRFs which receive more than 250 tons per day of material based on weekly average to operate under a Part 360 permit. The Department estimates that will only effect approximately 11 facilities in the state. The estimated cost for applying for a Part 360 permit is between $20,000 and $50,000. This cost will vary significantly based on the type, complexity, and location of the facility.

Potential decrease in costs:
- Allow storage of BUD material without time restriction
- Increase storage time for recyclables in general

The regulations will reduce the operating expenses of RHRFs by allowing increased allowed storage time for processed recyclables. This will allow RHRFs to accumulate more recyclable material and to hold material longer in anticipation of better market prices.

361-2 Land Application and Associated Storage Facilities

Potential Reduction in Costs:

- additional exemption for non-CAFO farms that have a nutrient management plan
- addition of papermill residuals under a registration
- removal of the requirement to analyze biosolids for organic pollutants
- the allowance for field stockpiling of papermill residuals prior to application
- removal of soil group standards
- soil pH adjustment requirement revised to 6.0

Potential Additional Costs:
- registration for storage of recognizable food processing waste in quantities greater than 20 cubic yards

There are many criteria in Subpart 361-2 that will reduce the cost to the regulated community. A new exemption for farms that are not concentrated animal feeding operations (CAFOs) but have implemented comprehensive nutrient management plans (CNMPs) will reduce the costs for these farms. The land application of papermill residuals requires a permit under the previous regulations. The revisions include a registration for these activities that could save the facilities $10,000 - $20,000. The revisions remove the requirement for analyzing biosolids for extensive organics pollutants which would save facilities $1000 -$3000 per year. The revisions allow the

short-term field stockpiling of papermill residuals without a pad, saving thousands of dollars. The removal of soil type criteria will increase the number of farm fields available for land application. Reducing the soil pH requirement to 6.0 from 6.5 will reduce the amount of lime that must be purchased.

Under the previous regulations, the storage of recognizable food processing waste was exempt from regulation. The new regulations require a registration for storage greater than 20 cubic yards and a liner to minimize groundwater impacts. The liner criteria are identical to those that a farmer must employ for manure storage.

361-3 Composting and Other Organics Processing Facilities

Potential Reduction in Costs:
- new exemption for small scale composting (1000 pounds per week)
- exemptions and registrations for fermentation facilities
- registrations for animal feed production facilities
- registration for up to 5000 cubic yards of SSO per year
- no restrictions on biosolids product use

Potential Additional Costs:
- radiation detection devices for municipal waste composting

The regulations represent a reduction for many potential organics recycling facilities. This includes an exemption for small-scale food scrap composting that will promote additional recycling and reduce the cost of management. The increase in the size of a facility eligible for registration related to food scraps will have a similar positive effect. Under the previous regulations, all fermentation facilities, other than those located at the site of generation, had to obtain a permit. The revised regulations include exemption and registrations for some fermentation facilities which would save the thousands of dollars in regulatory costs for those facilities. Under the previous regulations, animal feed production facilities required a permit, all require registration under the new regulations, saving thousands of dollars for those facilities. The elimination of product use restriction for biosolids products will increase the markets available for those products.

Facilities which compost mixed municipal solid waste must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000-$20,000 per unit depending on the level of capabilities desired. The cost of maintenance, including calibration, is expected to be $2,000-$3,000 annually.

361-4 Mulch Processing Facilities

Potential Reduction in Costs:

- no apparent reduced costs

Potential Additional Costs:

- pile size criteria for all mulch facilities
- registration and permit requirements

The mulch processing facility standards are new and may result in increased cost to the industry due to the need for additional land for the quantity of material managed, since pile size restrictions are included in these new criteria. Previously there were no provisions in Part 360 regulating these storage piles and larger piles have led to fires and significant odor and dust emissions. There are hundreds of mulch processing facilities in New York State but the majority of these facilities will fall under the exemption or registration provisions in the regulations. For those that were previously exempt and now must register, there is an added cost associated with developing and submitting the registration application and maintaining the piles in accordance with the registration criteria. This cost is estimated to be less than $1000 per year. In some cases the more restrictive pile sizes may require facilities to reduce the amount of wood they can process or require additional property to handle the wood managed. They both will cost the existing facilities additional funds. It is expected that less than 10 mulch processing facilities in the State will require a permit under the regulations. The cost for these facilities including preparation of the engineering report for the permit application and compliance with the criteria in the regulations. These costs are estimated to be $10,000 to $20,000 per facility. These are equal to $1 or less per cubic yard of mulch produced for the first year of mulch production, less thereafter.

Subpart 361-5 Construction and Demolition Debris Handling and Recovery Facilities (CDDHRFs)

Potential increases in cost:
- Permit for greater than 500 tons per day on a weekly basis
- Enclosed building for new facilities that handling mixed C&D debris (~$100,000)
- Sampling and analysis for fill material/residues leaving the facility ($900-$1300/sample)
- Tracking for material leaving registered CDDHRFs (minimal administrative costs)

Potential reductions in cost:
- No storage times for BUD material
- Storage volumes based on site characteristics

A small number of CDDHRFs will be required to acquire a Part 360 permit for their facility because they receive more than the 500 tons per day limit based on a weekly average. The estimated cost for applying for a Part 360 permit is between $20,000 and

$50,000. This cost will vary significantly based on the type, complexity, and location of the facility. In addition, new facilities will be required to manage mixed C&D debris, with the exception of specific waste types identified in the regulation, inside of an enclosed building. The costs associated with this building are estimated to be approximately $100,000. The regulations also require specific materials, including fill material, residues, and specific BUD materials to be sampled and analyzed prior to leaving the site for parameters identified in Part 360.13. The cost associated with these samples is estimated to be approximately $900 to $1300 per sample. Lastly, registered facilities are required under the regulations to provide tracking documents for specific materials leaving their facilities. These tracking documents will be provided by the Department, and the cost associated with their use will be minimal. Potential reductions in costs may be found in the revised storage requirements for materials stored at CDDHRFs. Rather than a generic storage limit, the regulations allow storage volumes based on the characteristics of the facility site. This will allow the facility to maximize its available storage to the extent acceptable for the particular site. Further, the storage time limits for BUD materials have been removed. These materials are the equivalent of raw materials, and allowing extended storage times will increase the facility's ability to store sufficient material for jobs thereby increasing the value of the material.

Subpart 361-6 Waste Tire Handling and Recovery Facilities

- Potential increase in costs: Require a permit for facilities which process tires into products or feedstocks

Potential reduction in costs:

- Clarify that storage below 1000 tires is exempt
- Clarify that uses with storage above 1000 tires that meet the registration requirements do not require a permit

The Department has found that facilities which process tires into products or feedstocks have increased potential for environmental impacts, especially related to the potential for fires. Because of this, the regulations require that these facilities acquire a Part 360 permit to operate rather than a registration. The estimated cost for applying for a Part 360 permit is between $20,000 and $50,000. This cost will vary significantly based on the type, complexity, and location of the facility. The regulations reduce costs associated with waste handling and recovery facilities in a number of ways. The regulations clarify that storage below 1000 tires is an exempt from registration or permitting, so no facility-specific Department authorization is necessary. In addition, the regulations require that any facility which stores more than 1000 tires must operate under a Part 360 permit. The regulations allow operations of several types of facilities to take place under a Part 360 registration, thus reducing the permitting and operating costs associated with the facility.

Subpart 361-7 Metal Processing and Vehicle Dismantling Facilities

Potential increases in costs:
- Registration ~$3,000-$5,000/ (administrative, etc.)

Under previous regulations, metal processing facilities are exempt facilities, however, they are required to submit annual reports related to the disposition of waste fluids generated at their sites. Vehicle dismantling facilities are required to operate in accordance with state law and to submit annual reports, as well. Under the regulations, facilities of these types which operate above specific material volumes must operating under a Part 360 registration. Costs associated with registrations are primarily administrative and are estimated at $3,000 to $5,000 annually, though the effective increase in cost will be lower for these facilities considering that they already incur costs associated with annual reporting.

Subpart 361-8 Used Cooking Oil and Yellow Grease Processing Facilities

Potential decrease in costs:
- The registration criteria for used cooking oil and yellow grease will result in decreased costs to facility owners of small or medium-sized facilities since they will no longer need to incur the cost of obtaining a permit.

Subpart 361-9 Navigational Dredged Material Handling and Recovery Facilities

Potential decrease in costs:

- The previous regulations include no provision for registration of facilities which handle navigational dredge material. Therefore, the facilities would require a Part 360 permit. The inclusion in the regulations of registration criteria for specific types of these facilities will result in decreased costs since they will no longer incur the cost of obtaining a permit.

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

Potential increased costs:

Radiation detectors - Permitted transfer facilities from which waste is transported out-of-state, municipal waste combustors, and municipal solid waste processing facilities must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000-$20,000 per unit depending on the level of capabilities desired. The cost of maintenance, including calibration, is expected to be $2,000-$3,000 annually.

Potential decreased cost:

Removed volatile solids testing requirement - Removal of the requirement for testing for volatile matter in combustor ash residue and the provision in the

regulations which allows for reduction in the semiannual testing of ash residue for leaching potential and total metals content will result in cost savings to combustion facility owners.

Registrations for combustion of specific waste types - ~$3,000-$5,000/ (administrative, etc.) - The registration for the combustion of limited amounts of waste tires, unadulterated wood, used cooking oil and yellow grease under prescribed conditions will result in decreased costs for a small facility owner since they will not incur the cost of obtaining a permit. Costs associated with registrations are primarily administrative and are estimated at $3,000 to $5,000 annually.

Part 363 Landfills:

- Removal of the requirement for submission of a site selection report for new landfill construction will save affected local governments and private entities from having to prepare the site selection report, which has historically resulted in cost and delay in processing landfill applications under the Part 360 permit process. Elimination of the requirement to submit a site selection report will result in cost savings of tens of thousands of dollars to landfill owners for the preparation of this report and time and associated savings in the shortened permitting process.

- Upon permit renewal or modification, the owners of all existing municipal solid waste landfills are required to submit a Facility Manual that describes the day-to-day facility operations throughout the active life of the landfill, addresses appropriate sequencing of all major landfilling activities, demonstrates how the landfill will meet all operating and reporting requirements and places increased emphasis on landfill operations being conducted in a more resource-conscious manner to aid in the conservation of air space and land resources. This requirement will cost the owners of all existing municipal and private landfills $5,000 - $10,000 in preparation of the updated report. However, it is anticipated that substantial air space savings will result from the planning required to prepare the Manual.

- The requirement for adding electrical resistivity testing on the upper and lower liner system as part of a Construction Quality Assurance (CQA) Plan will add cost to the construction of new landfill cells. Costs associated with the requirement are expected to be $2,000-$3,000 per acre of geomembrane tested. Based on the known improvement gained in construction quality and liner system performance, it makes sense environmentally and economically to perform these surveys as matter of routine. The cost of performing the electrical resistivity testing on both upper and lower landfill liners will be borne by the landfill owner as part of the cost of constructing a modern landfill, but is a small fraction of the overall cost of constructing the entire landfill. The relative low cost to repair leaks during installation and the limiting of future liability of discovering these liner

defects after operation begins far exceeds the cost of the testing. The use of electrical resistivity testing for leak location as part of landfill CQA plan is becoming more standard practice as evident by the landfill construction projects which have voluntarily performed electrical leak detection and have seen excellent results.

- The regulations require all landfills that receive municipal solid waste to install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from $7,000-$20,000 per unit depending on the level of capabilities desired. The cost of maintenance, including calibration, is expected to be $2,000-$3,000 annually.

- The cost of requiring the GCL as the lower component of the primary liner system in lieu of the six inch compacted clay layer, and the 12 inch structural fill layer that is placed below it, will more than be gained back by the landfill's gain in an additional 18 inches of disposal capacity. Based on an in-place density of waste being estimated at about 1,800 pounds per cubic yard and the average disposal fee of about $50 per ton, and an estimated installed price of the GCL of about $0.54 per square foot, the landfill would gain over $85,000 per acre in added disposal revenue. Further savings are realized by enhanced savings in reduced construction timing and reduced GHG emissions associated with not needing to place 18 inches of soil materials needed to construct the landfill liner system. It should also be understood that the vast majority on landfills being built today already use the GCL barrier in the primary composite liner system

- The cost associated with the improved hydraulic capacity of secondary leachate collection and removal system would be the cost associated with the specification of an added geocomposite drainage layer and other modifications in the design of the secondary leachate collection and removal system on only the bottom of the landfill to help improve the hydraulic capacity of the one foot of soil drainage material already required on the base of the landfill in the previous regulations. This cost is conservatively estimated to add about $1.00 to $1.25 per square foot of cost to the design and construction of secondary leachate collection and removal system.

Part 364 Waste Transporters:

- Costs to transporters regulated under Part 364 may be divided into 3 main categories, as follows: 1) regulatory fees; 2) required vehicle identification markings; and 3) recordkeeping.

<u>Regulatory Fees</u>

- Transporters required to obtain a permit under Part 364 are assessed regulatory fees based on the number and type of vehicle permitted. 6 NYCRR Part 484 requires a fee of $500 for the first vehicle and $200 for each additional vehicle permitted to transport industrial-commercial or regulated medical (or low-level radioactive) waste. Fees for vehicles not permitted for the transport of industrial-commercial or regulated medical (or low-level radioactive) waste are $250 for the first vehicle and $100 for each additional vehicle. The regulatory fees are annual fees, assessed on a permit year basis.

- The regulatory fee costs for existing or future transporters that are required to obtain a permit remains unchanged. With the increase in the upper exemption limit for certain waste types from 500 pounds per shipment to 2,000 pounds per shipment, is possible that some transporters may no longer require a Part 364 permit and therefore would not be assessed regulatory fees for vehicles, realizing a cost savings.

- For those transporters required to obtain a registration under Part 364, there are no regulatory fees assessed.

<u>Required vehicle identification markings</u>

- Transporters that must obtain a permit and those that must obtain a registration are both required to prominently mark their vehicles with the name of the permitted/registered entity and the permit/registration number assigned to that entity. The marking specifications remain unchanged so that the revised regulations have not added additional cost for those entities. Transporters required to obtain a registration will incur some cost for the marking of vehicles, and those costs will vary depending upon the means of execution. Self-applied vinyl lettering has been estimated at no greater than $50 per vehicle. Professionally applied lettering can cost several hundred dollars. The Department expects that the majority of the entities that will require registration will already have some of the required markings on their vehicles, as is routine business practice, and that only the registration number will need to be affixed, at a very nominal cost. Transporters required to obtain both a permit and a registration will have only a single vehicle marking requirement.

- With the increase of the upper exemption limit for certain waste types from 500 pounds per shipment to 2,000 pounds per shipment, is possible that some transporters may no longer require a Part 364 permit and therefore would not incur the costs associated with the Part 364 vehicle identification marking requirements.

<u>Recordkeeping</u>

- The introduction of waste tracking documents for certain types of waste will create some additional costs for transporters required to obtain a permit and also

for those transporters required to obtain a registration, however the Department does not expect those costs to be of consequence. Transporters of restricted-use, limited-use, and contaminated fill material, and non-exempt drilling and production waste state-wide and those transporters of of C&D debris including general fill material generated within the boundaries of the City of New York will be required to use waste tracking documents for each shipment of waste. In nearly all cases, the generator will be providing those forms, which will be available for free download from the Department website. The transporter may not accept a shipment of waste from a generator without a completed waste tracking document signed by the generator. This process is similar to the transfer of routine shipping documents and is not expected to burden the transporter with any measureable cost. Transporters will also be required to have the waste tracking documents signed by the receiving facility/location. Again, this process is similar to routine business practice in the transportation industry and is not expected to place a financial burden on the regulated community.

- Transporters will also be required to provide copies of the waste tracking documents signed by the receiving location to both the generator and the Department. The financial impacts associated with this requirement should be minimal, as it basically amounts to the cost of photocoping the waste tracking documents and postage with a minimal investment of administrative staff time.

- Transporters with a permits and transporters with both a permit and a registration must provide the Department with an annual report, summarizing the quantities of waste transported by waste type. For transporters with permits, the submission of an annual report is required under the previous regulations and therefore there is no additional cost associated with this requirement. For transporters that now are required to obtain a registration, there will be some new minor costs associated with the annual reporting requirement, however the data required for the annual reports can be drawn from basic accounting practices inherent to standard good business practices. In cases where annual reports are not submitted electronically, financial impacts will again basically be the costs of reproduction and postage, with a minor investment of staff time to compile the report

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Part 365 Regulated Medical Waste and Other Infectious Wastes:

Potential Reduction in Costs:

- registration for commercial operations at hospitals

- exemption for sharps collection

- registration for radiopharmacies

Potential Additional Costs:

- additional storage criteria for RMW
- permitting for entities treating BSL 3 or 4 and select agents and toxins

Under the previous regulations, hospitals that operate commercial RMW treatment systems are required to obtain a permit. The regulations reduce this requirement to a registration, although the same treatment criteria must be followed. These regulations will reduce the compliance cost by $10,000 – $20,000. Sharps collection containers and other devices are exempt under the revisions, reducing compliance costs. Also, radiopharmacies can manage waste from sharps and other devices that they dispensed under a registration instead of a permit.

New requirements limiting the length of time RMW may be stored on-site, which was not previously regulated, may impact facilities that store RMW on-site for extended periods of time prior to off-site transport. These facilities may incur additional costs for more frequent third-party collections of the RMW but it is not expected to impact the large-quantity generators who already have frequent collections.

The regulations require BSL 3 and 4 laboratories and those handling select agent or toxins to obtain a permit to treat on-site. Although new to regulation, this has been the method for handling these operations previously so the cost will not change.

Part 366 Local Solid Waste Management Planning:

- No change in cost to the regulated community.

Part 369 State Assistance Projects:

- No change in cost to the regulated community.

Costs to the Department and the State:

The cost to the State lies within the Department, for implementation and administration of the regulatory program. Since this is an existing regulatory program, it is not expected to be a significant increased cost to the Department. The primary impact will be with increased staff time needed to develop new forms, guidance and information related to the new criteria in the regulations. Providing technical assistance to the regulated communities on how the revised criteria will affect their activities will also be borne by existing Department staff. No additional staff are needed solely due to these regulations.

Costs to Local Governments:

This regulations will not impose any additional direct costs on local governments in general. However, local governments may own and operate solid waste management facilities such as recyclables handling and recovery facilities, composting facilities, municipal waste combustors, transfer facilities and landfills. If a local government owns a solid waste management facility, the costs associated with the revised rulemaking for that facility will be similar to those described under Costs to Industry for the same type of facility. With respect to solid waste management planning, no additional costs are anticipated with the exception of the costs for conducting public meetings on the draft plan and the revisions are expected to result in a reduction of municipal expenses and staff time necessary in the preparation of LSWMPs and LSWMP updates.

5. LOCAL GOVERNMENT MANDATES

This regulations do not directly mandate the expenditure of funds by any sector of local government. The regulations primarily update previous regulatory criteria applicable to solid waste management facilities. If a local government or small business owns and operates a solid waste management facility, the costs associated with revisions to criteria for that facility apply, as discussed in Section 4. The rulemaking is not expected to negatively affect local governments.

6. PAPERWORK

The rulemaking does not impose additional paperwork requirements for the regulated community, with the exception of certain waste transporters. Transporters of C&D debris, including general, restricted-use, limited-use and contaminated fill, and commercial waste required to register under Part 364 and comply with reporting requirements. A waste tracking document, prescribed by the department, is required for the transport of regulated medical waste and other infectious waste, C&D debris, including general, restricted-use, limited-use and contaminated fill, and non-exempt drilling and production waste under the revisions. A waste tracking document must accompany each load and be presented to authorized representatives of the department or to any law enforcement officer upon request.

The previous regulations require annual reports from most solid waste facilities, and these requirements continue under the regulations. However, the regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and annual reports. Also, the regulations allow electronic submissions whenever possible to ease the transfer of data and information. The Department intends to develop new forms to simplify and

standardize electronic reporting requirements to ease the paperwork requirements imposed by the regulations.

7. DUPLICATION

The regulations are not intended to duplicate any other federal or State regulations or statutes. There is no federal regulatory program covering most of the facilities or activities governed by Parts 360-365, 366 or 369. There are standards for the design and operation of solid waste landfills in 40 CFR Part 258. The criteria in Part 363 are equivalent to or more stringent than those found in 40 CFR Part 258 and the State has been approved by the United States Environmental Protection Agency to implement the federal Part 258 criteria. Although New York State does not have a delegated program, the federal criteria applicable to biosolids recycling were incorporated into Part 360 in 2003. Those criteria have been moved to Part 361 in the rulemaking.

8. ALTERNATIVE APPROACHES

The Department examined the no regulatory action or "no-action" alternative, which would be to continue its present method of administering the solid waste management regulatory program. This program consists of previous Parts 360, 364 and 369, Division guidance memoranda, program policies, and interpretation of Division memoranda on solid waste management issues and topics. Continuing this approach would provide the Department with a wide degree of administrative discretion and allow for rapid changes in management to account for recent advances in solid waste management. However, this approach may result in inconsistent application of the program across the State due to variations in the interpretation of Part 360 where other Department guidance is not available. The rulemaking is one of the key recommendations of the State Solid Waste Management Plan. For these reasons, the no-action alternative was rejected.

In each of the individual parts of this rulemaking there could have been criteria that was more stringent or less stringent than the criteria in the regulations. The rulemaking has been the subject of both extensive internal review and public review and discussion for several years. The result of this process are the revised regulations that the Department considers protective of environmental resources in a manner that limits the cost to the regulated community. In many cases, the cost to adhere to the regulatory criteria has been reduced without any reduction in environmental protection. More regulatory flexibility has been provided for in the regulations relating to in the design of the overall landfill minimizing the need numerous variance applications that is typically required under the previous regulations. Each variance application can have an estimated cost of $5,000 to $10,000 each.

9. FEDERAL STANDARDS

As stated above, there are no federal regulations for most of the facilities and activities contained in the rulemaking. The regulations for landfills and biosolids recycling exceed the federal regulatory framework found in 40 CFR Part 258 and 503, respectively. The packaging of RMW during transport is regulated by USDOT and appropriate reference have been added to Part 365.

10. COMPLIANCE SCHEDULE

For new facilities, compliance will be required upon adoption of the final rule. For existing facilities, transition provisions are specified in Section 360.4.

11. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within 3 years as required by SAPA §207.