6 NYCRR PART 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Revised Summary of Express Terms

Part 360

Land clearing debris landfills that were registered prior to November 4, 2017 can continue to operate until their authorized disposal capacity is utilized. Composting facilities, mulch processing facilities, and construction and demolition debris (CDD) handling and recovery facilities (CCHRFs) are prohibited from being located in any mine located on Long Island. Pursuant to New York State Department of Health regulations, only cannabis waste from manufacturing activities that has been rendered unrecoverable and beyond reclamation can be accepted at off-site processing and disposal facilities. Criteria is added to help determine when land placement of any material will require a nonspecific facility permit rather than a beneficial use determination (BUD). A new pre-determined BUD is added for combined concrete and asphalt pavement used as aggregate. Adjustments added to case-specific BUD requirements for oil/gas brine or LPG brine used on roads. “Excavated material” replaces “fill material” to encompass anything excavated for construction or maintenance (not mining), whether reusable as Fill or not. Restructure of Fill reuse types: F1 through F5 now include F1: former unrestricted fill (soil and rock only; outside of NYC; no visual or historical indicators of contamination; no lab analysis required); F2: former general fill (soil and rock only, meeting chemical concentration limits for GF); F3: F2 but may include de minimis asphalt/concrete, and if used on residential properties must be under cover; F4: former Restricted Use Fill (RUF) but no limits on non-soil materials; and F5: former Limited Use Fill (LUF). Prohibitions on use of F4 (unless locally generated) and F5 no longer only on Long Island but also in Westchester County and Putnam County. A new pre-determined BUD is added for grade adjustment using concrete, asphalt pavement,

rock, or brick (CARB), and F1-designated material, F2-designated material, or F3-designated material outside Putnam County, Westchester County, or Long Island.

Part 361

Exemptions are expanded for municipalities collecting source-separated recyclables. Upper throughput limit for registered Recyclables Handling and Recovery Facilities (RHRFs) are removed. Registration is required for land application of manure from CAFO. A permit is required for use of surface impoundments that store septage. Part 361 implements ECL Section 15-0517 by requiring groundwater monitoring and other groundwater protection procedures at certain composting facilities and mulch processing facilities on Long Island; expands exemption to allow contractors who generated certain CDDs to manage those wastes under their ownership or control; remove the 500 ton per day limit for registered CDDHRFs; establishes registered facility that can accept combinations of CARB to match newly established BUDs; establishes a new registered facility for storage of CARB and mixtures of CARB; requires most soil excavated as part of a construction or demolition project to only be received by permitted CDDHRFs, except for soil received directly from site of generation having no visual or other indication of contamination and not originating from within NYC unless the facility is owned or controlled by NYC; and reduces sampling frequency requirement for fill material with lower amounts of contaminants.

Part 362

Part 362 removes an unnecessary registration for a facility that combusts uncontaminated, unadulterated wood; adds adjustments that help to implement the 2019 Food Donation and Food Scraps Recycling Law; simplifies transfer facility regulations to encourage collection of source-separated recyclables at small facilities without requiring a permit or registration; eliminates permitting

or registration requirements for municipalities that hold seasonal waste collection events of less than 5 days per year; and adds a new facility type, Postconsumer Paint Collection Site, that simplifies the requirements for collection of waste paint from households or conditionally exempt small quantity generators (CESQGs).

Part 363

Part 363 removes the exemption for disposal of less than 5000 cubic yards of CARB and General Fill (GF) to be consistent with similar adjustments in Subpart 361-5 and to acknowledge that new pre-determined BUDs for use of this material as grade adjustment does not include a volume limit; expands exemption for disposal of tree debris generated by clearing rights-of-way; adds new prohibition on siting of new landfills or lateral and vertical expansions of landfills within 1000 ft of a school or residence; enhances landfill liner requirements to require 80 mil HDPE geomembranes for primary liners rather than 60 mil; requires double composite liners for CDD landfills, MSW ash landfills, papermill sludge landfills, and other industrial waste landfills unless it can be demonstrated that an alternative liner system will not adversely impact groundwater quality; requires CDD landfills to install horizontal gas collection lines to control odors and limit landfill gas emissions; and adds adjustments that help to implement the 2019 Food Donation and Food Scraps Recycling Law.

Part 364

Part 364 modifies requirements for transport of waste tire transport so that transport of 20 tires or fewer per load is exempt, transport of 21 to 80 tires per load requires a registration, and transport of more than 80 tires requires a permit and relocates from Section 360.13 to Part 364 transportation requirements for excavated material and fill. Transportation under a registration of F1, F2 or F3 is only required if the material is transported in the New York City Metropolitan Area Waste Impact Zone

(NYCMAWIZ). In addition, Part 364 establishes that transport of CARB and CARB mixtures is exempt anywhere except the NYCMAWIZ; that tracking documents are only required for F1, F2, F3 if transported in the NYCMAWIZ, but is required for transport of F4, F5 anywhere in the state.

Part 365

Part 365 changes requirement for removal of sharps/Regulated Medical Waste (RMW) storage from patient care areas to only when the receptacles are full or generating odors; eliminates 60-day limit on storage of RMW for generators of less than 50 pounds per month; establishes new registrations for two facility types: Biohazard Safety Level (BSL) 2 facility treating less than 500 pounds per month onsite, and BSL3 or BSL4 facility holding a Federal Select Agent registration; and clarifies that Subpart 365-3 Other Infectious Waste applies to waste presumed to be contaminated with infectious agents.

Part 366

Part 366 removes duplicate requirement to project MSW generation and moves submission deadline for biennial updates from May 1 to October 1.

Part 369

Part 369 clarifies ineligible costs for grant reimbursement and establishes that costs related to projects required by enforcement cases are ineligible for grant reimbursement.

Part 371

Part 371 includes language to clarify that the definition of solid waste under Part 370 Series is separate and distinct from the definition of solid waste under Part 360 Series; implements requirements of state legislation by removing exclusion from the definition of hazardous waste for

wastes produced by oil and natural gas exploration and production; and allows wastes generated by CESQG to be managed by permitted, registered, or licensed SWMF authorized to receive the waste.

Part 377

In the 2017 rulemaking, Part 361 was renumbered to Part 377. The current Part 377 includes internal references to regulatory citations within the Part, however several of these references continue to refer to Part 361. These errors have been corrected.

Summary of the Assessment of Public Comment

On the

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

6 NYCRR PART 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Solid Waste Management Facility Regulations

Comments received from June 8, 2022 through August 24, 2022

In May 2022, the New York State Department of Environmental Conservation proposed to revise the Part 360 Series (6 NYCRR Part 360 Solid Waste Management Facilities, Part 361 Material Recovery Facilities, Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities, Part 363 Landfills, Part 364 Waste Transporters, Part 365 Regulated Medical Waste and Other Infectious Wastes, Part 366 Local Solid Waste Management Planning, Part 369 State Assistance Projects). The revisions include technical amendments and clarifications to the comprehensive 2017 rulemaking, as well as updated criteria needed due to legal and policy developments. This rulemaking also includes minor revisions to Part 371 and Part 377. This Summary Assessment of Public Comment provides an overview of the most significant comments received during the public comment period and the Department's responses. The full Assessment of Public Comment provides a response to the substantive comments raised during the public comment period.

It should be noted that a significant number of comments received were judged to be outside the scope of this rulemaking. This conclusion was drawn because only portions of the Part 360 Series regulations were proposed to be revised, and therefore only those proposed revisions are open for comment and adjustments. Any portions of the Part 360 Series regulations that were not proposed for revision are not open for comment or adjustment at this time, and therefore comments on those portions are outside the scope of the rulemaking.

<u>Part 360</u>

Commenters provided opinions related to a variety of definitions under 360.2(b). These include:

> Commenters noted that existing agreements between USEPA, NYSDEC, NYSDOH, and the City of New York, and local municipalities provide protections of the New York City Watershed in areas west of the Hudson River. Additional comments were received that the regulated community would find it difficult to identify whether or not a particular location was within the New York City Watershed. These comments were considered relevant and therefore the definition of New York City Metropolitan Area Waste Impact Zone was modified to exclude areas of the New York City Watershed west of the Hudson River and to specify that Westchester County and Putnam County, rather than the New York City Watershed east of the Hudson River, are included in the Zone.

Commenters recommended that consideration be given to modifying and clarifying the definitions of “thermal treatment,” “alternative fuel,” “biofuels,” “traditional fuel,” and “combustion.” Based on consideration of these comments, the definition of “thermal treatment” was adjusted to remove references to chemical treatment and combustion from the definition. In other cases, the comment was considered outside the scope of the rulemaking.

Some commenters expressed disagreement with the restriction on locating composting facilities, mulch processing facilities, or construction and demolition debris handling and recovery facilities within active mines on Long Island. The Department concluded that the prohibition protects Long Island’s sensitive sole source aquifer and left the condition in place.

Comments were received related to the beneficial use of well production brine on roadways. Some commenters were concerned that added requirements would inhibit towns from using well production brine to maintain their roads. Other commentors expressed concerns regarding allowing the material to be used on roadways. The proposed regulations were not changed with the exception of one adjustment, which was recommended by a commenter, requiring that annual reports related to beneficial use of well production brine be signed by a by a responsible official of the user’s organization.

Part 361

Commenters noted changes related to exempt and registered CDDHRFs and expressed both support and concern related to the changes. The Department responded that these changes are intended to reduce regulatory oversight on management of low-impact materials such as concrete, asphalt, and rock and brick but increased oversight of soils, which are more likely to contain physical or chemical contamination. Adjustments to allowed exemptions and registrations as well as conditions associated with both were made based on these considerations.

Commenters drew attention to mulch and composting facilities and potential impacts to surrounding communities from those facilities. The Department identified existing regulations intended to limit impacts from all solid waste management facilities and specific regulations that focus on controlling generation and migration of odors from these specific types of facilities.

Comments were received concerning the registration requirements for third-party manure appliers. The Department provided clarification on some of the questions raised and also made revisions to the regulatory requirements for clarity and ease of implementation.

Part 362

Comments were received related to implementation of requirements from the Food Donation and Food Scraps Recycling Law. The Department clarified that while efforts are underway to implement aspects of this law upstream of landfills, municipal waste combustors, and transfer facilities, the law also requires these facilities to take all reasonable precautions to not accept source-separated food scraps from designated food scrap generators required to send their food scraps to composting facilities or other authorized facilities under 361-2 or 361-2.

Part 363

Many comments were received related to the proposed 1000-foot separation requirement between residences or schools and landfills. These comments included a wide range of opinions, from those who believed that the requirement would restrict disposal in the state to those who did not think that the restriction went far enough. The Department considered all of these comments and made adjustments to the final language in order to clarify how the distance would be calculated, what restrictions are implemented on the landfill if a residence or school is located within 1000 feet, and how circumstances such as legal agreements between the landfill owner and residence owner or school and schools or residences built after approval of a landfill disposal area should be addressed. The following specific clarification were included:

- Lateral and vertical expansion are only restricted if they are to be located within 1000 feet of a residence or school.
- The separation requirement is measured from the closest physical location on the landfill where waste is to be placed to the residence building and managed landscape.
- The separation requirement is measured from the closest physical location on the landfill where waste is to be placed to the school building and associated outdoor recreation areas.
- Residences or schools within 1000 feet that are built after a Part 360 permit expansion application has been submitted subsequent to this rulemaking are excluded from the separation requirement
- Agreements or easements are allowed between landfill owners and affected property owners.

Part 364

Some commentors requested clarification related to the exemption from regulation under Part 364 for residential and institutional wastes. The Department clarified that certain wastes that are generated by residences or institutions are explicitly identified in ECL 27-0303 as regulated wastes and therefore cannot be exempted from Part 364 oversight. The final regulatory language was adjusted to include these explicitly identified wastes as regulated wastes under Part 364.

Some commentors objected to the removal of the specific jurat language for waste transporter waste tracking documents and of the requirement that waste tracking documents be submitted to the Department, arguing that these requirements were not overly burdensome and that they allowed for more effective enforcement in cases of improper disposal (i.e., dumping) of solid waste. The Department considered these comments and agreed that neither requirement was significantly burdensome and that provisions that reduced illegal dumping and increased the Department's ability to enforce against dumpers should be retained. Based on these considerations, both of the provisions were returned to the final regulatory language.

Part 365

Many of the comments received regarding regulated medical wastes were related to regulatory language that was not proposed for revision and therefore these comments were considered outside the scope of this rulemaking.

Some commenters criticized the proposed revision which would allow facilities that treat less than 500 pounds per month of their own biohazard waste and that hold a Federal Select Agent Program

registration to be authorized using a Part 365 registration rather than a permit. The Department considered this comment and concluded that the proposed revision requires these facilities to have Department approval related to operational plans, design, and operating and general waste treatment requirements. After considering these safeguards and the original intent of avoiding redundancies between the state and federal oversight programs, the Department determined to maintain the revision as proposed.

Part 366

Three comments were received regarding local solid waste management planning: one supported the clarifications and extension of biennial update submission deadlines, one stated that no significant revisions were noted that would impact the solid waste management industry, and one, which recommended reorganization of the process to obtain an approvable local plan, was determined to be outside the scope of this rulemaking.

Part 369

One comment was received related to the methods included in Part 369 for the Department to enter into contracts with Municipalities for Recycling Coordination and Education grants. No revisions were proposed related to the specific regulations identified by the commenter and therefore the Department determined that the comment was outside the scope of this proposed rulemaking. However, the Department also responded that the system established under Part 369 intended to more quickly move funding to municipalities and that internal program adjustments had been made to speed up the contract process within the agency.

Part 371

One comment was received on changes to the list of materials excluded from the definition of hazardous waste, which were prompted by changes to state legislation. The comment criticized the Department for delays in modifying the regulations to adopt these changes and argued that some language was not properly adjusted. The Department reviewed the comments and found that no adjustments to the proposed rulemaking was necessary or appropriate.

Part 377

No comments were received related to this Part.

ASSESSMENT OF PUBLIC COMMENT

FOR PUBLIC COMMENTS RECEIVED ON THE
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

REVISIONS TO SOLID WASTE REGULATIONS
FOUND IN 6 NYCRR PART 360, PART 361, PART 362, PART 363, PART 364,
PART 365, PART 366, PART 369, PART 371, AND PART 377

General

Comment: Despite the Department's laudable goals to increase beneficial use of waste material and reduce the regulatory burden on the regulated community, the Department's Proposed Regulations will accomplish the opposite, by making reuse more burdensome and costly and, therefore, less likely to occur.

Response: Comment noted. This Assessment of Public Comment will address specific concerns expressed to the Department regarding proposed regulations for beneficial use with justification or with further proposed changes to the express terms.

Comment: I am launching a new industry and participating in review of proposed regulations to learn about New York requirements.

Response: Comment noted.

Comment: Retreat from Transparency - Despite advances in technology that make filing, retrieval and handling of records easier and less costly, the Department continues efforts to reduce transparency. Specifically, the Department has been changing its regulations to provide that reports from regulated parties do not need to be routinely sent to the Department, but instead can be made available to it upon request. This limits the ability of the public to obtain copies of such documents under the Freedom of Information Law. It continues to make additional revisions in this proposal to protect information on some solid and hazardous wastes from potential public scrutiny. Members of the public can be knowledgeable about what is happening in their community and often have alerted the Department into possible violations of environmental regulations. If the Department wants to limit the information that is routinely submitted to it to relieve burdens on regulated entities, it should balance this with policies that facilitate the public's ability to serve as its "eyes and ears." We urge the Department to amend its solid and hazardous waste regulations to include a provision from the air regulations, 6 NYCRR 201-1.10 ("Public access to recordkeeping") stating: "Where facility owners or operators keep records pursuant to compliance with the requirements of this Part, the department will make such records available to the public upon request in accordance with Part 616 of this Title. Facility owners or operators must submit the records required to comply with the request within 60 working days of written notification by the department of receipt of the request."

Response: The proposed revision in 364-5.1(b)(6) that would have eliminated the requirement for submission to the Department of Part 364 waste tracking documents has been removed. Other similar comments are addressed in the Part 364 Waste Transport section. Other aspects of this comment are outside the scope of this rulemaking.

Comment: Provisions in the proposed rulemaking should not contain connecting references to other portions of the regulations, or they risk becoming as complex as the Code of Federal Regulations (CFR). These are regulations guiding construction activities and reuse and handling of soil, among other construction waste. This is not a complex, overly regulated program that requires significant interim stages and steps for making determinations. The construction industry will opt for out-of-state disposal in any case where certainty cannot be determined, and the department should recognize this as the condition in the national construction industry, not just New York. The current form of Part 360 allows for significant material reuse. These changes will greatly reduce those options because decisions are now being required to be made during, and not before, contracts are written and bidding complete. All projects funded by taxpayer dollars require competitive bidding.

Response: It is necessary to reference other state and federal regulations in these proposed Part 360 Series changes. Rules impacting construction are intended to increase certainty by enabling planning. Materials and scenarios meeting rules can be planned for or time built into projects for case-specific Department review, if necessary. Material reuse rule changes are intended to accommodate, not complicate construction industry practices including competitive bidding.

Comment: In general, anywhere within Part 360 or Part 361, where agricultural materials are exempted from treatment as solid waste, and/or organic materials recycled for agricultural use are exempted from regulations, similar exemptions for source-separated seashells, fish/shellfish remains and related materials should be considered.

Response: For the recycling of organic waste under 361-3, the current exemption and registration criteria for animal carcasses would include seashells and fish remains.

Section 360.2 Definitions

360.2(a) Solid waste and related terms.

360.2(a)(3)
Comment: We understand the Department has not amended the language in this section. We believe this to mean the Department interprets utility vegetation management waste as exempt but would like to reiterate this suggestion to provide clarification for the exemption for utility vegetation management waste in order that there is a clear understanding that this waste is exempt from being considered a solid waste whether it actually gets used for burns, cooking fires, wood stoves, etc., or not. Because Department staff indicated that vegetation waste would be considered construction and demolition debris but then indicated that vegetation management waste could qualify as exempt under 360.2(a)(3)(iii), we suggested that the reference to "construction and demolition" in the definition needs to be removed if vegetation waste is to be exempt under the same. Accordingly, we recommend that the definition in 360.2(a)(3)(iii) be modified to delete the words "*generated from sources other than construction and demolition*" OR to include a new exemption in this paragraph for "*utility vegetation management waste*".

Response: A revision to this definition was not included in the proposed rulemaking; therefore this comment is outside the scope of this rulemaking.

360.2(b) Other definitions of general applicability.

Comment: Please add a definition for "Localities/ Locality".

Response: A definition of this term is not needed because the final express terms have been revised to remove it from 360.13(g)(1), the only place where it appeared.

Comment: The Definitions should include a definition of seashells, fish and shellfish remains and related aquatic materials.

Response: For the recycling of organic waste under 361-3, the current exemption and registration criteria for animal carcasses would also apply to seashells, fish, and shellfish remains.

Comment: We request the Department consider and create definitions for pyrolysis and gasification because these technologies are not the same as incineration. Other terms that must be clarified include biomass, synthesis gas, and char. These proposed changes would add clarity and reduce "RISK" exposure for potential financial lenders and institutions to new "GREEN" Technologies in New York State. Without clarifications obtaining the New York State goals for GHG and carbon reductions will suffer."

Response: Regulations specific to thermal treatment activities are included in Part 362. Determinations as to whether or not a specific activity is considered a renewable energy source is outside the scope of this rulemaking so definitions of the terms gasification and pyrolysis are not needed.

Comment: The terms "cool season vegetation" and "warm season vegetation" used in 363-6.17(a) should be defined in the subject text or in the definitions section.

Response: Determinations related to warm and cool season vegetation will be made as part of the review of landfill closure design under Part 363 so definitions of these terms are not needed.

Comment: Please include a definition of the New York City Watershed. We understand the watershed boundaries to be loosely defined outside of this proposed regulation.

Response: The New York City Watershed is defined outside of this regulation by the 1997 New York City Watershed Memorandum of Agreement and by public purchases of land. The New York City DEP and the New York State Department of State maintain surveys of the boundaries of the Watershed. However, the final rulemaking has been changed to eliminate the New York City Watershed from the definition of the New York City Metropolitan Area Waste Impact Zone and in related requirements for management of construction & demolition debris, including excavated material, in Parts 360, 361 and 364.

360.2(b)(7)
Comment: The definition of *alternative fuel* should include biomass such as the Processed Biomass fuel (PBF) from MSW, C&D, and unadulterated waste wood that is currently permitted for the Taylor Biomass gasification plant as the plant is not a combustion incinerator and combusts or burns everything it is fed. Biomass is not a Refuse Derived Fuel (RDF) and should be clarified as an "Alternative Fuel".

Response: Additional adjustments to the definition of alternative fuel are outside the scope of this rulemaking.

360.2(b)(26)
Comment: The definition of *biofuels* should not be restricted to vegetable or animal fat sources. Biofuel is fuel produced over a short time span from biomass, such as living matter such as plant or algae material or animal waste. Since biomass can be used as a fuel directly, some people use the words “biomass” and “biofuels” interchangeably.

Response: The Department did not propose to revise the definition of biofuels. The suggested revision is outside the scope of this rulemaking

360.2(b)(46)
Comment: The definition of *combustion* as the thermal destruction of waste is misrepresenting the intent of this definition. The term “combustion” means to heat a feedstock to burn it, to in turn release more thermal energy. This misrepresentation becomes evident in the definition of *combustion facility*.

Response: The Department did not propose to revise the definition of combustion. The suggested revision is outside the scope of this rulemaking

360.2(b)(47)
Comment: The definition of *combustion facility* states a facility that uses combustion to treat solid waste. These facilities include but are not limited to: mass burn combustors; modular combustors; and fluidized bed combustors; and facilities that combust refuse-derived fuel (RDF). All the above-mentioned processes identified are combustors and "burn" the waste feedstock. Any "thermal" heating is a downstream effect after the combusting or burning of the feedstock. Combustor ash contains significant amounts of carbon remaining that was not destroyed in the burning process. The ash is typically grayish and dark in color. Neither this nor any other Part 360 definition adequately describes a biomass gasification process. This is especially difficult when the Department has at least one biomass gasification process permitted for construction. Our company’s biomass process does not combust or burn the feedstock. It does not consume, combust, or burn RDF. Our process ash remaining as the residue from the gasification process is snow-white in color, the biomass (carbon) content of the feedstock having been consumed.

Response: Comment noted.

360.2(b)(61)
Comment: The definition of *construction* as modified is extremely broad and expansive. The construction area or location for Part 360 Series purposes should be confined only to the specific area designated in a solid waste permit application, submitted to the Department, for use of that location on a property or parcel for a 360-series regulated solid waste management purpose. This regulation modification obligates a property owner that owns a very large parcel to exclusively use the entire parcel for solid waste purposes. As laws change and new rules and regulations are added owner(s) could determine that the remainder of large parcel cannot or will not ever be used for solid waste management purposes.

The proposed modified definition of construction also contradicts definitions in 360.2(b)(104) for *facility* and 360.2(b)(302) for *undeveloped land*. *Facility* "includes all structures, appurtenances or improvements on the land used for the management or disposal of solid waste". This definition gets further changed by *undeveloped land*, "land with no structures, no infrastructure, and no grading or site improvement".

Our company is an example of a large property only partly being used now or likely in the future for solid waste management. In consideration of any impact of present or future use of our company's property pursuant to the NYS Climate Leadership & Community Protection Act (CLCPA) and under other local, state and federal laws and rules, the Department *must* consider when a large portion of a property partially used for solid waste management, is "undeveloped" and unlikely to be used for solid waste purposes. The CLCPA has caused a very significant impact on our company's business model. Business decisions could be significantly impacted by modifications to definitions and other requirements in the proposed regulations in combination with the CLCPA as well.

Response: The definition of construction relates to locations where particular types of waste are generated, especially construction and demolition debris; however, this does not mean that these locations are regulated as solid waste management facilities. The implementation of CLCPA is outside the scope of this rulemaking.

360.2(b)(62)
Comment: The definition of *construction and demolition debris* excludes furniture, which is composed of non-putrescible and inert materials such as wood, metal, plastic, foam, and fabric. Furniture behaves functionally identical to building structural materials and may be handled consistent with building structural materials. There is no reason from a waste management perspective to exclude furniture from the definition of C&D debris given its similarity from a composition perspective to C&D debris. We therefore recommend and request the definition of construction and demolition debris be revised to delete furniture from the list of materials excluded from regulation as C&D debris.

Response: The Department did not propose to revise the definition of construction and demolition debris to include furniture. Such a revision is outside the scope of this rulemaking.

360.2(b)(99)
Comment: It is not clear from the definition of *excavated material* what is intended by "excess" materials. As the defined term "excavated material" is utilized in relation to material that is otherwise reused on site, the word excess should be removed from the definition to avoid confusion.

Response: The Department agrees that the word "excess" is confusing in this definition and has removed it in the final express terms.

360.2(b)(100)
Comment: The definition of *excluded waste* should not include source separated yard trimmings, source separated recyclables and source separated food scraps from Subpart 362-1 processes, especially gasification, if recycling of these three waste streams is not feasible and the sole remaining disposal decision is to landfill these three waste streams. In the past landfilling of yard waste and recyclables has been the fallback position for municipalities in NYS. NYS CLCPA sub-committee recommendations state that incineration (this definition usage includes gasification) is going to increase thru 2050 and thereafter and reducing organics from landfilling is recommended. Combustion of these three waste streams when combusted or gasified produces less short term and long-term Green House Gases (GHG) than the process of landfilling. If NYS is to hit its targets and reduce GHG emissions at every opportunity, when these organic waste streams are not able to be recycled, gasification and combustion should be the next best management process decision before landfilling and as such acceptable practice in NYS.

Response: The Department did not propose to revise the definition of excluded waste. The suggested revision is outside the scope of this rulemaking

360.2(b)(104)

Comment: The definition of *facility* should clarify that it does not include the "undeveloped" (360.2(b)(302)) portion of property that has not submitted a solid waste application nor has a permit been issued to for its use as a solid waste facility.

Response: The Department did not propose to revise the definition of facility. The suggested revision is outside the scope of this rulemaking.

360.2(b)(110)
Comment: We seek confirmation that asphalt, brick and concrete are considered "similar material" under the definition of fill material and therefore can be used, for example, in work on a utility right-of-way. While Department staff indicated that these materials would not be considered "similar material" and therefore would not be considered fill material, we request that non-earthen material mixed in with soil be considered similar material. The definition of Fill Material should be changed to clarify this term.

Response: This comment refers to the definition of Fill Material in 360.2(b)(107). This definition is proposed to be removed and replaced by definitions for *Excavated Material* (360.2(b)(99)) and *Fill* (360.2(b)(110)). The definition of Excavated Material includes "soil, rock and *other material*", though "other material" in this context means *any* material encountered in excavation, not necessarily materials similar in physical properties to soil or rock (as intended by "similar material" under the previous definition of Fill Material). Various Fill Types (F1, F2, F3, F4) define whether materials other than soil and rock can be included. Where non-soil, non-rock materials are allowed in Fill, these can include asphalt pavement, brick and concrete when these materials are "granular and compactible" since these materials do not "readily degrade or produce odors" (see Table 2, Footnote 1 in 360.13(f)).

360.2(b)(111)-(115)
Comment: These definitions of *Fill Type 1 or F1* through *Fill Type 5 or F5* do not define these terms but merely refer to Section 360.13. The commenter suggests revising as follows: "*Fill means excavated material that meets criteria in section 360.13(f) and has been characterized by five fill types: F1, F2, F3, F4 and F5.*"

Response: Comment noted. However, the Department will retain the wording of these definitions as proposed.

Comment: These five definitions of *Fill Types* do little to simplify classification and reuse and compounded with the creation of geographical area in New York where various fill types are restricted or prohibited from use, and with a variety of requirements for transportation will make incorporation of these requirements in bid and contract documents impossible. They create multiple classifications with multiple exceptions or carveouts that complicate construction planning and schedules and will precipitate innumerable change orders on both projects already underway if this rulemaking is adopted, and on future projects. The complexity of these new requirements will cause delays and increase costs to local and state taxpayers. The new system will discourage excavated material reuse within the State of New York. Under current Part 360 regulations, classifications of General Use, Restricted Use and Limited Use fill and the geographic restrictions for testing, transportation and reuse simply divided between New York City and the rest of the State, could be explained to owners and their design teams, as well as contractors. That ability to explain is the main reason why reuse in the State has increased since the November 4, 2017, Part 360 went into effect, and in New York City, why excavated material reuse has been embraced by City agencies. If rules cannot be explained and require a spreadsheet to grasp and remember, they will not be adopted or used.

Response: The five Fill Types were developed with input from the construction industry, and the Department believes once industry and the public have practical experience using these categories they will not find them too complex.

360.2(b)(125)
Comment: The proposed changes to the definition of *friable asbestos-containing waste* introduce confusion and safety issues for the waste management industry. Specifically, excluding friable asbestos-containing wastes (FACM) discarded by a household under this definition means that improperly packaged FACM from homeowner abatement projects could be received at a municipal waste transfer facility or landfill. Personnel at the facility or landfill will not know that FACM is present as they would with properly packaged and labeled FACM from a licensed abatement contractor, and their health and safety is unnecessarily put at risk. If the Department intends to

make this change, we urge the Department work with the NYS Departments of Health and Labor to develop fact sheets for homeowners to educate on safe handling and packaging of FACM.

Response: The exclusion of homeowner-generated FACM is necessary to make this definition consistent with other provisions excluding or exempting homeowner-generated wastes from regulation, e.g., household hazardous waste and household medical waste. The Department agrees that public education on the handling of FACM is necessary and will continue to provide guidance together with the Department of Labor on recognition and safe handling of asbestos.

360.2(b)(128)
Comment: The definition of *gasification* states it is the thermal conversion of organic material in waste by direct or indirect heating in the presence of air into syngas products. The definition as proposed is incorrect. Gasification does not require air; some gasification processes use oxygen or steam as an input in place of air. In fact, indirect gasification uses no air or oxygen, only steam as an input. Gasification is used to convert *biomass* material in waste, not "organic material" as stated. As defined by USEPA pyrolysis and gasification are often described as heat induced thermal decomposition processes used to convert solid or semi-solid feedstocks, including solid waste (e.g., municipal solid waste, commercial and industrial waste, hospital/medical/infectious waste, sewage sludge, and other solid waste), biomass, plastics, tires, and organic contaminants in soils and oily sludges to useful products such as energy, fuels, and chemical commodities.

Response: The Department did not propose to revise the definition of gasification. The suggested revision is outside the scope of this rulemaking.

360.2(b)(140)
Comment: The term *Gross Contaminants* should be modified. The word "gross" should be removed as it leaves a negative connotation especially as wrongdoing in a reader's mind.

Response: The Department did not propose to revise the definition of gross contaminants. The suggested revision is outside the scope of this rulemaking.

360.2(b)(143)
Comment: The term *Home scrap metal* should be reconsidered. “Home” is confusing in this context since the intent of the definition is to describe scrap metal from manufacturer waste residues.

Response: “Home” scrap metal is the term-of-art given by industry for scrap from sources named in the definition.

360.2(b)(148)
Comment: The term *Household Medical Waste* should be edited to exclude regulated medical waste “generated and/or” collected by mobile units, home health care providers, hotels, etc., since this change would reduce human health and environmental risk from improper handling and disposal of RMW generated by these entities.

Response: The Department did not propose to revise the definition of household medical waste. The suggested revision is outside the scope of this rulemaking.

360.2(b)(156)
Comment: We request the Department to clarify whether, under the term *Institutional Waste*, the new language specifies wastes (other than biosolids) produced by *drinking* water treatment facilities. Historically these wastes have been managed as special wastes, requiring chemical analysis and a Waste Characterization Profile Form for disposal and transport with a Part 364 Permit. Given this waste is now classified as institutional, what is the intent for disposal management?

Response: This term includes wastes other than biosolids produced by drinking water treatment facilities. The inclusion of these wastes under this term does not significantly change their regulatory status or method of disposal. Sludge from water treatment facilities continues to be a regulated waste under the Part 364 waste transporter program

360.2{b)(173)
Comment: The definition of *Lumber and engineered wood* should be clarified for a mixed C&D recycling operation that sorts out and recycles unadulterated wastewood and manufactures the product into a recycled material such as a landscape decorative mulch or a fuel product. Simply stated the piece of LUMBER has "nothing on it and nothing in it", meaning no coatings and no injections of other ingredients.

Response: The Department did not propose to revise the definition of lumber and engineered wood. The suggested revision is outside the scope of this rulemaking

360.2(b)(181)
Comment: The definition for *Mulch Processing Facility* is not completely accurate. Some C&D processors facilities sort out and/or keep separated unadulterated or tree wood for manufacturing landscape decorative mulch. Uncontaminated pallets are also recycled and manufactured into landscape decorative mulch as an "unadulterated waste wood."

Response: The Department did not propose to revise the definition of mulch processing facility. The suggested revision is outside the scope of this rulemaking

360.2(b)(185)
Comment: The term *Municipal Solid waste processing facility* does not reflect the technology used at our Biomass Gasification facility, which does not consume, burn, or combust a refuse-derived fuel. A new term/definition should be added to allow for a "Processed Biomass fuel" (PBF) feedstock as an approved "Alternative fuel". Renewable energy technologies do not consume RDF as a feedstock.

Response: A facility that does not fall within the definition of a municipal solid waste processing facility would be regulated as another specific type of solid waste management facility or as a non-specific facility.

360.2(b)(190) New York City Metropolitan Area Waste Impact Zone
Comment: The new definition for the *New York City Metropolitan Area Waste Impact Zone* (NYCMAWIZ) is described as containing the “New York City Watershed.” No map or clear definition of the New York City Watershed is included in the proposed rule; no map showing the watershed outside of the proposed rule does so with clear boundaries, only county and municipal lines; no reasonable understanding of the watershed boundary can be determined.

As a result, the proposed NYCMAWIZ will be virtually impossible to regulate or be complied with; contractors bidding on construction projects and professionals working on materials will be left unclear as to whether a property is within the NYCMAWIZ.

Response: Legal boundaries for the New York City Watershed do exist and can be accessed from public sources such as the New York City Department of Environmental Protection (DEP). However, the New York City Watershed has been eliminated from the definition of the NYCMAWIZ and replaced north of New York City by the boundaries of Westchester County and Putnam County.

Comment: New York City Department of Environmental Protection (NYCDEP) maps show two discontinuous areas with points connecting the areas. Are connecting areas included in the WIZ?

Response: With the elimination of the New York City Watershed from this definition, this comment is no longer applicable.

Comment: The watershed includes portions of the State of Connecticut over which the Department has no jurisdiction. No regulatory definition can dictate what is to be done in one area without being capable of determining what must be done in adjacent areas.

Response: The Department acknowledges that its regulatory authority extends only to activities that occur within New York State; however, the New York City Watershed has been eliminated from this definition and replaced with Putnam and Westchester Counties, whose boundaries lie completely within New York State.

Comment: How will the Department manage and track activity in the WIZ, which spans three DEC Regions in full or part?

Response: The Department has long engaged in regulatory programs which span multiple regions and has developed means of internal coordination, particularly for activities potentially impacting water quality within watersheds that do not follow DEC Regional boundaries.

Comment: How does this area designation take into account NYCDEP and Department coordination for the NYC Watershed program, which extends into Region 4 and out of state? Were other State and federal agencies and NGOs involved in the NYC Watershed program consulted on designation of the WIZ and how will they be involved in fill management?

Response: The Department does not believe this rulemaking will interfere with any current coordination between the Department, NYCDEP and other entities involved in protection of the New York City water supply. On the contrary, this rulemaking includes provisions to track and limit trafficking and use of contaminated fill in the NYCMAWIZ north of New York City, are intended to address concerns raised by entities about impacts to water quality from these materials that could threaten USEPA's and NYSDOH's Filtration Avoidance Determination for water bodies supplying the City. To ensure that no interference will occur, specific reference to the watershed has been removed from the definition.

Comment: What was the intent of adding the watershed to the list of geographic restrictions on beneficial use of C&D debris and excavated material? We understand inclusion of Nassau and Suffolk Counties due to the presence of a sole-source aquifer, but the NYC Watershed exists to protect surface water that is regulated by the New York City Department of Environmental Protection.

Response: Like the Long Island aquifer, the New York City Watershed is a critical water supply. NYCDEP's regulation of activities in the Watershed does not preclude the Department from also enacting regulations to protect the watershed. In this rulemaking, Putnam and Westchester Counties have been designated as being partially or fully within the New York City Watershed and, due to proximity to New York City, locations where contaminated excavated materials are most likely to be placed inappropriately or illegally.

Comment: The definition of *New York City Metropolitan Area Waste Impact Zone* should remove the reference to the New York City Watershed in its entirety or limit the reference to the East-of-Hudson (Croton) Watershed. Imposing stricter waste management standards on communities located west of the Hudson River violates the 1997 New York City Watershed Memorandum of Agreement between the State, New York City and affected municipalities by imposing disproportionate regulatory and financial burdens on the less populated, rural communities in the Watershed west of the Hudson compared to the rest of the state.

The historic, successful 1997 New York City Watershed Memorandum of Agreement (MOA) was signed by, *inter alia*, New York City, NYSDEC, NYSDOH, USEPA, all of the counties, towns and villages in the New York City watershed and various environmental organizations. This MOA has protected New York City's water quality and the interests of the watershed communities and has permitted multiple renewals of the Filtration Avoidance Determination from USEPA and NYSDOH. The partnership established by the MOA has been supported in significant measure by the understanding of all the MOA parties that state regulations would not be used to undermine the MOA by imposing regulations on the watershed that ostensibly protect the City's water quality without gaining the consent of the watershed communities in the manner that lead to the 1997 MOA.

Unfortunately, the proposed Part 360 regulations represent the first time since 1997 that NYSDEC has violated that understanding. These regulations do that by creating "New York City Metropolitan Area Waste Impact Zone" which specifically includes the entire New York City watershed. In doing so, the proposed regulations would impose new

requirements governing the use of fill materials, land application, anaerobic digestion facilities, C&D debris handling and recovery facilities and waste transporters.

We are not aware of any information supporting why these new regulations are required in the West of Hudson watershed and are not a requirement state-wide. We understand that the proposed regulations were not requested by New York City, nor by NYSDOH which is responsible for issuing and overseeing the Filtration Avoidance Determination. In fact, NYSDOH has recently released a proposed mid-term revision of the 2017 FAD and solicited public comment. It must be noted that nowhere in that document did NYSDOH note a need for stricter regulation of solid waste handling in the watershed as necessary to protect water quality. Nor are we aware of any comments submitted to NYSDOH on the proposed revisions to the FAD that suggested that regulations such as the proposed 360 amendments are necessary.

The unwarranted inclusion of the West of Hudson watershed in the NYC Metropolitan Area Waste Impact Zone will preclude the beneficial use of uncontaminated concrete, asphalt pavement or millings, bricks and various Fill Types. This will increase costs for local communities undertaking projects using locally-generated materials that, by definition, are not likely to contain the levels of contamination commonly present in materials generated in urban areas. The rural nature of the Catskills does not result in the levels of contamination otherwise prevalent in fill material derived from New York City itself. The absurdity of the regulation is illustrated by the fact that excavated material collected in the Catskills would be permissible as Fill elsewhere in the West of Hudson counties outside the watershed, but prohibited within the watershed. Absent clear evidence that the same materials present a significant threat to the New York City's water supply while not threatening local water supplies, there is no justification for burdening the watershed communities.

We believe the decision to include the West of Hudson watershed in the definition of the NYC Metropolitan Area Waste Impact Zone was a well-intentioned but misinformed proposal. It is important to maintain the partnership in the watershed and not undermine the collective efforts by imposing a burden on the watershed communities. The simplest means of resolving the issue is to amend the definition of the NYC Metropolitan Area Waste Impact Zone by removing any reference to the West of Hudson Watershed.

Response: The Department agrees, based on protections described in this comment which already exist, that the portion of the NYC Watershed west of the Hudson River should not be included in the NYCMAWIZ. Furthermore, in place of the east-of-Hudson (Croton) portion of the Watershed, this definition now includes Putnam County in addition to Westchester County. These changes are also reflected in 360.12(c)(2)(ix) and in 360.13(g)(1) and (2) of the express terms.

Comment: Requiring testing of material in this geographic area to determine if material meets any of the five new categories of fill material prevents the ability to use fill with any reasonable certainty and will lead to transportation of additional material significant distances out of State. The New York City Watershed is already managed and regulated by New York City Department of Environmental Protection ("NYCDEP"). All construction within the impact areas of the reservoirs and connecting infrastructure is already tightly managed and regulated by NYCDEP to protect the watershed. Placing a discontinuous umbrella over the varied watershed areas and creating requirements that make decisions regarding ability to beneficially reuse material will encourage project owners and design teams to opt for out of state landfilling of material previously allowable for reuse or will at a minimum require transportation of material out of State increasing greenhouse gas emissions (GHGs) in order to protect against costly change orders. This will increase fossil fuel consumption, damage and increase wear on roadway systems – all at additional taxpayer cost. We strongly discourage this limitation on reuse of material in the NYCMAWIZ. Existing enforcement mechanisms are more than sufficient to discourage illegal dumping and improper material handling in the NYC Watershed.

Response: The Department disagrees and finds regulation of movement of excavated material to be necessary to supplement NYCDEP's protection of the New York City Watershed, specifically in Westchester and Putnam Counties.

360.2(b)(197)

Comment: The definition of *organic, "*derived from living matter or living organisms and is readily biodegradable", is incorrect. This definition, as generally understood in industry, should include organic chemical compounds and certainly should include biomass, meaning non-fossilized and biodegradable organic material originating from plants, animals and/or microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes.

Response: The Department did not propose to revise the definition of organic. The suggested revision is outside the scope of this rulemaking

360.2(b)(199)
Comment: The proposed revised definition of *organics recycling facility* limits what can be considered "organic" and be consumed as a feedstock. No definition for "Biomass" exists to support the future use of organic materials as new technologies are introduced. Biomass is an ingredient sorted and separated from the organic fraction of solid waste for gasification. Higher level descriptive terms/definitions are required from NYSDEC if we are to increase new green syngas technologies and other products.

Response: The Department does not find that the proposed revisions to this definition reduce the types of materials that can appropriately be processed at an organics recycling facility.

360.2(b)(204)
Comment: Consider adding "two sidewalls equals one whole tire" to the definition of *passenger tire equivalent*.

Response: The Department did not propose to revise the definition of passenger tire equivalent. The suggested revision is outside the scope of this rulemaking.

360.2 (b) (215)
Comment: The definition of *processing* states that processing means the use of "…devices to alter the volume…of solid waste." But the last sentence states that "compacting of waste at a transfer facility is not considered processing". This is contradictory, since compacting material changes its volume. The changing of volume, by any means, should be considered processing. Also, what is "basic handling"?

Response: The proposed adjustments to this definition were included to clarify the difference between transfer facilities and processing facilities. The compaction of waste at a transfer facility is an activity that could be interpreted as processing, and so this language was included to avoid confusion and increase consistency in the implementation of the program. "Basic handling" should be understood in a plain reading of movement or transfer of waste that does not involve compaction, treatment or sorting.

Comment: *Processing* should not include the typical "floor-kick" of recyclables out of the waste stream on the tipping floor as it is received and tipped onto the facility floor.

Response: This activity to be considered basic handling and thus is not included as processing.

360.2(b)(218)
Comment: The definition of *Project engineer* includes "independent environmental monitor". However, that term is not otherwise defined within the proposed regulations. We ask that NYSDEC clarify (1) whether the term "independent environmental monitor" encompasses the concept of "environmental monitoring services" under 360.20; (2) whether all project engineers must be professional engineers licensed in New York or whether an out-of-state engineering license is acceptable; and (3) if a professional engineering license is not required, what type of training, experience and licensing is acceptable?

Response: Regulatory language in the Part 360 series regulations is explicit for activities that require a certification from professional engineer licensed in New York. Only a person licensed or otherwise duly authorized under the Education Law may practice engineering or use the title "professional engineer" in New York State (see Education Law Article 145).

Comment: The definition of *Project engineer* is expanded to include "independent environmental monitor funded by the permittee and who certifies that activities related to the facility conform to the engineering design contained in the permit and the applicable regulations." Various sections of the regulations require that the "project engineer" is involved in applicable aspects of design and construction certification at solid waste management facilities. The way in which this proposed definition is written implies that the DEC's environmental monitors overseeing environmental compliance would be included under the definition of "project engineer". Does this imply that a permittee funded DEC staff member will be required at all facilities? If that is the case, this would add significant costs to the facility operators where a DEC environmental monitor has not been agreed upon within the permitting process. In addition, typically, these individuals performing compliance inspections are not licensed engineers or providing professional engineering services and judgement for the project owners on behalf of the DEC. We feel that an "independent environmental monitor" and "project engineer" are not interchangeable and the responsibilities of the "independent environmental monitor" need to be clarified, if they are to be included.

Response: This language does not imply that permittee-funded environmental monitors are required at all facilities. Circumstances in which environmental monitoring is required at a facility are identified in Commissioner's Policy #64 – Environmental Monitoring Services.

360.2(b)(219)
Comment: In the definition of *Prompt Scrap Metal* the word "Prompt" should be revisited. The definition of "Prompt" does not relate to the intended solid waste purpose.

Response: The term "prompt scrap metal" is a recognized industry term-of-art inclusive of the sources and types of scrap described in the definition.

360.2(b)(224)
Comment: Within the definition of *Putrescible*, the excluded wood items should also include unadulterated waste wood and tree wood.

Response: The Department did not propose to revise the definition of putrescible. The suggested revision is outside the scope of this rulemaking.

360.2(b)(236)
Comment: 360.2(b)(236) – The definition of *Recycle* is deficient in two respects. Organics recycling is referenced in definition as for soil conditioning. Another more predominant use of organics is unadulterated waste wood for landscape decorative mulch. There are more and more landscape decorative mulch manufacturers setting up in every small town and city. This abundance has increased the supply and new innovative outlet solutions are needed for the use of "unadulterated waste wood" instead of being disposed of in a landfill increasing GHG. Secondly, the Department has chosen not to allow "Thermal" technologies the credit for recycling. Recycling process includes the sorting and separating process of recyclables such as biomass prepared fuel as a feedstock for making syngas, biofuels and renewable electricity and be credited for recycling in NYS. A thermal technology process that sorts, separates and recycles on the front-end of the process should get rewarded for this recycling effort costing increased labor and other significant expense while making new green jobs to increase recycling. It should be noted that combustion technologies or landfills do not increase recycling. A biomass gasification plant does.

Response: The Department did not propose to revise the definition of recycle. The suggested revision is outside the scope of this rulemaking.

360.2(b)(238)
Comment: The definition of *Refuse-derived fuel* (RDF) should state that RDF can only be treated in combustion processes and technologies. RDF does not include or operate sorting and separating lines to remove the non-organic and other non-combustible ingredients from the waste stream feedstocks prior to the combustion treatment.

Response: The Department did not propose to revise the definition of refuse-derived fuel. The suggested revision is outside the scope of this rulemaking.

360.2(b)(240)
Comment: This definition of *Regulated Medical Waste* —and particularly the exceptions—does not directly address personal protective equipment used in health care or public health contexts. The Department should clarify whether masks, face shields, or gowns fall within the exceptions to this rule.

Response: The Department does not believe this clarification is necessary. Personal protective equipment constitutes RMW under 360.2(b)(240)(i)(*f*) if it "contain[s] infectious agents" (i.e., is contaminated with infectious material), and if not, it does not constitute RMW.

Comment: Under the definition of *Regulated Medical Waste,* the commenter suggests to move all excluded items to the "(ii) Regulated medical waste does not include" section at the end of the definition. Otherwise, it is currently somewhat confusing to discern where exclusion of teeth and gums ends and inclusion of body fluids resumes.

Response: The Department has not proposed to revise the portion of the definition cited by the commenter (360.2(b)(240)(i)(*b*)). The suggested revision is outside the scope of this rulemaking.

360.2(b)(252)
Comment: The definition of *Scrap metal processor* should be revised to expressly except facilities receiving metal-containing products in connection with a product stewardship or extended producer responsibility program.

Response: The Department disagrees with this comment. Metal containing products collected through product stewardship or EPR programs are, nonetheless, scrap metal and facilities handling them for recovery must follow proposed operating requirements in Subpart 361-7 to protect public health and the environment.

Comment: In the definition of *Scrap metal processor*, change "stores, and recycles" to "stores, or recycles".

Response: The Department agrees with this comment and has made this change to the proposed Part 360, which will make this definition consistent.

Comment: The definition of *Scrap metal processor* should be clarified that a C&D Debris Handling and Recovery Facility (CDDHRF) and a Municipal Processing Facility (MSWPF) are not scrap metal processing facilities due to their sorting, separating, and recycling the metal components out of the MIXED C&D and Mixed MSW.

Response: This clarification is not necessary because 361-7.1(b), the subpart applicable to Scrap Metal Processing and Vehicle Dismantling Facilities, specifically states that 361-7 does not apply to facilities regulated under 361-5 (CDDHRFs) and 362-2 (MSWPFs).

Comment: The proposed rule would revise the existing definition of *scrap metal processor* to delete language stating a scrap metal processor is a facility *"…engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap (including decommissioned vehicles), the end product of which is the production of raw material for remelting purposes for steel mills, foundries, smelters, refiners, and similar users*." The language proposed to be deleted distinguishes scrap processors from scrap metal end users, such as steel mills and foundries.

Instead, the proposed rule states that a scrap metal processor is a facility "…*that receives, decommissions, processes, dismantles, stores, and recycles ferrous and/or non-ferrous metal and discarded metal-containing products, including appliances*." This addition appears to treat any entity that *receives* scrap metal, including end users, as a scrap metal processor. This would unnecessarily apply the solid waste management facility registration and operating requirements of Sections 360.15 and 360.19, and Subpart 361-7 to steel mills that recycle, remelt, and convert scrap metal into new commercial products. This over-broad expansion in the coverage of the scrap metal processor definition seems unintentional and should be corrected. The commenter recommends that the revised definition include the italicized language:

"(252) Scrap metal processor means a facility, *other than steel mills and similar end users that melt and convert scrap metal into new commercial products,* that receives, decommissions, processes, dismantles, stores, and recycles ferrous and/or non-ferrous metal and discarded metal-containing products, including appliances."

Response: It is not the intent of the rulemaking to classify end users of scrap metal as scrap metal processors. Several predetermined beneficial use provisions in subdivision 360.12(c) combine to make scrap metal received at manufacturing facilities to cease being regulated as solid waste, and accordingly keep metal products manufacturers unregulated as solid waste management facilities. These provisions include 360.12(c)(2)(viii), 360.12(c)(3)(iii), 360.12(c)(3) (xiv), 360.12(c)(4)(i), and 360.12(c)(4)(v).

360.2(b)(280)
Comment: In the definition of *Tank*, delete "of" before the word "waste".

Response: This change has been made to the proposed regulations.

360.2(b)(281)
Comment: - The definition of *Thermal treatment* needs revision. Thermal treating is a heating process and is NOT a burning or combustion process of waste feedstocks. Combustion is a burning or combusting process. In combustion processes heat is originated from the burning/combustion of feedstock processes. Combustion should be deleted from the definition.

Response: The Department agrees with this comment. This definition was not included in the proposed rulemaking, however, use of the term was proposed to be changed in the Applicability Section of 362-1. Therefore, adjustments have been made to both the definition and the Applicability Section of 362-1.

360.2(b)(286)
Comment: The definition of *Toxic drug waste* doesn't define anything according to pharmaceutical waste industry standards, in particular regards to DEA Controlled Substances. Scheduled drug wastes are distinctly regulated apart from hazardous/toxic drugs. The commenter suggests clarifying the three broad categories of pharmaceutical waste: hazardous drugs (NIOSH regulated), hazardous waste pharmaceuticals (RCRA regulated), and controlled substances (DEA regulated).

Response: The Department did not propose to revise the definition of toxic drug waste. The suggested revision is outside the scope of this rulemaking.

360.2(b)(288)
Comment: Under the definition of *Traditional Fuel*, it should be clarified that the Department is accepting BIOMASS as an acceptable "Traditional fuel" or as an "Alternative fuel" dependent on technology process to provide clarity for the regulated community. Currently there is no provision in definitions for biomass or "Processed biomass-fuel" differentiated from organic feedstocks when utilized as a fuel product line. This becomes especially essential now that the Department is differentiating between "traditional fuels" and "alternative fuels".

Response: Specific waste types are not included in the definition of traditional fuel.

360.2(b)(296)
Comment: To reduce confusion, the definition of *Tree debris* should be modified to include all unadulterated waste wood.

Response: The Department did not propose to revise the definition of tree debris. The suggested revision is outside the scope of this rulemaking.

360.2(b)(299)
Comment: The new definition for *Uncontaminated* prohibits "unauthorized waste". This term could refer to any amount of unauthorized content in materials subject to regulation under Part 360, including construction and demolition debris and pre-determined beneficial uses. In practice, this will prove unrealistic, as even the most meticulous screening and processing will still have trace amounts of unauthorized wastes. To allow for a more administrable approach, the Department should include a limiting factor, such as "other than *de minimis*" amounts of unauthorized wastes.

Response: The Department will retain this definition as proposed; where warranted, inclusion of *de minimis* related to materials for reuse has been authorized in other regulation changes.

360.2(b)(302)
Comment: Concerning the definition of *Undeveloped land*, any such land that has not submitted any Department solid waste applications or has had any NYSDEC solid waste permits issued for solid waste use, should only be required to submit a courtesy notification to the Regional Director that the undeveloped land is going to be used for non-solid waste use at the current time as a business decision.

Response: The Department did not propose to revise the definition of undeveloped land. The suggested revision is outside the scope of this rulemaking.

360.2(b)(326)
Comment: The proposed *Wood debris* replicates the definition of "unadulterated wood" and is confusing. The two definitions are and should be one and the same.

Response: The Department did not propose to revise the definition of wood debris. The suggested revision is outside the scope of this rulemaking.

360.2(b)(328)
Comment: The definition of *Yard trimmings* should include "Organics" and "Biomass". This would obviously not include leaves and grass for composting. Increasing "Yard trimmings" up to 4" diameter from 1" diameter will cause additional cost for municipalities and their "Yard trimmings" disposal cost and further delete feedstock for other technologies such as biomass gasification.

Response: The Department does not believe these changes are consistent with the intended meaning of this definition, and declines to make them. Including "organics" and "biomass" would allow a broad array of materials to be composted under the exemption and registration that have been developed for the limited universe currently covered by the definition of yard trimmings. This would increase the potential impacts due to runoff, odor, etc. The 4" diameter for tree limbs and branches does not represent a change that was proposed with this rulemaking.

360.4 Transition
Comment: This section does not specify what Registered facilities will now require a permit? Is it all existing registered facilities that must submit a new Registration Application and if the NYSDEC determines if they need a permit, then apply? If this is the case, can that be specified? Can the reasons why a registered facility must get a permit also be specified, so facilities can plan accordingly? Would a permit be required because of volume of materials on-site or compliance track record? Please specify.

Response: All existing registered facilities are not required to submit new registration application forms. There are a variety of reasons why a specific facility may require a permit rather than a registration. If a facility has a question about the appropriate regulatory mechanism under these regulations, we recommend that they contact their local NYSDEC regional office.

Comment: The entirety of the 2017 version of section 360.4 Transition has been replaced, and the intent of this section rewording is unclear. Typically, each permit term is limited to a 5-year operational period, and no longer than 10 years pursuant to section 360.16(i). The provisions of the permit are then continued over subsequent permit terms, providing for operational continuity and supporting community investments in long-term solutions to material management challenges. If the intent of the transition provision is to provide for continuity of permissible activities over time and across multiple permit terms, then we support the changes in this provision. If the intent of the proposed change is different than just described, please clarify.

Response: The typical process of permit renewals is not significantly changed by the proposed language in this section.

Comment: A new section is proposed that states "at the time of permit renewal, the application will be considered a permit modification request and the facility or transporter must comply with the regulations that pertain to the type of facility or transporter in effect at the time of permit renewal. "Historically, a permit renewal has been a Type II action under the State Environmental Quality Review Act (SEQRA) and public comment has not been required. This should continue to be the case and no further review under SEQRA, where the application is a straight renewal (i.e., no modification to operations are proposed), should be required. If the permit renewal proposes no changes, then it should not be considered a permit modification. Additionally, this regulatory language could be problematic because it may involve siting criteria, effective at the time of the original permit issuance with which the Facility was able to comply, that now may conflict with updated siting criteria. If for some reason a renewal is considered a modification for which it could be argued that the updated siting criteria might apply, the site life for a facility could be significantly impacted. More clarification is required as to how previously existing siting criteria and regulations would apply to permit renewals, and when permits would be grandfathered in. Alternatively, a clear statement should be included in the regulations that the new siting criteria only applies prospectively to new landfill applications.

Response: No new SEQR obligations would be required for an existing facility seeking a permit renewal and continuing activities consistent with its previous permit. Siting requirements related to new landfills and existing landfills are specifically identified in Part 363. Language has been added to the section to clarify these requirements. However, please note that the SEQRA review required for a specific permit application will depend on the application itself and any other regulations that are applicable to the facility at that time.

360.4(c)
Comment: Add "prior to November 4, 2017" between the words 'issued' and 'under' on the first line of paragraph 360.4(c)(2).

Response: This language has been added.

Comment: For registered facilities that will be required to obtain a permit, we propose the following text change:

"A complete application must contain sufficient information to define the activities to be conducted at the facility, but it need not include all the discrete technical details that will be required to be included for the technical review, and any applicable State Environmental Quality Review Act requirements must be commenced, but a negative declaration or acceptance of a draft environmental impact statement need not be completed by the end of the 365-day term." For those registered facilities who choose to obtain a Part 361 solid waste permit in lieu of maintaining their registration, the deadline of 365 days to obtain a complete application with an applicable SEQRA determination will be difficult especially with other NYC agencies being potentially involved in the environmental assessment process with both CEQRA and SEQRA involvement.

Response: This language has been added to 360.4(a)(2).

Comment: Regarding Subdivisions 360.4(c) and 360.15(f), if under 360.4 every registered Subpart 361-5 facility must submit a new registration form, that means all facilities will fall within the same 5-year renewal schedule. Does the NYSDEC have the staff to do all renewals every 5 years, since all new applications will be received within 60 days before the term expires? Should the NYSDEC make some 4 years, 5 years, or 6 years to stagger the workload? We would assume if a timely re-submission is made and acknowledged, then the State Administration Procedures Act (SAPA) would apply and the Registration would remain active until it is either formally approved or denied.

Response: The Department has received and processed a significant number of registration applications since the November 2017 rulemaking and anticipates that it has sufficient staff to process new registration applications going forward.

360.4(g)

Comment: There appears to be a contradiction between proposed sections 360.4(g) and 360.4(k)(3). Please clarify. Section 360.4(g) appears to indicate that retrofitting of existing structural components of facilities would be required for landfills, but does not reference Part 363. Section 360.4(k)(3) states that retrofitting structural components at landfills would not be required.

Response: The language "except for landfills" in 360.4(g) excludes landfills because more specific requirements regarding retrofitting at landfills is included in 360.4(k)(3). To be clear, retrofitting of existing structure components at landfills is not required.

360.4(j)
Comment: Please confirm that financial assurance (restoration bonds) for registered facilities in place prior to November 4, 2017 for the local municipal agency (for example, New York City Department of Sanitation for facilities in Region 2) will satisfy the requirements of 360.4(j) so that a duplicate restoration bond for NYSDEC is not required.

Response: Specific language associated with avoiding duplicative financial assurance requirements is included in 360.22(c)(2). Department staff should be consulted for a determination as to whether specific financial insurance instruments provided for municipal requirements are sufficient to cover or offset the requirement in this Part.

Comment: The commenters request extending the Financial Assurance deadlines for registered and permitted facilities from November 4, 2022, to 60 days after the Effective Date of the 2022 Amendments. For Financial Assurance deadlines for registered and permitted facilities, we suggest that the deadline be adjusted from November 4, 2022 to 60 days after the Effective Date of the 2022 Amendments. The 2022 Amendments may not yet be effective by November 4, 2022 and having a set deadline that provides sufficient time to seek adjustments to financial assurance will allow for a smoother rollout for the Department and the regulated community.

Response: The compliance dates included in this section were not proposed for revision. Facilities that existing in 2017 were provided significant time to acquire financial instruments from the effective date of the rulemaking. Language was adjusted here to identify the effective date of the 2017 rulemaking and the related deadlines for acquiring financial instruments. And new facilities are provided sufficient time to acquire financial assurance instruments, if required. Therefore, the suggested revision is outside the scope of this rulemaking.

Comment: This section on Transition is unclear regarding whether a registered facility (361-5 facility in this example) is required to obtain some form of financial assurance. Will some registered facilities require financial assurance, and will it be determined by NYSDEC on a case-by-case basis? How will uniformity be enforced between regions or in the same region on which facilities require financial assurance?

The commenter recommends that NYSDEC qualify how financial assurance may be required for Registered facilities: Will financial assurance be required based on a total volume of stored material (some maximum volume threshold), or compliance track record? Delete the references to Registered Facilities that may need financial assurance or add a new section that would require that registered facilities that have a poor compliance record will be required to maintain financial assurance.

Response: Determination as to whether a facility requires financial assurance are either established in regulation for specific facility types or may be made on a case-by-case basis by Department staff.

360.4(k)
Comment: The Department has determined that land clearing debris LANDFILLS that were registered prior to November 4, 2017, can continue to operate until their authorized disposal capacity is utilized. This will provide significant economic hardship and impact to areas in New York State (NYS) where unadulterated waste wood recycling facilities are not feasible or economically sustainable. This could leave parts of NYS with no alternative solution.

Response: The Department believes that facilities such as Mulch Processing Facilities pursuant to 361-4 provide more sustainable alternatives to landfilling, and exemption and registration provisions within this Subpart make compliance feasible for rural communities.

360.8 Prohibited Actions

Comment: We support the Department's effort to adjust requirements for C&D debris and excavated material will make it easier to handle and reuse these materials. Regulations that support the reuse of materials are consistent with the Solid Waste Management Act, Laws 1988, ch. 70, and the State's solid waste management policy to "reuse material for the purpose for which it was originally intended or to recycle material that cannot be reused." ECL 27-0106 (1)(b). "This policy, after consideration of economic and technical feasibility, shall guide the solid waste management programs and decisions of the department and other state agencies and authorities." ECL 27-106(3). However, within the same proposal the Department is proposing to adopt another regulation directly contrary to this stated goal of the legislature and direction to apply this policy, specifically new paragraph 360.8 (d): Long Island. A composting facility, mulch processing facility, or construction and demolition debris handling and recovery facility located in Nassau or Suffolk County must not be operated within a mine subject to regulation under article 23 of title 27 of the ECL. This proposed prohibition will work to create inefficiencies in the transport, processing, and market development for the reuse of RUCARBs, impose unnecessary costs on vital infrastructure projects and increase truck transport requirements, traffic congestion, and associated air emissions with no added true benefit to the environment. The Summary of the Regulatory Impact Statement accompanying the proposal states that this revision is related to ECL § 15-0517. However, this provision does not provide a basis for this blanket ban. ECL §15-0517 is entitled: Water quality testing requirements for land clearing debris and compost facilities in Nassau and Suffolk counties. By its caption and terms, it does not apply to C&D. Enacted in 2018, its stated justification was "Recent studies have highlighted the potential for adverse water quality impacts as a result of large compost and mulch facilities. This legislation will help protect water quality by ensuring that water quality and other environmental protections are in place." 2017 New York Senate Bill No. 3213, New York Two Hundred Fortieth Legislative Session. It does not encompass C&D and has no relationship to the Department's proposed elimination of this land use by 6 NYCRR 360.8, which may in some instances be constitutionally protected. Indeed, even for the type of facilities to which it does apply, it contemplates a case-by-case determination, not a blanket ban as proposed by 6 NYCRR 360.8. See ECL § 15-0517 (2) ("The department may exempt a land clearing debris facility or a composting facility from the regulatory requirements of this subdivision following a review of the facility's water quality testing results and a determination by the department that such facility does not pose a risk of impairment to the primary recharge area or, if applicable, other recharge area."). In contrast, proposed 6 NYCRR 360.8 eliminates by regulation an entire land use. Presumably, the legislative history was referencing a study conducted by the Suffolk County Department of Health Services ("SCDHS"). Since the enactment, SCDHS released the study which purported to ascribe adverse impacts from vegetative waste located at mine sites. However, as the Department's analysis of the report found, it does not support such a finding, let alone eliminating land use rights. The NYSDEC and other experts have discredited the report, with the NYSDEC summarizing it as "fatally flawed." The Department should not adopt a regulation eliminating existing operations based on fatally flawed studies. To our knowledge, there are no valid studies demonstrating that the collocation within MLRL permitted property presents a risk such that the outright ban would not be arbitrary.

This new prohibition appears to be arbitrary, as, even given the presence of the aquifer, these types of facilities can and have been co-located and operated successfully without impact to the aquifer or the mining operation, and without the need for enforcement for environmental harms. It should include grandfathering in existing facilities that have valid permits for both operations. This prohibition seems to be released before hard environmental data has been collected and evaluated to actually see if 360 operations or mining facilities adversely affect each other or the environment. As an example, the commenter describes a regulatorily-compliant facility that has been both a NYSDEC permitted mine and Permitted 361-5 (RUCARBS), 361-4 (mulch) and a 361-3 composting facility for decades. Must this and other similar facilities contemplate which activities to abandon, having invested heavily in all these operations on the same site? The complete prohibition should be reconsidered in favor of adding site specific considerations for both operations to safeguard groundwater. Groundwater monitoring is already being proposed with Long Island composting and mulching operations in 361-3 and 361-4. In addition, local governments such as the Town of Southampton require all mine sites to comply with a new local law that requires groundwater sampling.

The Department should reconsider the proposed 6 NYCRR 360.8 (d) considering the potential adverse impact it will have on recycling, increased requirement for raw materials production, and associated GHG emissions (the commenter cites references to lower GHG emissions from production of recycled versus new aggregate materials, especially when materials are processed and used locally). ECL § 15-0517 does not mandate the blanket prohibition contained in the proposed 6 NYCRR 360.8 (d). A case-by-case evaluation and controls, as set out in ECL § 15-0517, such as setbacks and water quality testing, in the normal course of MLRL permitting can address any concerns.

Address the appropriateness of a composting facility, mulch processing facility or construction and demolition debris handling and recovery facility located on Long Island within a regulated mine on a site-specific basis as opposed to the proposed blanket prohibition.

Response: As discussed in the Regulatory Impact Statement, the Department has authority to conserve, improve, and protect nature resources and environment and to prevent water pollution. The Department has also been empowered to adopt regulations in Nassau and Suffolk Counties to prevent water pollution from land clearing debris and composting facilities. Due to the sensitive groundwater issues on Long Island and the greater potential for pollutant migration from mine sites, the Department has determined that a prohibition, although conservative, is appropriate in this setting.

360.12 Beneficial Use

General

Comment: Our company has developed a process to recover reusable construction aggregate from municipal solid waste combustion ash (MSW ash). A new subdivision similar to 360.12(e) for navigational dredged material, and 360.12(f) for waste brine, should be added for case-specific beneficial use determinations (BUDs) for processed MSW ash. A new subdivision could include conditions that would streamline review and approval of case-specific BUDs for products such as construction aggregates separated from ash and help alleviate the problems of ash generation and landfilling, both on Long Island and statewide.

Response: The present case-specific review criteria in 360.12(d) are adequate and appropriate to determine whether these materials can be used beneficially.

Comment: The Department should develop a generic Beneficial Use Determination, similar to what other states have done, to allow aggregate recovered from MSW ash to be used in construction. The BUD should include consistent standards, testing requirements and types of permissible locations for use.

Response: Recovered aggregates from MSW ash do not have established characteristics or markets and need case-specific review for beneficial use.

360.12(a)(4)
Comment: Clarification contained in new Section 360.12(a)(4) is appreciated, as the prior iteration of the rule provided little guidance when additional permitting would be necessary, particularly with respect to facilities receiving non-conforming materials or receipt of materials over a period exceeding one year. However, we question whether certain of the other conditions warrant full permitting:

- Subparagraph (iii) provides that sites receiving more than 100,000 cubic yards of material may require a permit. As the materials being used pursuant to a pre-determined BUD no longer constitute waste when meeting the outlined specification, it does not follow that mere volume increases the need for additional oversight.
- Subparagraph (iv) provides that sites receiving pre-determined BUD materials from more than one source may require a permit. Given that many of the other predetermined beneficial use provisions—which indicate that a given material is no longer considered waste when meeting the outlined specifications—it does not follow that the fundamental nature of that material changes merely by virtue of coming from multiple sources.

Response: Permitting for large fill projects, based on large quantities, multiple sources and over long periods of time, is justified by the Department's experience where the conditions of a BUD have been too weak to prevent receipt of fill that did not meet appropriate criteria, or the amount of fill received exceeded the quantity needed for the project, creating drainage or nuisance issues. Hence, 360.12(a)(4) states a permit is required "in place of a beneficial use determination", to "prevent adverse impacts to public health and the environment. In cases where more material than is needed for the beneficial use is delivered to a site, the material is not considered to be covered under a beneficial use determination and is therefore considered a solid waste that has been improperly disposed. The permitting process allows for a more thorough review of large fill projects than a BUD by all relevant environmental quality programs in the Department, and unlike a BUD, allows for financial assurance and environmental monitoring oversight to protect the public and environment during the fill placement and provides for public awareness and input on a large project during the permit application process.

Comment: Subparagraph 360.12(a)(4)(i) allows the department to require a permit where a facility receives consideration for acceptance of any quantity of material; however, the fill provisions in 360.13(g) contemplate that sites can receive a fee for F1 or F2 fill. The Department should address this inconsistency.

Response: The proposed rules allow a facility to charge a fee to receive F1 and F2 fill to accommodate situations in which the facility consists of land leased or rented to store fill and other construction materials. The Department does not expect that F1 or F2 fill will be unwanted, and therefore finds it unlikely that generators will find it necessary to pay a landowner to receive these materials for disposal. In other situations, the scenario of a landowner being paid as an incentive to receive undesirable excess or contaminated materials is possible and prohibited in the Department's interpretation of ECL § 27-0707(2-a).

360.12(c)
Comment: Much of the revised Part 360 appears to better clarify exemptions for recycled asphalt pavement (RAP) and concrete aggregate from regulation. The Department should encourage the use of RAP and concrete aggregate because of the cost saving benefits to New York's taxpayers. It is also more energy efficient and better for the environment because no excavation is required from quarries or refineries for virgin rock and less trucking is needed. New York's municipalities have a longstanding practice of storing road millings at various sites for future use for shoulders and for use as material in road projects. This allows us to reuse a valuable resource and reduce costs.

Response: Comment noted.

Comment: The Department should add a pre-determined BUD to re-use seashells for artificial reefs, shellfish seeding programs and other environmentally beneficial uses, provided that the re-use is governed by other DEC permit programs such as Tidal Wetlands, Hatcheries Permits, and/or Protection of Waters Permits. There is currently a similar pre-determined BUD for agricultural and/or soil conditioning products defined in Part 360.12(c)(4)(ii).

Response: An exclusion from the definition of solid waste in 360.2(a)(3)(x) allows use of materials in artificial reefs in compliance with applicable water quality criteria, including seashells.

Comment: We recommend that the NYSDEC provide specific examples and further elaborate as to how material ceases to be a solid waste.

Response: Existing and proposed rules in 360.2(a), 360.12(c), and 360.12(d) provide explanation of waste cessation. The Department can be contacted for questions regarding applicability of rules to specific materials, if unclear.

360.12(c)(1)(ii)
Comment: Does "physical contamination" include ash, slag, concrete, brick, or asphalt pavement?

Response: The referenced language does not appear in the proposed revisions and is outside the scope of this rulemaking. However, the examples stated by the commenter do serve as possible examples of physical contamination (as opposed to chemical contamination as determined through laboratory analysis). Whether or not a

specific material is a physical contaminant depends on whether it is allowed in a Fill Type, aggregate or other product under a predetermined or case-specific BUD. For example, concrete appearing in Fill Types 1 or 2 would constitute a physical contaminant, whereas in Fill Types 3, 4, and 5, it would not.

360.12(c)(1)(iv)
Comment: The new grade adjustment predetermined BUD for material on the site of generation provides significantly more flexibility for the use of fill material on-site and is a welcome addition to the regulatory program.

Response: Comment noted.

Comment: The disqualification of "*illegally disposed*" on-site materials should be further clarified. It will be difficult, if not impossible, for most property owners to assess whether historic fill was legally or illegally disposed. The commenter recommends this be changed to "*fill previously identified by the Department as illegal*."

Response: Any illegally disposed material is ineligible for this beneficial use requirement, whether the Department has identified the disposal of material as illegal or not. For site-specific questions related to the regulatory requirements for BUDs, individuals should contact the local Department regional office.

Comment: The commenter requests further definition or clarification of what constitutes the "site of generation." For example, in linear construction projects (like sewer line replacement, road construction etc.) "site of generation" should include the entire project area. Further, individual owners of numerous adjacent parcels should be permitted to use fill material on those adjacent lots.

Response: The proposed predetermined BUD includes the scenario described by the commenter for materials excavated and reused same properties along the linear construction route.

Comment: It is confusing to have this provision appear in paragraph 360.12(c)(1) in the proposed rulemaking instead of in Section 360.13 as an exemption under subdivision 360.13(c). This provision for on-site fill reuse should be kept under Section 360.13; the commenter recommends relocating it under subdivision 360.13(b) Waste Cessation as a new paragraph that would include all the same conditions as under the current subdivision 360.13(c) for on-site use. It is further confusing to have the on-site reuse provision appear as part of a proposed beneficial use for "grade adjustment" that seems to limit the use of the material for grade adjustment only.

Response: The Department recognizes use of on-site excavation and demolition materials specified in the proposed rulemaking (in 360.12(c)(1)(iv)) as more accurately a predetermined beneficial use rather than an exemption. The Department also believes the predominant reuse of materials generated at a site, on the site, is for grade adjustment, including backfill or excavations or depressions resulting from structure demolitions.

Comment: Clause (a) of this section refers to "*fill that meets the criteria to be used as Fill Type 1 and Fill Type 2 in Section 360.13 of this Part*," but fails to specify which paragraph(s) of Section 360.13 should be referenced. For example, does the location of the site impact whether these Fill Types can be used?

Response: Both Fill Types 1 and 2 are referenced since the location of use of this pre-determined BUD will impact which type of material can be used as cover.

Comment: Under clause 360.12(c)(1)(iv)(*a*), the proposed rulemaking does not define the term "*same property*," which appears to align with the term "*site of generation*" used elsewhere in this subparagraph. The Department should clarify whether "same property" is intended to have a different scope.

Response: The Department agrees with your comment. The language has been changed to use the term "site of generation."

Comment: Clause 360.12(c)(1)(iv)(*b*) does not provide a definition for "*on-site structures*," which appears to align with the earlier undefined terms "site of generation" and "same property." For the sake of clarity, the Department should conform the definitions used in this section.

Response: "On-site structures" include roads or buildings on the project site.

Comment: Regarding clause 360.12(c)(1)(iv)(*b*), it is unclear if the material described includes larger pieces of concrete and asphalt pavement debris (i.e., unprocessed concrete and asphalt debris) and what would be considered an appropriate use in terms of grade adjustment if it does include larger pieces of concrete and asphalt, which cannot be compacted. Further, it is unclear what level of oversight NYSDEC expects for this beneficial use. For example, if such material is provided by a municipal highway or public works agency to outside entities for use in accordance with this pre-determined BUD, what obligations does the agency assume for ensuring the outside entity's use of the material complies with this pre-determined BUD? A clarification would be helpful.

Response: The Department intends no restriction on on-site use of unprocessed debris for grade adjustment, but this pre-determined beneficial use provision does not exempt the entity using the material from other local, state or federal requirements including local building codes or agency specifications. In the scenario of an agency providing materials meeting the description in this proposed predetermined BUD to another entity using the materials on the same site, both the agency and recipient entities would need to meet any local or other applicable requirements for storing and using the materials.

Comment: Clause 360.12(c)(1)(iv)(*b*) allows all uncontaminated concrete, concrete products, asphalt pavement and millings and brick from demolition to be exempt for on-site reuse. But in this clause, there is no mention of any geographical area in the State excluded for this exemption so it is unclear whether this material can be used anywhere, including Long Island and the new watershed area.

Response: There is no restriction on this pre-determined beneficial use based on geographic area; therefore no areas are stated in the referenced clause.

360.12(c)(2)
Comment: If there is no BUD specified for typical "clean concrete" or "R1 (a trade name for crushed clean concrete)" will all clean concrete have to be referenced to 360.12(c)(2)(x) or (xi) and now require a Tracking Document?

Response: Uncontaminated crushed concrete unmingled with asphalt or brick that meets "R1" and similar specifications for Recycled Concrete Aggregate (RCA) continues to be allowed for aggregate, subbase and grade adjustment pursuant to 360.12(c)(3)(viii) even with modifications proposed in this rulemaking. When meeting these RCA specifications, this material ceases to be regulated as a solid waste and requires no C&D Debris Tracking Document under Part 364.

360.12(c)(2)(iii)

Comment: The pre-determined BUD in Clause 360.12(c)(2)(iii)(*c*) to permit the use of street sweepings in "locations subject to commercial or industrial land use" should be further clarified to permit greater workability. While determining if an area's permitted uses include industrial or commercial uses is straightforward under most zoning codes, it can be difficult to assess whether, in practice, individual uses in an area are non-commercial or non-industrial. Furthermore, does this clause allows material described to be used on any commercial or industrial lot for any purpose? To allow for greater predictability and clarity, the Department should revise this definition to "areas zoned for commercial or industrial use" and specify allowable uses.

Response: This clause is unchanged in the proposed rulemaking from the current regulations except to change the reference to the newly proposed definitions in 360.2 for *commercial land use* and *industrial land* use and is therefore outside the scope of this rulemaking.

360.12(c)(2)(iv)
Comment: Commenters expressed appreciation for the Department's allowing whole tires in the proposed regulation for farms to secure plastic or tarpaulins on stored feed, instead of allowing only tires sliced in half and/or

punched with holes for drainage, provided the tires are stored when not in this use in a manner that prevents the retention of water. Allowing whole tires will ensure quality animal feed and animal safety.

Response: Comment noted.

Comment: Following the November 4, 2017 rule, many farms began aggressively transitioning to sidewall tire weights in place of whole tires to comply with the rule. In some cases, the unintended consequence for these farms is an abundance of stored tires that are no longer needed to cover feed piles. Proper disposal of these tires is burdensome and expensive. Provided that farms store excess tires in a manner that does not cause a nuisance, fire hazard, or retention of water, the Department should grant farms a five-year window, through enforcement discretion or another means, to properly recycle tires that are no longer needed.

Response: Since March 1, 2018, an enforcement discretion has been granted to farms for use of whole or cut tires to secure tarpaulins, and the Department has exercised its discretion not to pursue enforcement against farms for excess tire storage from that time up until the present. Granting of additional discretion is a case-specific decision and is outside the scope of this rulemaking.

Comment: We also ask that the Department continue to seek out grants and other resources to help farms in their efforts to comply with these regulations. We would like to have a program be established to assist with wide-scale tire recycling. Publicly-funded "tire recycling days" often limit participants to bringing 4 tires, which doesn't begin to address the number of tires that farms may need to recycle.

Response: These requested actions are outside the scope of this rulemaking.

Comment: Challenges with cutting tires into tarp weights that we presented to the Department in comments on the November 4, 2017 rules have not changed. Metal content in the tire could end up in the animal feed or injuring farm employees; cutting tires is time consuming and most farmers purchase tires already cut, due to do lack of the special machinery needed to cut tires. Cutting tires realistically works only for bias-ply tires that do not contain metal and would be safe to cover feed with.

Response: The proposed rulemaking is intended to address problems with the use of metal-containing tires by allowing the use of either cut or whole tires.

Comment: There appear to be regional discrepancies in the enforcement of this BUD and some farmers have been cited for having tire piles that may not be currently in use on bunks. While farmers do their best to manage tire inventories on their farms, there may be times of the year when tires are piled to a side or farmers may not need some tires in one year but may in another, depending on feed inventories. In addition, due to the high cost of recycling tires, it can be a financial burden for farmers to recycle a large amount of tires at a time.

Response: Consistency in enforcement of the Department's regulations is an important objective but cannot be addressed in this rulemaking.

Comment: In many cases, side wall tires alone have not accomplished the goal of keeping stored feed covers in place during wind/storm events. Therefore, more cut or whole tires have been required to keep the covers in place, even to double-stacking tires on the tarpaulins to ensure they are properly weighted. We ask that a second layer of tires and/or sidewalls not be limited to anchoring the edges only, and instead leave the decision related to tire placement to the discretion of the owner/operator of the farm.

Response: This predetermined BUD will allow placement of two layers of side wall weights over the tarpaulin, since two side walls are effectively the same as a "passenger tire equivalent" as defined in 360.2(b)(204). Thus the "single layer" limit in 360.12(c)(2)(iv)(*a*) would not be exceeded. The proposed regulation has been changed to clarify that "waste tires *or passenger tire equivalents*" can be used.

360.12(c)(2)(ix)

Comment: Several commenters expressed support for the addition of this pre-determined beneficial use to the proposed rulemaking for uncontaminated concrete, rock, brick, asphalt pavement or millings, and Fill Types 1, 2 or 3, alone or in mixtures for grade adjustment.

Response: Comment noted.

Comment: The predetermined BUD for grade adjustment should not include the restriction from use at mining sites "unless that activity is authorized…in a Mined Land Reclamation Permit". The only materials allowed under this predetermined BUD are uncontaminated concrete, rock, brick, asphalt pavement or millings, and certain Fill Types, and the BUD declares these no longer solid waste. A mine owner or operator should be able to bring these materials in without having to obtain a Mined Land Reclamation Permit modification.

Response: DEC is concerned not only with the composition of imported grade adjustment fill, but its quantity and genuine need for fill as part of a reclamation plan, whether the fill is a purchased commodity or a waste being used under a BUD. Predetermined BUD 360.12(c)(2)(ix) includes this restriction to reserve the right of the Mined Land Reclamation program to regulate importation of grade adjustment materials and ensure their use is consistent with the Mined Land Use Plan or Reclamation Plan, as appropriate.

Comment: Why has New York City been left out of (is not eligible for) this pre-determined BUD?

Response: New York City is not excluded; this predetermined BUD can be used in New York City.

Comment: Shouldn't this predetermined BUD reference the New York City Metropolitan Area Waste Impact Zone?

Response: The NYCMAWIZ has intentionally not been referenced in this predetermined BUD since the WIZ includes the five boroughs of New York City and the Department's intention is to allow this BUD to be used within the City.

Comment: By allowing "mixtures of these materials" under Pre-Determined BUD in subparagraph 360.12(c)(2)(ix), isn't the Department authorizing creation and use of Fill Types 4 and 5 to be used without chemical testing, and without the restrictions on placement of F4 and F5 fill?

Response: Fill Types F4 and F5 are produced from excavated material as defined in 360.2(b)(99), not from the mixture of recognizable and uncontaminated (and in the case of Fill Types 2 and 3, tested) materials. The mixtures allowed for use under 360.12(c)(2)(ix) do not constitute Fill Types 4 or 5.

Comment: Restricting use of pre-determined BUD in paragraph 360.12(c)(2)(ix) in counties surrounding New York City, Long Island and the NYC Watershed prevents over 10 percent of the state nearest to NYC, forcing generators of C&D debris and excavated material to haul these materials long distances for reuse. These restrictions increase greenhouse gas emissions in opposition to goals of the CLCPA and could increase illegal disposal in the restricted areas.

Response: The unrecognizable mixtures allowed under this pre-determined BUD could result in contamination of water supplies since no testing of the materials has been conducted (other than determination of Fill Types 2 and 3 that may have been made). Petitions for case-specific determinations can be submitted in instances where a pre-determined beneficial use determination is not available.

Comment: Pre-Determined BUD in paragraph 360.12(c)(2)(ix) seems to add additional, confusing restrictions on the uses of concrete, asphalt, brick, and Fill Types F1, F2 and F3 – especially whether these materials can be used in New York City, Nassau County, Suffolk County, Westchester County and the NYCMAWIZ; their point of waste cessation; and allowable purposes of use. This predetermined BUD conflicts with Section 360.13 provisions for these materials. Please clarify.

Response: This pre-determined BUD is not intended to restrict use of any individual material that is listed under the BUD but has allowed uses that are included elsewhere in 360.12 and 360.13. Its main purpose is to allow excavated material consisting of mixtures of these materials for grade adjustment under the conditions, and in the locations stated. For example, there is no further restriction intended for the use of concrete as allowed under 360.12(c)(3)(viii) in any county in New York State, or the use of Fill Type 2 anywhere in the state. However, recycled concrete aggregate (RCA) or broken concrete and F2 cannot be mixed together before importation or upon delivery to a grade adjustment project in the areas restricted under 360.12(c)(2)(ix).

Comment: Pursuant to §1100 of the State Public Health Law, NYCDEP has authority to regulate certain land uses in order to protect the City's drinking water supply and already restricts the use of construction and demolition debris as fill to "recognizable uncontaminated concrete, asphalt pavement, brick, soil, stone, trees or stumps, wood chips, or yard waste." 15 RCNY § 18-41(c). The same restriction also is included in State regulation 10 NYCRR § 128-3.11(c). Establishing new and conflicting standards for fill within the New York City Watershed is not necessary, could cause confusion, and would unnecessarily restrict its beneficial reuse.

Response: 360.12(c)(2)(ix) is consistent with the regulations of the City of New York at 15 RCNY § 18-41(c) and the New York State Department of Health at 10 NYCRR § 128-3.11(c) restricting the use of construction and demolition debris as fill. Specifically, the NYCDEP and NYSDOH regulations allow "…only construction and demolition debris that is recognizable uncontaminated concrete, asphalt pavement, brick, soil, stone, trees or stumps, wood chips, or yard waste" which, with exception of organic material, is identical to this pre-determined BUD.

Comment: Remove the words "except in Nassau County, Suffolk County, Westchester County and the New York City Watershed". It does not matter where the material originates, since material originating from these areas must pass the same Part 375-6.8(b) chemical tests as areas outside these locations. They are both clean materials.

Response: When specifying restricted locations, the predetermined BUD in 360.12(c)(2)(ix) does not refer to the source sites for these materials, but to "*the location[s] of use as described in this paragraph*" (see 360.12(c)(2)). The Department agrees with the commenter that the materials allowed for use under this predetermined BUD are deemed not to adversely affect the environment or public health regardless of origin, provided they meet other criteria for the specific material or fill type. Of the allowable materials, only Fill Types 2 and 3 need to pass the Part 375 criteria referenced by the commenter. Note also that this provision has been revised to replace "New York City Watershed" with "Putnam County".

Comment: Restriction on use of this pre-determined BUD in the NYC Watershed west of the Hudson River (WOH Watershed) will pose economic hardship on individuals and municipalities in this rural area, when justification is not provided as to why mixed uncontaminated concrete, brick and asphalt pavement and clean fill cannot be used in the Watershed.

Response: This pre-determined BUD has been changed to restrict use of materials north of New York City only in Westchester and Putnam Counties. The intent of the restriction in this pre-determined BUD is to prevent the undocumented importation of unrecognizable mixtures of soil-like material, concrete, brick and asphalt into the designated counties. Recognizable or tested material can continue to be used in these counties pursuant to other predetermined BUDs.

Comment: The requirement to notify the appropriate Department regional office for use of more than 2500 cubic yards of material is vague. The Department should provide a form for this notification, specific email contact information to submit the form, at which stage of the project must the Department receive the form and clarify what will be required on the form.

Response: The Department will provide forms and other aids to meet this requirement.

Comment: This provision appears to invert the current practice regarding the intake of materials for reclamation. Under current practice for Mined Land reclamation, permittees are allowed to import materials for reclamation unless specifically prohibited from doing so. Requiring affirmative authorization for material reuse would require amendment to many, if not most, current Mined Land Reclamation permits. The Department should clarify that

amendment of a Mined Land Use Plan or Mined Land Reclamation Permit would only be required if the use of this material would otherwise be prohibited by Part 360 or other applicable law.

Response: The Department must ensure that its predetermined BUDs do not interfere with the environmental goals and objectives of other programs, including the Mined Land Reclamation program. These regulations ensure that solid waste disposal is appropriately managed so that materials imported to mines are not injurious to the environment or inconsistent with the approved mined land reclamation plan. The proposed predetermined BUD only requires that the activity of material use be authorized in an approved Mined Land Use Plan, whose revision, if needed, would not entail a more time- and effort- consuming permit modification.

Comment: The prohibition on the acceptance of consideration in exchange for material under this BUD does not relate to the potential environmental suitability of the material in question. If the material meets each of the required physical, geographic, and use restrictions, those characteristics do not change by virtue or receipt of payment for the material. To better encourage reuse of this material, the restriction on fees for receipt should be eliminated.

Response: In the Department's experience, allowing a recipient of this type of mixed, unrecognizable material to receive a fee incentivizes the receipt of contaminated materials and/or excessive quantities of material, resulting in environmental damage and nuisance conditions. Furthermore, this practice would violate the prohibition on "fee or any other form of consideration" for disposal of C&D debris under subdivision 2-a of ECL § 27-0707.

Comment: Under proposed subclause 360.12(c)(2)(ix)(*b*)(*2*), "Any fee or other form of consideration for receipt of the material is prohibited." We note that fill material brought into a NYC agency construction project is generally paid for, as is fill paid for outside of NYC but within the New York City Metropolitan Area Waste Impact Zone (NYCMAWIZ).

Response: No restriction against purchase of fill or grade adjustment material is intended, but rather payment in the form of a tipping fee or disposal fee collected by the recipient.

Comment: We request that NYSDEC clarify whether it is the Department's intent that material "received at the location of use" in the New York City (NYC) Watershed, Westchester County, etc. must be used in a specific way (grade adjustment, raising surface elevation, and must be placed above the seasonal high groundwater table, etc.)? Many construction sites are dewatered when excavations are backfilled. Accordingly, the restriction to place material above the seasonal high groundwater table (even for F1 soils) seems prohibitively /unnecessarily restrictive.

Response: The material allowed under this pre-determined BUD is unrecognizable and untested. For material placed below the water table, it is recommended select material, such as Fill Type 2, be used, or a case-specific BUD obtained pursuant to 360.12(d). This predetermined BUD is not intended to restrict Fill Type 1 from use, only mixtures of F1 with the other C&D debris described in 360.12(c)(2)(ix).

Comment: Also, given the restriction in subclause 360.12(c)(2)(ix)(*b*)(*3*) to placement above the seasonal high-water water table, if a New York City agency has a construction project where backfill is required to be placed below the water table, how is NYC to procure material and meet this requirement?

Response: The mixed material described under this pre-determined BUD should not be used below the water table without case-specific City and Department review. Other types of excavated materials and C&D debris are allowed below the water table and can be procured, e.g., recycled concrete aggregate under 360.12(c)(3)(viii), Fill Type 2 or Fill Type 3.

Comment: Under subclause 360.12(c)(2)(ix)(*b*)(*5*), the term "residues" is not clear. As the section currently reads, it could be interpreted to prohibit receipt of otherwise exempt RUCARB from C&D debris handling and recovery facilities. Also, the provision allowing "*de minimis* amounts of wood included with these materials" as "acceptable under this determination" should be moved from this subsection to the beginning of Section 360.12(c)(2)(ix), between the first and second sentence. That way the *de minimis* exception applies to the entire subparagraph.

Response: "Residue" is defined in 360.2(b)(247) and does not prohibit non-residue materials otherwise meeting conditions of this predetermined BUD. The Department agrees that the statement concerning de minimis content should be relocated to the opening statement of 360.12(c)(2)(ix).

360.12(c)(2)(x)
Comment: We request clarification as to whether this section is applicable to bricks, concrete and asphalt generated onsite.

Response: Yes. This section is applicable to bricks, concrete and asphalt reused on the site of generation

Comment: The predetermined BUD for recycled brick, concrete, and asphalt aggregate under cover should remove the "separated and stored" requirement; the receiving facility should be able to rely on the facility's Section 361-5 status and other visual and olfactory indications to determine appropriateness without having to verify the full internal operations of the distributing facility.

Response: The Department disagrees with this comment; it is essential that materials used for this type of aggregate be separated and stored prior to processing, regardless of where the material is processed.

Comment: This proposed predetermined BUD is almost identical to subparagraph 360.12(c)(2)(xi), except that (x) allows *de minimis* wood or soil and (xi) states material coming from a 361-5 facility (prohibiting de minimis wood and soil). However, does 360.12(a)(2)(i): "solid waste that is being sent to facilities subject to regulation under Part 361 of this Title until the solid waste is processed to meet the requirements of this Section;" indicate that a 361-5 facility can make and distribute material specified under 360.12(c)(2)(x)?

Response: The difference between predetermined BUDs under 360.12(c)(2)(x) and (xi) is that (x) allows de minimis soil or wood. However, aggregate under either predetermined BUD could be produced at a 361-5 CDDHRF. Material used under (xi) must come from a CDDHRF and can be used under impermeable surfaces and under a soil, gravel or Fill cover of at least three inches.

Comment: Can recycled material listed in this proposed predetermined BUD be used in the excluded counties and the NYCMAWIZ, under road surfaces, or does this predetermined BUD apply Statewide?

Response: The aggregate described in 360.12(c)(2)(x) or (xi) can be used statewide as described under these BUDs.

Comment: Does this proposed new Predetermined BUD allow for the commingling of recycled concrete pavement and asphalt pavement? Does recycled aggregate from concrete pavement mean crushed concrete? NYSDEC should also clarify if the description of asphalt pavement can be interpreted to mean larger pieces of asphalt or if it only includes millings.

Response: This new predetermined BUD is intended to allow aggregate made from commingled crushed concrete and crushed or milled asphalt (this mixture is sometimes termed "R2" by the construction industry, versus "R1" which is 100 percent crushed concrete). Any proportion of concrete, brick and asphalt is acceptable provided it meets project specifications.

360.12(c)(2)(xi)
Comment: The commenter requests the addition of "*De minimis* amounts of soil or wood included with these materials are acceptable under this determination" at the end of this predetermined BUD.

Response: Since this pre-determined BUD is allowed for use not only under impermeable surfaces, but under three or more inches of cover material (topsoil, an appropriate Fill, gravel, etc.), it is held to a stricter standard and other materials are not allowed.

360.12(c)(3)

Comment: Another subparagraph should be added to Paragraph 360.12(c)(3) that describes crushed material from a 361-5 facility that is only comprised of concrete/masonry and brick (no asphalt). The former regulations included this BUD under 360.12(c)(3)(viii) and there was no mention of "prior to processing at a 361-5 facility".

Response: No additional subparagraph is necessary; the proposed changes to 360.12(c)(3)(viii) include these same materials and the words "…*prior to any necessary processing at an authorized facility*…" which include but are not limited to 361-5 facilities.

360.12(c)(3)(iii)
Comment: This reads as though industrial wastes historically used as an ingredient in a manufacturing process can be reused regardless of the intended reuse. It seems like the paragraph is missing the "intended use".

Response: This predetermined BUD is not included in the proposed rulemaking and is outside the scope of this rulemaking.

360.12(c)(3)(viii)
Comment: The commenter requested clarification regarding whether this predetermined BUD prohibits processing of recognizable, uncontaminated concrete, rock, brick and masonry products, minus asphalt or soil, into commercial aggregate? Are 361-5 facilities in any way prohibited from making this aggregate – i.e., does the wording "at an authorized facility" refer to exempt sites described in Part 361-5.2(a)(2)?

Response: The pre-determined BUD and its wording, "*at an authorized facility*" is not intended to prohibit processing of the referenced materials at any exempt, registered or permitted CDDHRF except where specifically prohibited under 361-5.2(a)(2) as the commenter notes.

Comment: Are 361-5 facilities prohibited from making this material and utilizing this predetermined BUD (i.e. the material meets the BUD by definition instead of being sent to the receiving site as in the Paragraph 360.12(c)(2) BUDs?)

Response: No. The pre-determined BUD is intended to allow use of commercial aggregate made from the referenced materials processed anywhere authorized by the Department in New York State, or from an out-of-state facility, provided the material "*meets the requirements for the intended use*"; this point of waste cessation can be at the 361-5 facility, as opposed to materials under 360.12(c)(2).

Comment: Where in the 360.12 regulations is the permitted or registered 361-5 facility that produces a clean crushed concrete aggregate located? Is there no Pre- Determined BUD to allow the transfer or use of this material?

Response: This predetermined BUD in 360.12(c)(3)(viii) allows transfer and use of aggregate produced only from clean concrete (sometimes termed "R1" by industry); or aggregate with some brick, rock or masonry. The authorization in a BUD, pre-determined or case-specific, focuses on a material for reuse, whereas 361-5 authorizes processing facilities to produce materials to meet requirements for the BUD, if necessary.

Comment: To maximize the beneficial reuse of Recycled Concrete Aggregates ("RCA"), tolerance for a *de minimis* amount of asphalt material should also be included in this Pre-determined BUD to account for miniscule pieces of asphalt that remain embedded in concrete debris during concrete crushing operations that are impossible to separate out.

Response: The predetermined BUDs in 360.12(c)(2)(x) and (xi) are intended for RCA containing asphalt.

360.12(c)(3)(ix)
Comment: The commenter requested clarifications regarding this predetermined BUD: What are considered "other paved surface construction and maintenance applications" (The Department should provide examples of these uses and guidelines for use); is reuse of millings limited to the right of way or does it also allow for reuse on other

lands, including private property; and what conditions, if any, does the Department have for such reuse, e.g., binding or compaction?

Response: "Other paved surface construction and maintenance applications" can include but are not limited to uses for reclaimed asphalt pavement (RAP) identified in the New York State Department of Transportation Standard Specifications. Backfilling of utility cuts is another acceptable use. This predetermined BUD does not limit use to public rights of way; any private entity can use RAP or millings for purposes allowed under this predetermined BUD.

Comment: If the millings are provided by New York City DOT to outside entities for use in accordance with this Pre-determined BUD, what obligations does NYCDOT assume for ensuring that these millings are being used in compliance with the Pre-determined BUD?

Response: Millings meeting the requirements for use at the point of generation cease to be regulated as solid waste. The entity providing them assumes no more liability for improper use than if a non-waste material was provided. Entities storing and using millings are obligated to do so in accordance with accepted industry practice and the pre-determined BUD.

Comment: Besides reporting via the Pre-Determined BUD Large Quantity Annual Report (if reporting quantities are exceeded), does the Department have any additional recordkeeping requirements for this Pre-determined BUD?

Response: No other recordkeeping is required other than the reporting under 360.12(c)(5) for entities distributing 10,000 or more tons of any pre-determined BUD material in the calendar year.

Comment: What is the practical reason for having two separate Pre-determined BUDs in 360.12(c)(2)(x) and 360.12 (c)(3)(ix), which both address the use of asphalt pavement, given that there is no discernable difference between the descriptions of these beneficial uses ("under asphalt pavement or other impermeable surface" versus "asphalt pavement or in other paved surface construction and maintenance operations")?

Response: Pre-Determined BUD 360.12(c)(2)(x) is intended to allow use of subbase made from mixtures, in any proportion, of crushed concrete, brick, and asphalt pavement. This mixture does not cease to be regulated as solid waste until received at its location of use so that the material can be tracked in transport due to its greater potential for improper use. The more valuable and widely-used reclaimed asphalt pavement (RAP, or millings) addressed in 360.12(c)(3)(ix) ceases to be regulated when milled or crushed to meet RAP specifications for use, and does not require tracking in transport.

360.12(c)(3)(x) and (xi)
Comment: Paragraphs (x) and (xi) do not make any distinction for locality, so these BUDs seem to apply to the entire State; this leads to a conflict with exemption language in 6 NYCRR Part 364, Waste Transporters. Under 364-2.1 Exempt Transport, 364-2.1(b)(13) says any RUCARBS including asphalt in the NYC Metropolitan Area Waste Impact Zone are not exempt from transport and tracking documents. Which citation governs if a truck gets pulled over carrying these materials? The commenter suggests changing language here and/or in 6 NYCRR Part 364 Waste Transporters to resolve this apparent conflict.

Response: The Department recognizes the potential conflict in language, and to simplify the regulations but continue to provide for tracking of excavated material, fill, and unprocessed or unrecognizable C&D debris in the NYCMAWIZ, the point of waste cessation in predetermined BUDs for these materials, in the final express terms, is when materials are received at the location of use if materials are generated in the NYCMAWIZ. These changes appear in 360.12(c)(2) and 360.13(b)(1).

360.12(c)(3)(xiii)
Comment: The predetermined BUD in this subparagraph for "*excavated material meeting specifications of and used pursuant to a municipal soil reuse program approved by the Department and administered by the municipality under an agreement with the Department*" appears clearly to accommodate the presently operating NYC Clean Soil

Bank. Can other NYC agencies obtain an exemption similar to the Clean Soil Bank for clean fill they generate from construction projects?

Response: Yes; other New York City agencies, and any municipal soil reuse program statewide can utilize this predetermined BUD.

360.12 (c)(3)(xiv) and 360.12(c)(4)(v)

Comment: The commenter expressed concern regarding these proposed pre-determined BUDs for scrap metal, noting that prompt scrap and home scrap that steel manufacturing facilities generate on-site (cobbles, off-spec bar, etc.) is routinely recycled and reused on site. Under the Department's proposed rules, a manufacturer reusing self-generated scrap metal would have to demonstrate that this home scrap meets a "*commercial commodity specification*" (Part 360.12(c)(3)(xiv)) or the scrap would have to leave the facility (Part 360.12(c)(4)(v)) to be eligible for a BUD. This requirement is unnecessary and inappropriate and should be deleted. First, the proposed rule would impose a wholly undue burden on the steel manufacturing industry to demonstrate that the steel it makes meets a specification. Second, as the proposal is drafted, a facility would illogically be required to ship the scrap steel created at the facility off-site and then buy back the very same steel. Third, scrap generated at steel products facilities, although clearly meeting a commercial commodity specification, would require the scrap generator to demonstrate that the scrap is a viable commercial commodity. Scrap metal, whether generated on-site or elsewhere, is the primary ingredient in the steelmaking process and is managed as any other raw material. Clarifying that scrap generated in the steel manufacturing or steel product industries is subject to the Part 360.12(c)(3)(xiv) pre-determined BUD applies a common-sense treatment to the use of steel scrap since it is never discarded and, hence, is not solid waste in the first instance. The commenter emphasizes the importance of clarifying *end users* of scrap metal versus scrap processors in the Parts 360 and 361 regulations. The commenter recommends revising the definition as italicized: "(xiv) scrap metal, including processed scrap metal, prompt scrap metal and home scrap metal, *and scrap generated by steel product manufacturing"* and delete, *"which meets a commercial commodity specification for use in an industrial or manufacturing process.*"

Response: The Department will retain the proposed language for this pre-determined BUD since reuse of self-generated scrap within the steel manufacturing industry, and many other industries, is covered by the pre-determined BUD in 360.12(c)(3)(iii) for "*industrial waste historically used as an ingredient in a manufacturing process*". Steel manufacturers would not be impacted by or required to conform to pre-determined BUDs intended to regulate scrap from Subpart 361-7 Scrap Metal Processors and Vehicle Dismantling Facilities, where the predetermined BUD in 360.12(c)(4) applies, or scrap metal from sources other than Subpart 361-7 facilities, where 360.12(c)(3)(xiv) applies (and the requirement to meet a commercial commodity specification is necessary to ensure metal can be used by manufacturing facilities).

360.12(c)(3)(xv) and (xvi)

Comment: The commenter applauds proposed inclusion of subparagraphs (xv) and (xvi), which provide additional options for the management of concrete cutting slurry, but requests an additional allowance for placement of concrete slurry material into any open sidewalk areas or pedestrian plazas that are being installed or replaced. This proposal is consistent with the Department's approval, since 2003, of the placement of concrete slurry material at State DOT and NYS Thruway sites.

Response: Under these predetermined BUDs, dewatered solids from concrete slurry, or the slurry itself, can be used as ingredients in the manufacture of the products identified in the BUDs so long as they are "meeting industry specifications."

360.12(c)(4)

Comment: The commenter recommends adding new subparagraphs under 360.12(c)(4) to allow use of uncontaminated, recognizable concrete, brick, masonry products, rock, asphalt pavement, asphalt millings, and aggregate consisting of mixed concrete, brick and asphalt pavement, as described in Paragraphs 360.12(c)(2) and (3), for these materials exiting a C&D Debris Handling and Recovery Facility or other solid waste management facility.

Response: 360.12(c)(2) and (3) allow the subject materials when the source is a solid waste management facility authorized to receive, store and/or process them. 360.12(c)(4) identifies materials which are eligible for BUDs *only* when leaving a solid waste management facility. The suggested language is not necessary.

360.12(c)(4)(iii)
Comment: The commenter requests the words "vegetation from utility right-of-way clearing" be added to this predetermined BUD.

Response: The Department will retain the language proposed in this rulemaking, which is inclusive of materials generated from utility right-of-way clearing.

360.12(c)(5)
Comment: Commenters stated the Department, not industry, should provide a form for this reporting; otherwise reporting requirements are not clear.

Response: This provision is not included in the revisions and therefore is outside the scope of this rulemaking.

360.12(d)(2)(vii)(*c*)
Comment: In addition to demonstrating that "the management of the waste when used in accordance with the beneficial use will not adversely affect public health and the environment," petitioners are also required to provide "other information as the department determines to be appropriate." These additional unknown requirements could dissuade entities from petitioning out of concern that these new unknown requirements could delay projects and lead to additional costs. Such an outcome would reduce material reuse and hinder the petitioner's and State's sustainability objectives.

Response: This provision is not included in the revisions and therefore is outside the scope of this rulemaking.

360.12(d)(3)(vi)
Comment: Under this section, a use can only constitute a beneficial use if heavy metals are not above Residential and Protection of Groundwater Soil Cleanup Objectives ("SCOs"). However, this requirement fails to account for naturally occurring background concentrations of heavy metals throughout NYS that exceed Protection of Groundwater SCOs. To account for these background conditions, the Department should allow applicants to include additional material explaining exceedances of the applicable standards.

Response: This provision is not included in the revisions and therefore is outside the scope of this rulemaking.

Comment: We recommend that land use play a role in use of Soil Cleanup Objectives to direct allowable limits for materials, as it does in the Brownfield Cleanup Program (BCP).

Response: This provision is not included in the revisions and therefore is outside the scope of this rulemaking.

360.12(d)(8)
Comment: This requirement for an annual report is not clear and the Department should provide a form for it.

Response: This provision is not included in the revisions and therefore is outside the scope of this rulemaking.

360.12(f)
Comment: For small western New York towns, gas well production brine has been an affordable and effective material to regrade and stabilize dirt roads and control dust. Towns have endeavored to comply with all Department regulations, including submitting annual testing results and volumes of brine used for these purposes. New added requirements will add significant expenses to Town budgets for these services if Towns are prevented from using gas well production brine. The Department should be helping Towns find different solutions to unpaved road maintenance and dust control if the Department will be restricting brine use for protection of the environment.

Response: Comment noted; most proposed changes do not further restrict brine use for road treatment compared to requirements in the November 4, 2017 regulations.

Comment: The commenter supports the proposed concentration thresholds flexibility in the "BUD Criteria for the Use of Oil/Gas Well and LPG Storage Brine for Road Uses" when it comes to the application of brine for road stabilization. The commenter expressed concern, however, that for road stabilization a "case-specific" approval process by the Department could be unnecessarily time consuming and result in costly project delays. A municipality should not need to seek separate approvals from NYSDEC or have additional testing performed for each individual road stabilization project. Such a process could lead to costly delays in critical applications during the typical northeastern construction season because such treatments are significantly weather dependent. The commenter urges NYSDEC to accept brine without any additional needed approval from already tested sources that have met the annual standards for deicing. For sources that are outside these limits we recognize that there may need to be case-specific analysis but would ask that it be a streamlined approval process.

Response: The change to "case-specific" consideration for use of brine in road stabilization is not intended to further burden holders of brine BUDs, but rather allow use of brine for one-time, annual road stabilization easier by giving the Department discretion in approving brine sources for this purpose which may not meet some criteria in 360.12(f)(3)(iii). Properly graded and stabilized unpaved roads require less application of dust palliatives (including brine) and better public safety and access, justifying one-time annual use of brine from these sources with Department review and approval.

360.12 (f)(2)(vi)
Comment: We respectfully request additional clarification on the definition of "Point of Use", we understand that this means the location where trucks are filled with brine for road application; for example, the brine storage pond of the producing entity or the municipal storage tank. If the brine in our tanks comes from these same sources we would argue that any requirements for more testing, for example of each truck, would be unnecessarily duplicative.

Response: This provision is not included in the revisions and therefore is outside the scope of this rulemaking.

360.12(f)(3)(iii)
Comment: In 2016 and 2017 comments on the previous rulemaking, we expressed concerns over the continued permission to apply oil and gas production brines to roadways. Since that time, additional information has been developed that increases the doubts that use of these brines in the manner allowed by the regulations is truly "beneficial." These include concerns over the efficacy of the practice, particularly for dust suppression, and mounting evidence of high levels of radioactivity in fluids from conventional wells which has caused other states to tighten their policies. As a result, in 2021 the Legislature passed a ban on the use of drilling fluids and production fluids on the State's highways. Although Governor Hochul vetoed this legislation, she also directed the Department to "evaluate the regulatory approach in place and identify whether further rulemaking is necessary". Nothing in the proposal indicates that any such evaluation has taken place: the testing parameters and procedures remain essentially unchanged. In fact, numerical standards for acceptable levels of toxic substances and environmental hazards are made inapplicable to the use of brine for road stabilization, with only a non-binding statement that lower concentrations "may" be considered. No new substances are added to the list of criteria and no levels are lowered. It is hoped that in the coming months the Department will complete the review of its regulatory approach and improve the protections afforded to the public and the environment.

Response: Use of gas well brine and LPG storage brine benefits western New York towns greatly by providing a lower cost option for calcium and sodium chloride for winter and summer road maintenance. In winter, brine aids with ice and snow control on paved roads for public safety. In other seasons, brine is key to regrading and stabilization of unpaved roads for public access and to controlling dust for air quality. The Department's regulations monitor pollutants in brine sources and ensure the brine is of adequate strength to be effective. Calcium and sodium salts, whether in solid or solution (brine) form or whether mined or byproducts of gas extraction and storage, are still the most practical option for de-icing, road stabilization and dust control in New York State. When applied in controlled amounts to prevent runoff or infiltration, they cause minimal surface and groundwater pollution. The Department's regulations focus not only on composition criteria but on how brine must be applied to roads for maintenance purposes to avoid excess. The current regulations balance environmental protection and public safety.

360.12(f)(3)(x)
Comment: The proposal amends subparagraph 360.12(f)(3)(x) to change the date on which an alternative annual report must be submitted. This subparagraph should be further amended to provide that this report must contain the same signed statement that is generally required for a responsible official of a beneficial use petitioner's organization under §360.12(d)(8), stating that the organization has been in compliance with the approved case-specific beneficial use determination during the reporting period.

Response: This change has been made to 360.12(f)(3)(x).

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

General
Comment: The Department has not reached out to municipal leaders who write and administer specifications in order to understand the differences and potential hurdles these new excavated material and fill regulations invoke. This comment period is such an opportunity, but the comments are a one-way communication that do not allow agencies to provide examples of how this specifically will not work. We would like to be a partner with NYSDEC, working to create ways that maximize taxpayer cost savings through reuse, increase green options and reduce emissions on long transportation. We would welcome the opportunity to provide suggestions for how the existing classifications can be tweaked to increase material reuse rather than a complete redefining of terminology, geographic areas and transportation requirements.

Response: The Department respectfully disagrees with this comment; many of the proposed changes come from consultation with the construction industry and municipalities.

Comment: Proposed changes to Fill Reuse regulations will result in three negative impacts to New York City municipal and industry entities: 1) they will significantly limit the quantity and frequency of reuse; 2) they will increase costs to these entities; and 3) fail to provide clear instruction regarding new notice and reporting requirements. The present beneficial use regulations for fill material, particularly for use upstate, work adequately to promote reuse and should not be changed by creation of the NYCMAWIZ and other new reuse requirements.

Response: Many changes to 360.13 in this rulemaking are intended to streamline, not complicate, reuse of fill material. The Department believes this will become be more evident once changes are implemented in practice.

Comment: Given restrictions on use outlined in this section, if a facility operates in New York City, is it allowed to send out materials for grade adjustment outside of the City?

Response: Yes, provided materials meet criteria for specific Fill Types and uses.

Comment: This portion of the regulations should have the goal to promote as much reuse of excavated material as possible to achieve the overall solid waste hierarchy goal of avoiding landfilling at the few remaining landfills left in NYS.

Response: The Department agrees with this comment. The intention of this Section is to provide directions for reuse of excavated material, even material mixed with non-soil constituents and urban or historical chemical contamination, to the extent possible without case-specific Department review, with the hope that this will encourage both expanded and proper Fill use while reducing illegal diversion and disposal.

360.13(a)
Comment: It appears that 360.13(a)(3) contradicts paragraph (a)(1). 361-5 facilities (CDDHRFs) can distribute Fill Types F1 through F3 but cannot accept them? This seems counterproductive. Subpart 361-5 facilities provide a service to the construction industry to accept fill that cannot be used for a beneficial use on another project, and so provide a consistent location to recycle soil legally. 361-5.5(e) details the requirements to sample for F1/F2/F3 fill leaving 361-5 facilities. 361-5.3 allows the 361-5 facilities to accept soil but does not have any reference to the F1-F5 designations. These can be added to the reference if 360.13(a)(3) is deleted.

Response: There is no contradiction. Materials received at any solid waste management facility, including a CDDHRF regulated under 361-5, are solid wastes. Therefore, the pre-determined beneficial use provisions in 360.13 cannot apply to materials on receipt at the CDDHRF, but can apply when the materials exit the CDDHRF, as stated in this subdivision.

360.13(a)(3)
Comment: This paragraph states that Section 360.13 does not apply to excavated material going to Subpart 361-5 facilities. It could create confusion, however, since excavated materials at Subpart 361-5 would be required to be sampled and sorted into the various fill types. This language should be clarified, perhaps to specify which requirements are for excavated material or fill material, and which are for the processing and handling of these materials, or by reference to 361-5.5(e) which incorporates the sampling requirements from this section.

Response: By stating that these pre-determined criteria do not apply to materials entering a CDDHRF, this subdivision adequately clarifies that materials received at such facilities are subject to storage, handling and testing requirements in 361-5.

360.13(b)(1)
Comment: Was the intent of the Department to leave Suffolk County out of Fill Type 1? This conflicts with 364-2.1(b)(12)(i) that lists Suffolk County for restrictions on F1 fill. This conflicts with Section 364-5.1(a)(1)(i) that says a tracking document is required for all F1 fill within the NYC Metropolitan Area Waste Impact Zone; however, 360.13(b)(1)(i) makes Suffolk F1 fill exempt from being a solid waste because it is not in Nassau or Westchester Counties.

Response: The Department has revised the final express terms to set the point of waste cessation for all Fill Types to when received at the location of use if the Fill is generated within the NYCMAWIZ (with exception that Fill Type 1 cannot be generated in New York City). Accordingly, Fill Type 1 generated in Suffolk County would be subject to requirements of Part 364 Waste Transporters.

Comment: Please explain the rationale behind (i) and (ii) where a distinction is made between F1 material generated outside or inside Nassau and Westchester County, and in each case, the material ceases to be solid waste at a different point, either once the determination is made or once delivered to site of reuse? Why Nassau and Westchester counties and not Suffolk County? This entire reference including two counties within the larger NYCMAWIZ without any clear understanding as to why Suffolk County is excluded and why material outside of Nassau and Westchester can be made before reuse but Westchester (containing a number of NYC reservoirs and a very large rural population) requires placement before waste is exempt makes no sense, is not explained and is thoroughly confusing as to how this is coupled and decoupled with the other areas of the NYCMAWIZ. These distinctions will be extremely difficult for regulated entities to follow, including engineering design or construction teams without significant environmental expertise.

Response: Fill Type 1 can be generated in Nassau and Westchester Counties, but due to the counties' proximity to New York City, there is a higher risk that this untested material may contain urban contamination. In view of this risk, the Department has determined that Fill Type 1 generated in these counties must be regulated as solid waste for purposes of waste transporter registration or permitting, tracking and recordkeeping requirements until reaching its place of reuse. To simplify requirements, the final express terms state the point of waste cessation in 360.13(b) for all Fill Types to when delivered to the location of use when Fill is generated within the NYCMAWIZ (recognizing that Fill Type 1 cannot be generated in New York City).

Comment: If the purpose of Section 360.13(b)(1)(ii) is to enable the tracking of Fill Type 1 from Westchester County due to the concern that excavated material from highly developed areas may be misclassified, consideration should be given to delineating the County into two segments (Southern Westchester and Northern Westchester), so as not to impose an additional burden on the portion of Westchester County that is more similar to the rest of NYS than it is to the City. Placing additional restrictions on Nassau County and Westchester County seems to introduce an unnecessary level of complexity and confusion into the management of what NYSDEC deems clean fill material that may have "any end use."

Response: Comment noted. The Department believes, however, that creating two segments of Westchester County would introduce still more complexity in the waste cessation provision.

Comment: This Section is also inconsistent with the Consolidated Regulatory Impact Statement accompanying these proposed Part 360 revisions, which states, "[a]ll types of fill material are being addressed in one pre-determined beneficial reuse for 'excavated material' pursuant to 360.13." Despite this statement, Section 360.13(b)(1)(iii) states that Fill Type I cannot be generated in New York City.

Response: The prohibition on Fill Type 1 being generated in New York City is unchanged from the November 4, 2017 regulations, where this type of Fill appeared under 360.12(c)(1)(ii).

Comment: Commenters pointed out areas of New York City that can be expected to yield clean soil from excavation that should be allowed, if necessary with testing, under Fill Type 1("any end use"). For example, soils from deep excavations encountering native glacial sediments in the City can meet unrestricted-use SCO criteria or background criteria equivalent to upstate New York native soils, as can locations such as the Far Rockaways, Alley Pond Park in northeastern Queens, and soils stockpiled at the City's Office of Environmental Remediation's Forbell Street Clean Soil Bank. These soils also are equivalent to Part 375 Track 1 soil allowed for unrestricted use in the NYS Brownfield program. The Proposed Regulations should reflect the reality that some NYC soils can meet Fill Type 1 criteria.

Response: The purpose of a separate Fill Type 1, versus Fill Type 2, is to allow use of excavated material meeting the physical criteria of the Fill Type *without* sampling and laboratory analysis. Requirements for management of excavated material under the Brownfield program are different from management of excavated material pursuant to Parts 360 and 361. Materials under the Brownfield program have been sampled or otherwise characterized as native, undisturbed fill, whereas the characteristics of materials not sourced from a site in the Brownfield program are unknown and, in New York City, potentially impacted by human activity. Requiring use of soil from City sources under Fill Type 2, which requires confirmatory sampling, is warranted.

Comment: Effectively the same F1 material generated in different parts of the State is either exempt from being a solid waste at the point of generation or only at the time it is reused except for NYC where the NYSDEC has concluded it does not exist at all. The designation in NYC should allow for the identification of F1 fill in NYC following testing and that it meets the requirements of Table 6.8(a) (Unrestricted SCOs).

Response: With the potential for urban contamination in New York City from in-situ materials or those excavated and mixed with other materials, the Department deems it necessary to require sampling and analysis for soils. The Fill Type 1 category precludes any sampling and analysis and so it not appropriate. Unrestricted SCOs cannot be used to determine excavated material capable of "unrestricted use" since the list of parameters in 375-6.8 of Part 375 does not cover the universe of potential contaminants in urban soils, only those prioritized for the Superfund and Brownfield programs and for which SCOs have been developed. Fill Type 2 allows most scenarios of beneficial use that would be sought by the construction industry.

Comment: The commenter recommends adding a second category to F1 material. This category would be supported with material generated within NYC that has been adequately tested and characterized as containing no construction and demolition (C&D) material (recognizable asphalt, concrete, brick or other manmade material). It could be referenced as 'de minimis.' This could be F1a or b.

Response: The Fill described by the commenter is allowed under proposed Fill Types 2 and 3, with few restrictions hampering its reuse in construction projects in or outside of NYC.

360.13(b)(2)
Comment: This provision requires Fill Type 2 (i.e., soil, sand, gravel or rock) to be managed in the NYC Watershed as waste until it has been tested and reaches the site of reuse, imposing an additional burden on WOH Watershed communities that will significantly complicate the management of certain types of fill material. Once again, however, the Department has failed to explain why that additional burden is necessary, particularly in the

WOH Watershed, which consists largely of lower income communities that will be further economically strained by the additional costs associated with managing soil as waste until it reaches the site of reuse.

Response: Sampling and management of excavated material as Fill Type 2 is only required if indicators of contamination stated in 360.13(d) are present; much excavated material generated and used in the WOH Watershed will be managed as it is currently under 360.12(c)(1)(ii), as Fill Type 1. Note that the definition of the New York City Metropolitan Area Waste Impact Zone (NYCMAWIZ) has been revised to eliminate the New York City Watershed, so that the west-of-Hudson Watershed is not subject to restrictions on material transport and use in the NYCMAWIZ.

Comment: Commenters requested justification for why Fill Type 2 has a different point of waste cessation in the NYCMAWIZ versus in the rest of the state. It is the same material; why is it required to be handled as a regulated solid waste until delivery to its site of reuse instead of at its point of generation (or determination to be Fill Type 2)? What are the implications for handling this material until its delivery?

Response: The consequences of diversion and misuse of contaminated excavated material in the NYCMAWIZ makes it imperative that Fill Type 2 be tracked from point of generation to point of reuse. Excavated material is a type of C&D debris, and as such is subject to the exemption thresholds and registration criteria in Part 364 Waste Transporters, not transporter permitting. C&D debris tracking, however, is required.

Comment: The geographic basis for waste cessation for Fill Type 2 will cause much confusion for the construction industry with projects occurring and material being transported across county lines. Material generated upstate in the watershed is now regulated, where the 2017 rules created the General Fill category that allowed material to be reused without testing. Now all material within this area needs to be tested in order to understand if it meets F2, but testing does not need to be done because the prior section allows F1 determinations to be made and those do not require testing. There is no clear path which can be explained to construction teams in order that they may follow a process.

Response: Other than the point of waste cessation, Fill Type 1 generated in the NYCMAWIZ (outside of New York City) is unchanged from the November 4, 2017 "unrestricted fill" category in 360.12(c)(1)(ii). No sampling is required of this material unless contamination is suspected, with indicators stated in 360.13(d) – and if a determination is made that the material is Fill Type 2, its uses are unchanged from current regulation. Only the point of waste cessation is changed from the 2017 regulations.

Comment: Suggested revision would state that all pre-determined BUD material to be delivered for reuse is exempt once the determination is made. All material that is not reused in this manner and is removed from the site of generation will be managed as regulated solid waste.

Response: While it is understood that this comment is offered in the context of excavated material, the Department notes that many materials that can be used under pre-determined BUDs pose a risk of diversion for misuse or illegal disposal. Thus the point of waste cessation does not occur until the material reaches its place of use as allowed under the pre-determined BUD. The waste status of the material in transit to its destination of use authorizes the Department to require registered or permitted transport vehicles and tracking.

360.13(b)(3)
Comment: Please confirm that Fill Types 3, 4 and 5 are regulated solid waste for transportation and tracking requirements.

Response: This subdivision addresses point of waste cessation only, but yes, Fill Types 3, 4, and 5 cease to be regulated as solid waste when received at sites and in locations described in 360.13(f) and (g).

360.13(c)
Comment: The entire requirement in this section indicates the department is either unaware of how general construction contracts and projects actually are executed, or the department is not concerned regarding the results this process will generate. We note that the paperwork process required in this section is not significantly different

from a Case Specific BUD. It is unreasonable to think that projects can be bid and expected to have submittals delivered to the Department for review and comment before material can be moved. This will cause large scale, out-of-state disposal of fill, which can be built into a budget and schedule but will increase the cost to construct projects in NYS. We recommend the inclusion of specific criteria that must be met, sampling, etc. and when that information is generated and material meets the criteria, it is then exempt and may be moved and reused. If the Department cannot create a procedure that can be followed with certainty and submissions are always required, then movement of all fill in NYS is essentially following the onerous a Case Specific BUD process, which will significantly slow down projects.

Response: These notification requirements are nearly identical to requirements in the November 4, 2017 360.13 regulations; they have been moved to this subdivision. They are *notification* requirements, not case-specific review submittals. 360.13 sets up the very process stated by the commenters to allow contractors to make their own determination with regard to an excavated material's Fill Type for purposes of planning or real-time decision during a project. Contractors are not dependent on any Department review or approval once having notified the Department's Regional office of the transfer of excavated material for Fill reuse. If a contractor's sampling of excavated material finds the material cannot conform to any Fill Types and they wish a case-specific review by the Department, *then* a case-specific BUD petition would be necessary. Otherwise, this process requires no case-specific Department review and no resulting delay to projects that would not otherwise presently be incurred for material with suspect or mild visual contamination.

360.13(d)
Comment: Section 360.13(d)(1)'s exemption from testing 10 cubic yards or less of material that originates in NYC if there is no historic evidence of contamination seems to conflict with Section 360.13(b)(1)(iii)'s prohibition on Fill Type 1 generated within NYC. NYSDEC should rectify the seeming contradiction.

Response: This paragraph does provide an exception to the prohibition on Fill Type 1 being generated in the City of New York, for very small projects such as private residential construction. The limit on ten cubic yards is *per site*.

360.13(e)
Comment: Neither paragraph (1) nor (2) specifies what type of samples are required, either a grab sample or composite sample.

Response: In order not to be overly prescriptive, the regulation leaves the decision of grab versus composite sampling to the qualified environmental professional (QEP) as stated in 360.13(e)(1), provided that the sampling is representative of the excavated material proposed for reuse.

360.13(e)(2)(i)
Comment: Required parameters appear unchanged from the 2017 regulations, referring to the soil cleanup objectives published in 6 NYCRR Part 375. Does DMM understand that the Part 375 regulations are also undergoing revision, and Part 375 is looking to add the emerging contaminants (PFOS and PFOA lists) and dioxane to the list of SVOCs?

Response: Yes; the Department recognizes that emerging contaminants threaten environmental quality and should be evaluated where they may appear in waste materials proposed for reuse.

Comment: Commenters expressed concerns regarding the continuing linkage of required analysis parameters in this subdivision with parameter lists in the current 6 NYCRR 375-6.8 Soil Cleanup Objective tables. The Part 375 parameters are currently being recommended for revision and will potentially be expanded to include several Emerging Contaminants (ECs) such as polyfluorinated alkyl substances (PFAS) and 1,4-dioxane.

The commenters mention several concerns with respect to EC analysis for Fill determinations:
- The lack of EPA-approved analytical methods for ECs.
- The multitude of compounds identified by assays under consideration, most of which do not have promulgated limits in soil or solid matrices.

- ECs are found ubiquitously in consumer products and action levels in environmental media are extremely low, in the parts per trillion or quadrillion. Some Fill materials now commonly reused in construction, that are otherwise unimpacted and clean, could exceed proposed EC limits through atmospheric deposition.

Commenters predict that the addition of these three new EC parameters will result in a huge increase in volume of contaminated soil, render the whole Part 360 soil reuse program unmanageable by the State or by industry, and will result in soil being unnecessarily sent out of state for disposal.

Commenters made several recommendations:
- Given uncertainties in appropriate analysis methods and regulatory concentration limits in soil, it does not seem sensible to add these EC analyses to the list of required parameters for Fill Type determination at this time.
- If EC analysis must be added, then the only compounds that should be of concern should specifically be those for which NYSDEC has promulgated SCOs, not an expanded list lacking guidance or promulgated limits.
- Fill Types slated for use under or required to be under impermeable surfaces and above seasonal high-water table should not be subject to EC analysis, since their potential to contribute to groundwater pollution in these scenarios is unlikely.
- Materials exceeding EC criteria should be allowed in Fill reuse scenarios below under impermeable surfaces (e.g., pavement or foundations) and above the water table.
- Proposed language in Part 375 states that the Groundwater SCOs for these parameters apply only to programs governed by Part 375 (assuming Superfund, Brownfield programs) and should not be applied to other environmental programs unless directed by those programs. Based on this language in Part 375 and uncertainties for sampling and evaluation of soils for ECs and consequences for materials becoming ineligible for fill use, ECs should only be analyzed in context of Part 375 programs, not for solid waste and BUDs.

Response: Emerging Contaminants including PFAS compounds and 1,4-Dioxane are significant concerns across the state and reducing the distribution and reintroduction to the environment of these compounds is a priority. The Department will continue to utilize Part 375 tables for the implementation of the 360.13 excavated material reuse program and include any revisions which are introduced. The Department disagrees that these parameters should only be required for sites regulated under the Brownfield and Superfund programs; ECs may be present at any site at concentrations of concern depending on historic use of the land and spill or release events.

Materials not meeting criteria for Fill Types 2 through 4 can be used as Fill Type 5 – under an impermeable surface and above the water table - or evaluated for other use under a case-specific BUD.

360.13(e)(2)(ii)
Comment: Section 360.13(e)(2)(ii) creates a new asbestos testing requirement that is confusing and needs to be clarified. For example, this section requires testing "if suspect asbestos-containing material is observed," but fails to explain where such material must be observed for the requirement to apply. This section also fails to specify if testing is needed on fill that contains suspect asbestos or the actual suspect asbestos within the fill. A more reasonable approach would be to only require such testing where there is information suggesting uncontrolled demolition of a structure that contained asbestos-containing material ("ACM").

Response: This requirement for asbestos testing is not new; the proposed language is intended to clarify the similar requirement in the November 4, 2017 regulations. The present language does state asbestos testing was required *on proposed fill material* if "demolition of structures has occurred on the site", which the Department has found to be too broad a trigger for an asbestos analysis. It is better that an asbestos analysis be required as intended in this proposed subparagraph *on excavated material proposed for use as Fill* only if asbestos-containing demolition debris or other constituents of excavated material are confirmed to be at the site.

Comment: It also should not require NYS Department of Labor (DOL) or NYSDOL-certified inspector to make this determination; this determination can be made by the QEP who, per Section 360.13(e)(1), is responsible for the design and implementation of the sampling program. Logistical difficulty is created if a certified asbestos inspector is intended to be on site in order to make the 'suspect determination' to be made? This is not regarding building demolition but soil and fill handling. Asbestos Containing Material (ACM) has a very specific determination, which

is 1% by weight. ACM will not be present in quantities in the ground sufficient to equal this definition unless there is approximately 30 pounds of asbestos per cubic yard of soil.

Response: The intent of this subparagraph is not to require the presence of a certified asbestos inspector at soil or fill excavation projects, but to limit any requirement of asbestos sampling to instances where suspect material is encountered during excavation, by the QEP or contractor, and confirmed to be suspect ACM by a qualified inspector. Scenarios which will require actual analysis of excavated material for ACM will be rare, and as noted by the commenters, rejection of excavated material for asbestos still rarer. Typically, suspect ACM should be removed from materials intended for reuse.

Comment: We note that even if ACM is contained within a building, it should not be presumed that there is a nexus to the soils underlying that building. Asbestos is a solid, not a vapor or liquid and is incapable of penetrating into soil without purposeful mixing.

Response: The Department agrees that if structures have been demolished following any necessary asbestos abatement and all ACM removed from a site, subsequent excavation can avoid asbestos analysis through visual inspection by the QEP and contractor. Scenarios are rare but happen where excavated materials contain friable or crushed, non-friable ACM from uncontrolled demolition and burial of debris.

360.13(e)(2)(iv)
Comment: As drafted, this provision does not provide sufficient limitation on when VOC sampling would be required. The "presence is possible" standard can be interpreted over-broadly to incorporate any number of otherwise minor environmental conditions. The commenter recommends altering this language from "possible" to "reasonably likely," allowing for the avoidance of superfluous testing.

Response: The Department believes the language used here is appropriate given the examples of indicators of possible VOCs provided (spill history, odors, real-time instrument readings).

360.13(f)
TABLE 2 - General
Comment: Several commenters expressed that requirements for the five Fill Types appear confusing and inconsistent at times with respect to when the BUDs take effect and in which geographic locations. Commenters expressed concern that the organization of requirements in the proposed regulations could likely lead to industry misunderstandings and inconsistent implementation. One commenter recommended consolidation of all requirements for each Fill Type together in the regulations. Another commenter recommended expanding Table 2 to include all requirements including notification, point of waste cessation and location restrictions.

Response: Comments noted. The Department appreciates the commenter's suggestion for an expanded table, which is outside the scope of this proposed rulemaking but may be appropriate on a guidance web page to consolidate all applicable requirements for each type of Fill.

Comment: Suggestion would be for the department to review this language and examine how the department would include these requirements in construction projects that have the need for schedule and reasonable determinations to be made before the digging begins.

Response: The very intention of these regulations and Fill Types is to provide a self-implementing decision process for the construction industry to follow to reduce the number of case-specific reviews by the Department and as an aid to project planning and anticipating management options for excavated materials.

Comment: Any references to Part 375 vocabulary need specific citation and regulatory cross references. If not, the department should avoid confusing terms that exist in sister regulations. Using terms in 360, e.g. "commercial", that exist in Part 375 will create confusion unless specific references are made. No categories of fill under this revision look at Commercial or Industrial uses stipulated in Part 375.

Response: The Department agrees with this comment and has defined uses of the terms "commercial" and "industrial" wastes, land uses, etc., with respect to the Part 360 Series in 360.2 or made reference to specific citations in Part 375 when necessary. Any other use of terms (e.g., "commercial" in "commercial soil") that may appear in Part 360 should not be construed as having the meaning given in Part 375 but rather a plain language meaning. In addition, Fill Types in this subdivision are allowed for sites with commercial or industrial site use (as defined in Part 360 and Part 375) where no other conditions prohibit use.

TABLE2 – Fill Type 1
Comment: Sections 360.13(f) and 360.13(b) prohibit Fill Type 1 from being generated within NYC. However, this absolute prohibition is unnecessary. To drastically increase the opportunity for material reuse, NYSDEC should create an additional category or subcategory of Fill Type 1 to include NYC material that has been fully tested in accordance with Table 1 of Section 360.13(e) and meets all the parameters of Part 375-6.8(b) Residential and Protection of Groundwater SCOs. Projects within NYC often generate significant volumes of deeper native clean soil in order to create multiple basement levels. Projects generating over 10,000 cubic yards of material, which meets the current General Fill criteria, or even better clean native soil, are very common. Under the proposed regulatory categories, this material can only be reused under Case Specific BUD applications. This new category or subcategory could be added as a Pre-determined BUD classification, which would allow the material to be reused without the necessity of a case-specific BUD application, thus allowing contractors to determine the possibility of reuse earlier in the project schedule and prevent it being transported out of NYS for disposal.

Response: The Department declines to add the proposed category. Once an excavated material requires testing for Fill determination, it is no longer Fill Type 1. Fill Type 2 provides for pre-determined beneficial use of excavated material generated in New York City with few restrictions beyond allowable uses for Fill Type 1. The Department disagrees that case-specific petitioning and review would be necessary more often under the proposed rule than under existing Part 360.

TABLE 2 – Fill Type 3
Comment: Fill types F2 and F3 have the same chemical limits. F3 is physically the same as F2 except for very small amounts of inert material. So why can't F3 material be used the same as F2 material – in particular, why must it be covered if used on residential properties? The inert material is *inert*, implying it poses no concern for the environment or health and safety.

Response: Fill Type 3 is proposed to address soils excavated in or near construction projects, especially highways, where materials consist of soil and rock but unavoidably contain small, irretrievable pieces of pavement or building materials. These physical contaminants may be of concern for nuisance or aesthetics to residential purchasers who at least should be aware of the type of fill and have topsoil or other natural soil cover provided for it.

Comment: Commenters expressed objection to the term "*de minimis*" for allowable concrete, brick or asphalt in Fill Type 3, as being vague and confusing for the construction industry. Commenters requested inclusion of a percentage limit to define *de minimis*. If a percentage criterion cannot be stated in the regulation, the commenters suggest a visual inspection standard whereby material does not contain pockets or layers of brick, concrete or other non-soil constituents and only contains soil; incidental, individual pieces of brick or concrete, etc. that are above this material that fall in the excavation would be considered "*de minimis*."

Response: The Department cannot specify a percent of allowable concrete, brick or asphalt in the rule. Instead, visual standards such as proposed by the commenters are helpful. However, the Department expects that concrete, brick and asphalt in excavated materials intended for use as Fill Type 3 will be smaller pieces mixed into soil during the process of excavation and which are not easily retrievable.

Comment: Fill Type F3 can be used "If used on residential property, material must be under impermeable surface or under a minimum three inches of Fill Type 1, Fill Type 2 or commercial soil." The term "*commercial soil*" is not defined – what is it, and what chemical criteria must it meet? Does it refer to "commercial" criteria in Part 375? – if so this must be specifically cited in 375.

Response: The term "commercial soil" in context of Fill Type 3 refers to mined, purchased, or commercially available soil. This material is not a solid waste and therefore is not regulated under the Part 360 Series.

Comment: There should be another type of fill, call it F3A, with the same chemical limits as F2, and with no volume limit of non-soil constituents. It should be allowed to be used the same as F2 material. The material is clean.

Response: The Fill described by the commenter is not usable in locations where natural soil is desired. Regardless of chemical analysis results, the material is contaminated, physically, for Fill Type 2 purposes. This material is classified under Fill Type 4 or 5.

Comment: We recommend that the Department consider F3 fill for reuse without F1 or F2 cover if the *de minimis* amount of debris is pre-screened from the material, or on commercial and industrial sites.

Response: Table 2 allows for commercial and industrial site use of Fill Type 3 without clean soil cover. Screening is unlikely to remove all concrete, asphalt and brick from F3 material, and the material must continue to be handled as Fill Type 3.

TABLE 2 – Fill Types 4 and 5
Comment: Confusion is created by the provision that Fill Type 4 "[m]ay also be used in the same manner as Fill Type 5" as prohibiting the use of Fill Type 4 in Nassau and Suffolk County because proposed Section 360.13(g)(2) prohibits "[p]lacement of Fill Type 5…[in] Nassau County or Suffolk County." The regulations should clarify that this is not the intent, and that Fill Type 4 can be used in Nassau and Suffolk County, Westchester County and the New York City Watershed for the uses and in the manner that Table 2 allows (we comment on the "locality" restriction in Section 360.13(g)(1) below).

Response: The Department recognizes the potential for confusion, and in final express terms, has clarified in 360.13(f), Table 2 that Fill Type 4 cannot be used in the same manner as Fill Type 5 in Putnam, Westchester, Nassau or Suffolk Counties where use of Fill Type 5 is also prohibited. The Department believes this change both prevents confusion and is protective of these portions of the NYCMAWIZ in limiting locations where Fill Type 4 can be placed.

TABLE 2, Footnote 1
Comment: Currently, the non-soil constituents specifically excluded are materials that readily degrade or produce odors. We recommend expanding the definition to provide additional examples of what would not be acceptable (e.g., bricks, concrete debris/asphalt greater than a specific size), as applicable.

Response: The other materials mentioned by the commenter would not degrade or produce odors, and accordingly are not mentioned; moreover, they are acceptable in some Fill Types. With regard to "granular and compactible" materials based on particle size, the definition of Fill in 360.2(b)(110) already covers this requirement.

TABLE 2, Footnote 3
Comment: Footnote 3 requires placement of fill within 365 days and after that, prohibits use. This should be expanded to allow material to be delivered to construction projects for use as backfill as long as the construction project is continuing. If a project is halted or delayed an extension request can be submitted to the Department but if a project schedule is greater than 365 days, this would be acceptable. All dust and soil erosion control requirements must be met until material is reused. This would open additional opportunities for reuse where material can be identified for reuse and staged to allow flexibility rather than having to find material when it is needed. The larger time period would assist specifically in the reuse of soil within NYC, where multiple agencies coordinate project, soil availability and staging to meet project schedules that do not match.

Response: Since these provisions in 360.13 are predetermined and self-implementing, it is necessary for the Department to include time limitations to avoid Fill Type 5 placement and abandonment without impermeable cover. If a longer time is sought, the project owner should seek a case-specific determination or permit for storage and use over multiple construction seasons and project time extensions.

360.13(g)
Comment: The commenter requests clarification that notification of the transfer of fill material is triggered under Section 360.13 in advance of the placement of the fill material.

Response: The commenter refers to paragraphs in this subdivision which have been removed, with Notification now proposed to be addressed in 360.13(c). Subdivision (c) is specific to when notification must be made.

360.13(g)(1)
Comment: Fill Type 4 generated in the NYCMAWIZ can be used within the same "locality", however, "locality" is not defined. NYSDEC should clearly define this term and clarify if it means the same county or municipality or a specific geographic radial distance from site of excavation to site of reuse; otherwise this term restriction will be impossible for the industry to interpret.

Response: The term "locality" is clarified in the context of the language in 360.13(g)(1); each geographic entity within the NYCMAWIZ (Counties and the NYC Watershed) is named in the paragraph as a "locality". Therefore, this paragraph is saying materials generated in each individual portion of the NYCMAWIZ can be reused in that portion.

Comment: Wouldn't the geographic restrictions for use of Fill Types 4 and 5 in the NYCMAWIZ conflict with the general exemption in paragraph 360.14(b)(1)?

Response: No, since the general exemption in 360.14(b)(1) covers "transfer, temporary storage, treatment, processing…" of excavated material, not permanent placement. Under the general exemption cited, entities generating excavated materials with intent to reuse them could stage, test, process and store them for up to 365 days at properties in the NYCMAWIZ under their ownership or control, before transferring to a location where their use is allowed.

Comment: If these regulations are intended to encourage reuse pursuant to the NYS solid waste hierarchy, why are Fill Types F4 and F5 not allowed to be reused at all within the entire NYCMAWIZ with the exception of NYC?

Response: Fill Type 4 is not entirely prohibited but can be moved and reused within the same locality in the NYCMAWIZ outside of New York City; only Fill Type 5 is prohibited altogether. Since allowable limits for certain chemical constituents are greater in these two Fill Types, the geographic restrictions on use are intended to protect New York City's water supply, the Long Island sole source aquifer system and populated areas near New York City.

Comment: In paragraph 360.13(g)(1), is the intent to move F4 fill within the same county, or can F4 fill be moved within the four areas identified (Westchester, Nassau, Suffolk and the NYC Watershed)?

Response: This paragraph only allows placement of material generated in one locality at another site in the same locality, i.e., material generated in Westchester County, placed in Westchester County; material generated in Nassau County, placed in Nassau County; same in Suffolk County; and material generated in the NYC Watershed, in the Watershed.

Comment: Within the NYC Watershed, Fill Types 4 & 5 are subject to restricted and prohibited use respectively. As with Section 360.13(b), NYSDEC has failed to explain why these additional requirements are necessary, particularly in the WOH Watershed.

Response: The purpose of these restrictions is to protect water supplies, both local and for New York City. However, the area north of New York City designated for the restrictions on use of Fill Types 4 and 5 in Subdivision 360.13(f) has been revised to eliminate the west-of-Hudson New York City Watershed and designate Putnam and Westchester Counties east of the Hudson instead of the entire New York City Watershed.

360.13(g)(2)
Comment: Does this imply F5 fill can be used in NY City? Why not say the NYC Metropolitan Area Waste Impact Zone?

Response: Fill Type 5 can be used in New York City, and since NYC is part of the NYCMAWIZ, the prohibition on placement of Fill Type 5 is not extended to the entire NYCMAWIZ.

360.13(g)(3)
Comment: Use of Fill Type 4 or Fill Type 5 can only occur at a project that is authorized by an approved local building permit or other municipal authorization, if required. The material must be used within 30 days of arriving at the project site." The restriction on storage of Fill Types 4 and 5 to 30 days will prove impracticable for many construction projects, as the time necessary for groundworks can exceed the thirty-day limit. For F5 soils, which can only be used under cover, the thirty-day limit would be nearly impossible to achieve on most sites. Given the significant use limitations of F4 fill to use on sites where *in situ* contaminants exceed the applicable contaminant levels for F4 or F5 criteria, there is little risk of increased environmental contamination through stockpiling of soils. Moreover, as identified in footnote 3 of Table 2, F5 fill cover must be installed within 365 days of fill placement, thereby limiting its potential impact. The commenter recommends eliminating the thirty-day limit of on-site storage prior to use.

Response: The Department believes 30 days to be a reasonable limit for storage or staging of material after delivery to the construction site, to prevent impacts from wind and water erosion from stockpiles. Keeping in mind that Section 360.13 outlines *pre-determined* criteria for fill reuse under which Department review is not required, a user of fill could petition the Department for case-specific fill reuse, with justification, to accommodate logistics on a specific project.

Comment: Paragraphs 360.13(g)(1) and (2) and their categorical geographic limitations on the use of Fill Types F4 and F5 will create numerous practical impediments to the reuse of this material in a large portion of the state, severely restricting potential end users for generated fill. Any excess material generated outside of a "locality" where it can be reused would therefore need to be appropriately treated and disposed of, and few facilities exist in the close suburban counties and most parts of the watershed to address the additional F4 and F5 soil generated. Given the paucity of facilities to handle this new influx of unusable fill material, these geographic restrictions will increase the soil disposal costs of any project in the watershed—requiring significant additional truck mileage to reach disposal facilities—and will potentially encourage additional illegal dumping. Additionally, these geographic restrictions will increase the amount of material being transported, thereby increasing the associated greenhouse gas emissions for such activities, in contravention of the goals of the CLCPA.

Response: The intent of these paragraphs is not to prohibit reuse of Fill Type 4 or Type 5 in locations outside of the NYCMAWIZ or in New York City if the Fill meets the other criteria in this Section.

360.13(g)(4)
Comment: The commenter supports the recognition that individuals may receive compensation for disposing of F1 and F2 fill but questions the additional limitations on receiving fees for the disposal of F3, F4, or F5 fill on land owned by the individual. While the Department's interest in prohibiting unpermitted landfills is understandable, those concerns should be mitigated by the broader restrictions on reuse of fill material. If the material is being used for a permitted purpose under the Series F standards, there is no risk of illegal land filling. To better encourage sites to reuse fill in accordance with the promulgated standards, the restriction on receipt of payment for use of all fill types should be eliminated.

Response: A difference in receipt of a fee for Fill Types 1 and 2 is that they are *not* being disposed, and in fact may be placed on rented land for long-term staging. Fill Types 3, 4 and 5, by contrast are mildly contaminated, and the Department's experience has been that receipt of payment for these materials encourages illegal disposal. There should be no need for the recipient to be paid when the Fill is likely provided at no cost to the recipient, providing a cost savings compared to purchased fill.

Comment: Given that Fill Types 3, 4 and 5 have been determined not to be solid waste, provided they are used in the manner set forth in Part 360, there should be no prohibition on providing payment or other forms of consideration for their reuse. They constitute a valuable construction commodity once determined to meet the requirements for F3, F4 and F5, and the need for avenues for reuse only grows for these materials, given the shut

down of a number of processing and disposal facilities in New York. Allowing payment or consideration would increase the reuse of these materials. With respect to F3, this material especially should not be subject to this restriction. This material meets the specifications of general fill, which can be used for nearly any purpose given the lack of contamination confirmed in this material. The fact that it used to contain other inert aggregates or materials prior to processing should not change this. If the material is suitable for nearly all uses that general fill is, and it meets the same sampling standards as general fill, it has value, and payment or other consideration should be allowed.

Response: The cessation of solid waste status in Fill is not unconditional, and if materials are not placed in accordance with conditions and criteria in Section 360.13, these materials remain regulated as solid waste under the Part 360 Series. In particular it is the Department's experience that the charging of a tipping or disposal fee by a recipient of excavated material will result in receipt of non-compliant material or too much material. Fill Type 3 does not contain chemical contamination but does contain physical contamination. If in fact any of these Fill Types has value to the construction industry, there should be no reason for a recipient to charge for placement of these materials, especially when they are at no cost or provided at a small cost to the recipient compared to mined, purchased fill.

Comment: Sections 360.12(c)(2)(ix)(b)(2) and 360.13(g)(4) both contain rules regarding payment and/or consideration for receiving or allowing the beneficial use of material. All rules pertaining to the same topic should be consistent and easy to find, so as to maximize compliance among construction teams and other regulated professionals. Additionally, while we agree that it is appropriate to restrict payment for fill, such payment often includes costs for transportation and trucking. Therefore, an exception should be made that allows for payment for transportation only, which can often be costly.

Response: Comment noted. Restrictions on payments for receipt of fill include "other forms of consideration," which includes payments for delivery and transportation.

Comment: Eliminate the prohibition of payment or consideration for receipt of F3, F4 and F5 materials, provided they are used in the manner set forth in the Part 360 Series, to increase the reuse of these materials.

Response: It is the Department's experience that the charging of a tipping or other fee by a recipient of excavated material will result in receipt of non-compliant material or excessive and unnecessary amounts of material.

Comment: Paragraph 360.13(g)(4) includes a restriction on receiving payment or any form of compensation for the use of Fill Types 3-5. We recommend that this note should be revised to indicate that payment for transportation of fill is allowed. The current language suggests that even trucking costs cannot be paid; trucking of fill is often equally as costly as the fill material itself, and it is unclear why the generator should have to pay this cost of the receiving site is willing to pay to ship the material to their site.

Response: Restrictions on payments for receipt of fill include "other forms of consideration," which includes payments for delivery and transportation.

Section 360.14 Exempt facilities and activities.

360.14(b)(1)
Comment: Are transfer and storage requirements not applicable to, for example, NYC municipal projects where material can be moved from one site under control and ownership to another? Suggested clarification: material may be reused on any site under control and or ownership. Transportation over public streets requires documentation for exempt material during transport. If material use changes, all material loses exempt status immediately.

Response: Exempt storage of C&D by persons identified by the generator as responsible for generation of the material, and exempt storage sites authorized by the City of New York as temporary staging areas, are included in Subpart 361-5.2**.** Reuse requirements are specified in Section 360.12 and Section 360.13. Transportation requirements are specified in Part 364.

Comment: It is unclear if this section exempts NYCDEP projects from the transfer and storage requirements, provided that material is moved from one NYC-owned property to another NYC-owned property. A clarification would be helpful.

Response: This exemption includes material moved from one property owned by a municipality to a second property owned by that municipality.

360.14(b)(9)
Comment: It appears that Sections 360.14(b)(1)(viii) and 360.14(b)(9) contradict each other. Please clarify whether 360.14(b)(1)(viii) should read "a facility storing more than 1,000 waste tires, including a waste tire generator storing waste tires."

Response: Paragraph 360.14(b)(1)(viii) is specific to tires stored at a facility generating waste tires, while 360.14(b)(9) allows storage or storage with transfer of less than 1000 tires at any location.

Section 360.15 Registered facilities, transporters and collection events.

360.15(c)
Comment: Paragraph 360.15(c)(1) already states that the Registration must be provided on a form prescribed by the Department. The specific information on what that form is vague.

Response: The Department did not propose to revise Paragraph 360.15(c)(1); therefore, the suggested revision is outside the scope of this rulemaking.

Comment: Section 360.15(c)(2) states that the owner must state the intended volumes for the facility based on the size and orientation of the site and maximum throughputs per day on the form. There is no requirement for engineering drawings specifying the volume limits or showing calculations. Are these numbers simply added to the Registration form without backup calculations?

Response: The Department's intent is to allow the registration application process to be as simple as possible. In many cases, engineering drawings and calculations will not be necessary to identify maximum storage volumes and throughputs. A site plan is required as specified in paragraph 360.15(c)(4), however, and any additional calculations can be appended to the applications.

Comment: Paragraph 360.15(c)(4) is confusing. This section states that the owner must submit information requested by the Department. Is this information required at the time of submission, or is it required if requested by the Department later? Should the language be rewritten to simply say it is required at the time of submission?

Section 360.15(c)(4) also states that the submission must include a site plan describing the solid waste management practices. Should this site plan be prepared by a licensed Professional Engineer or Licensed Surveyor? Have any specifications for submission be stipulated or will hand sketches be allowable? Should the site plans show stockpile locations and have detailed volume calculations so that the Department can verify the volumes listed in the Registration Form?

Response: This provision establishes the right of the Department to request additional information as necessary to make a determination as to the compliance of a proposed registered facility with the applicable Part 360 Series requirements. The site plan should show how wastes will be managed on the site, but it is not a requirement that it be prepared by a licensed Professional Engineer or Licensed Surveyor.

Section 360.16 Permit application requirements and permit provisions.

360.16(c)(1)(iii)
Comment: Regarding this new proposed subparagraph: the site owner/operator should be notified prior to NYSDEC personnel entering the site so that they may have a representative on-site to witness the conditions during

the site visit, ensure that samples are being properly obtained and be given the opportunity to take a split sample or take their own sample.

Response: Comment noted.

Comment: Regarding this subparagraph, there is also a safety concern related to the presence at a solid waste management facility of any person who is not familiar with the facility. The presence of an owner/operator representative would eliminate that safety concern.

Response: Comment noted.

Section 360.22 Financial assurance.

360.22(b)
Comment: In order to obtain financial assurance, an owner must have a detailed written estimate from a third party to perform closure in compliance with the requirements of Section 360.21 and Subpart 374-2. Can this estimate be an engineer's estimate or does the owner/operator need to obtain an independent Contractor.

Response: 360.22(b)(1) requires the owner or operator to have a detailed written estimate, in current dollars, of the cost of hiring a third to perform closure in compliance with the requirements of 360.21 and 374-2. This can be an estimate from an engineer, but it must cover the costs of hiring a third party to perform the closure.

Comment: The closure cost estimate should incorporate potential salvage value that maybe realized with the sale of materials that had been generated by the owner/operator associated with the facility at the time of closure. Many of the CDDHRF facilities have spent considerable sum of time and monies to creating different products which will have a reclamation or salvage value and maybe stored on the site during a closure process.

Response: This comment is outside the scope of this rulemaking.

Comment: For estimating an inflation factor for construction costs, we recommend using a construction cost index similar to those published by the Engineering News Record or other construction industry organization rather than the inflation factor in the proposed regulation which is related to goods and services (GDP).

Response: Comment noted. Based on guidance from the US EPA the Department believes the GDP Implicit Price Deflator is appropriate for this use. Published construction cost indexes are often based on the weighted aggregate of average prices of constant quantities of common labor and construction materials and can be subject to considerable short-term variations. These indexes are not seen as the best fit for calculating inflation factors for solid waste management facility cost estimates.

360.22(c)
Comment: "The department may reduce, to zero if appropriate, the amount of financial assurance required under this section by the amount of financial assurance obtained by a facility for the benefit of the municipality. . ." The new additions to this section appropriately recognize and attempt to address the "double bonding" issue, granting the Department the discretion to eliminate the required financial assurance mechanism where alternate mechanisms are provided under municipal law. Since the City of New York maintains a robust bonding requirement for solid waste transfer and processing facilities, individualized consideration of the sufficiency of those financial assurance mechanisms would be superfluous. To reduce the Department's administrative burden in reviewing applications for facilities in New York City, we recommend incorporating an additional exception, providing that "Financial assurance mechanisms authorized and accepted by the New York City Department of Sanitation or other municipalities in the State shall satisfy the requirements of this section."

Response: On a site-specific basis, the financial assurance cost estimate and financial assurance mechanism being used to meet the New York City Department of Sanitation or other municipal financial assurance regulations would be evaluated for compliance with the requirements of Section 360.22. In cases where the municipal financial

assurance obligations were found to be compliant with the Part 360 requirements, duplicate financial assurance mechanisms would not be required.

PART 361 – MATERIAL RECOVERY FACILITIES

General

Comment: The commenter objected to any relaxation of requirements for permitted facilities, stating these harm the recycling industry. In particular the requirements for both permitted and registered recovery facilities must ensure the best separation and quality of recovered materials possible with best practices and technology.

Response: The Department has not relaxed any requirements for design or operation of RHRFs and other material recovery facilities in this rulemaking.

Comment: The Department must incorporate flexibility for processing and recycling facilities into these regulations for counties with populations of one million or more, to manage various fill types in physically constrained spaces.

Response: The suggested revision is outside the scope of this rulemaking.

Subpart 361-1 Recyclables Handling and Recovery Facilities

Section 361-1.3 Registered Facilities

Comment: We note the throughput limit for RHRFs has been eliminated, and the sole requirement for registration is meeting the 15 percent limit on residue annually. Could the Department similarly allow source-separated organics facilities to register without a throughput limit, based only on residue rate? These changes would make it possible for many more organics facilities to exist and have necessary capacity to keep organics recovery local in New York City.

Response: Facilities for organics recovery face different challenges to prevent impact to the communities around them than do RHRFs, therefore a similar registration framework for organics facilities as for an RHRF may not be protective. This comment is addressed further under 361-3.

Comment: We note the changes to this Subpart leave only the annual residue rate as the criterion for RHRF registration. What is the consequence to a facility if the 15 percent annual residue rate is exceeded?

Response: This requirement is unchanged for a registered facility from the November 4, 2017 rulemaking. If the residue rate is exceeded, the Department would review the facility's status as a registered RHRF and consider whether the facility's registration would be revoked, subject to Part 621 (Uniform Procedures), and the facility would be required to obtain a permit.

361-1.5 Operating Requirements

Comment: Regarding 361-1.5(g), why must incoming material be weighed? Why can't facilities use volume measurements?

Response: This requirement is unchanged from the regulations effective November 4, 2017. 361-1.5(g) merely clarifies that RHRFs receiving 5 tons per day or less material, as under current regulations, are not required to weigh incoming and outgoing materials. No facilities would be compelled to obtain weighing equipment who do not already have this obligation. In any case, any revisions to the requirement to weigh incoming material are outside the scope of this rulemaking.

Part 361 Subparts 361-2 to 361-4
General Comments on Organics Recycling

Comment: The Department should also revise 6 NYCRR 350-2.4, which governs how designated food scrap generators manage the food scraps they produce. Currently, the regulations do not require any standardized process for managing food scraps. Instead, the separation and management processes are entirely dependent on the capabilities and requirements of the organics recycler or intermediary facility which the generator contracts with.

This lack of uniformity will cause significant contamination in the organic recycling stream, limit recycling opportunities, and push small recyclers out of the market. The Department should instead promulgate regulations that require all designated food scrap generators to separate all food scraps from all inorganic waste at the point of generation.

Response: Designated food scraps generators are regulated under Part 350. Revisions to Part 350 are outside the scope of this rulemaking.

Comment: The Department should adopt a uniform source separation requirement for all designated food scrap generators. Given the concerns about depackagers and the existing regulations, the Department should adopt new regulations which require all designated food scrap generators to separate food scraps form all inorganic materials at the point of generation. Under this new regulatory system, it would be the responsibility of all generators to source separate all food scraps from all non-compostable materials at the point of generation and arrange for the transfer of the source separated food scraps to an organics recycler. This new policy will prohibit the practice of combining source separated food residuals with packaged organics. Source separation is the most effective way to avoid contamination in the organics waste stream and is entirely viable for the majority of food scraps generated in the State, including packaged food. However, to address concerns with managing large volumes of heavily packaged food scraps, such as yogurt, ice cream, etc., the regulations should allow for food scrap generators to contract with a certified treatment facility, such as a depackager facility, to separate packaged food scraps on their behalf. This allowance should be strictly limited to significant volumes of heavily packaged organics only. This new regulatory system will decrease the amount of contamination in the organic waste stream, help facilitate a system that produces sustainable soil amendments, and ensure access for smaller composting operations. Moreover, the standardization of the management requirements for food scrap generators will make is easier for new organic recyclers to enter the market. A successful food scrap management system in New York will need to be flexible and responsive to the waste stream, generator density, and the availability of local infrastructure. These regulations balance those concerns with the need for a more uniform management approach.

Response: See response above.

361-2 and 361-3 Land Application Facilities/Composting Facilities

Comment: Current jurat language is deleted from reporting requirements for several other regulated activities. Such language is deleted from required elements of annual reports by land application facilities in §361-2.5(c)(2)(vii), composting facilities in §361-3.2(e)(33), anaerobic digestion facilities in §361-3.3(e)(30), other organics recycling facilities in §361-3.6(e)(30), and from waste transporter tracking documents in §364-5.1(b)(2) and annual reports in §364-5.2(d). These changes remove a simple tool to deter improper handling and disposal of wastes.

Response: The certification statement for annual reports was removed from Part 361 but it remains a requirement of the annual report as indicated on the form that must be submitted with the report. Therefore, it remains as an enforcement tool. For Part 364, the certification statement has been reintroduced in 364-5.1(b)(2).

361-3 and 361-4 Composting Facilities /Mulch Processing Facilities

Comment: We are pleased to see the changes in the regulation to incorporate additional protections to Long Island's groundwater, including the groundwater protection requirements in new 361-4.6, although again we note that the statute (Chapter 449 of the Laws of 2017) required these regulations to be promulgated and implemented by January 1, 2020.

Response: Comment noted.

Comment: Mulch and composting facilities, whether registered or permitted, often result in quality-of- life issues for neighbors, including odors. In disadvantaged communities those issues can further exacerbate existing health problems and other burdens and can depress property values. We urge the Department to ensure that registered facilities are required to implement best practices to avoid odors and dust and to be responsive to community complaints.

Response: The Department is continually evaluating methods to enhance performance, monitoring, and compliance. Under 361-3.2(c)(10) and 361-3.2(e)(1)(xi), both registered and permitted composting facilities are required to control the generation and migration of odors. In addition, 360.19(g) and (i) require the control of dust and odor at all registered and permitted solid waste management facilities, including composting and mulch facilities.

361-2 Land Application and Associated Storage Facilities

361-2.2(a) Exempt facilities

Comment: This section proposes a requirement that only 50% of the total annual volume of food waste in an NCRS certified storage facility consist of non-manure. However, Part 361-2.3(b)(2)(iii) allows for only 40% of the total annual volume. We request clarification from NYSDEC as to the reason this difference as our understanding is that they relate to the same facility requirement and should be the same value.

Response: The requirements in 361-2.2(d) and 361-2.3(b)(2) concerning storage of food processing waste at a farm, either a CAFO farm or non-CAFO farm, are not being revised with this rulemaking. It is correct that both types of storage structures require the same type of liner certification. A greater non-manure amount is allowed at CAFOs since there is more ongoing oversight through the certified planner that may not be present at a non-CAFO farm.

Comment: Subdivision 361-2.2(d) - Manure and food processing waste storage facilities located at a permitted consolidated animal feed operation (CAFO) are exempt from the Part 361 regulations except when the CAFO is located within the NYC Watershed. However, these higher performance standards are not based upon evidence of need and should therefore be dropped.

Response: Both the NYC Watershed and Long Island represent areas with sensitive groundwater sources and therefore, in some cases, require additional oversight. The revision requires a registration for these operations to decrease the potential for impacts due to improper nutrient application. The registration requires that the operations are conducted under a CNMP (comprehensive nutrient management plan).

361-2.3(b) Registered facilities

Subparagraph 361-2.3(b)(3)(viii)
Comment: Unrecognizable food processing wastes and paper mill residuals land application facilities located in the NYC Watershed must have a Comprehensive Nutrient Management Plan (CNMP). These higher performance standards are not based upon evidence of need.

Response: This does not represent a revision proposed with this rulemaking and is therefore outside the scope of this rulemaking. The requirement is found in 361-2.3(c)(8) of the Part 361 regulations promulgated in 2017.

361-2.3(c) Registered facilities - third-party manure land appliers

Comment: We see why this proposal could be beneficial to both the CAFO farm and to the manure applicator. Despite this benefit, there are some issues with the proposed language that need to be addressed prior to the Department finalizing this provision. We encourage the Department to do robust outreach to both CAFO farms who hire these custom manure applicators and the applicators themselves, but we submit the following commentary to begin the conversation.

First, the definition of a “third-party CAFO land applier” is vague and could be confusing We recommend that specific language indicating that the “third-party CAFO land applier” is a person engaged in the business of providing a service, similar to the definition provided by Vermont’s licensing program. “(c) Registration requirements for third-party CAFO land appliers. The following persons must be registered. (1) a person or entity who is engaged in the business of applying manure or nutrients to land other than the owner or employee of a

CAFO, who applies manure or process wastewater from a CAFO, referred to hereinafter as the manure applier, provided the following conditions are satisfied:"

Additionally, there are other questions that are not clear in the proposed regulation. First, it is unclear how long the registration period is. Is this an annual requirement, or other set period? Other states provide for a multi-year certification with annual renewals. These other states like Vermont and Pennsylvania also have basic education requirements to ensure that these individuals engaged in manure application understand the basics of manure handling and application. We strongly encourage the Department to continue to do outreach to further develop this proposal so that it attains the goals that it is intended to while protecting the complex relationship between CAFO farms and custom manure applicators.

Response: The Department agrees that outreach will be an important component of the implementation of this program and will use associations and other avenues to provide information. The definition of third-party CAFO land-applier has been revised to clarify that it does not cover one farmer assisting another with application. The registration period is 5 years. There is curently no regulatory requirement for an education component, but the Department will consider it for the future.

361-2.3(c)(1)
Comment: The definition of "third-party CAFO land applier" should be modified to explicitly allow farms to assist one another in land applying nutrients without being required to register. There are many scenarios where a CAFO may export manure, digestate, or process wastewater to a neighboring CAFO or AFO where the importer directs their timing, rate, and method of application in compliance with the General Permit for CAFOs. This type of export should not be discouraged or made more administratively difficult. A compliant exporting CAFO has the advantage of understanding nutrient management plans and have trained employee applicators. Requiring an exporting to be included in the definition of a "third-party CAFO land applier" will not add additional environmental protections, rather be administratively burdensome to the exporting permittee.
The term "engaged in the business of applying manure or nutrients" is likely intended to carve-out the above scenario but we think additional clarification would be helpful. "(c) Registration requirements for third-party CAFO land appliers. The following persons must be registered. (1) a person or entity who is engaged in the business of applying manure or nutrients to land other than the owner or employee of a CAFO, who applies manure or process wastewater from a CAFO, referred to hereinafter as the manure applier, provided the following conditions are satisfied:"

Response: 361-2.3(c)(1) has been revised to read "a person, other than the owner or employee of a CAFO, who land applies manure or process wastewater from a CAFO onto land that is under the control of a CAFO, referred to hereinafter as the manure applier". It does not apply to a farmer or a farm employee and only applies to waste taken from one CAFO to another.

361-2.3(c)(1)(ii)
Comment: Since the details of the registration process have not yet been shared, it is unclear how the department envisions the proposed requirements to be administered. Therefore, we have the following questions and comments:
a. What is the anticipated frequency in which a third-party applier will be expected to register? It seems impractical for the applier to submit the CAFO-required certification statements concurrent with the submission of a registration application since they will likely not know who their customers might be at that time. It is not uncommon for third party appliers to be solicited in emergency situations by farms they have not previously provided services to.

Response: The Registration process for all registrations under the Part 360 Series is contained in 360.15. A registration is valid for a maximum of five years (see 360.15(f)). 361-2.3(c)(1)(ii) has been revised so that certification is not required with the registration application. Revised 361-2.3(c)(ii) reads "the manure applier must submit the signed contractor certification statement required by the CAFO permit to the CAFO prior to the initial application of nutrients on the date of service". This would allow the applier additional flexibility since the farms do not need to be known at the time of registration.

361-2.3(c)(1)(iii)

Comment: The requirement should be changed from 7 to 21 days, or within 24 hours upon the request of the Department, to accommodate the reality of custom appliers' rigorous schedules during peak times like before crops are planted or after they are harvested. This timeframe would closer align with custom appliers' billing cycle while lessoning administrative burdens associated with the proposed regulations.

Response:
361-2.3(c)(1)(iii) has been revised to allow 21 days instead of 7 days, or within 24 hours of Department request, as suggested. The revised language is "(iii) quantity of manure applied and fields used must be provided to the involved CAFO(s) within 21 days after the last day of consecutive service, or within 24 hours upon the request of the department".

361-2.3(c)(1)(iv)
Comment: - A modification is needed to reference the specific calibration guidance: "applicator equipment must be calibrated annually using the following guidance from the land grant university - http://nmsp.cals.cornell.edu/publications/factsheets/factsheet18.pdf.

Response: The Department will provide guidance on calibration techniques. At this time, the guidance from Cornell University is recommended, but that is subject to change in the future.

361-2.3(c)(1)(v)
Comment: - To foster buy-in and encourage seamless compliance with these new requirements, the Department should continue to work with third party appliers to standardize the record keeping and annual reporting requirements. As currently written in (a) through (e) of 6 NYCRR 361-2.3(c)(1)(v), the additional requirements presume that the applier will only be working with CAFO farms. However, it is not uncommon for CAFOs to be an exporter of material to AFOs or crop farms.

Suggested revisions to 6 NYCRR 361-2.3(c)(1)(v)(a-e): ('a') the names of the CAFO(s) or AFO(s) where the manure and/or process wastewater was generated; ('b') the quantity of manure and process wastewater applied from each CAFO or AFO; ('c') the name of the Landowner(s), AFO(s), or CAFO(s) where land application occurred; ('d') the source and total amount of manure and process wastewater applied on each Landowner, AFO, CAFO; and ('e') a copy of the applicator equipment calibration certification. [Note: We are not currently aware of this document's existence.]

Response: The Department will work to develop an annual report form that is user friendly for the appliers. Appliers are only required to report on application sites that are on CAFO farms. The annual report requirements are as follows below. Clause "e" has been revised to remove the certification and replace it with a description, to address the concern about a certification.

> (v) in addition to other information that may be required by the department, the annual report required by section 360.19(k)(3) of this Title must include:
>
> ('a') the names of the CAFO(s) where the manure and/or process wastewater was generated;
>
> ('b') the quantity of manure and process wastewater applied from each CAFO;
>
> ('c') the name of the CAFO(s) where land application occurred;
>
> ('d') the source and total amount of manure and process wastewater applied on each CAFO; and
>
> ('e') a description of how the applicator equipment was calibrated

Comment: Although we appreciate NYSDEC's explanation for this proposed regulation change, requiring a third-party registration for CAFO land appliers is too cumbersome and would slow down the land application of these food waste materials. In its place, we propose requiring an annual report from third party spreaders.

Based on our experience as Agricultural Environmental Planners who help farms comply with environmental regulations, we feel strongly that there is not a significant concern with "unregulated" applications of manure by

custom applicators. This section will have very little positive impact on the application of nutrients but create a redundancy in responsibility already taken by the contractor when he signs the Contractor Certification Statement. Alternatively, we suggest that a custom manure applicator be required to attend the same DEC endorsed manure applicator training that a CAFO facility is required to. This adds no expense to the DEC, as far as bureaucracy and administration, but results in a better educated operator.

Response: The application of manure is a potential source of groundwater and surface water contamination if not properly controlled. The Registration is another tool for the Department, with limited burden on the applier, to reduce the potential for environmental impacts.

Comment: For the yearly equipment calibration, we are wondering what is considered acceptable on liquid manure tanks?

Response: DEC will provide guidance on acceptable calibration methods. Cornell University has been a good resource for guidance in this area and will be used as a resource.

361-3 Composting and Other Organics Recycling Facilities

361-3.1 Applicability

Comment: That the applicability of Section 361-3.1 be expanded to include reference to allow processes and storage of organic materials generated by the shell-fishing, commercial fishing and/or aquaculture industries, as it allows other types of organic and agricultural materials.

Response: The existing registration for composting of animal mortalities found in 361-3.2(b)(3) includes fish carcasses and similar organic matter from fishing and similar operations.

Comment: As proposed, 361-1 removes the 250 tons per day limit (based on weekly average received) for the Recycles Handling and Recovery Facilities (RHRF) to be eligible for registration with NYSDEC. Therefore, the sole registration eligibility requirements are that the facility maintains a 15 percent limit on residue based on a full year of operation and that the facility complies with operational, recordkeeping, and reporting requirements outlined in Part 360 and Subpart 361-1. A similar concept should be applied to facilities that receive source separated organics per Subpart 361-3. Doing so would facilitate a diversity of options for organics recovery in the urban context. Effective organics recovery requires multiple operations, from very large, permitted and centralized facilities to smaller, community-based operations that can keep organics recovery local. NYSDEC should revisit the exemption limit of 1,000 lbs/week and the registration limit of <10 tons/day in Composting and Other Organics Recycling Facilities and add a residue limit or other criteria to facilitate the growth of small and medium sized operations that either provide pre-processing and/or organics processing (e.g., composting) services.

Response: Unlike RHRFs that are contained in an enclosed building and that handle non-putrescible waste, smaller source-separated composting facilities typically operate outside and handle waste that can cause odors, dust, and runoff if not managed properly. Therefore, the exemptions and registrations found in 361-3 are based on the amount and type of material handled. The exemption and registration for source-separated composting facilities allow growth of small and medium sized facilities. Larger facilities are subject to permitting due to the greater need to ensure the design and operation are protective of the environment.

361-3.2 Composting Facilities

Comment: The following language has been added to paragraph 361-3.2(c)(7) - “the facility must be at least 200 feet, *or 500 feet for more than 1000 cubic yards of SSO per year*, from the nearest residence or place of business. This requires additional clarification. What is the technical justification for extending the setback for operations process more than 1000 cubic yards of source separated organics? Does this include only residences and businesses that are present at the time siting or does this leave a door open for future development of residences and businesses

to impact the facility in the future? The language as written could restrict the ability of these types of facilities to co-locate with businesses or facilities that could beneficially use the materials they create.

Response: 361-3.2(c)(7) has been revised to remove the requirement for a 500 feet buffer for facilities that accept more than 1000 cubic yards of SSO per year. Instead, those facilities will be required to develop and implement an odor control plan.

Comment: The operating criteria for registered and permitted facilities found in paragraph 361-3.2(c)(9) and subparagraph 361-3.2(e)(2)(iii) add that "if compostable products are to be processed, they must comply with a standard acceptable to the department." The Department should clarify what process is required and what the technical specifications would be to "comply with a standard acceptable to the department".

Response: The intent of the requirement is to limit compostable products to those that have met an industry standard, not simply a manufacturer claim. The Department intends to provide additional guidance on this issue.

Comment: We request NYSDEC provide clarification on the intent of the conditional exemption requirement outlined in subdivision 361-3.2(a), "no waste accepted remains on-site for more than 36-months". If the intent is to prohibit unprocessed waste from remaining on-site for more than 36 months, we request NYSDEC clarify there is no time limit for processed material or compost utilized as a "product".

Response. The language cited from 361-3.2(a) was not revised with this rulemaking and is therefore outside the scope of this rulemaking. For clarification, it does represent a limit for how long material can remain on-site (from acceptance to product distribution).

361-3.2(a)(7)
Comment: we request clarification from NYSDEC regarding the purpose of the proposed changes as they appear to allow farms with CAFO permits to operate full scale composting facilities (except for biosolids). As such, it is unclear whether environmental management requirements are the same for both operations (CAFO or Solid Waste Permit). We respectfully urge NYSDEC to ensure all composting facilities, permitted under Part 360 or CAFO, are subject to the same regulatory requirements for management of environmental impacts.

Response: This does not represent a revision occurring with this rulemaking and is therefore outside the scope of this rulemaking. The Department agrees that composting operation, whether regulated under Part 360 or a CAFO permit, must be managed in a manner that is environmentally protective.

Comment: We request additional clarification from NYSDEC regarding the proposed changes to this section, in particular the following: Will farms be allowed to operate a depackaging facility under a CAFO permit?
What are the environmental management requirements for like operations under CAFO as opposed to a solid waste facility permit? What are the expectations/requirements for mitigation of potential contamination?

It is also important for NYSDEC to hold all depackaging facilities to the same standards and operational controls to ensure safe and appropriate protection of the environment. We request additional clarification from NYSDEC to this extent regarding the proposed changes to this section.

Response: Farms will continue to be allowed to operate depackaging operations under the revised regulations. The revisions do require all products to meet a standard for physical contaminants, which could be introduced by depackaging or other means. The expectation is that both CAFO and non-CAFO farms that are using waste products as a fertilizer manage those materials in manner that is equally protective of the environment.

Comment: For subparagraph 361-3.2(e)(3)(iv), what are considered "physical contaminants" and how would this be measured? To ensure all facilities are held to the same standard, NYSDEC should develop guidance on testing and maximum contaminate levels for the specific physical properties.

Response: Physical contaminants are defined in 361-3.2(e)(3)(iv) and maximum levels are specified. DEC will provide guidance on acceptable means to analyze for these parameters.

Comment: For subparagraph 361-2(e)(1)(ix)is the expectation that even small facilities accepting less than 2,500 tons/year SSO would require an enclosure.

Response: Enclosure is only required for facilities that require a permit and that meet the threshold specified. It does not apply to composting facilities that accept less than 2500 tons of SSO per year.

Comment: For subparagraph 361-3.2(e)(2)(i), we believe "within 60 days of receipt" is too limiting as proposed in this section. For example, fall leaves can be used as a bulking agent throughout the year. We suggest allowing more flexibility, and propose the following language in its place, "in a time period that doesn't create nuisance odors from leaving the site."

Response: 361-3.2(e)(2)(i) has been revised to allow storage of leaves beyond 60 days if nuisance conditions are controlled.

Comment: Reading 361-3.2(e)(3)(iii) it would seem that all compost must be sampled in accord with 361-3.9 Tables 5 and 6; however, the next section exempts yard waste compost. Since yard waste is exempt from 361-3.2(e)(3)(iii) sampling requirements based on the exemption in 361-3.2(e)(4)(i), can that statement be added to 361-3.2(e)(3)(iii)? Such as:

(iii)The product must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of sawdust, soil, or other materials to the process or product for dilution purposes is not allowed. ***As per 361-3.2(4)(i) compost derived from yard waste is exempt from sampling.***

Response: Agreed. 361-3.2(e)(3)(iii) has been revised to clarify that yard trimmings compost is not required to be sampled. The following language has been added - "As outlined in subparagraph 361-3.2(e)(4)(i), routine analyses of yard trimmings compost are not required."

361-3.3 Anaerobic digestion facilities

Comment: Concerns about microplastic contamination in the organic waste stream. Transitioning from a system where food waste is simply thrown in the trash, to one where it is separated and put to productive use requires time and investments. This is especially true because a significant amount of food is packaged – primarily in plastic. If not properly separated, materials such as food packaging, containers, bags, produce stickers, and service ware can result in plastic contamination in compost and digestate. This is especially concerning given that when soil amendments made from compost or digestate contain significant amounts of microplastics, these tiny plastic fragments can enter soil and water, posing potential risks to the environment and human health. Researchers at the University of Catania, Italy found that microplastics are present in vegetables and fruit like carrots, lettuce, apples, and pears. Another study found that microplastics in soil penetrated the roots of lettuce and wheat plants, causing absorption as the plants grow. Moreover, a recent report attempted to quantify the current scientific understanding regarding the impacts microplastic-contaminated soil may have on food systems. The report evaluated 41 peer reviewed studies that analyzed the ability of plants to absorb and uptake microplastics from the environment. Ultimately, a majority of these studies found that plants can absorb microplastics when the material is present in the soil. As humans are primarily exposed to microplastics through ingestion, actions that increase the levels of microplastics in food represent a significant public health concern.

Response: To reduce microplastics in soil products derived from waste, 361-3.2(e)(3)(iv) includes new, stricter requirements for physical contaminants in materials used as soil amendments

Comment: The regulations incentivize depackaging, which increases contamination, decreases the recyclability of packaging materials, and pushes out smaller operators. Most plastic is easily identifiable and removed from food scraps by either the generator, or a composter or digestion facility. However, this is not always the case, especially if the food and the plastic packaging it is contained in are separated using mechanical "depackagers." Depackaging is an emerging process that involves collecting and commingling unpackaged and packaged food scraps in order to mechanically separate packaging materials from the organic food scraps. These machines essentially grind up the

food waste and the predominantly plastic packaging and then attempt to separate the two materials into two separate waste streams using a series of screens. While convenient, depackaging systems result in an organic waste stream that is contaminated with shredded plastic waste. Manufacturers of depackaging equipment list a contamination rate of at least 0.5%, and in some cases contamination rates as high as 2-3%. According to Biocycle, the contamination rate ranges between 3-10%. In addition to allowing for microplastic uptake in the food system, land applying microplastic-contaminated soil amendments may also contribute to the presence of other toxic materials in soil and food. When plastics fragment and breakdown they begin to leach the additives they contain. Many of these additives are highly toxic, including Bisphenol A, phthalates, and Per- and polyfluoroalkyl substances ("PFAS"). Phthalates are linked to asthma, attention-deficit disorder, breast cancer, obesity, decreased fertility, as well as type II diabetes. PFAS are very dangerous because they are toxic to humans in very small concentrations—in the parts per trillion. Moreover, allowing recyclers and intermediaries to set the requirements for how food scraps are managed will limit the opportunity for local, and small compost operations. In Vermont, the Agency of Natural Resources began allowing food scrap recyclers to dictate how food scrap generators manage the material. As depackaging operations offered generators a way to avoid needing to separate out food scraps from inorganic packaging, there was a significant shift away from local and small operators. Moreover, generators began sending all of their food scraps, not just packaged food scraps, to depackaging facilities because it was easier to have all of their organics managed by one operation, despite the risk of increase contamination and loss of local markets. Finally, the current regulations, which favor depackaging and large organics recycling operations, are likely increasing the amount of recyclable packaging materials that is landfilled or incinerated. The packaging material that is successfully separated through mechanical depackaging is contaminated with organic waste and is unlikely to be recyclable. In Vermont, a shift in policy which favored depackaging resulted in packaging waste that would have otherwise been recyclable being sent to an incinerator because it was too contaminated to have a viable end market in the recycling system.

Response: The regulations governing organics recycling facilities found in 361-3 govern all types and sizes of facilities. No incentives or preferences are provided for larger facilities or for the use of depackaging operations. Smaller operations are subject to less regulatory requirements through the use of exemptions and registrations. All larger facilities that are subject to permitting are required to describe all processes, including depackaging if used, and how the resultant soil products will be acceptable for use. DEC reviews these engineering documents as part of the permit process to determine compliance with the regulatory criteria and to determine acceptable uses for the product.

Comment: I do anaerobic composting -- aerobic and anaerobic composting. The anaerobic composting takes longer than twenty-four to thirty-six months. Another thing our goal has been, we've been composting for thirty years, is to have a three-year chemical-free organic soil, which we mix in with our topsoil and our organic. So we have like a fifty-fifty blend. We go off by the U.S.D.A. standard and as I see it that the D.E.C. does really not have a standard on topsoil organic mix to qualify for the organic three-year standard. Is that something Materials Management Regulations – mean, how could I have this conversation? How could I proceed with this conversation? Is that possible and who I could talk to?

Response: USDA is the organization that sets the standards for the certification of food and other organic agricultural products. The Department does not have a role in that process. Under Part 360, composting is considered an aerobic process.

361-4 Mulch Processing Facilities

361-4.3 Registered facilities

361-.4.3(b)(6)
Comment: The Department should provide justification or reasoning for increasing the monitoring to two times per week from once per week. This additional requirement will add labor (and therefore cost) for operations and maintenance of mulch processing facilities.

Response: The monitoring frequency only applies to double or fine ground material. The temperature can accelerate quickly in these piles and a greater frequency of monitoring can preclude the start of a fire.

361-4.3(b)(7)
Comment: Section 361-4.3 (b) (7) Add " , or by concrete block walls." At the end of the sentence.

Response: The suggested revision was not included in the proposed regulations and is therefore outside the scope of this rulemaking. The Department does not believe the suggested revision would be sufficient to reduce the potential for fire transmission.

361-4.6 Groundwater Protection Requirements for Facilities Located in Nassau and Suffolk Counties

Comment: There is a numbering problem in 361-4.6. It appears to reuse (iv) twice previously from paragraph (b)(1).

Response: All numbering errors in 361-4.6 have been fixed.

Subpart 361-5 Construction & Demolition Debris Handling and Recovery Facilities

361-5
Comment: The commenter agrees with expanding eligibility for registration of Subpart 361-5 Construction & Demolition Debris Handling and Recovery Facilities (CDDRHFs) for concrete, rock, brick and asphalt pavement, but expressed concerns with registration of CDDHRFs to receive other types of C&D debris. The commenter disagrees with any changes that will discourage facilities from requiring customers to bring in clean materials for processing and reuse.

Response: The revisions allow combinations of material that will not cause negative environmental impacts and that have potential for reuse.

Comment: Reliance in this Subpart on such factors as visual observation to determine whether soils received at CDDHRFs are clean is potentially a danger to water supplies where outgoing soils will be reused. Unless the soils are moved within the same tax parcel, any soils relocated for reuse should be thoroughly tested for chemical and physical contaminants.

Response: Most soil reuses require periodic sampling prior to reuse.

361-5.2 Exempt Facilities
Comment: While an exemption similar to the general exemption in Section 360.14 has not been included for utilities, the exemption in 361-5.2 appears to cover utility companies' day to day generation, handling and reuse of recyclable and reusable materials.

Response: Comment noted.

Comment: The new provision allowing for on-site storage of certain types of materials anticipated to be reused under a beneficial use determination clarifies the responsibilities of generators of construction and demolition debris. However, the disparity in treatment between sites within the New York City Metropolitan Waste Impact Zone and other areas of the state requires greater justification. No explanation is offered as to why the storage limits within this zone are capped at 1/20th of other areas of the state. For rural areas within the New York City Watershed, this could significantly hamper construction and development efforts. The Department should revise its rulemaking documentation to explain this disparity of treatment, particularly with respect to its impact on rural areas of the state. The reduced storage capacity for construction and demolition debris within the New York City Metropolitan Waste Impact Zone will also increase the amount of excavated material transported off-site, thereby increasing greenhouse gas emissions associated with such activities in contravention of the goals of the CLCPA or encouraging unnecessary landfilling of this material in the state's few remaining landfills.

Response: The reduced allowance for exempt storage within the NYCMAWIZ was included because of the concern of impacts related to improper storage in those areas. Storage of larger volumes of material could be accommodated through use of other approval mechanisms. Note that the proposed definition of the NYCMAWIZ has been changed to include only the counties of the portion of the New York City Watershed east of the Hudson River.

Comment: Is the intent of the Department to limit the exemption for a 361-5 facility in the NYC Metropolitan Area Waste Impact Zone to a volume of 500 cy? What if a facility receives (and maintains) less than 500 cy of unprocessed concrete/brick/masonry material and crushes it on site – would resulting material be considered to meet a predetermined beneficial use under 360.12(c)(3), a material that ceases to be a waste on meeting requirements for use, and as such the exempt CDDHRF can store any quantity of this processed material indefinitely? Was the intent to not allow processing on an exempt site, and if so, why not add that to the language in 361- 5.2(a)?

Response: Processing of construction and demolition debris is not allowed at an exempt facility under 361-5.2, as indicated in the language of these exemptions limiting activity to "*storage*". A facility conducting processing of these materials requires an appropriate registration or permit.

Comment: The proposed regulations are not clear in Section 360.12 (Beneficial Use) or Subpart 361-5 regarding authorization for a facility that produces a clean, crushed concrete aggregate. This is the most valuable alternative concrete aggregate that a facility can make. The former regulations included a pre-determined BUD under 360.12(c)(3)(viii) for this aggregate, and there was no mention of "prior to processing at a 361-5 facility".

Response: The rulemaking continues to authorize receipt, storage and processing of concrete into aggregate under 361-5.3 and 5.4, and the use of this material under the pre-determined BUD in 360.12(c)(3)(viii). Only one pre-determined BUD material under 360.12(c)(2)(xi) requires that the aggregate be distributed by a 361-5 facility for use only under pavement or in subsurface applications (with intent that this aggregate could contain asphalt pavement).

Comment: Is the intent of the exemption in 361-5.3 that no processing will take place?

Response: 361-5.3 refers to registered, not exempt, CDDHRFs. While processing is prohibited at any of the exempt facilities described in 361-5.2, it is allowed at all registered facilities in 361-5.3 except for the facility described in 361-5.3(b) that allows storage only.

Comment: Can a site in Suffolk County store an unlimited amount of F1 fill, since it is exempt and not from Westchester or Nassau County?

Response: Based on waste cessation provisions in 360.13(b)(1)(ii), Fill Type 1 generated in Suffolk County is no longer a solid waste once received at the site of reuse and can be stored up to 500 cubic yards indefinitely in Suffolk County pursuant to the exemption 361-5.2(a).

Comment: This limit will significantly hamper highway maintenance and reconstruction projects performed by area municipalities that routinely use these materials in highway maintenance. Thresholds outside of the NYC Watershed/New York City Metropolitan Area Waste Impact Zone allow for a maximum 10,000 cubic yards with notification to the Department for volumes exceeding 2,500 cubic yards. The Department has not adequately explained why the 500 cubic yard limit is necessary in the NYC Watershed or justified the 9,500 cubic yard difference between areas inside and outside the Watershed. The added burden of additional handling and regulatory compliance above and beyond the standards required outside of the NYC Watershed is not justified and should eliminated.

Response: The reduced allowance for exempt storage within the NYCMAWIZ was included because of the concern of impacts related to improper storage in those areas. Storage of larger volumes of material could be accommodated through use of other approval mechanisms.

Comment: While this section exempts sites authorized by the City of New York to temporarily stage C&D debris from the Subpart 361-5 requirements, it does not specify if this exemption applies in all geographical areas where

the City of New York holds regulatory authority, including in the New York City Watershed. NYSDEC should provide a clarification.

Response: This exemption includes any site that is authorized by the City of New York to temporarily stage C&D debris, wherever the City has standing to make such an authorization.

361-5.3 Registered facilities.

Comment: What are the newly proposed combinations of allowable materials at registered facilities in regard to the proposed rule change for stacked registrations? Are permitted facilities able to add a registration for another waste stream if the combination of both activities is in the list of allowable combinations?

Response: The provision in this Subpart for stacked registrations is removed in the rulemaking. A facility could conduct more than one of these activities eligible for registration but would need to demonstrate to the Department that the materials could be received, stored, and processed separately. The Department, pursuant to 360.15(a)(3), would reserve its right to require a solid waste management facility permit at a site with multiple activities otherwise eligible for registration if the Department perceives a significant adverse impact on the environment from the combined activities.

Comment: By removing the 500 tons-per-day throughput restriction from registered facilities, what is the intent? This change seems to only benefit registered facilities and negatively impact permitted facilities. Aside from more stringent requirements for permitted facilities, how will permitted facilities and registered facilities be distinguished from each other?

Response: The Department has concluded that the throughput limit for registered CDDHRFs is not necessary to protect the environment. Registered facilities continue to be distinguished by their receipt of specific C&D debris streams separated at the source of generation. Many C&D debris materials will not meet these restrictions and require management at a permitted facility.

Comment: There is a numbering error in this proposed section, as it jumps from Section 361-5.3(a)(5) to Section 361-5.3(a)(7).

Response: Comment noted.

Comment: It is greatly appreciated that Subpart 361-5 was revised to include exempt activities. We would appreciate clarification of the intended difference between 361-5.3(a)(1) and 361-5.3(b)(1).

Response: The difference in these two facilities receiving concrete, masonry, brick, rock and asphalt pavement (plus asphalt millings under 361-5.3(a)(1)) is that storage and processing of these materials is allowed at the registered facility under Paragraph 361-5.3(a)(1) whereas only storage at the facility registered under 361-5.3(b)(1). The facility storing *and* processing must comply with *all* applicable general operating requirements for facilities in 6 NYCRR 360.19, whereas the facility only storing these materials needs only comply with 360.19(b) - Water Protection; 360.19(g) – Dust Control; 360.19(j) – Noise; and 360.19(k)(3) – Annual Reporting. Both types of facilities must comply with CDDHRF-specific design, operating, recordkeeping and reporting requirements in 361-5.

Comment: The restriction on registrations under paragraph 361-5.3(a)(5) for facilities that receive waste from the five boroughs will also create a monopoly for the City's Clean Fill Bank, eliminating other clean fill registration facilities. This reduction in possible destinations will further increase the quantity of excavated material being transported out of the City of New York, inducing additional greenhouse gas emissions in contravention of the goals of the CLCPA.

Response: The Department believes that these regulations will provide for multiple avenues for management of soils and will not create a situation that negatively impacts the environment.

Comment: The registration provision in paragraph 361-5.3(a)(5), which appears to refer to fill material handling facilities, should refer to fill classifications contained in Section 360.13(f) or "excavated material" as defined in 360.2, for consistency purposes, instead of "*soil, sand, gravel, or rock*". Alternatively, the term "soil…" should be replaced with "*fill materials*" or the specific type(s) of fill if these were intended.

Response: The use of "soil, sand, gravel, or rock" is intentional. Materials need not be sampled and analyzed, but can be received at this type of registered facility on the basis of visual and olfactory observation plus spill history at the site of generation. The materials will not yet have been determined as belonging to any of the Fill Types when received at this registered facility, but will be processed, sampled, analyzed and stored to be sent out for use under various pre-determined or case-specific BUDs. The term "excavated material" cannot be used for this registration since excavated material is not limited to soil, sand, gravel or rock but can contain any human-made content that may or may not be suitable as fill. The term "fill material" no longer appears in the Part 360 Series.

Comment: 360.13(a)(3) states that the whole 360.13 section does not apply to fill being sent to 361-5 facilities; this appears inconsistent with the registration under 361-5.3(a)(5) which states that soil, sand and gravel can be sent from excavation sites to 361-5 facilities. It makes more sense to delete 360.13(a)(3) and have the registration in 361-5(a)(3) refer back to Section 360.13 and what types of fill can be accepted at a 361-5 facility.

Response: A facility registered under 361-5.3(a)(5) is intended to receive native, unimpacted-appearing "soil, sand, gravel, or rock" for processing and testing for reuse. Since these materials have not been determined to be Fill Type 1, an aggregate or any product under a BUD, their receipt at a 361-5 facility is appropriate and consistent with 360.13(a)(3). Note that no excavated materials visually appearing to be Fill Types 3, 4 or 5, or which have been characterized as such at the site of excavation, can be received at a site registered under 361-5.3(a)(5) – these excavated materials must be received at a permitted CDDHRF if not going to a site of reuse.

Comment: An obvious risk is incurred by 361-5 facilities accepting fill and later trying to sell it to customers that need fill; the 360.13 regulations should also apply to material being transported to a 361-5 facility.

Response: The Department acknowledges the risk described by the commenter, but will not require Fill characterization for materials received at a CDDHRF. Facilities have the option to require incoming materials to be tested and a Fill Type determination made.

361-5.5 Design and operating requirements for registered and permitted facilities
Comment: How does the April 27, 2022, Enforcement Discretion affect the sampling and analysis of fill material at CDDHRFs?

Response: The Department's April 27, 2022, Enforcement Discretion Letter will expire on May 3, 2023, or whenever this rulemaking is adopted, whichever is sooner. The provisions of 361-5.5(e) in the proposed rulemaking outline sampling and analysis requirements for fill material at CDDHRFs that will be required of all facilities.

Comment: As the Department is aware, there has been confusion in the field as to certain sampling and tracking requirements, specifically as they relate to CDDHRFs. In keeping with the Department's Enforcement Discretion for CDDHRFs to date, the commenter recommends the words "*when sampling is required*" be added to 361-5.5(e) to reduce confusion regarding sampling of fill material leaving CDDHFs.

Response: This change is not necessary since the Enforcement Discretion will cease upon adoption of this rulemaking; the requirements of 361-5.5(e) will apply uniformly to all facilities producing fill.

Comment: As the Department knows, many CDDHRFs handling primarily fill material located in New York City do not have sufficient acreage or room to receive and maintain compliance with the five different Fill Types that may be accepted at a facility, and then follow-up processing of these Fill Type materials into uses as defined by Section 360.13 is extremely difficult. Additional flexibility in the placement of storage bins or other structures would aid in managing the various fill types, especially in light of the speed that the construction industry operates and the role of the facilities to help meet the contractors' fill needs. The Department should allow CDDHRFs who choose to go for permits to adjust boundaries and bin locations in order to better accommodate their clients' needs.

Response: No changes in this rulemaking specifically address this comment, but to the extent allowed in this Subpart and in 360.19, the Department can approve changes to a facility's Facility Manual to meet needs of the facility such as described by the commenter.

361-5.5(h) and Section 361-5.6

Comment: This operating requirement states all C&D debris leaving a CDDHRF must meet appropriate waste tracking document requirements of Section 364-5.1 (Waste Transporters), and furthermore that these tracking documents are records for purposes of Section 361-5.6. However, Section 361-5.6 does not mention tracking documents or any requirement for a CDDHRF to keep them. It does not specify who must create the tracking document, just says that it must be prepared. The commenter notes that the Department, in this rulemaking, deleted the former 361-5.6 Tracking Document Section. What is more, there are no requirements specified in 360.19(k) that the facility must keep tracking documents. The commenter believes the present rulemaking in 364-5.1 puts the responsibility on Transporters, not CDDHRFs, to make and maintain the tracking documents and tracking document recordkeeping.

If the 361-5 facility makes a 360.12(c)(2) pre-determined beneficial use material (ceases to be a waste upon receipt at the receiving location), then this material must be tracked with a 364 Tracking Document and now the onus is on the trucking company or contractor buying the commercial aggregates to manifest this material. This seems utterly confusing and will most likely lead to errors in the documents.

Response: The Department agrees with the commenter that transporters, as opposed to CDDHRFs, are responsible to initiate tracking documents for materials where these are required pursuant to 364-5. The transporter must provide a copy of the tracking form to the *generator* (in this instance, a CDDHRF) for Fill Types 4 and 5 and excavated material not under a pre-determined or case-specific BUD. These copies constitute records which must be retained by the CDDHRF as required in 361-5.6. The Department agrees with the commenter that this specific requirement is missing from the proposed rulemaking in 361-5.6(a) and has revised the subdivision to include it. In the final express terms, the point of waste cessation for all Fill Types in 360.13(b), and for unprocessed or unrecognizable C&D debris in 360.12(c)(2) is changed to when materials are delivered to the location of use when such materials are generated within the NYCMAWIZ. This change from the proposed rulemaking will simplify these requirements for transport and tracking of BUD materials inside versus outside of the NYCMAWIZ.

Subpart 361-7 Scrap Metal Processing and Vehicle Dismantling Facilities

Comment: The Department proposes to broaden the applicability of Part 361-7 such that it includes "*any facility that receives, decommissions, processes, dismantles, stores, or recycles any metal, discarded metal-containing products (e.g., appliances) or end-of-life vehicles.*"

If any facility that receives and processes metal is subject to Subpart 361-7, as proposed in the draft rules, this could be interpreted to include steel mills in New York State that receive scrap metal, remelt the scrap, and create finished steel products. This over-broad application of the proposed rule would eviscerate some of the pre-determined BUDs for scrap steel. For example, if a steel mill were to be subject to the requirements of Subpart 361-7, scrap metal that would otherwise be subject to a BUD under 6 NYCRR 360.12(c)(4)(v) would lose that status as any steel sent to the mill for recycling would be material "taken to another facility regulated under…Part 361 (see Paragraph 360.12(c)(4))". Throughout the regulations it is necessary to clarify that facilities such as steel mills that make finished steel products from scrap metal, are not subject to solid waste facility requirements as scrap metal processors.

Response: Several pre-determined BUDs shield a steel mill receiving scrap metal from regulation as a solid waste management facility under 361-7. 360.12(c)(2)(viii) provides a pre-determined BUD for source-separated recycles typically managed at a recyclables handling and recovery facility when received directly by a manufacturing plant. In addition, the predetermined BUDs in 360.12(c)(3)(xiv), 360.12(c)(4)(i) and 360.12(c)(4)(v) provide that metal proceeding *from* a recyclables handling and recovery facility, and scrap metal on its own or proceeding from a scrap metal processing facility, cease to be regulated as a solid waste prior to being received at a manufacturing facility.

Any manufacturing plant receiving these materials as feedstock for use in its processes would not be considered a solid waste management facility.

PART 362 – COMBUSTION, THERMAL TREATMENT, TRANSFER, AND COLLECTION FACILITIES

362-1 Combustion Facilities and Thermal Treatment Facilities
General

Comment: We urge the Department to adopt siting requirements for all combustion facilities and thermal treatment facilities. Currently, the regulations do not contain any limitations on where these facilities can be located. This is a glaring omission from the regulations given the public health and environmental harms associated with these facilities.

Response: All solid waste management facilities, including combustion facilities and thermal treatment facilities are subject to the general siting requirements in 360.8.

Comment: As part of revising and updating regulations NYS should follow other states and continue certain gasification and pyrolysis technologies as renewable energy sources."

Response: These actions are outside the scope of this rulemaking.

Section 362-1.5 Design and operating requirements.

362-1.5(b)(l)
Comment: New language was added to this section that states: "The metal that is extracted subsequent to combustion is not considered to be part of the facility's approved design capacity." This is similar language to what is in the Part 360 Series enforcement discretion letters signed by Deputy Commissioner and General Counsel Thomas S. Berkman, dated October 12, 2018, September 19, 2019 and March 16, 2022, however, the language in the proposed regulations is different from the discretion letter, changing it from " ... the facility's throughput capacity" to " ... the facility's approved design capacity."

Since a facility 's waste processing design capacity is based on an estimated annual average waste high heating value (BTU per pound) at the time of facility design, the design capacity is not reflective of a facility 's actual, potential or permitted waste processing capacity. As such, we recommend the language be revised to state: "The metal that is extracted subsequent to combustion is not considered to be part of the facility's permitted capacity."

Response: Comment noted. In everyday conversation the terms "throughput capacity", "permitted capacity" and "approved design capacity" are used interchangeably, however the official term in the regulations is "approved design capacity". The regulation defines "approved design capacity" in 360.2(b)(14) as the amount of waste authorized to be received at a facility over a time period as specified in that facility's Part 360 permit. Therefore, the suggested revision is not needed.

362-1.5(b)(9)
Comment: This section is related to the design and operating requirements associated with handling and processing regulated medical waste and source-separated pharmaceutical waste. Existing language has been repealed and replaced with new requirements, although some of the existing language remains unchanged. Of specific concern is:

a. The removal of " ... except source-separated pharmaceutical wastes which can be mixed with other wastes on the tipping floor" from Section 362-1.5(b)(9) (iv).
b. Replacing Section 362-1.5(b)(9)(ii) with "unloaded directly into the waste receiving pit;"
c. Adding Section 362-l.5(b)(9)(v) that reads "combusted within 24 hour-period; and"

Although the requirements listed in Section 362-1.5(b)(9) may be appropriate and necessary for the handling and processing regulated medical waste, we do not believe all are necessary for handling and processing of source-separate pharmaceutical waste. As such, we recommend that two sets of requirements are incorporated into the regulations; one for regulated medical waste and one for source-separated pharmaceutical waste.

The source-separated pharmaceutical waste that the WTE facilities receive consists of non-hazardous bulk and/or consumer packaged material, which can include FDA-regulated controlled substances. While controlled substances are managed by placing the material directly into the combustor and not mixed with other wastes in the waste pit as per the proposed requirement of Section 362-1.5(b)(9)(iii), we are requesting that source-separated pharmaceutical wastes that do not include controlled substances, be handled and processed the same as the residential, commercial, institutional and non-hazardous industrial waste that is processed at the facilities. To maintain optimal combustor operations and environmental performance, source-separated pharmaceutical waste should be mixed with other wastes to help maintain a homogeneous, consistent heating value fuel blend. We offer the following suggested requirements for handling source-separated pharmaceutical wastes:

i. Unloaded on the tipping floor separate from other wastes;
ii. Managed in a manner that ensures controlled substances are placed into the combustor and not placed in the waste pit;
iii. Handled in a manner that ensures the integrity of the containers until combustion; and
iv. Identified in the Waste Control Plan.

Response: Due to the probability of compromising the packaging if the material is dumped in a pit and picked up by grapples, the Department is requiring pharmaceutical waste be managed separately and not dumped in the pit. Compromised packaging may release aerosols that may be hazardous to facility personnel. Please note, the existing 362-1.5(b)(9)(ii) was moved to 362-1.5(b)(9)(iv) and revised to read “handled in a manner that ensures the integrity of the containers until combustion”.

362-1.5(g)(i)
Comment: This provision should clarify that combustion facilities shall make every reasonable effort not to accept source separated food scraps for combustion. It is impractical for the Department to expect transfer facilities and combustors to enforce the Food Donation and Food Scraps Recycling Law at the point of generation. The Department must be responsible for enforcing the law upstream of the transportation, transfer, and end-use facilities.

Response: Comment noted. The Department understands its responsibility to enforce the Food Donation and Food Scraps Recycling Law. However, municipal waste combustors must take all reasonable precautions to not accept source-separated food scraps from designated food scraps generators required to send their food scraps to a facility regulated by 361-2 or 361-3. This is an extension of the requirement that ensures municipal waste combustors do not accept other source-separated materials for combustion unless specifically approved at the time of permitting.

Comment: This is a new subdivision related to food scraps that reads:
"After January 1, 2022, combustion facilities must take all reasonable precautions to not accept food scraps from designated food scraps generators required to send their food scraps to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department."

We do not believe this new subsection is required because existing subdivision 360. l6(c)(4)(i)(h) already includes requirements related to the acceptance of food scraps at combustion facilities. As such, we request that this subsection not be incorporated into regulation. Subsection 360.16(c)(4)(i)(h) reads:

"(h) in the case of a landfill, a municipal waste combustor, or a transfer facility, a detailed plan must be included that:

(1) describes procedures to ensure that source-separated recyclables, source-separated yard trimmings and tree debris, source-separated food scraps. and source-separated electronic waste and other product stewardship designated materials are not accepted for disposal, and describes actions to be taken if these materials are received at the facility; and

(2) describes procedures and time-frames for conducting periodic waste characterization surveys. "

Response: Comment noted. 360.16(c)(4)(i)(*h*) describes the requirements of the waste control plan that must be included as part of the facility manual submitted with the permit application. To complement the permit application requirements, the operating requirement in 362-1.5(g) is necessary. Therefore, the language has been retained.

362-1.6 Recordkeeping and reporting requirements.
362-1.6(c)
Comment: We are specifically concerned about the timeframe of only 15 days of receipt of residue analytical results to submit to the Department. The current Part 362 regulations do not include any timeframe for residue analytical result submittal and the previous regulations (360-3.5(d)(2)(vii)), prior to the Part 360 Series changes in November 2017 required 60 days. We believe that 15 days may not be enough time to review the results, potentially correspond with the laboratory, prepare an ash sampling report and submit to the Department. As such, we are requesting that the proposed regulation be modified to allow 60 days to submit residue analytical results to the Department.

Response:
The regulations have been revised to require the residue analytical results to be submitted to the Department within 30 days of receipt of the results. The Department considers 30 days to be sufficient time for the facility to analyze the data and submit a sampling report to the Department.

362-3 Transfer Facilities
General

Comment: We provide comment to the revised Part 360 regulations for mulch-related material subject to qualifications of a transfer facility outlined in Subpart 362-3. Fundamentally, a facility handling organic material and temporarily storing less than 10,000 cubic yards of mulch-related material (i.e. the threshold for a Part 361 registration) should be exempt from a transfer facility registration or permit. As the regulations stand, a facility that accepts 5 cubic yards per day of organic waste or less is exempt from a transfer facility registration or permit. By definition, a transfer facility is a facility where waste is received, consolidated, and then transported to a subsequent facility for processing, treatment, further transfer, or disposal.

If mulch-related material processing were to occur at a facility, rather than just temporary storage for transfer, a facility would be considered exempt from a Part 361 registration or permit when under the 10,000 cubic yards threshold. In that case, no solid waste management facility (SWMF) related applications would need to be filed with the New York State Department of Environmental Conservation (NYSDEC), whereas, because only temporary storage and transfer of mulch-related material with no processing occurs at a facility, a transfer facility registration or permit would be required.

Material that is temporarily stored at a facility for subsequent transfer to another SWMF consists of tree debris and leaves that are predominately dry in nature, typically, and kept in an active pile, where the material does not sit stagnant for significant periods of time to cause any nuisances, such as odors. There would be no need for control measures via the addition of a structural enclosure. Additionally, there may be local restrictions on providing such an enclosure that would also require variance applications to be pursued with that entity, and for the flow of operations to be redesigned and reapproved, especially for small facilities. An example we had with a client storing 1,000 cubic yards of mulch-related material called for a transfer facility permit with variance by the regional office,

but when submitted to the state office, was told the variance was not necessary. This incurred unnecessary costs to our client and time on our behalf.

Mulch processing facility activities are conducted outdoors in the open yard. These processing activities would have much greater potential to cause disturbances and nuisances than the temporary tree debris and leaves storage, loading and unloading done at a facility.

Therefore, since the mulch-related material disturbance at a facility is minimal in its potential to cause nuisances, this further supports a request to exempt facilities from a transfer facility registration or permit if they are exempt from a Part 361 registration or permit.

Response: Transfer facilities play an important role in the movement of solid waste. These facilities are defined in 360.2(b)(289) as facilities that receive solid waste for the purpose of transferring waste to another facility for processing, treatment, disposal, or further transfer. These facilities are authorized to receive and transfer incoming material to another solid waste management facility, however storage of large volumes of material at a transfer facility is not allowed (see 362-3.5). Instead, the storage of material should be managed at the facility processing the material (see 361-1.5(c), 361-4.3 and 361-5.4(f)).

Comment: The proposed language in 362-3.3(c)(7) and 362-3.5(k) should clarify that it is the facility's responsibility to ensure that source separated food scraps delivered to the facility for the purpose of recycling in accordance with the law be kept separate from other wastes and transferred to the appropriate facility for recycling or that source separated food scraps are not accepted at the facility if it does not accept those materials for recycling.

Response: Comment noted. 362-3.3(c)(7) of the regulations read "All reasonable precautions must be taken to not commingle the food scraps with any other solid waste unless such commingled waste can be processed by the facility regulated by 361-2 or 361-3 of this Title to which the commingled waste is transferred". In 362-3.5(k)(2) the regulations read "take all reasonable precautions to not commingle the food scraps with any other solid waste unless such commingled waste can be processed by the facility regulated by 361-2 or 361-3 of this Title to which the commingled waste is transferred". The facility receiving the source-separated food scraps from the transfer facility is responsible for making sure it only accepts the material it is authorized to accept.

Section 362-3.5(e)
Comment: This subdivision is related to the radioactive waste detection procedures and requirements at transfer stations. As currently written, only transfer stations that transport MSW or drilling and production waste out of state must meet the procedures and requirements. We are confused by why radiation detection requirements would only apply when waste is sent out of state. Low-level radioactive waste (LLRW) is sometimes present in MSW; and if all permitted transfer stations are not required to detect radiation, then it is likely LLRW would not be discovered until it arrives at a disposal facility where radiation detection is required, such as a combustion facility or landfill. Lack of radiation detection at transfer stations creates the following two issues:

1. The potential increased risk for employees at waste management facilities, and possibly the general public, to be exposed to low level radiation.
2. It is difficult to determine the generator of the LLRW, thereby restricting the ability to stop the re-occurrence of improper disposal of LLRW in the MSW waste stream.

Response: This comment is outside the scope of this rulemaking because the requirements for waste transported out of state were not proposed to be changed. Only a minor edit adding dashes between "out of state" was proposed.

PART 363 - LANDFILLS

General

Comment: I understand that there's a proposal to expand landfill regulations. I do not support expand the landfill. My families been victim of the landfill as my sister-in-law died of a rare blood cancer caused from the air contaminants from the landfill and my 20 year old niece contracted a rare blood disorder and the Cancer from the air near the landfill. They both live in Seneca Falls / Waterloo and it's been proven that the air from the landfill caused this rare illness. We would have sued the landfill, the state, and the operators but the laws that are in place prevent us from doing that. Please honor their memory and the others that have died by closing this landfill.

Response: Comment noted.

Comment: New York has only 26 municipal solid waste (MSW) landfills left and there is nothing in this regulatory package of amendment to require landfills to recycle MSW that can be recycled or to create new recycling markets. To the contrary, the entire package of regulatory revision is overly focused on making it harder to reuse soil and fill than to maximize reuse of all recyclable materials. The landfill section had far fewer edits than any of the other sections despite the creation of significant amount of greenhouse gasses (GHGs) from the State's existing landfills. The Part 363 regulations should have a separate rulemaking to mandate more recycling by landfill operators to preserve the minimal amount of space left in our existing landfills for waste that cannot be recycled. Tax credit programs have been very successful in New York State and our firm would be happy to assist the Department in creating a new tax credit program to encourage true recycling and minimizing waste disposed at antiquated landfills not benefiting the State at all.

Response: Comment noted. The Department intends to propose future revisions to Part 363 related to GHG emissions and enhanced diversion of recyclables.

363-1 Applicability

363-1.1
Comment: This section should be revised to specify that new or more stringent requirements introduced in this Part, and that were not included in the previous version of Part 360, apply only to proposed landfills and/or proposed modifications to permitted landfills. Changing the design and/or performance requirements of permitted landfills may require costly and infeasible redesign and/or reconstruction of numerous components to meet the new or more stringent standards. Existing landfills that are already permitted, and which have had no modifications to the design since issuance of the permit, should be held to the performance standards in place at the time they were permitted. We suggest that the subject text be revised as follows:
"In addition to the requirements contained in Part 360 of this Title, this Part applies to new landfills that are not currently permitted, ~~existing landfills both active and inactive~~, proposed but as-yet unpermitted lateral or vertical expansions of existing landfills, ~~or landfills undergoing subsequent development~~ and proposed but as-yet unpermitted modifications to existing landfills.

Response: The transition regulations in 360.4(k)(3) state that "Retrofitting of existing landfill liners, buried pipes, leachate storage tanks and similar existing structural components is not required." Part 363 applies to all landfills as stated in the applicability and therefore the language in the proposed regulations has been retained.

363-2 Exempt Facilities

363-2.1(b)
Comment: The lack of broad access to livestock rendering facilities coupled with the Department's robust air quality regulation for incinerator flue gas emissions has presented an obstacle for New York livestock farms that is not easily overcome. Livestock operations currently have only 2 options for disposing of mortalities, composting or burial, both of which are difficult to implement given the state's diverse soil types and topography. The industry desperately needs additional options, so we encourage the Department and Ag & Markets to work collaboratively to renew viability for in-state rendering companies through tax incentives, grants, and product development.

Response: Comment noted. Issues related to livestock rendering facilities are beyond the scope of this rulemaking.

Comment: The exempt facilities language for livestock burial contained in 363-2.1(b) 1-10 provides a prescriptive framework for farms to follow when disposing of mortalities. While the intent of this part may be focused on catastrophic mortality, we see an opportunity for bilateral use of the criteria in the context of routine mortality on CAFO farms.

Response: Comment noted.

363-4 Permit Application Requirements

363-4.3(c)(3)
Comment: The potential for mobilization of post-peak displacement shear strengths should be considered, however, the regulation as indicated makes it read as if the post-peak shear strengths are mobilized, then a factor of safety of 1.5 should be applied. This is in conflict with industry practice which considers both peak and post-peak strengths and applies different factors of safety. It is suggested that the subject text be revised as follows:
"a demonstration that the design considers an appropriate selection of shear strengths based on the variability of materials and the potential for mobilization of post-peak displacement shear strengths. ~~and~~The potential ~~for~~ pore pressure regimes caused by liquid buildup, seepage forces, and landfill gas pressures ~~and~~ should also be considered and the system should achieve~~s~~ the following factors of safety under static stability conditions:"

Response: The regulation has been revised as suggested to clarify the requirements for the structural integrity and overall slope stability analysis.

363-4.3(c)(3)
Comment: The system is designed to withstand the peak displacement shear strength, because this is the largest possible stress that will be applied to the system before failure occurs. The post-peak displacement shear strength occurs after the system has already failed and thus should hold no bearing on a system that was designed not to fail to begin with. For interfaces such as soil on soil, or soil on geosynthetic whose peak failure and post-peak failure shear values are relatively similar to one another, this distinction is not as significant. However, in the situation of an interface of textured geomembrane on geotextile/ geocomposite/GCL, the failure implies that the fabric is already damaged and thus no longer able to withstand the necessary shear stress that caused the system to fail in the first place. We reference an article by Ronald K. Frobel, MSCE, P.E. in the February/March 2007 issue of Geosynthetics Magazine. In this article the author cites papers done by Stark, Richardson, and Theil (Stark and Richardson [2000] and Richardson and Thiel [2001]) which state that "coextruded textured geomembranes exhibit large post-peak strength loss against geotextiles due to geotextile fiber tearing, pullout, and shear orientation. In addition to geotextile fiber/texture interaction, the texture itself may comb (lay over) causing greatly reduced post peak shear strength (Stark and Richardson, 2000)." We recommend that the NYSDEC either remove the reference to post-peak displacement shear strength or clarify its relevance to a system that was designed to not reach post-peak displacement.

Response: See response above.

363-4.3(d)(1)
Comment: The discussion of large-displacement shear strengths (3 inch) appears to be focused on interface strengths within the landfill liner system. The proposed changes do not appear to consider stability within soils which may act differently than interfaces under peak and post-peak conditions. The regulatory impact statement states "to match the decreased displacement threshold, the requisite seismic coefficient should have been increased from 0.5 to 0.75 of the free field peak ground acceleration." It is not clear why a decrease in acceptable displacement (conservative) would also require use of an increased seismic coefficient (conservative) in the analysis. The proposed regulation, while adding requirements related to displacement, and apparently related to geosynthetic interfaces, does not recognize that layered systems typical of a landfill liner system do not respond all in the same way. That is, large displacements may only occur in one layer and therefore, using the large displacement shear strength is not necessary as suggested by these regulations. It is recommended that a technical basis / justification be provided for these proposed revisions and suggested that clarifying language be added.

Response: The seismic stability analysis demonstration must utilize either a pseudo-dynamic analysis or a displacement analysis. When using the displacement analysis, the regulations limit the calculated permanent seismic deformations to less than six inches. The seismic coefficient equal to 0.5 of the free field peak ground acceleration used in the pseudo-dynamic analysis was intended to limit deformations to less than twelve inches. Therefore, in order to be consistent with the six-inch displacement threshold of the displacement analysis, a seismic coefficient equal to 0.75 of the free field peak ground acceleration must be used in the pseudo-dynamic analysis.

363-4.3(d)(1)(i)
Comment: Please provide details on the technical basis (EPA, AASHTO, USGS, Literature) for increasing the seismic coefficient from 0.5 to 0.75.

Response: See response above.

Comment: Subdivision 363-4.3(d) pertains to seismic stability analysis and therefore it is not clear why parts (i) and (ii) also refer to static analyses. We recommend the word static be struck from the proposed revisions for 363-4.3(d)(i)&(ii).

Response: Comment noted. The seismic stability analysis may impact the overall stability and structural integrity analysis of the landfill. Therefore, the language in the proposed regulation has been retained.

363-4.3(e)(1)(ii) and 363-4.3(f)
Comment: Please clarify if the proposed requirement to evaluate the potential impacts of a 500-year recurrence interval storm event, (363-4.3(e)(1)(ii) and 363-4.3(f)(ii)), will apply to operating landfills.

Response: Operating landfills will have to comply with the regulations in accordance with the transition requirements in 360.4. After the effective date of the regulations, an operating landfill is subject to these provisions when its permit is renewed or modified. After the landfill transitions to the new regulations, these evaluations will be required of an operating landfill when a new or updated version of the engineering report is required.

363-4.3(e)(1)(ii)
Comment: It is not clear what is intended by the request for an evaluation of the impacts from a 500-year storm. If the design criterion is something less than the 500-year storm, then the evaluation will show that the system is not adequate. For instance, what if a 500-year storm were to cause some temporary ponding of leachate that has no impact because of effective liner performance, but for a short time exceeds the head buildup criterion for leachate? If the Department is interested in the potential impacts, it is recommended that evaluations for the 500-year storm be required/described in the Contingency Plan. And, that the criteria for the evaluation be an assessment of potential failure that would cause an unacceptable risk. Also, the duration of the 500-yr storm should be specified.

Response: Evaluations of impacts from a 500-storm events are outside the scope of this rulemaking.

363-4.6(f)(2)
Comment: While condensate and sediment are sampled at many facilities on a case-by-case basis, they are not currently regulated media and the inclusion of this language suggests they are required at all facilities. The departments use of the word ‘all’ achieves the intent to obtain the descriptions, and any language after the word ‘points’ is unnecessary.

Response: The inclusion of condensate and sediment monitoring points in 363-4.6(f)(2) does not mean that those monitoring points are required at all facilities. Rather, if condensate and sediment monitoring points are being proposed based on the requirements in 363-4.6(f)(8), the monitoring points must be described in the environmental monitoring plan.

363-4.6(f)(8)(v)
Comment: Condensate monitoring is unnecessary. Regardless of whether condensate is reintroduced into the landfill or discharged into the leachate collection system, separate monitoring of condensate quality is an

unnecessary activity. Condensate monitoring should only need to be performed in the event that condensate is managed independently of landfill leachate.

Response: The requirements for sampling and analysis of landfill gas condensate were included in Part 360 prior to November 4, 2017. These requirements are consistent with leachate monitoring requirements, will enhance groundwater protection, and will reflect the standard industry practice. The proposed regulations allow for reductions in the frequency of testing, number of parameters analyzed, and number of locations sampled if the specified criteria are met.

363-4.6(j)(4)
Comment: When a landfill has detected odor control problems, the landfill generally has operational and design defects so the remainder of this paragraph should mandate requirements to be satisfied through an odor control plan if not previously implemented. Therefore, we suggest the Revised Paragraph 363-4.6(j)(4) be amended as follows: The odor control plan **shall** ~~may~~ include but not be limited to, gas control systems that are appropriately connected to the landfill liner system's primary leachate collection and removal system (including the drainage area on the landfill's side slopes), use of horizontal gas collection lines, **final double composite liner on the side slopes that can no longer be filled since side setbacks have been met up to within fifteen (15) feet of the surface and** ~~or~~ the rejection or mitigation of odiferous wastes that are determined to be contributing to off-site odors.

Response: The language in the regulations says that "the odor control plan may include but not be limited to…". The Department believes this gives the flexibility needed to determine the circumstances on a site-specific basis and, therefore the proposed language has been retained.

363-4.6(j) and 363-4.6(k)(2)
Comment: The air quality monitoring plan should be integrated with the odor control plan to proactively identify and correct fugitive landfill odors and air permissions prior to impacting the neighboring community.

Response: The odor control plan and the gas monitoring and emission control plan, which includes a description of any air quality monitoring, are both required plans in the landfill's facility manual. While there may be integration between the plans based on site circumstances, these plans serve different purposes and integrating them in the regulations would obscure their separate objectives.

363-5 Siting Requirements

363-5.1
Comment: We oppose the expansion of existing landfills, or the establishment of new landfills. However, if the Department is going to allow new landfill cells to be built, this regulatory change should require an applicant seeking to develop a new landfill in New York to hire an independent hydrologist or hydrogeologist to establish that groundwater at the chosen site will not migrate to any surface water body within five years of escaping the landfill leachate collection system. This should be done by estimating, based upon representative on-site field testing, the seepage velocity of the groundwater in both the surficial geological deposits and in bedrock. The maximum seepage velocity shall be the highest rate estimated for any test site in the disposal area. The five-year time of travel estimate shall be calculated by multiplying the maximum seepage velocity, in units of feet per year, by five years. The setback from surface water will therefore be the greater of the five-year time-of-travel estimate calculated as part of the application, or five-hundred feet.
We recommend that the Department require, as part of the seepage velocity calculations, the installation of water table observation wells and open standpipe piezometers in numbers and locations sufficient to determine the horizontal and vertical groundwater flow rates, as well as the groundwater time-of-travel rates from the bottom of the landfill and leachate liner system to sensitive receptors placed near surrounding surface waters. Additionally, the applicant must ensure that these instruments are read at a frequency sufficient to identify the seasonal extremes of groundwater fluctuations as well as the groundwater time of travel to receptors.
In addition to the updates to 6 NYCRR § 363-5.1(k), the Department should also promulgate regulations which impose a new site-specific setback requirement that controls the proximity a new landfill can have to surface waters. A site-specific setback requirement for any proposed new landfill from any perennial river, lake, or coastal water of

New York. The setback distance shall be sufficient to prevent any contaminated groundwater arising from the solid waste facility from reaching any perennial river, lake, or coastal water of New York within five years.

Response: New requirements beyond those already in regulation for separation from primary water supply aquifers, principal aquifers, or surface waters actively used as sources of municipal drinking water supply are not proposed in this rulemaking. Therefore, the recommendations for additional groundwater evaluations and surface water setbacks are outside the scope of this rulemaking. The Department believes that the current siting and groundwater monitoring requirements, as amended by these revisions, are protective of human health and the environment.

363-5.1(c)(1)(i)
Comment: Language is included in this section that prohibits any new landfills or expansion of existing facilities from being located on agricultural land that was taken through the exercise of eminent domain. This should be removed. This appears to be a questionable overreach of state authority and gives the appearance of taking away local land use control.

Response: Issues related to the siting of landfills on former agricultural lands are outside the scope of this rulemaking.

363-5.1(j)
Comment: If a wetlands area expands in size due to climate change or seasonal weather patterns, will the landfill be grandfathered or the landfill be required to get a wetland permit from the department? At a minimum, the landfill operator should be required to monitor the encroaching wetland to confirm it is not contaminating the wetland.

Response: An updated wetlands delineation is required as part of any landfill expansion application.

363-5.1(j)
Comment: These regulations are redundant to current Part 360 restrictions, the SEQR process, and the U.S. Army Corps of Engineers permitting process and this section should be deleted in its entirety.

Response: The proposed regulations will increase consistency with federal solid waste landfill regulations and therefore will be retained as part of this rulemaking.

363-5.1(k) Minimum distance from schools or residences
Comment: This siting regulation is necessary, and there is support for it. Living near a landfill can have a negative impact on people's health and quality of life. The New York State Department of Health studied cancer incidences near landfills between 1980 and 1989 and concluded that women living close to a landfill had statistically significant elevated risk of bladder cancer and leukemia. The gases produced by landfills can also pose a risk to residents' respiratory health. Community members living closest to landfills are also at a greater risk of contracting anthropozoonotic diseases. Living near a landfill also negatively impacts community dynamics due to uncertainty about the health-related and other impacts of landfills on the community which causes fear-induced environmental stress. This regulation will serve environmental justice and protect overburdened communities.

Response: Comment noted.

Comment: Prohibiting new landfills or expansions of existing landfills within 1000 feet of a school or legal place of residence will restrict landfill disposal capacity. Having less available landfill disposal capacity in the state will result in more expensive tip fees, increased transportation distances, and increased illegal dumping. Increasing the distance that waste must be transported will increase transportation costs and greenhouse gas emissions. Furthermore, it will make New York State reliant on disposal capacity in neighboring states which is not a viable waste management solution. Alternatively, new landfills could be sited within the State which would cause the displacement of other land uses. Taken together, this contradicts the goals of the State Solid Waste Management Plan and Climate Leadership and Community Protection Act.

Response: The Department believes that the proposed changes will reduce potential negative impacts from landfill on surrounding communities, and that increasing diversion of recyclables from the waste stream identified in the

state solid waste management plan and Climate Scoping Plan will reduce impacts of available landfill capacity. The Department intends to propose future revisions to Part 363 related to GHG emissions and enhanced diversion of recyclables.

Comment: Our organization appreciates the Department's efforts to streamline the Part 360 solid waste regulations. Many of the proposed revisions are helpful clarifications that are welcome going forward. In addition, our industry supports changes imposed to further protect the environment. However, we feel that there are specific sections of these proposed regulation changes that could have a significant negative impact on New York State's ability to manage our own waste in an efficient and environmentally sound manner. Ultimately, imposing siting prohibitions for the expansion of current waste disposal facilities will lead to exporting our waste to other states and effectively burdening others with an issue that should be managed locally and kept within our state. In addition, long hauling of waste to other states will increase waste transportation emissions beyond the current levels.

Response: Comment noted. See response above.

Comment: Please explain what will be considered a "legal place of residence".

Examples of language/suggestions used in the comments pertaining to this question:

- A parcel already containing a residence or one zoned for residential use
- Primary residence of a full-time resident?
- Property owner or does the term include the legal place of residence of a renter?
- Exclude camps or second homes?
- NYSDEC should consider using the definition for permanent place of abode as defined in NYS Tax Bulletin TB-IT-690: Permanent Place of Abode (ny.gov) to ensure consistency amongst NYS agencies.
- assuming the intent here is an existing residence (structure) not one that could be built in the future, so the 1,000 foot is measured from existing structures not from property lines of parcels?

Response: The term "residence" is used in other parts of the Part 360 Series and will be retained here for consistency. The language "legal place of" was removed. The separation requirement is measured from the closest location in the landfill where waste is to be placed to the residence building and managed landscape. Language has been added to the proposed revision to specify how the distance is to be measured.

Comment: In some instances, the landfill owner or operator will own properties surrounding their landfill. This can allow many of the landfill management staff live within close proximity to the facility. This should be viewed as an operational benefit, as it puts them in a position to closely recognize and response to any issue experienced at the site. Will exemptions be allowed for legal residences owned by the owner or operator of the landfill?

Response: Language has been added to exclude residences or schools that are owned by the landfill owner or operator or have entered into legal agreement with the landfill owner or operator.

Comment: Please explain what will be considered a "school".

Examples of language/suggestions used in the comments pertaining to this question:

- daycare, preschool, private, public, university

Response: The term includes any legally recognized establishment for the teaching of children or adults, including legal daycare organizations.

Comment: Please provide scientific justification or study results to explain how the 1,000-foot distance was chosen and explain how this distance will be measured.

Examples of language/suggestions used in the comments pertaining to this question:

- Distance measured from property line to property line?
- Distance measured from limits of waste to a legal place of residence?
- Limits of waste of the existing landfill or the proposed expansion area?

- Distance measured from the boundary of waste, landfill perimeter, or other location within the boundaries of a landfill facility
- The existing regulations' definitions would apply the new prohibition to the entire landfill. The Proposed Regulation will rely on the definitions in the existing Part 360 regulations as DEC interprets and applies the Proposed Regulation. Part 360 defines "landfill" as "a facility where waste is intentionally placed and intended to remain..." 6 CRR-NY § 360.2(b)(152). The existing regulations define "facility" as "a location and associated devices employed in the management of solid waste beyond the initial collection process" and includes "all structures, appurtenances or improvements on the land used for the management or disposal of solid waste." 6 CRR-NY § 360.2(b)(101). This means that the Proposed Regulations that prohibit an existing landfill from expanding prohibits any vertical or lateral expansion of any portion of the landfill where any portion of the facility—including landfill cells, tipping areas, leachate holding tanks, stormwater retention ponds, landfill roads, landfill gas collection devices, or other parts of the facility—are within 1000 feet of a legal residence.
- It does not appear that many other states have a setback distance requirement in their requisite solid waste rules. However, where states do have such set back requirements, many are limited to 500 feet, and allow alternate means of meeting the intent. We request that NYSDEC consider adopting this standard to align these requirements more closely with existing standards in other states
- What if the school or residence is greater than 1000 feet but the property in question is large such that the property line is less than 1000 feet?
- Will the distance be measured from the center of the landfill? From the landfill boundary?

Response: The 1000-foot distance was chosen in order to increase the separation between residences or schools and landfills. The Department believes based on professional judgment that this increase in separation will reduce potential negative impacts from landfill on surrounding communities. For residences, the separation requirement is measured from the closest physical location on the landfill where waste is to be placed to the residence building and managed landscape. For schools, the separation requirement is measured from the closest physical location on the landfill where waste is to be placed to the school building and associated outdoor recreation areas. Any proposed expansion will be subject to the requirement, however, residences or schools that are built after a Part 360 permit application has been submitted are excluded. The distance would be measured on a plan view, meaning that there would be no consideration of elevation difference between the measurement points.

Comment: 1000 feet is not enough separation between schools or legal places of residence and landfills. This distance should be increased. There should be a high bar for approving any variances below this distance.

Examples of language/suggestions used in the comments pertaining to this question:

- Distance should be increased to half a mile
- Distance should be increased to a mile
- Distance should be increased to 3,000 feet

Response: The Department believes that the chosen distance will reduce potential negative impacts from landfills on surrounding communities.

Comment: Allowing existing facilities to continue to operate less than 1,000 feet of a school or legal place of residence is an injustice. If this new subdivision is being created to protect public health, existing facilities that operate 1,000 feet or less next to a school or legal place of residence should face some type of consequence or only be permitted to operate beginning at 1,000 feet away from neighboring properties, schools and legal place of residence.

Response: Transition regulations in 360.4(k)(3) do not require landfills to retrofit existing structural components based on newly established regulatory requirements, therefore, existing authorized landfill footprints are not included in this separation requirement. However, the requirement would be applicable to future expansions of existing landfills.

Comment: Could a landfill expand away from the direction of a school or residence?

Response: Yes. The language has been clarified to restrict the expansion within 1,000 feet of a school or residence.

Comment: A landfill should not be limited from expansion based on residences or schools built after a landfill facility is permitted and constructed. These properties should be excluded from the criteria.

Response: Language has been added to exclude schools or residences that are built after a complete Part 360 permit modification application has been submitted to the department.

Comment: Will this law prevent schools or legal places of residence from being constructed adjacent to existing landfill facilities? If so, how will this be prevented? If not, then the provision unfairly gives residents and local governments the power to determine whether a facility may expand, replacing the State's permitting process with a local land use process.

Examples of language/suggestions used in the comments pertaining to this question:

- would effectively defeat efforts to work around the proposed rule and would allow a single landowner to impose far-reaching impacts on the State's solid waste planning.
- Why should individuals and local governments be given such power, without giving the facility operators an opportunity to identify impacts and develop mitigation methods. More importantly, why should the State protect individuals who construct residences near landfills from the consequences of their own action.
- If there is a 1,000-foot rule, it should be limited to new facilities.

Response: This regulation does not prevent or prohibit construction of any schools or residences. In addition, language has been added to exclude schools or residences constructed after a Part 360 permit expansion application has been submitted.

Comment: The regulations should allow for alternate means such as an easement or agreement with the property owner. In addition, other means of addressing land-use impacts could be considered to resolve a site-specific issue, such as easements or agreements.

Response: Language has been added to exclude schools or residences that have entered into legal agreement with the landfill owner or operator.

Comment: The existing State Environmental Quality Review Act (SEQR) process is required for all proposed new landfills and landfill expansions. This includes a scientific process for determining the required setback distance of the proposed landfill or landfill expansion based on site specific metrics. Furthermore, existing Part 360 and Part 363 regulations have specific provisions related to preventing potential environmental impacts from the landfill. The existing SEQR process, Part 360 and Part 363 regulations already ensure adequate setbacks and protect human health and the environment. The addition of this regulation is an overreach of the Department's regulatory authority.

Response: In addition to any site-specific separation requirements established as part of a SEQR process, general separation requirements already exist within the solid waste management facility siting requirements for landfills (363-5.1(d) and (e)), composting facilities (361-3.2(c)(7), 361-3.2(e)(1)), anaerobic digestion facilities (361-3.3(c)(5) and (6), 361-3.3(e)(1)), fermentation facilities (361-3.4(c)(4) and (5); 361-3.4(e)(1)), and other organics recycling facilities (361-3.6(c)(3) and (5)). This rulemaking adds to these existing requirements.

Comment: The second sentence of the regulation is unauthorized by statute and exceeds the executive authority of the Commissioner of the Department of Environmental Conservation.

Response: Environmental Conservation Law 27-0703 provides the Department authority to adopt regulations that prevent or reduce "conditions inimical to the public health, safety, and welfare" and establishes that siting, design, and operating requirements shall be embodied in rules and regulations. Existing Part 360 Series regulations deal with potential expansions of existing facilities in a variety of ways. See response above. These existing regulations and this addition are within the authority of the Department to ensure landfills are appropriately sited.

Comment: The available background information published by NYSDEC does not clearly explain the reason for proposing changes to these regulations. We request NYSDEC provide further clarification on the intent of these proposed changes and the objective of NYSDEC in doing so.

Response: The Department believes that the chosen distance will reduce potential negative impacts from landfills on surrounding communities.

Comment: Did the State examine whether engineering or administrative controls could provide better or more cost-effective protection? The State did not identify what impacts it is protecting residents from, but assuming noise is one of the impacts, did the State examine whether there are noise mitigation steps a facility might take to reduce the impact without preventing expansion of the facility. The State needs to identify the impacts it intends to mitigate, examine alternative means to mitigate those impacts and then compare the means of reaching the desired results. Without that, the rule is arbitrary and capricious.

Response: Restrictions already exist on noise, odor, dust, and other potential nuisance impacts from any solid waste management facility. With regard to landfills, **t**he Department believes based on professional judgment that the chosen distance will reduce potential negative impacts from landfills on surrounding communities and has made adjustments so that the existing authorized landfill location is not affected, so that future expansions are possible within certain constraints, and so that future development outside the control of the landfill does not cause the landfill to be in violation of the requirements. These provisions have been included to ensure that the rulemaking takes reasonable consideration of all parties involved.

Comment: The State does not seem to have performed the required SEQRA examination of the potential impacts of this provision, or of the regulations for that matter. SEQRA requires an agency to take a "hard look" at potential environmental impacts before approving any action. We understand that the SEQRA Finding Statement for these proposed regulations relied on two documents: (i) the Generic Environmental Impact Statement prepared for a rulemaking that became effective on November 4, 2017 and (ii) the State Solid Waste Management Plan, dated December 2010. However, since both of these documents predate the proposed landfill siting regulation, they do not adequately address its impacts. The significant amount of time that has elapsed since the adoption of the Solid Waste Management Plan raises questions about whether its impact analysis remains relevant. Events that occurred after 2010 suggest the presence of impacts not anticipated by the Plan. For example, in the aftermath of Hurricane Sandy, the need for economic and environmentally sound local disposal options was highlighted and one might expect climate change to create other such events. Has the State examined those potential impacts. Additionally, the State Solid Waste Management Plan anticipated significant reductions in waste disposal, decreasing the need for landfill capacity. Has that decrease occurred? SEQRA requires the State to examine the potential impacts of these regulations based on current conditions, not based on assumptions that were made more than 10 years ago.

Response:
As an initial matter, the administrative record on the State Environmental Quality Review Act also includes a negative declaration in addition to the 2017 GEIS. Here, the action is adoption of amendments to address specific issues that have arisen since the 2017 rulemaking. These include technical cleanup, changes related to fill material. amendments to implement the paint recycling law, and additions to reduce potential impacts from landfills among other changes with are identified in the Regulatory Impact Statement issued with this rulemaking. The rulemaking does not address the issues related to climate change and whether there is a diminishing need for landfills. The Department issued a negative declaration concerning the proposed changes. The suggestion that the rulemaking consider events like Hurricane Sandy and climate change is outside the scope of this rulemaking. The Department expects to be conducting future rulemakings to specifically address climate change and its applicability to management of solid waste under the Part 360 regulations.

Comment: This regulation will impact more than just eight landfill facilities.

Response: Based on calculations performed by the Department in developing this regulation, eight existing landfills could potentially be impacted by the new separation requirement. Agreements between residences and schools and landfill owners and operators are not reflected in tax parcel maps and therefore cannot be factored into

the calculation. Also, details of potential future landfill expansions may not be known at this time and therefore cannot be reflected in the calculation.

Comment: The SUMMARY OF REGULATORY IMPACT STATEMENT references that the proposed 363-5.1(k) landfill siting restriction as impacting eight landfills in the state. Can you tell me which landfills those are?

Response: Based on calculations performed by the Department prior to issuance of the proposed rulemaking, the eight identified landfills that were potentially impacted by this separation requirement included the Blydenburgh Road Landfill Complex, Dunn C&D Debris Landfill, Honeywell/Camillus C&D Landfill, North Elba C&D Landfill, Ontario County Sanitary Landfill, Port Jefferson Village Cleanfill, Victor Insulators Landfill, and Voorhees Hill Road C&D Landfill.

Comment: Department should refrain from adding in this new provision. Instead, we encourage some dialogue with the regulated community, so the Department can get a better sense of how such a provision would impact the ability of New York State's landfills to accommodate the waste that is generated in state.

Response: The Department believes that the chosen distance will reduce potential negative impacts from landfill on surrounding communities and has made adjustment in the final rule to clarify the method by which the distance is calculated and to make allowances for changing circumstances related to the separation requirement. Therefore, the Department finds it appropriate to adopt the proposed setback.

Comment: It appears that the separation proposed was intended as a lateral measurement; including the vertical expansion restriction is also arbitrary and should be technically justified if it is to remain.

Response: The language has been clarified that vertical expansion that is within 1000 feet of a residence or school is restricted.

Comment: The impacts of this regulation have not been examined in the Regulatory Impact Statement or the Generic Environmental Impact Statement for the 2017 Part 360 amendments. The Regulatory Impact Statement prepared in support of the regulation fails to calculate the total tonnage of waste displaced from existing landfills by the prohibition against expansions, fails to assess the State's capacity to manage the displaced waste, fails to address the interstate community's ability to absorb New York waste entering the flow of interstate commerce due to the prohibition of expansions, and grossly underestimates the environmental and financial impacts of the prohibition of landfill expansions to local communities and local governments.

Response: Based on the Department's calculations, the impact on the existing available landfill airspace and on potential landfill airspace through future landfill expansions is minimal. In addition, the language has been clarified that only disposal within 1000 feet of a residence or school would be restricted.

Comment: Although we ultimately encourage NYSDEC to eliminate this proposed requirement, at a minimum, the regulation language should be revised, and as such, we propose the following changes:
A new landfill limit of waste cannot be located within 500 feet of a school or permanent place of abode as defined in NY Department of Taxation Tax Bulletin IT-690 (TB-IT-690), at the time of siting, unless it can be demonstrated through easements or agreements with affected property owners that the applicant has acquired the right to expand.
An existing landfill limit of waste cannot be expanded either vertically or laterally to within 500 feet of a school or permanent place of abode as defined in NY Department of Taxation Tax Bulletin IT-690 (TB-IT-690), at the time of siting, unless it can be demonstrated through easements or agreements with affected property owners that the applicant has acquired the right to expand. The 500 ft set-back distance is measured from the limit of waste to the physical structure. This requirement does not apply to a place of abode owned by the landfill, or any place of abode or school built after the facility began operation.

Response: Comment noted. Several of these clarifications have been included in the final rule, including allowing for easements or agreements with affected property owners, calculating the setback distance from the placement of waste to the physical structure and stated outdoor areas, excluding residences or schools that were constructed after

an expansion application identifying the landfill's disposal footprint has been submitted, and only limiting lateral or vertical expansions that are located within 1000 feet of a residence or school.

Comment: We believe the Department of Conservation ("DEC") is exceeding its authority in proposing the amendment to landfill siting requirements. DEC's enabling statute requires that the Department's regulations prevent or reduce certain impacts, and that it consider the economic and technological feasibility of compliance with its regulations. With this proposed regulation, however, DEC offers no explanation as to how the prohibition on new landfills or expansions of existing landfills within 1,000 feet of a school or residence will mitigate impacts, and, despite partially recognizing (without assessing) the negative economic effects of that restriction, does not duly consider them in proposing the amendment. In authorizing DEC to promulgate regulations governing the siting and operation of solid waste management facilities, the Legislature expressly requires that such regulations "be directed at the prevention or reduction" of air, noise, and water pollution, obnoxious odors, or other conditions harmful to public health, safety, and welfare. ECL § 27-0703(2), (4). Importantly, the Legislature further directed DEC to "give due regard to the economic and technological feasibility of compliance" with the regulations. The proposed siting requirements satisfies neither of the explicit requirements in ECL § 27-0703(2). In its regulatory impact statement, DEC asserts that this amendment is intended to "increase the distance between landfill[s] and school[s] or residences and thereby limit any potential impacts." DEC did not assess or explain why this arbitrary distance is necessary. This discussion is essential because landfills are already subject to strict siting and operational requirements that effectively mitigate offsite odors, noise, and other impacts, and applications for new or expanded landfills require detailed environmental assessment under the State Environmental Quality Review Act ("SEQRA"). Nor does NYSDEC evaluate the necessity or appropriateness of a blanket prohibition like the one proposed given variable development patterns and population densities of the areas surrounding the landfills.

Response: Restrictions already exist on noise, odor, dust, and other potential nuisance impacts from any solid waste management facility. (See 360.19(f), (g), (h), (i), and (j)). With specific regard to landfills, the Department believes based on professional judgment that the chosen distance will reduce potential negative impacts from landfill on surrounding communities and has made adjustments so that the existing authorized landfill locations are not affected, so that future expansions are possible within certain constraints, and so that future development outside the control of the landfill does not cause the landfill to be in violation of the requirements. These provisions have been included to ensure that the rulemaking takes reasonable consideration of all parties involved. Based on the Department's calculations, the impact on the existing available landfill airspace is minimal.

Comment: While this is a positive new regulation, questions arise such as: How is the State prepared to enforce this new regulation given the proximity of existing active landfills within the State? Is a major expansion of a landfill, such as the 150 acre "expansion" of the High Acres landfill into Macedon, which was actually a "new" landfill with brand cells and brand new liners a new landfill that would fall under this new regulation in the future or not? Additionally, this new regulation fails to help communities with residences already within 1,000 feet from the current impacts of existing landfills. We propose an addendum to §363-5.1(k) as "§363-5.1(k)(ii)":
Any existing landfills located within 1,000 feet of a school or legal place of residence causing off-site fugitive landfill odor and air emissions pursuant to the sampling required under §363-4.6(k)(2), the landfill's odor control plan shall be implemented pursuant to section 363-4.6(j)(4) within seven (7) days subsequent to one or more complaints to the Department from property owners located within the 1,000-foot radius. A written communication shall be sent to the property owner(s) that issued the complaint detailing the corrective action implemented and an explanation of how the corrective action is designed to prevent recurring impacts. Continuous air monitoring shall be implemented with use of the most state of the art technology to confirm compliance until all releases from the surface are mitigated. Should off-site odors persist for a 30-day continuous period, the landfill must identify the contributing cell(s) and close the cell(s) with a temporary liner until a demonstration of proper operation of the cell(s) has been made.

Response: Restrictions already exist on noise, odor, dust, and other potential nuisance impacts from any solid waste management facility. (See 360.19(f), (g), (h), (i), and (j)). With regard to landfills, the Department believes that the chosen distance will reduce potential negative impacts from future landfills and landfill expansions on surrounding communities. Expansion is defined in 360.2(b)(102). The type of situation described in the comment would be an expansion. Existing requirements associated with odor control measures identified by site inspections or through

neighbor complaints will continue to be utilized to reduce potential odor impacts on neighboring properties. The Department declines to adopt the revisions suggested by the commentor.

Comment: Should the Department choose to let this regulation stand it must include clarifying language, including:
• Consistency with the Department's presentation on May 25, 2022, at the Federation of New York Solid Waste Associations Conference – that the proposed siting restriction is intended only to apply to new landfills and landfill expansion footprints.
• Clarifying that if the legal place of residence is owned by the same entity that owns the landfill property and/or written approval is obtained from the resident or school, the regulation does not apply.
• Additionally, guidance should be provided to define how the separation will be established and that it should be established from the residential structure or school building in question to the limit of waste.
Should the Department choose to let this regulation stand, we suggest that the subject text be revised as follows:
"The limits of waste of a new landfill or the limit of waste of the expansion footprint of an existing landfill cannot be located within 1,000 feet of a school building or residential structure ~~legal residence~~ unless the residential structure is owned by the same entity that owns the landfill property and/or written approval is obtained. An existing landfill located within 1,000 feet of a school or ~~legal place of residence~~ residential structure is prohibited from expanding either vertically or laterally within the 1,000-foot separation but this restriction does not apply provided the expansion footprint is not located within 1,000 feet of a residential structure or school building."

Response: Comment noted. The requirement is a siting restriction that is intended only to apply to new landfills and expansions at existing landfills. Several of these clarifications have been included in the final rule, including allowing for easements or agreements with affected property owners, calculating the setback distance from the placement of waste to the physical structure and stated outdoor areas, excluding residences or schools that were constructed after an expansion application identifying the landfill's disposal footprint has been submitted or after an application for a new landfill has been deemed complete, and only limiting lateral or vertical expansions that are located within 1000 feet of a residence or school.

Comment: As currently proposed, this regulation must apply to the Seneca Meadows Incorporated landfill, or S.M.I., which is slated to close, but is now seeking to expand. We have identified at least nine residences that are within one thousand feet of S.M.I. and, in some cases, they share a property line with the landfill. We will be submitting the addresses of these residences in writing. S.M.I., located in Seneca Falls, the birthplace of American's women rights, is the largest of twenty-seven landfills in New York State. It is permitted to accept six thousand tons of waste and produce up to two hundred thousand gallons of polluted leachate a day. A quarter of the landfill is trash from New York City, followed by four other states. S.M.I. was previously required to stop receiving waste and halt operations by 2025. However, Waste Connections, the parent company of S.M.I., contributed around two hundred and eighty thousand dollars into pro-landfill candidates who won seats in town board and county races, and are now supporting the valley infill expansion. It's a seven-story high expansion. And this would keep the landfill operating through 2040 with allowable dumping on the valley infill, which is the former toxic Tantalo superfund site, rising another seventy feet into the viewscape. Leachate and wastewater runoff from the landfill contain per- and polyfluoroalkyl substances, or PFAS, which can contaminate widespread drinking water and cause harmful health impacts. Seneca Meadows produces seventy-five million gallons of this Leachate each year, which is distributed, not just to Seneca Falls, but also to Buffalo, Watertown, Chittenango, and Steuben County, contaminating drinking water across the state. In conclusion S.L.G. supports the regulation, which would prohibit S.M.I. from expanding when it should be closing on the basis that it has residences within a thousand feet of the landfill. Seneca Meadows Landfill is located within 1000 feet of multiple legal residences.

Response: The separation requirement will only apply to applications for landfill expansions which are submitted after the effective date of the rule or are not deemed complete by the Department prior to the effective date of the rule. Clarification was added to the final rule describing when the restriction applies. Application and evaluation of the separation requirement will be made on a case-specific basis.

Comment: The regulation may be construed to prohibit an internal expansion of capacity at the Agency's Blydenburgh Road Cleanfill Landfill which does not laterally expand the outer waste perimeter or vertical limits established by permit.

Response: Language has been added to clarify that the requirement would prohibit vertical expansions within the 1000-foot separation zone. So long as lateral or vertical expansion of a landfill does not take place within 1000 feet of a residence or school, this requirement would not prohibit that expansion.

363-6 Design, Construction and Certification Requirements

363-6.1(e)
Comment: Is it the Department's intent that every subsequent cell construction will be required to meet the current design requirements or require an overlay liner system, even if both liner systems are double composite? Please clarify which design requirements specifically are required to be met in order to overlay waste onto adjacent landfill cells if permitted prior to November 4, 2017. The current interpretation seems to imply that newly permitted cells will require an overlay liner system over adjacent cells designed in accordance with previous liner system design requirements; however, placement of waste overtop of these cells is occurring currently at sites that have not permitted new expansions, but are building new cells in currently permitted areas. Please specifically clarify if the following are required for compliance with this condition (i.e. in order to avoid construction an overlay liner system: • Maximum 12" head over primary liner • 1 cm/sec greater in lower 12" of primary collection stone and 0.1 cm/sec in upper 12" • 24 hour detection time • Secondary leachate collection layer design capacity of 1,000 gpad • Stone gradation (5% maximum passing No. 200 sieve) • Calcium carbonate of 15% maximum • 8" primary and 6" secondary leachate collection pipes • Composite geonet transmissivity reduction factor requirements • Any other specific design or operating requirements not mentioned here that will be required to be met. The potential for requiring double composite liner systems to overlay existing double composite liner systems if they cannot meet all of the above criteria is concerning due to the potential for significantly increased costs for liner system construction with no scientific justification for doing so. This is especially concerning with the proposed requirement of an 80 mil HDPE geomembrane liner; will all subsequent cells adjacent to an existing cell with a 60 mil HDPE geomembrane liner then require an overlay liner system if constructed after these regulations go into effect? This creates the potential for newly constructed liner systems less than 5 years old to require overlay liner systems in order to overlay waste if a new permit goes into effect. However, this has not been the case, nor has ever been contemplated to our knowledge, for adjacent cells built under the same permit to construct but with differing cell design requirements (such as those permitted prior to November 4, 2017 but constructed since then). To implement this at some sites with double composite liner systems but not others, dependent only on permit status, is arbitrary. Please clarify the Department's position with regards to the timing of landfill cell design/construction versus permitting and the potential inconsistencies in the enforcement of this rule.

Response: The requirements in 360.4(k) specify the transition rules for landfills and include the requirements for subsequent cell design/construction. Any landfill permit renewal or modification application received or deemed complete on or after the effective date of this rule will be subject to the requirements of 360.4(k) and the transition rules must be followed for subsequent cell design, construction and certification. Applications for landfill expansions that include waste being placed over existing cells constructed with double composite liner systems that meet the basic configuration of the liner system required in the regulations do not require an overlay liner system provided the application includes information acceptable to the Department that verifies that the existing double composite liner system is functioning as designed.

363-6.6(a)(1) and 363-6.6(a)(2)
Comment: It is our understanding that the requirement to increase liner thickness (i.e., 80 mil) is dependent upon a landfill's proximity to a water source, such as a deep-water flow area, or an aquifer recharge area where a confining layer is not present. NYSDEC's existing 60 mil landfill liner thickness requirement is in-line with federal requirements under the Resource Conservation and Recovery Act (RCRA). We request NYSDEC consider any additional requirements on a site-by-site basis, as geographical specific concerns, are already addressed by the stricter requirements for landfills in Nassau and Suffolk Counties due to the proximity to deep water flow areas and aquifer recharging areas.

Response: The 80-mil geomembranes required in previous versions of the Part 360 regulations were driven by the requirements in the Long Island Landfill Law for landfills located in Nassau and Suffolk Counties because of the importance of preventing contamination of the deep flow recharge area. The Department is committed to protecting

groundwater across the state, and therefore the use of an 80-mil geomembrane in the primary composite liner has been expanded to landfills located in all areas of the state.

Comment: Constructing landfill liners with 80 mil liners is difficult and has its own drawbacks. First, working with 80-mil liner material is more difficult due to its rigidity and heavier weight. 80- mil liner product is typically manufactured in shorter length rolls than 60-mil product resulting in more seams and weld points. These additional installation points create additional opportunities for leachate penetration. Moreover, the shorter yet heavier rolls will require 33 percent more material and deliveries resulting in additional truck traffic and emissions. These factors will ultimately result in higher installation costs which will be passed on to facilities' users. Additionally, the 80 mil liner has a tendency to wrinkle, making electro-resistivity testing less effective due to the thickness of the material and voids where wrinkles form. Requiring the manufacture of 30% more material made from fossil fuel, and 30% more trucking to deliver the material, slowing deployment and construction schedules, without documented proof of performance improvement or increase in environmental protection, seems unnecessary.

Response: The 80-mil geomembrane liners have been used in the construction of liner systems in landfills located in Long Island and other areas of the state and have not presented construction or certification issues. Best management practices can be used when installing the 80-mil geomembrane that will decrease the potential for wrinkles. The thicker geomembrane will have a longer service-life, increasing the longevity of the liner system to ensure added long-term groundwater protection. The requirement to use an 80-mil geomembrane in the primary composite liner has been retained. The Department recognizes the importance of maintaining direct and uniform contact with the underlying soil layer. The requirement for the use of the 80-mil geomembrane in the secondary composite liner under 363-6.6(a)(1)(ii) has been revised.

Comment: The proposed requirement to use 80-mil or thicker HDPE geomembrane will result in 33% or more horizontal seams as compared to 60-mil HDPE. 80-mil HDPE roll lengths are shorter than 60-mil and thus more horizontal (butt) seams are required, contradicting Subdivision 363-6.8(5)(i) which states "The number of horizontal seams must be minimized". It is widely recognized in the landfill construction, design, and regulatory community that leaks in geomembrane barrier systems are more prevalent in the seams. The proposed regulations do not promote the minimization of seams.

Response: While the 80-mil geomembrane roll lengths are shorter and will require additional seams, the thicker geomembrane is more robust against damage resulting from installation of the material and construction of the remaining layers of the liner system. The 80-mil geomembrane will also have a longer service-life, increasing the longevity of the liner system to ensure added long-term groundwater protection. The requirement to use an 80-mil geomembrane in the primary liner has been retained.

Comment: We are unable to find any evidence that landfills lined with 80 mil material have outperformed those lined with 60 mil. The existing requirement for 80 mil liner is the result of the unique hydrogeological setting of facilities on Long Island. What technical and scientific data can the State provide that shows the use of 60 mil liner in other areas of the state is not protective to the environment? To the best of our knowledge there is no scientific evidence that the current requirements are not protective of groundwater quality. Please justify this change and provide scientific evidence to support this thicker geomembrane requirement.

Response: The thicker geomembrane will have a longer service-life, increasing the longevity of the liner system to ensure added long-term groundwater protection. The requirement to use an 80-mil geomembrane in the primary composite liner has been retained.

Comment: If NYS is to move forward with these requirements more information is needed. Considerations should be made for the integration of existing liner systems. Specifically, requirements for tie ins and welding at existing landfills are not provided. We request any such considerations be done in consultation with the landfill operations community.

Response: Comment noted**.**

Comment: It is our understanding that there is no data that suggests any active 60 mil. landfill liner system is not working as designed. While we are not necessarily opposed to the use of 80 mil. liner, the clarification should be made in order to assure the public that the 60 mil liner systems are safe and protective of groundwater quality.

Response: Comment noted.

363-6.6(a)(2)(i)
Comment: This regulation needs to specify when the side slopes are required to be covered by the appropriate membrane. The requirement of a "final" cover system should be triggered for the covering of a landfill's side slopes that have reached maximum capacity. The mountainous MSW landfills that exist in the State are not being required to comprehensively cover their side slopes once they have been fully filled to the maximum setback requirements, leading to excess emissions of landfill gasses in violation of the CLCPA law. The intermediate cover provided by §363-6.14 has not shown to be sufficient to stop the migration of gasses. The 363-6.6(a)(2)(i) provision should be amended to state: This provision shall apply to vertical side slopes that have reached maximum capacity based on the maximum setback requirements and can no longer be filled within 15 feet from the top surface of the landfill to prevent off-site migration of fugitive emissions.

Response: The citation provided in the comment to 363-6.6(a)(2)(i) is not correct, however, the suggested revision to 363-7.1(c) is outside the scope of this rulemaking.

363-6.6(b)
Comment: The Department should clarify the justification for this change. What engineering studies have been performed to support the requirement for a double composite liner system for these types of landfills? To the best of our knowledge there is no scientific evidence that the current requirements are not protective of groundwater quality.

Response: Leachate monitoring data has shown that the leachate from other non-MSW landfills is similar in nature and contains similar concentrations or parameters, including emerging contaminants. It is for these reasons that the regulations require a double composite liner for all landfill types, unless the applicant can demonstrate that an alternative liner system is justified. This double composite liner system adds a second geomembrane liner and leachate collection system to the existing requirements to enhance environmental performance and to prevent adverse impacts to groundwater.

Comment: Because of the high level of containment afforded by the single composite liner, the benign nature of the leachate and the proven protection to groundwater resources, we believe that requiring a double liner system for these facilities is unnecessary and will do little to improve environmental containment.

Response: Comment noted. See above response.

Comment: The blanket requirement that all landfills, including construction and demolition landfills, have a presumption of necessitating a double lined system is something that is better determined on a site by site basis. This regulation will simply result in excessive costs with little marginal benefit as there is no evidence of any C&D landfill located in New York State necessitating a secondary liner. The added cost of this installation will result in higher disposal fees for businesses that utilize these sites and possibly push material to further out of state locations.

Response: Comment noted. See above response.

Comment: DEC recognizes in its published Summary of Regulatory Impact Statement that the proposed regulatory changes commented on above will result in higher costs. We believe that the actual costs will be substantially more than what is estimated under real operating conditions. Regardless of how much the cost increase will be, at a time of historic inflation, DEC must be mindful of the financial impacts these regulations will have on our business customers, and the negative cost of living effects to our New York State residential customers.

Response: Comment noted. See above response.

Comment: Requiring double composite liners for C&D facilities, it will effectively eliminate C&D landfills in New York. If owners are required to install a double composite liner, then every facility will be converted to a MSW facility. Requiring double composite liners for C&D facilities will eliminate this cost-effective disposal option for C&D waste in New York. C&D waste will be co disposed with MSW, eliminating the many benefits of separating C&D waste from the waste stream such as reduced gas generation (a very important consideration today).

Response: Comment noted. The type of waste received by a facility is determined as part of the Part 360 permit process. Twenty-five of the currently operating MSW landfills accept C&D debris for disposal. Based on 2018 landfill data, approximately 49% of the C&D debris disposed of in New York State is disposed of in MSW landfills.

363-6.6(b)(1)(v)
Comment: This paragraph was originally limited to industrial wastes whose chemical characteristics are not likely to vary over time. However, C&D debris consists of various types of material disposed of over time. We recommend that "C&D debris" be deleted from this paragraph since its waste characterization is variable. If C&D debris remains in this paragraph, please define how to identify the chemical characterization of C&D debris since it can vary unlike waste from industrial processes.

Response: While the composition of the C&D debris waste stream varies slightly based on the construction or demolition being performed, the components of the C&D debris waste stream have stayed fairly constant. The language in the final regulations has been retained.

363-6.8(b)(1)
Comment: As it pertains to waves and wrinkles, a certain amount of field judgement should be allowed for wrinkles and typically the desire would be to have waves of less than 6-inches with the stipulation that the liner would not lay over on itself allowing subsequent fill placement (PDS). Language that waves "must be" less than two inches in height does not allow for such field judgment or discussion about the same with a DEC construction monitor. Will all wrinkles be required to be measured and certified as part of construction? HDPE liner systems expand and contract with temperature variations, a wrinkle may appear during the day when temperature is high and disappear as temperatures cool. Standard operating practice for HDPE liner installation involves smoothing out wrinkles and adding sandbags or weight to hold wrinkles down and correct them without cutting the liner system. The arbitrary requirement that liner waves or wrinkles must be less than two inches will result in superfluous cut-outs and repairs in the liner system which will decrease the overall effectiveness of the liner system. We suggest the removal of the specified height of two inches.

Response: Part 363 currently requires the geomembrane to be installed in a manner that eliminates waves entirely to ensure that the material is installed in direct and uniform contact with the underlying low-permeability soil layer or GCL. The regulated community has indicated that eliminating waves during construction is not practical and has been unable to meet this requirement during construction inspections. The requirements in proposed 363-6.8(b)(1)allow the geomembrane to be installed in a manner that minimizes waves and any waves must be less than 2 inches in height. The Department believes the 2-inch height is appropriate to ensure that the waves are small enough to avoid creases in the geomembrane to allow for direct and uniform contact as the overlying liner layers are placed. The language in the proposed rule has been retained.

363-6.8(b)(5)(iv)
Comment: Restricting geomembrane field seaming to temperatures at 32 degrees or above could result in a reduction in quality of the barrier system and a lengthening of project construction schedules. Specifically, the restriction that liner be installed when temperatures are at 32F or above will result in shorter construction hours during the fall, winter, and spring months. The shorter construction hours will result in an extended installation period which could result in more joints and seams within the installed geosynthetic products. The minimization of seams increases the performance of the system. It is widely recognized in the landfill construction, design, and regulatory community that leaks in geomembrane barrier systems are more prevalent in the seams. The proposed regulations do not promote the minimization of seams. The commentor recommends adding language consistent with GRI GM9 to allow for field seaming of geomembranes in cold weather (5°F to 32°F) provided the geosynthetics installer can demonstrate using pre-qualification test seams, that field seams created under these conditions comply with the project specifications.

Response: The proposed regulations clarify where the temperature reading should be taken and do not change the requirement prohibiting field seaming when ambient air temperatures are below 32° F. The recommendation to allow field seaming below 32° F is outside the scope of this rulemaking.

363-6.8(c)(3)(vii)
Comment: When electrical leak location testing was added to previous versions of the regulations, it was after the Department had worked with industry to develop procedures and methodologies that were viable in practice and valuable. In this case it is not clear what technologies are being suggested, if it has been successfully implemented in the field if the logistics required to implement the technology are not counterproductive. Methodologies requiring additional earth/stone moving or additional equipment working in the vicinity of the liner systems should be avoided. Lastly, the need for a GPS-based map is excessive, creates unnecessary costs and complexity and adds no value. The survey report only needs to be adequate to locate and repair defects. Therefore, the proposed revisions in this subparagraph should be deleted in their entirety.

Response: Comment noted. Electrical resistivity leak location evaluations are most effective when performed with proper site preparation and adequate isolation of the soil drainage layer. The language in the proposed regulations adds clarification to ensure that the electrical resistivity leak location evaluations are performed consistently across the state in a manner that yields effective results. When tie-in areas of the cell cannot be adequately isolated, the proposed regulations offer an alternative testing method to ensure that key areas of the cell can be adequately evaluated. The language related to the written report of the findings of the evaluation was revised in the proposed regulations to fix grammatical issues to clarify the requirements. The language in the proposed regulations has been retained.

363-6.17(a)
Comment: The last sentence of this subdivision is unduly restrictive. Many final cover systems include a cushioning layer (drainage composite or geotextile) to protect the underlying geomembrane from stones in the barrier protection layer. Therefore, the last sentence should be revised to read "If the lower six inches of soil are in direct contact with the geomembrane (i.e., no drainage composite or geotextile cushion are present) then the soil used to construct the lower six inches of this layer must pass a two-inch sieve."

Response: Comment noted. The proposed regulations include a minor change to 363-6.17(a) to remove the "one hundred percent of" wording at the beginning of the last sentence. This change from the existing regulation does not change the overall requirement. The suggested revision is a significant change to the requirement and is therefore outside the scope of this rulemaking.

363-7 Operating Requirements

363-7.1
Comment: Landfill Gas Collection/Destruction Requirements The regulatory impact statement cites numerous sections of the Environmental Conservation Law (ECL) as statutory authority for the rule changes, but not ECL Article 75 ("Climate Change"). This article was added by the Climate Leadership and Community Protection Act (CLCPA) in 2019 in recognition of the need for immediate action by New York State to reduce greenhouse gas emissions. Several provisions impact the issuance of permits by state agencies, including those governed by the Parts proposed for amendment in this rulemaking. The Department has recently also proposed amendments to Part 621 ("Uniform Procedures") that to a limited extent incorporates CLCPA provisions into the process of issuing major permits. However, as noted in the regulatory impact statement for the proposed amendments to Part 621: "The proposed rule would implement the Climate Leadership and Community Protection Act (CLCPA; Laws of 2019, Chapter 106, as codified in ECL Article 75), including consideration of environmental justice within the context of CLCPA, and requirements for consideration of climate change (e.g., sea level rise and flooding) consistent with the Community Risk and Resiliency Act (Laws of 2014, Chapter 355, as amended by Laws of 2019, Chapter 6, Section 9)." "While the regulatory programs administered under UPA apply to a broad range of environmental resources, the changes proposed in this rule making are procedural in nature and do not include changes to the standards for permit issuance that are contained in the program regulations for the programs that UPA procedurally administers." Any substantive regulatory changes to address climate impacts by solid and hazardous waste facilities must be made in

the Part 360 series. The Department previously had proposed some of these changes in the 2016 proposed update to these regulations (State Register I.D. #ENV-11-16-00004-P). We commented that "Part 360 revisions that would appear in proposed Part 363-8 (Landfill Operating Requirements) include a new condition that would require active collection/destruction of landfill gas for all new MSW landfills and subsequent development at existing MSW landfills." We noted that this was a good first step to limit greenhouse gas emissions from landfills and supported it, provided municipalities had the resources they need to comply. However, the Department issued a revised proposal in 2017 that dropped the requirement for active collection/destruction of landfill gas. We wrote to express their disappointment and urged the Department, without success, to revisit the issue "in light of the devastating contributions of methane emissions to climate change." We note that the Climate Action Council agrees that additional actions are needed to reduce methane emissions associated with landfills: the Council's draft scoping plan calls on the Department to enhance existing regulations for landfill gas capture, including requiring installation of landfill gas collection systems sooner after waste placement, and expanding monitoring requirements. The "Waste" chapter of the draft plan also indicates that the Climate Justice Working Group strongly supports controlling fugitive emissions from landfills. (See pp. 246-247). The changes in the current proposal address such concerns only in an extremely limited way and the final regulations must do better. While we are aware that the CLCPA includes a specific section (§75-0109) on the promulgation of regulations on greenhouse gas emissions reductions, we also note that the Department has chosen to act separately to promulgate regulations to reduce methane emissions. When it adopted regulations to reduce methane emissions from the oil and natural gas sector earlier this year, the Department stated that "as acknowledged by the Legislature through its enactment of the CLCPA, significant reductions of GHG emissions, including methane, are necessary to mitigate the ongoing impacts of climate change on New York State. By reducing methane emissions, this regulation will further the goals and requirements of the CLCPA." -3- We urge the Department to show the same sense of urgency in completing its unfinished task of strengthening efforts to reduce methane emissions from landfills. With regard to the need to ensure that municipalities have the needed resources, we note the recently enacted Inflation Reduction Act includes billions of dollars to fund climate pollution reduction grants to state and local governments.

Response: Comment noted. The Department intends to implement regulatory changes associated with the Climate Scoping Plan through a future rulemaking.

363-7.1(b)(4)
Comment: We have the following comments regarding the proposed changes to this section:

- We request NYSDEC provide further explanation as to the reason for proposing these changes to the regulation. We believe NYSDEC is proposing this amendment to set a maximum amount of AOC material to be used at a landfill on an annual basis and is not intended to combine the AOC with the maximum permitted disposal tonnage. We suggest revised wording to clarify the intent.
- As a general "rule-of-thumb", the industry has historically used a factor of approximately 20% of the total volume. This is a reasonable estimation, however the requirement to apply a minimum of 6" of cover material over the working face on a daily basis is variable based on the density of the material (converting to tons) and the workability of the material. For example, a working face approx. 1 acre (200 ft x 200 ft) requires about 1,000 – 1,200 tons of soil per day to cover (40,000sf @ 6" soil depth = 741 cy or approximately 1,000 – 1,200 tons of soil based on an average density of 3,000 lb./cy). If the material is grinding media, or ash, the density and workability may require more or less tonnage of the material to achieve the intent which is to control vectors, mitigate fire, mitigate odors, mitigate dust, and prevent wind-blown litter.
- A landfill needs operational flexibility to manage materials eligible for use as AOC. Most soil is generated seasonally, the landfill benefits from stockpiling for use during off-season months.
- The beneficial reuse of materials under section 363-6.21, equivalent design standards and use of waste as construction and operational material, are essential to meeting daily cover needs at landfills. The amount of material needed for alternative daily cover varies for each site based on the size of the working face, time of year, type of wastes received, etc.
- The ability to beneficially re-use waste to meet this need is essential to conserve valuable natural resources and conserve mining and importation of native soil for this purpose.
- The regulation should be clear that the material used for AOC is not disposed and therefore is not included in the permitted tonnage.

As such, we propose the following changes: The total annual tonnage of alternative operating cover approved pursuant to section 363-6.21(c) of this Part is considered beneficial use and must be identified apart from the tonnage for disposal in the facility's permit to operate. The facility must not exceed the total annual AOC tonnage approved by the Department. Any exceedance of the total annual AOC tonnage must be reported to the department in accordance with the permit and with section 363-8.2 of this Part.

Response: Comment noted. The Department does not consider the use of waste materials as alternative operating cover to be a beneficial use. The final regulations, specifically 363-7.1(b)(4), have been revised to clarify that the annual tonnage for alternative operating cover must be identified in the permit separate from the annual tonnage for disposal.

363-7.1(b)(4)
Comment: The Department should clarify that the alternative operating cover (AOC) tonnage will still be a separate annual tonnage, but it will be specified in the permit. Furthermore, materials such as concrete, rubble and hard fill for roads should be considered separate from AOC when determining annual tonnage. In most cases AOC is in addition to the approved design capacity for the acceptance of waste, which should remain the case in the regulations.

Response: Comment noted. See above response.

363-7.1(e)(1)
Comment: We support gas collection system requirements specifically for C&D landfills to ensure potential for emissions and odors, including methane, are controlled. Therefore, we propose C&D landfills be required to develop and implement site specific gas collection design plans, prepared by a professional engineer and designed for the unique gas collection and control management considerations of C&D landfills on a site-specific basis.

Response: Comment noted. The final regulations, specifically 363-7.1(e)(1), have been revised to provide an option for alternative spacing of gas collection lines in landfills that only accept C&D debris. This revision allows the department to approve site specific designs that demonstrate that landfill gas will be adequately collected throughout the waste mass.

363-7.1(e)(1)
Comment: In C&D landfill environments gas generation rates are much lower, waste permeability is much higher, and waste is generally drier and more prone to air infiltration. Therefore, we believe a one-size-fits-all approach to gas collector spacing design for C&D landfills identical to MSW landfills will lead to operating issues at C&D landfill gas collection systems. Operating issues caused by improperly designed collector spacing could result in less effective collection and control of gases from C&D landfills and potential for increases in actual emissions. Overlapping vacuum influence between too-closely spaced collectors will result excessive air (oxygen) infiltration, inhibiting normal methanogenic processes potentially reducing methane concentrations below levels required for stable flare combustion and causing increased incidence of elevated waste temperatures and subsurface 'smoldering' events, potentially leading to actual landfill fires.

Response: Comment noted. See above response.

363-7.1(e)(1)
Comment: We support gas collection system requirements specifically for C&D landfills to ensure potential for emissions and odors, including methane, are controlled. We propose C&D landfills be required to develop and implement site specific gas collection design plan, prepared by a professional engineer, and designed for the unique gas collection and control management considerations of C&D landfills on a site-specific basis. Based on our experience with horizontal collection system designed for both C&D landfill and MSW landfill systems, horizontal spacing in the C&D waste will be 2.5 to 5 Times of that in MSW landfill in order to meet the equivalent performance standards which 363-7.1(e)(1) seeks to achieve for MSW landfills.

We understand that there have been past incidents of gas emissions and odors at C&D landfills within NYS and, are supportive of targeted engineering design requirements for gas collection systems in C&D landfills in order to control potential for odors and emissions

Response: Comment noted. See above response.

363-7.1(e)(1)
Comment: Since C&D debris does not generate as much landfill gas as MSW, the locations of the horizontal landfill gas lines for C&D debris landfills does not need to be similar to MSW landfills. Experience at C&D debris landfills has shown that 200-foot H and 50-foot V spacing is sufficient. Please revise the location requirements for the horizontal landfill gas lines for C&D debris landfills to 200-foot H and 50-foot V spacing.

Response: Comment noted. See above response.

363-7.1(e)(1)
Comment: The Department should further clarify this section as there are two separate interpretations of whether this is 100 feet of solid pipe or the minimum length of 100 feet. Please provide further technical clarification. In addition, this requirement is overly prescriptive. Smaller landfill sites cannot support 100 feet of solid piping, as significant portions of the waste mass would be without gas collection. Landfill gas collection system design should be site specific based on geometry, waste depth, waste types, applied vacuum, and other considerations as determined by a professional engineer.

Response: The final regulations, specifically 363-7.1(e)(1), have been revised to clarify that the collection pipe must terminate not more than 100 feet from the exterior slope of the waste mass. The regulations require the collection pipes to extend across the entire waste mass, but do not specify a required pipe length or a required length of solid pipe.

363-7.1(t)
Comment: This language should be revised to clarify that this applies to source separated food scraps which could be reasonably detected and rejected from disposal. It is impractical for the Department to expect landfills to enforce the Food Donation and Food Scraps Recycling Law at the point of generation. The Department must be responsible for enforcing the law upstream of the transportation, transfer and end-use facilities.

Response: Comment noted. The Department understands its responsibility to enforce the Food Donation and Food Scraps Recycling Law and is implementing requirements upstream of transfer and end-use facilities. However, regulations reflect the requirement outlined in Environmental Conservation Law 27-2209, that landfills must take all reasonable precautions to not accept source-separated food scraps from designated food scraps generators required to send their food scraps to a facility regulated by 361-2 or 361-3. This is an extension of the requirement that ensures landfills do not accept source-separated materials for disposal.

363-9 Closure, Post-Closure, and Custodial Care

363-9.6(a)(1)(ix)
Comment: It would be helpful to define “seismic events of sufficient intensity”. How and where is the intensity measured? What magnitude represents “sufficient intensity”? Or is this intended to mean sufficient intensity to cause visible damage, upon which further inspection and reporting would be required.

Response: The final regulations, specifically 363-9.6(a)(1)(ix), have been revised to clarify that these are seismic events of sufficient intensity which may adversely affect the integrity of the final cover system.

363-9.6(b)(1)(vi)
Comment: The term “sufficient intensity” is not defined in the regulations but should be for consistent application and compliance.

Response: The final regulations, specifically 363-9.6(b)(1)(vi), have been revised to clarify that these are seismic events of sufficient intensity which may adversely affect the integrity of the final cover system.

363-10 Corrective Measures

363-10.1(c)(6)
Comment: In the event corrective measures are needed, 14 days may not be an adequate amount of time to complete an appropriate report. And different levels of corrective measure may be more complex than others. It is recommended the text be modified to read as follows:
"The facility owner or operator shall submit certification that the corrective measure has been completed according to the requirements of paragraph (5) of this subdivision. The certification shall be submitted as soon as possible following completion of the corrective measure but in no case more than 180 days following completion."

Response: 363-10.1(c)(6) requires the facility owner or operator to submit a certification to the Department within 14 days. This is consistent with the Part 360 in effect prior to November 4, 2017, and the Department believes that 14-days provides adequate time for this submission. The language in the regulations has been retained.

363-11 Landfill Reclamation

363-11.2(a)
Comment: It is assumed that the Department does not intend to restrict the wholesale assessment of landfill reclamation projects – something that is consistent with the landfill airspace preservation goals in the current New York State Solid Waste Management Plan. If the intent is to only restrict intrusive studies that require disturbing regulated components of the landfill, it is suggested that clarifying language be added to this regulation.

Response: 363-11.2(a) requires the owner or operator of a landfill to obtain a Part 360 registration pursuant to 360.15 prior to conducting a reclamation feasibility study or landfill reclamation. The reclamation feasibility study and reclamation activity both involve disruptions to the landfill cover system and waste mass. Therefore, the Department believes that requiring a registration is appropriate and the wording has been left unchanged.

PART 364 – WASTE TRANSPORTERS

Subpart 364-1 General
364-1.2(e)
Comment: Although not a proposed amendment, the definition of "industrial-commercial waste" under this section, is unclear given the Part 360 definitions of "industrial waste" and "commercial waste." We request NYSDEC align these definitions to ensure the categorization of "vehicles authorized to transport industrial commercial waste" aligns with NYSDEC requirements and expectations for categorization of industrial and commercial waste in general for the Part 360 regulations. The term "industrial-commercial" used in ECL 27-0303 describes waste characteristics (i.e. liquid, sludge, solid, contained gaseous or hazardous), not the waste type. It would seem "industrial-commercial" as a category could be separated into two waste types; industrial waste and commercial waste, creating a clear distinction between those wastes as they relate to the Part 364 permit (i.e. industrial) versus a Part 364 registration (i.e. commercial).

Response: The proposed revisions to Part 364 do not include revisions to the definition of industrial-commercial waste and therefore the suggested revisions are outside the scope of this rulemaking. As the commenter notes, the Department is obligated to use the term "industrial-commercial waste" because it appears in statute. Where the terms "industrial waste" or "commercial waste" appear separately in Part 364, they should be understood to be used as defined in 360.2. The Department encourages regulated entities to contact the Department for clarification of any regulatory provision to ensure clear understanding and compliance with regulatory requirements.

364-1.2(e)(10)

Comment: Subparagraph 364-1.2(e)(10) only specifies industrial or commercial businesses. C&D projects on residential properties are exempt from this definition by 364-2.1(b)(1) and then are not regulated? How would an enforcement officer know if it is a residential or commercial project needing a tracking document?

Response: Construction and demolition debris generated or transported by an industrial or commercial business, regardless of where the debris was generated, is subject to Part 364. For example, if C&D debris is generated at a residential property and subsequently transported to a disposal facility by a commercial business, that waste is a regulated waste under 364-1.2(e)(10) and the commercial business requires a Part 364 waste transporter authorization.

Comment: Paragraph 364-1.2(e)(10) states that all industrial and commercial soil (excavated fill) is regulated. This statement contradicts 360.13(b)(1)(i) and 360.13(b)(2)(i). Once a determination is made that the F1 and F2 fill meets the definition, the material ceases to be a waste.

Response: All excavated material is regulated waste pursuant to 364-1. The Department has revised the final express terms in 360.13(b) to set the point of waste cessation for all Fill Types (i.e., excavated materials meeting or processed to meet Fill requirements) generated within the New York City Metropolitan Area Waste Impact Zone to when Fill is delivered to the site of reuse. Materials with a BUD are exempt from 364 transport or tracking pursuant to 364-2.1(b)(12) if the BUD takes effect before the material is transported. These instances may include Fill generated outside of the NYCMAWIZ or any material generated within the NYCMAWIZ with waste cessation under a pre-determined BUD when the material meets BUD criteria (for example, materials included under 360.12(c)(3) and 360.12(c)(4). By this change the Department believes the contradiction between BUD provisions and Part 364 applicability is resolved.

Comment: C&D regulated by 360.12(c)(1) and (3) would not apply because they meet the definition of the pre-determined BUD as the waste ceases to be a waste if meets the requirements of each paragraph.

Response: Final express terms, in recognition of this contradiction, set the point of waste cessation for C&D debris, including excavated material and Fill, pursuant to 360.12(c)(2) and 360.13(b) to when materials are delivered to the site of reuse. All such materials are subject to Part 364 for transport and tracking, but materials which cease to be solid waste at their point of generation or when determined to meet BUD criteria, continue to be exempt from Part 364 pursuant to 364-2.1(b)(12).

Comment: 364-1.2(e)(10) makes all excavated waste a regulated waste (if it has a commercial or industrial origin). Should a disclosure be added that states excavated material in accord with 360.13 and 360.12 is excluded (similar to 364-2.1(b)(12))?

Response: Excavated material is a waste unless and until it conforms to a pre-determined or case-specific Beneficial Use Determination (BUD), though some excavated materials under a BUD may still require regulated transport and tracking due to location of generation and/or use.

Subpart 364-2 Exemptions

364-2.1
Comment: We request NYSDEC expand upon the statement in the supporting document that "[t]he exemption for residential and institutional waste is being amended so that any regulated wastes identified in Section 364-1.2 that are generated by residences or institutions are no longer exempt from Part 364 oversight." While "residential and institutional waste" have been proposed to be removed from the exemptions section, there is nothing proposed in Subpart 364-1.2 to this effect. We request NYSDEC clarify whether residential waste is no longer exempt and would require a registration and annual reporting. If so, as the language has not been included in the regulatory revisions, the expectations of NYSDEC are unclear at this time. We request the public comment period be extended to allow for review and comment on this requirement.

Response: This section has been revised to be consistent with ECL 27-0303(4), which identifies "regulated wastes" to include raw sewage, septage, sludge from a sewage or water supply treatment plant, low-level radioactive waste, waste tires or waste oil. Residential waste or institutional waste is not subject to Part 364 requirements unless it is one of these waste types.

364-2.1(b)(1)
Comment: Paragraph 364-2.1(b)(1) states that residential C&D is exempt; however Paragraph 364-5.1(a)(2) states all concrete, brick, asphalt (former CARB) are regulated and does not distinguish between residential and industrial/commercial.

Response: Under 364-1.2(e)(10), construction and demolition debris generated or transported by an industrial or commercial business, regardless of where the debris was generated, is subject to Part 364. 364-5 applies only to registered and permitted transporters, whereas transporters exempted in 364-2 have no obligations pursuant to 364-5.

364-2.1(b)(7)
Comment: Commenters suggest amending 364-2.1(b)(7) to replace the term "fill" with "fill material" for clarification.

Response: The term "fill material" no longer appears in the Part 360 Series. The term "fill", as defined in 360.2(b)(110), is used intentionally in this paragraph.

364-2.1(b)(12)
Comment: In Paragraph 364-2.1(b)(12), subparagraph formatting should be changed from "(a),(b),(c)" to "(i), (ii), (iii)".

Response: Comment noted. This revision has been made.

Comment: 364-2.1(b)(12)(i) conflicts with 360.13(b)(1)(i).

Response: With changes to 360.13(b)(1) in the final express terms, there is no longer a conflict. According to 360.13(b)(1)(ii), excavated material generated not only in Nassau or Westchester County, but anywhere in the NYCMAWIZ that meets criteria for Fill Type 1 ceases to be solid waste only upon delivery to the site of reuse. The exemption from waste transport requirements in 364-2.1(b)(12) now corresponds to this point of waste cessation for all materials under BUDs.

Comment: The exemptions in paragraph 364-2.1(b)(12) include Suffolk County, which is confusing insofar as waste cessation in 360.13(b)(1)(i) does not include Suffolk County. Section 360.13(b)(1)(i) indicates that F1 fill can be generated in Suffolk County and therefore is not a regulated waste. Please clarify.

Response: The Department, in the final express terms, has set the point of waste cessation for all Fill Types under 360.13(b) to when materials are delivered to the site of reuse when materials are generated in any part of the New York City Metropolitan Area Waste Impact Zone (including both Nassau and Suffolk Counties). The Department believes this change makes the Part 364 transport requirements consistent with the waste status of materials in these counties.

Comment: Why does 364-2.1(b)(12)(i) also list Fill Type 1 (F1) fill from NYC, when 360.13(b)(1)(iii) prohibits F1 fill from being generated in NYC?

Response: No contradiction exists; 364-2.1(b)(12)(i) refers to *transport* of F1 Fill in New York City, not *generation* of F1 in the City. F1 can be transported through New York City or to reuse sites in New York City. The regulation has been revised to require a Part 364 authorization for transport of any fill type within the NYCMAWIZ.

Comment: Does a general contractor, not familiar with soil disposal issues understand that they need a registered truck to move soil in Westchester and Nassau Counties as it ceases to be a waste upon dumping at the final location?

Response: A regulated entity is obligated to meet whatever regulatory requirements are applicable to its activity. However, the Department has and will provide guidance to regulated entities to help them understand requirements for transport of excavated material and other types of C&D debris. The Department also encourages regulated entities to contact the Department for clarification of any regulatory provision to ensure clear understanding and compliance with regulatory requirements. Note that the final express terms change the waste cessation of all Fill Types to when materials are delivered to sites of reuse, so that registered vehicles, tracking and other Part 364 requirements applicable to soil (and other types of C&D debris) are uniform across the entire NYCMAWIZ.

Comment: This paragraph, 364-2.1(b)(12)(i)–(iii), lists the Fill soil types that are not exempt from Part 364 Transportation requirements. The way this is presented may lead to confusion, for example, subparagraph (a) states that F1 material within NYC, Nassau, Suffolk and Westchester Counties is listed. This is a unique subset of the NYCMAWIZ. However, this F1 material excludes the NYC Watershed, whereas subparagraph (b) states that F2-5 material is excluded from the exemption inside of the NYCMAWIZ (only difference is adding the watershed) and subparagraph (c) excludes F4 and F5 outside the NYCMAWIZ. We request that the NYSDEC clarify.

Response: The Department believes that the exclusions from the exemption have been sufficiently clarified in the final express terms and will be further clarified in guidance to the regulated community.

Comment: The proposed regulation exempts the transportation of Fill Type 2 or Fill Type 3 and *"[c]oncrete and concrete products ... asphalt pavement, asphalt millings, brick, rock or mixtures of these materials"* outside the New York City Metropolitan Area Waste Impact Zone from the waste transporter permit requirements, while requiring a permit for similar transportation activities inside the Impact Zone. Once again, NYSDEC is proposing additional waste handling and regulatory compliance requirements in the NYC Watershed without explaining why the additional burdens are necessary both generally or with respect to the West of Hudson Watershed.

Response: A registration pursuant to 364-3, not a permit, is required for vehicles transporting these Fill Types and other materials described in this subparagraph in the NYCMAWIZ, unless quantities in a single shipment are less than ten cubic yards or the vehicle is otherwise exempt, in which case a registration or permit is not required. These materials, in addition to being transported by a registered transporter, do require a Waste Tracking Document or equivalent pursuant to 364-5. These requirements are intended to prevent diversion of materials for improper or illegal disposal in the New York City Watershed and on Long Island. Note that in the final express terms, the definition of the NYCMAWIZ in 360.2(b)(190) no longer includes the New York City Watershed west of the Hudson, and instead of the Watershed east of the Hudson, the NYCMAWIZ includes Putnam and Westchester Counties.

Comment: These proposed exclusions from the Part 364 transportation exemptions are confusing and inconsistent with other regulations (i.e., Section 360.12 and 360.13). For example, (a) states that Fill Type 1 within NYC, Nassau, Suffolk, and Westchester Counties is not exempt from the Part 364 transportation exemptions. This exclusion from the exemption does not make sense because per Section 360.13(b)(1)(i), Fill Type 1 generated outside of Nassau County or Westchester County ceases to be solid waste once determined to be Fill Type 1. Therefore, once this determination is made, the material is no longer regulated and in turn, should be fully exempt from the Part 364 transportation requirements.

This section goes on in subparagraph (b) to exclude Fill Types 2-5 from the Part 364 transportation exemptions within the NYCMAWIZ and then in subparagraph (c) excludes Fill Types 4-5 outside of the NYCMAWIZ. Regulating transport inside portions of the NYCMAWIZ for one Fill Type (Fill Type 1), the entire NYCMAWIZ for remaining Fill Types (Fill Types 2-5), and outside the NYCMAWIZ for two specific Fill Types (Fill Types 4-5) requires significant expertise and an in-depth understanding of these regulations. This cannot be concisely communicated through guidance for contracting work, and the lack of consistency and confusing terms will make it virtually impossible to implement.

Response: In recognition of the contradiction between waste status and applicability of Part 364 for fill, the Department states in 360.13(b) of the final express terms that all Fill Types cease regulation as waste upon delivery to the site of reuse when generated anywhere in the NYCMAWIZ (however, Fill Type 1 cannot be generated in the City of New York). The Department believes this change will make the requirements less complex and will conduct outreach and provide tools and forms to assist the construction industry to understand and comply with these requirements.

364-2.1(b)(13)
Comment: Under Section 360.12(c)(1)(iv)(b), recognizable and uncontaminated concrete or concrete products, asphalt pavement or millings, and brick from demolition of on-site structures are exempt material. Why is material now granted an exemption under the regulations required to be transported and documented as regulated solid waste in the NYCMAWIZ? Having exempt material treated as regulated material and changing requirements based on complex geographical boundaries is likely to cause confusion in the regulated community. For example, transportation permits will not be required in Rockland County, but when a truck passes into Westchester County, Part 364 permits will then be required. This provision will be extremely difficult for NYSDEC to track and regulate, let alone for the regulated community to manage and comply with. This section will certainly create additional out-of-state reuse and/or disposal and could lead to illegal dumping because the regulations are too complicated to follow.

Response: Some materials reusable under pre-determined BUDs may be indistinguishable from waste materials destined for disposal or pose a risk to water supplies in the NYC Watershed or on Long Island if not used as allowed under BUDs. The Department has determined that these materials must be regulated under Part 364 to reduce the possibility of "mishandling and mismanagement" through transport. The Department notes that a 364 registration, not a permit, would be required for vehicles hauling over ten cubic yards per shipment of C&D debris and associated BUD products. The Department will provide outreach and tools to regulated entities to aid in compliance with these transport requirements.

Subpart 364-3 Registrations.

Section 364-3.1 Applicability
Comment: This section presents the same confusion as Section 364-2.1(b)(12)(a). As noted above, Section 360.13(b)(1)(i) indicates that Fill Type 1 generated outside of Nassau County or Westchester County ceases to be solid waste once determined to be Fill Type 1. Once this determination is made, the material is no longer regulated and in turn, should be fully exempt from transport requirements.

Response: Some materials reusable under pre-determined BUDs may be indistinguishable from waste materials destined for disposal or pose a risk to water supplies in the NYC Watershed or on Long Island if not used as allowed under BUDs, therefore safeguards that promote proper handling and reuse are necessary. The Department has adjusted the final express terms in 360.13(b) to state that all Fill Types generated within the New York City Metropolitan Area Waste Impact Zone cease regulation as solid waste when delivered to the site of reuse, which matches the requirement included in the proposed rulemaking that these materials must be transported by a Part 364 authorized transporter.

364-3.1(d)(2)
Comment: This provision requires a registration to transport Fill Type 2 and Fill Type 3 within the New York City Metropolitan Area Waste Impact Zone while no registration is required outside of this zone. Again, NYSDEC has not explained why this added burden is necessary in the NYC Watershed generally or the West of Hudson Watershed, in particular.

Response: The Department considers the NYC Watershed to be at high risk from mishandling and mismanagement of waste materials from urban areas, including those under BUDs which may be difficult to distinguish visually from waste materials. Accordingly, the Department has determined that registration and waste tracking is necessary for transporters of these materials in the Watershed. Note that in the final express terms, the definition of the NYCMAWIZ in 360.2(b)(190), north of New York City, includes only Putnam and Westchester Counties in place

of the entire NYC Watershed. These two counties contain the NYC Watershed east of the Hudson River, which is at highest risk from mismanaged waste materials originating from New York City. The Department agreed with commenters that the risk of impact from waste mismanagement is much lower in the west-of-Hudson Watershed, and this area does not need to be included in the NYCMAWIZ and associated transport requirements.

Subpart 364-4 Permits.
Section 364-4.7
Comment: This Section needs to be formatted with a hard return between "*The following insurance requirements apply to transporters subject to the permitting requirements of this Part:*" and *"(a) Evidence of insurance coverage as set forth in 49 CFR part 387, as incorporated by reference in section 360.3 of this Title, must be provided to the department…*"

Response: Comment noted.

364-5 Recordkeeping and Reporting Requirements

Section 364-5.1 Waste tracking document applicability and requirements.

364-5.1(a)
Comment: Is it the intent to have all formerly exempt "recognizable, uncontaminated concrete, asphalt pavement, rock, brick and soil" (RUCARBS) being sent to a Part 361-5 C&D Debris Handling and Recovery Facility (CDDHRF) be tracked using a Waste Tracking document only in the NYC Metropolitan Area Waste Impact Zone? Most general contractors in the NYC Metropolitan Waste Impact Zone are not familiar with this requirement, nor any Part 364 requirements to haul a load of broken concrete to a concrete processing facility. If a general contractor in Rockland County sends material to a Westchester processing facility, will they know it needs to be tracked? Does a truck carrying material through the NYC Watershed area, but dumping somewhere else, need a tracking document?

Response: The commenter's understanding of these requirements is correct and the Department will provide outreach to help educate contractors and transporters of these recordkeeping and reporting requirements. Note that in the final express terms, the portion of the New York City Watershed west of the Hudson River has been removed from the definition of the NYCMAWIZ in 360.2(b)(190).

Comment: Now all 361-5 (former RUCARBS) processing facilities will be collecting tracking documents for all material that enters their facility. However, Part 361-5.6 (Recordkeeping) and 360.19(k)(2)(i) only requires the 361-5 facility to keep a daily log. Is the 361-5 facility required to keep these Tracking documents for all incoming RUCARBS for 7 years too?

Response: As noted in 364-5.1(b)(5), holders of Part 364 registrations and permits need to complete Waste Tracking Documents and provide a copy to recipients of regulated wastes. As stated in 364-5.1(b)(6), for some materials, the transporter must also provide copies to the waste generator (including a CDDHRF) and the Department. The final express terms have been revised to clarify 361-5.6(a) that records kept by a CDDHRF must include these generator copies of a Waste Tracking Document.

Comment: Is the intent of the NYSDEC to have the transporters produce and store all Waste Tracking Documents? All references in Part 364 distinguish that the transporter is responsible for the Waste Tracking Documents. Both 364-5.1 and 364-5.2 specify requirements for Tracking Document record keeping and put the onus on the transporter and not the facility. 364-5.1(b)(5) states that the transporter must provide a copy of the Tracking Document to the receiving location, but if the receiving facility is a 361-5 facility, there are no requirements for that facility to keep those records.

Response: The commenter's understanding is correct.

Comment: The new rule 364-5.1(a)(2) requires every load of C&D debris to have a tracking document within the NYC Metropolitan Area Waste Impact Zone. This conflicts with 364-2.1(b)(1) that makes residential C&D exempt, while 364-5.1(a)(2) states all C&D generated in the NYCMAWIZ is regulated and needs a tracking document. This paragraph should be revised to add that all residential C&D debris as exempted by 364-2.1(b)(1).

Response: No conflict exists since C&D debris transported by an industrial or commercial business, even from a residential project, is subject to Part 364 registration and waste tracking requirements.

Comment: The new rule 364-5.1(a)(2) also conflicts with 364-2.1(b)(7) exempting C&D debris produced by a 361-5 facility meeting a 360.12 BUD. Was the intent of the Department to make every job more difficult? For example, we have customers that do utility work and need to manifest every load of C&D from a utility project to a 361-5 facility, but if they haul off recycled concrete aggregate that meets 360.12(c)(3)(viii) to fill an excavation, they do not need a tracking document? The commenter suggests revision of paragraph 364-5.1(a)(2) to require Waste Tracking documents for transporters of C&D debris generated in the New York City Metropolitan Area Waste Impact Zone, except material produced by a 361-5 facility that meets the requirements of a beneficial use determination (BUD) specified in section 360.12 of this Title.

Response: The Department confirms that its intent as stated in the express terms is not to make products exiting an exempt, registered or permitted CDDHRF subject to Part 364, as stated in 364-2.1(b)(7). Instead, wastes everywhere in the state such as residues and materials not meeting waste cessation requirements of a BUD when leaving the facility, are subject to Part 364 pursuant to 364-2.1(b)(7). When transported within the NYCMAWIZ, fill or mixed, unprocessed concrete, asphalt pavement, brick and rock are subject to Part 364, as noted under 364-2.1(b)(12) and (13).

Comment: This subdivision seems to conflict with subdivision 364-3.1(d), which only requires transport of Fill Type 1 by a registered transporter in Nassau, Suffolk, and Westchester Counties or the City of New York. Section 364-5.2(a)(1)(i) seems to imply that, for Fill Type 1, waste tracking documentation is required for the entire NYCMAWIZ.

Response: The Department agrees that if waste tracking documentation is required for transport of a specific waste in the NYCMAWIZ, then the transporter of that waste should be either permitted or registered under Part 364. This change has been made to 364-3.1(d) in the final express terms.

Comment: 360.13(b)(i) excludes Suffolk County from F1 fill requirements which conflicts with 364-5.1(a)(1)(i) indicating that all fill types require a tracking document.

Response: Final express terms in 360.13(b) have been adjusted to make these requirements consistent; that is, that Fill Type 1 (F1) does not cease to be regulated as solid waste anywhere in the NYCMAWIZ outside of New York City (including Suffolk County) until delivery at the site of reuse, so that its transport requires a tracking document.

Comment: We respectfully suggest NYSDEC consider implementing a sticker program for Part 364 Permitted or Registered vehicles. Similar to a vehicle inspection sticker color coded by date, a permitted vehicle (and expiration) could easily be visually identified. The Part 360 regulations prohibit Solid Waste Facilities from accepting industrial-commercial waste from an unpermitted transporter. Since the permits are issued by vehicle license plate, it can be onerous for the scale attendant to review the hauler Permit, ensure the permit is valid, has the named disposal facility listed for the specific type of waste, and confirm the vehicle license plate is listed. A color-coded sticker would lessen the burden of this requirement. If a transporter loses a license plate, the Part 364 permit needs to be modified to include the replacement plate. This is time consuming for both the permittee and the NYSDEC Part 364 Transporter Office. Converting to an annual sticker program will potentially reduce the need for additional paperwork and allow the transporter to continue operating in the event of a license plate change.

Response: Comment noted. An annual sticker program for waste transport vehicles is not part of the proposed revisions and is outside the scope of this rulemaking. A sticker program has been considered in the past but for a variety of reasons was not implemented.

364-5.1(b)
Comment: Deletions of Jurat Language In addition to the changes to the waste tracking document discussed above, current jurat language is deleted from reporting requirements for several other regulated activities. Such language is deleted from required elements of annual reports by land application facilities in §361-2.5(c)(2)(vii), composting facilities in §361-3.2(e)(33), anaerobic digestion facilities in §361-3.3(e)(30), other organics recycling facilities in §361-3.6(e)(30), and from waste transporter tracking documents in §364-5.1(b)(2) and annual reports in §364-5.2(d). These changes remove a simple tool to deter improper handling and disposal of wastes. Only the change to §364-5.2(d) would substitute "a certification acceptable to the department" for the jurat language. However, it is not clear whether it intends this certification to include an acknowledgment that filing a false document may result in penalties. It is not even clear that a signature will be required: the regulatory impact statement (at p. 34) indicates that for waste tracking documents, an acknowledgment by the generator or the receiving facility can be used in place of the signature of an authorized representative. This removes any personal accountability for the veracity of the information submitted. With regard to the other programs, the Department may feel that other factors can make a certification of truthfulness unnecessary. However, these things (allowing weigh scale ticketing, requiring submission of original laboratory sheets) only extend to some of the information that must be reported. Other information such as the source of the waste or actions taken to correct significant operation problems, may be knowingly misreported. While we support efforts to reduce the burden on regulated parties when there is no potential for adverse health or environmental impacts, we feel that signing a statement that the document being filing is true and accurate is not particularly burdensome, and these requirements should be retained. Furthermore, we note that ECL §27-3101(1) was amended by Chapter 29 of the Laws of 2021 to require that all generators of construction and demolition debris in New York City must provide a waste tracking document for each shipment. Such documents must include a certification, in a form prescribed by the department, "which shall contain a certification that the information therein is true, accurate and complete." The Department has removed the jurat language from §364-5.1(b)(2) but has not replaced it with any other language implementing this law. The Governor and the Legislature mandated this additional certification in tracking documents in order to combat widescale illegal dumping of construction and demolition debris, especially in the Long Island region. The Department must revise the proposal to maintain the current jurat language or must craft an equally strong and effective version with stated penalties. We also note that ECL §27-3101(2) requires that all generators of construction and demolition debris in New York City must "have the debris tracking document signed by the receiving location or facility…." The changes to §364-5.1(b)(2) include a provision allowing an acknowledgment acceptable to the Department to replace the required signatures of authorized representatives of the generator and receiving location or facility. This provision is in conflict with the plain language of the ECL and must be revised.

Response: The proposed regulation included a requirement that certification language be included in all waste tracking documents. This language would be chosen by the Department and would provide all necessary enforceability. However, in order to ensure that waste tracking documents are as useful as possible in deterring illegal disposal, explicit jurat language in 364-5.1(b)(2) has been added to the regulation. In addition, a proposed revision to 364-5.1(b)(6) that would end the requirement for waste tracking documents to be submitted to the Department has been removed from the regulatory language.

364-5.2 Records retention and reporting.

364-5.2(c)
Comment: Commenter previously sought clarification on whether transporters with both permitted and registered vehicles will need to submit two annual reports under Part 364-5.2(c). The commenter supports the amended language in the proposed subdivision 364-5.2 (c) to allow a transporter with both permitted and registered vehicles to submit one annual report containing information for all of its vehicles to comply with Part 364.

Response: Comment noted.

PART 365 – REGULATED MEDICAL WASTE AND OTHER INFECTIOUS WASTE

365-1 RMW Generators

365-1.1 Applicability
Comment: Residential health care facilities, as defined in Section 2801, include nursing homes. Most states still require nursing homes and skilled nursing facilities to abide by generator requirements pertaining to Waste Management Plans and manifest maintenance. Clinical labs and hospitals are generally in a different class of waste generation, volume-wise, than long-term care facilities.

Response: Proposed changes to this section do not change the November 4, 2017 language regarding applicability, which states that 365-1 does not apply to residential health care facilities and nursing homes as defined in and regulated under Section 2801 of the Public Health Law.

365-1.2(b)(5),(7) & (8)
Comment: The commenter supports the elimination of the 60 and 90-day storage requirement to instead require removal of sharps and other RMW containers from patient care areas, laboratories or other generation areas only when they become full or if the container starts to generate odors or other evidence of putrefaction.

Response: Comment noted.

365-1.2(b)(14)(ii) & (ix)
Comment: The commenter indicated that they make the best efforts to disinfect reusable secondary containers, disinfectants are not always readily available (such as during public health crises like the COVID-19 pandemic). The language requiring disinfection and disposable liners should be removed, and across-the-board cleaning required, which is appropriately protective. The commenter recommended revisions to these subparagraphs.

Response: The Department believes that both cleaning and disinfection of reusable secondary containers is important. This provision addresses the need for cleaning and disinfection that is protective of the general public who may come in contact with the containers in healthcare settings and personnel in waste management situations during handling, packaging, and transport of the containers. 365-1.2(b)(14)(ii) has been rephrased only; nothing has been changed from a regulatory standpoint. 365-1.2(b)(14)(ix) is not proposed for revision, therefore, this action would be outside the scope of this rulemaking.

365-1.2(c)(3)
Comment: Commenters recommended rewording the language in this paragraph regarding the medical waste tracking form. State and local regulations concerning tracking forms required for the transportation of hazardous materials, which are regulated by the US Department of Transportation (DOT) under 49 CFR §§ 172.200–172.205, are preempted to the extent they are not "substantively the same" as the federal hazardous materials regulations (HMR). See 49 USC § 5125, 49 CFR § 171.1(f). Department's existing instructions are more prescriptive (i.e., not "substantively the same") as the HMR.

Response: 365-1.2(c)(3) was not proposed for revision and is outside of the scope of this rulemaking.

Comment: The commenter suggests that this section reference the acceptability of a hard or electronic copy since most waste tracking forms are electronic now.

Response: 365-1.2(c)(3) was not proposed for revision and is outside of the scope of this rulemaking.

365-1.2(c)(5)
Comment: The commenter supports this incineration requirement for pharmaceutical waste since chemical/carbon-based decomposition/destruction has many environmental and implementation issues. The commenter also supports the requirement for generators to indicate on the disposal packaging that incineration is required; as well as supporting the clarification that saline and nutrient solutions are not subject to wastewater disposal prohibitions.

Response: Comment noted.

Comment: This proposed revision clarifies that a generator may choose to comingle pharmaceutical waste and RMW. Allowing generators to comingle these waste streams enables efficiencies and helps facilitate proper disposal practices for pharmaceutical wastes. The commenter requested that the words "*comingled with regulated medical waste*" appear after "*Any pharmaceutical waste…*"

Response: The Department agrees with the commenter but declines to change the language in this section since its intention to include RMW is clear (as stated by the commenter), and the commenter's change would unnecessarily restrict this provision if the waste in question were not RMW.

365-2 RMW Treatment, Storage, and Transfer Facilities

365-2.1(d)
Comment: As noted in the regulatory impact statement, one proposed change provides that "regulated medical waste facilities that hold federal authorizations will be allowed to operate under registrations rather than permits, which, since the facilities continue to be regulated by both state and federal agencies, will reduce overly burdensome permitting obligations." We are not opposed to providing relief from redundant regulation when it is appropriate but cannot support removing regulatory requirements that protect public health and safety, as the proposed language in new §365-2.1(d) would do. The facilities that the proposal would relieve from regulated medical waste (RMW) permits are those that have "a current registration number under the Federal Select Agent Program (FSAP) authorizing the facility to possess and work with select agents or toxins of biological origin…." These select agents include biohazards like anthrax, SARS, lasso fever, Ebola and monkeypox. Over the past decade, the Government Accounting Office, Department of Health and Human Services' Office of the Inspector General and others have documented safety lapses in FSAP laboratories and deficiencies in oversight of FSAP-registered entities. Given the potential threat posed to New Yorkers by mishandling of medical waste form these facilities, we deem it of vital importance to augment Federal authorization with the greater protections afforded by full state-level permitting. This is even more important considering the possibility of repeating the fluctuations in Federal enforcement of regulations that occurred in recent memory. Instead of downgrading FSAP laboratories from permits to registrations, we recommend that the Department consider whether additional safeguards should be included in these regulations or in permit conditions for facilities operating Biosafety Level 3 or 4 laboratories, whether registered with the FSAP or not.

Response: The Department believes allowing RMW generators who hold a FSAP registration to register under Part 365 is ultimately more protective of the public. The Department notes many federal requirements to obtain a Federal Select Agent Program Registration including but not limited to review and approval of incident response, biosafety, biocontainment, and security plans, training, risk assessments, operating procedures, facility information and commissioning documents. The required information may exceed Part 365 registration or permitting requirements and are protective of public health and the environment. FSAP registered facilities are inspected on a regular basis by FSAP personnel. To eliminate redundancy and ensure there are no conflicts with FSAP requirements, the Department amended the regulations to only require a registration for FSAP facilities. The Part 365 registration for these facilities still requires the most stringent elements (365-2.6 & 365-2.7) required of permitted facilities including Department approval of an operation plan, design, operating and general waste treatment requirements. The Department also inspects these facilities regularly and if a FSAP registration is surrendered or expires, the facility is required to obtain a Part 365 permit. The Department believes that by requiring registration in place of a permit for FSAP-registered facilities, many of which are on university campuses, the Department can bring more of these facilities into regulation who historically have not had any Department regulation or oversight of their RMW management. Finally, only BSL-3 laboratories with FSAP registration are eligible for Part 365 registration; BSL-4 laboratories must obtain a Part 365 permit regardless of FSAP status.

365-2.4(a)(1)
Comment: Commenters stated this paragraph should be amended to allow permit applicants to specify the expected average monthly, rather than average and maximum daily and annual, amounts of RMW to be treated. Anticipating daily and annual averages and maximums is not practical. Requiring a monthly average represents a reasonable compromise, and will lead to more accurate, and therefore useful, information for the Department.

Response: 365-2.4(a)(1) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.5(a)
Comment:
In accordance with the comment under 365-1.2, the commenter reiterated that the tracking document should comply with USDOT regulations.

Response: 365-2.5(a) was not proposed for revision and is outside of the scope of this rulemaking.

Comment: Commenters reiterated previous statements, under Section 365-1.2, that the Department's tracking document requirements should follow USDOT regulatory requirements. The existing instructions are more prescriptive (i.e., not "substantively the same") as the HMR and are therefore preempted.

Response: 365-2.5(a) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.5(b)(3)
Comment: Commenters stated that the requirement to measure and record background radiation at least daily is unduly burdensome and unnecessary. Commenters recommend establishing background radiation initially, but then given that background radiation is relatively static, the requirement for daily checks of background radiation could be eliminated.

Response: 365-2.5(b)(3) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.5(e)(12)-(15)
Comment: RMW storage requirements for treatment, storage and transfer facilities are unnecessarily complex, making it difficult for the regulated industry to comply. Current requirements do not provide a significant human health or environmental benefit. It should be permissible to store untreated RMW for up to 15 days, regardless of putrescence. This 15-day limit is consistent with what other jurisdictions require and provides a simple, easy to follow and protective restriction. It also, in a practical way, ensures that RMW is not stored for a lengthy time.

Response: 365-2.5(e)(12)-(15) were not proposed for revision and are outside of the scope of this rulemaking.

365-2.6(c)
Comment: This subdivision should be moved out of Section 365-2, which relates to RMW treatment facilities, and into Section 365-1, which relates to RMW generators. The requirements listed in Section 365-2.6(c) relate to generators' responsibility to manage certain wastes at the site of generation. Relocating this subdivision will more clearly indicate what is required of generators and help ensure that all parties can more easily identify and fulfill their respective requirements.

Response: This subdivision addresses management, and primarily treatment, of cultures and stocks and is appropriately located within the regulations for facilities seeking registrations or permits to treat the waste.

365-2.6(i)
Comment: The regulations should provide more flexibility regarding validation testing and related protocols. The existing regulations already require validation testing protocols to be approved by the Department; therefore, the Department can and should allow for variation in the protocols if any variations are reviewed and approved. In addition, the regulations should specify that, if Department fails to respond to a proposed variation within 60 days of receiving a submitted request, the proposed variation is deemed approved. This time limit for the Department to respond to requests will allow facilities to operate more efficiently and with greater certainty, while still allowing the Department sufficient time to review submissions and proposals. Commenters proposed adding the following to this subdivision: "*The Department may allow for variation in validation testing protocols if such variations are reviewed and approved. Variations submitted for Department review and approval will be deemed approved and effective if the Department does not respond to the submission within 60 days of receipt.*"

Response: The Department is not proposing to revise 365-2.6(i), other than to require approval of scientific sources documenting validation protocols as effective. This subdivision provides minimum standards for testing protocols

and the Department must still review protocols in view of facility-specific equipment, wastes and other factors. The Department is not making changes to validation protocols as requested by the commenters because the existing requirements are consistent with nationally recognized standards, and any variations for testing a particular treatment device would potentially render the facility's treatment protocol an alternative treatment method requiring a NYSDOH alternative treatment device approval. Imposition of a time limit for the Department's review could jeopardize public health and safety; the Department will not approve any treatment device that in its determination has not been validation-tested in accordance with the regulations, regardless of the time needed for review.

365-2.6(i)(2)(i)
Comment: Commenters recommended changing the requirement for biological indicators for validation testing, from 6 log10 spores to 4 log10 spores. The Department has been agreeable to authorizing this approach on a case-by-case basis, finding no resulting harm to human health or the environment. The commenters recommend that the previously approved variation be documented in the regulations rather than requiring the regulated community to seek approval in connection with each validation test.

Response: 365-2.6(i)(2)(i) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.6(i)(6)
Comment: Commenters recommend deletion of requirements for verification testing of commercial biological indicators at facilities. These manufacturers have strong QA/QC processes regarding the indicators that obviate the need for additional verification testing. Requiring facilities to further test commercially purchased indicators is therefore unnecessary and duplicative, imposing costs and delays on RMW treatment facilities. One commenter recommended the regulations instead make clear that the treatment facility's responsibility is to follow the original manufacturer's instructions regarding proper handling of biological indicators.

Response: 365-2.6(i)(6) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.6(j)
Comment: The commenter recommended eliminating the requirement for repeat validation testing. Treatment facilities conduct routine bio-challenge tests and routine maintenance checks to ensure compliant operations. Repeat validation testing are unduly burdensome in that it requires cessation of commercial operations leading to delays and backups.

Response: Other than to add the condition of "failure to achieve microbial inactivation *and treatment*…," 365-2.6(j) was not proposed for revision. The Department continues to regard repeat validation testing as necessary under all conditions listed in this subdivision to ensure effective treatment of RMW.

365-2.6(j)(4)
Comment: Requiring regular validation testing every 5 years for units located at RMW treatment facilities (as compared to generator facilities with on-site treatment) is unnecessary, duplicative, and expensive. Commercial RMW treatment facilities operate continuously, and regularly run maintenance checks and bio-challenge tests. Moreover, full validation requires a facility to shut down and divert waste during testing, which is unreasonable and could create unnecessary risks associated with longer transport and storage periods. Further, the commenter is not aware that any other state requires revalidation as a routine requirement.

Response: 365-2.6(j)(4) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.6(k)(8)(i)
Comment: The Department should remove the requirement for re-validating an autoclave each time the system fails to operate in accordance with expected parameters. This requirement is unduly burdensome. A treatment system may fail to operate in accordance with its parameters for a number of reasons, including an unanticipated power outage or a defective valve, most of which can be easily identified and timely resolved. RMW treatment facilities should be allowed to repeat a treatment cycle post corrective action without the need to report the matter to the Department or undergo full re-validation. If the permitted and acceptable operating parameters are met after the repeated cycle, normal operations should be allowed to resume.

Response: 365-2.6(k)(8)(i) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.6(l)
Comment: Commenters stated that requirements that operation logs include the type and amount of RMW treated should be removed. Treatment facilities may not know the type of RMW being treated, as it is unreasonable and unsafe to open containers of RMW prior to treatment. Further, it is impractical to require treatment facilities to weigh each autoclave bin during each treatment cycle. The weight is not relevant to ensuring efficacy given periodic validation testing requirements.

Response: 365-2.6(l) was not proposed for revision and is outside of the scope of this rulemaking.

Comment: Commenters requested eliminating the operator name from operation log since this information is not relevant and many companies prefer to exclude the operator's name from the operation log.

Response: 365-2.6(l) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.7(h)
Comment: The commenter recommended eliminating the daily bio-challenge test required for the first six months of operations. Requiring daily testing is unduly burdensome for facilities that continuously operate, as this often means beginning a new test before the previous day's results have even been received or evaluated. Instead, commenters recommend weekly bio-challenge testing for all facilities or allowing flexibility for large commercial operations to test once per week or every 40 hours – this will still result in regular testing as intended in this subdivision.

Response: 365-2.7(h) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.7(h)(5)
Comment: Commenters requested that this requirement be changed from bio-challenge testing of autoclaves from every 200 hours to 200 hours or six months of operation, whichever is less frequent. For large scale commercial RMW treatment facilities that operate continuously, requiring testing every 200 hours may mean expensive and overly burdensome third-party testing approximately once every 8 days.

Response: 365-2.7(h)(5) was not proposed for revision and is outside of the scope of this rulemaking.

365-2.8
Comment: Commenters indicated that treatment facilities do not maintain information on the types of materials in the containers and for safety reasons, the containers are not opened. Therefore, it is not practical for them to be able to provide records of cultures and stocks, human pathological waste, blood and blood products, etc. Commenters recommended deleting requirements relating to both recordkeeping and reporting of these quantities under this section.

Response: 365-2.8 was not proposed for revision and is outside of the scope of this rulemaking.

PART 366 – LOCAL SOLID WASTE MANAGEMENT PLANNING

366 General

Comment: The revisions made are welcomed clarifications and extension of submittal deadlines for biennial compliance reports.

Response: Comment noted.

Comment: No significant revisions are noted that would negatively impact the solid waste industry.

Response: Comment noted.

366-3 and 366-4
Comment: The Department should consider reorganizing the steps required to obtain an approvable Local Solid Waste Management Plan (LSWMP). Currently the regulations require a public review period prior to receiving a completeness determination from the Department. There have been cases that resulted in a waste of public funds to conduct a public review of a document that has not been deemed complete by the Department. It is recommended that the steps be revised to be – 1. Draft plan (with public input as needed), 2. Completeness review by the Department, 3. Formal public hearing and comment period of the complete plan, 4. Modify plan as necessary based on public comment, 5. Full Department review of plan, 6. Address Department comments, finalize plan, etc.

Response: This comment is beyond the scope of this rulemaking.

PART 369 – STATE ASSISTANCE PROJECTS

369-1.3 Contract Requirements

Comment: There is consistent agreement that the State's support for recycling education in municipalities throughout New York is invaluable. However, the current state of contracting is a concern. The Municipal Waste Reduction and Recycling program Grants for Recycling Coordination and Education contracts are offered on an annual basis. Prior to 2019, the contracts were for three years. This three-year timeframe enabled a municipal program to not only be implemented but also to include planning which often crosses over the calendar and or fiscal year. For instance, an event or program being planned in the summer may have a planning process that starts well before the beginning of the year. This planning can include down payments for space or contracting for services. It can be difficult for this planning to take place if these commitments cannot be put in place because a current contract is over at the end of the year.
A related problem to this annual contracting is the amount of time it takes for both a municipality and the State to effectively sign a contract. To be clear, while a contract can be awarded in the fall, it can take months until the final contract is in place. A municipality cannot commit to spending any funds until this contract is in place. While there may be some ability to maintain personnel without this signed document, any further funding is just not an option. However, it should be noted that a three-year grant timeframe also allows for more reliability, consistency and longevity of municipal staffing. While some municipalities may have the ability to retain staff for multiple years regardless of the state grant support, others need to be able to count on 3+ year grant contracts in order to justify hiring personnel. Also of note, these yearly grants create more work for DEC staff as each grant has to go through the 'closing out' process and a 'starting new' on an annual basis.
We are suggesting that the State consider returning to the three-year contract period, but with an annual review of the work program and related funding. As many know, any three year plan will undoubtedly need updating and changes, which can be well-accommodated within this model.

Response: While substantial changes to this section were not proposed for revision and this comment is outside of the scope of this rulemaking, the Department understands the concerns regarding funding timing and a municipality's reliance upon this funding. The Municipal Waste Reduction and Recycling (MWRR) grant programs are funded on an annual basis as part of the New York Budget process. The current system of annual applications and contracts allows DEC to disperse as much money as possible to the three separate MWRR grant programs under annual budget allocations. Prior to implementation of the current system, these grants were added to a waiting list, resulting in funding delays of several years in many cases. DEC has also made internal adjustments to speed up the processing of contracts under these programs, so similar issues should be resolved in the future.

PART 371 – IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

371.1(e)(2)(v)
Comment: While the proposed changes remove oil and gas wastes from lists of materials excluded from hazardous waste, as required under Chapter 133 of the Laws of 2020, the proposed rulemaking is considerably delayed from the required deadline of August 2, 2020. This delay may have caused real-world consequences in proper characterization and disposal of oil and gas extraction wastes. The changes also fail to include "extraction" in the term for regulated materials, and do not fully address specific waste streams in this category.

Response: The language in this citation refers to "drilling fluids, produced waters and other wastes associated with exploration, development or production…." This language was not adjusted; the only revision was to remove any wastes associated with crude oil and natural gas from the exclusion.

PART 377 – SITING OF INDUSTRIAL HAZAROUD WASTE FACILITIES

No comments were received related to this Part.

6 NYCRR Part 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Summary of Revised Regulatory Impact Statement

This proposed rulemaking is a revision to the Department's existing solid waste regulations which became effective on November 4, 2017. The existing regulations for solid waste management activities and facilities are currently found in Part 360 Solid Waste Management Facilities, Part 361 Material Recovery Facilities, Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities, Part 363 Landfills, and Part 365 Regulated Medical Waste and Other Infectious Wastes. In addition to the solid waste management facilities and activities currently regulated under those Parts, this proposed rulemaking 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). This rulemaking will also incorporate minor amendments to Part 371 Identification and Listing of Hazardous Wastes and Part 377 Siting of Industrial Hazardous Waste Facilities.

The Department's statutory authority to undertake amendments to Part 360 is found in Environmental Conservation Law Sections 1-0101, 3-0301, Titles 1, 3, 5, 7, 15, 20, 21, 22 of Article 27, ECL Sections 27-1901, 27-1903, 27-1911, 54-0103, and Title 7 of Article 54.

NEEDS AND BENEFITS

The proposed regulations amend Part 360 Series, Part 371, and Part 377 to meet statutory requirements and the overall goals of properly managing solid waste to protect human health and the

environment. This rulemaking is an extension of the comprehensive revision to the Part 360 Series regulations that became effective on November 4, 2017. A Generic Environmental Impact Statement and SEQR Finding Statement were completed as part of that rulemaking and can be found at this location: https://www.dec.ny.gov/regulations/118777.html. 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. This rulemaking continues to address the issues outlined in the State Solid Waste Management Plan and includes measures to further the environmental objectives set out in that Plan.

Statutory changes implemented through this rulemaking include:

- revisions related to ECL Section 15-0517, which requires additional groundwater monitoring and operating requirements at composting facilities, mulch processors, and construction and demolition (C&D) debris facilities on Long Island to prevent water quality or other environmental impairments;
- revisions related to ECL Section 27-0903, which removes the exclusion from the definition of hazardous waste for wastes produced during oil and natural gas exploration and production; and
- revisions related to ECL Section 27-2213, which requires DEC to implement regulations implementing the requirements of Article 27 Title 22 Food Donation and Food Scraps Recycling Law and which set requirements for transfer facilities, municipal waste combustors, and landfills related to diversion of food scraps from solid waste disposal.

In these revisions, adjustments have been made to increase environmental protection but also to reduce the regulatory burden in situations where protection of human health and the environment would not be impacted:

- adjusted requirements for C&D debris and excavated material will make it easier to handle and reuse these materials. The regulations continue to contain standards and operating requirements that protect human health and the environment, and ease operating requirements only at facilities handling inert materials like concrete, asphalt pavement, rock and brick. The Department agreed with commenters that for the West of Hudson portion of the Watershed, inclusion in the New York City Waste Impact Zone would not be necessary for water supply protection and would pose undue regulatory and financial burdens on less populated, rural communities in this area. The Department also agreed with commenters that it may be difficult to identify whether an activity was taking place within the New York City Watershed. Therefore, language in the rule has been revised to identify Nassau County, Suffolk County, Westchester County, Putnam County, and the City of New York as part of the Waste Impact Zone and reference to the Watershed has been removed.

- newly added facility types will ease the regulatory burden on waste paint collectors by allowing them to operate under a registration so long as they are operated under the requirements of a department-approved postconsumer paint collection plan. This matches the objectives of ECL Article 27 Title 20 by minimizing public sector involvement and allowing retailers and other entities to collect postconsumer paint.

- removal of upper throughput limits on registered recyclables handling and recovery facilities will simplify their authorization and will not create significant impacts because only nonputrescible source-separated recyclables can be managed at these facilities.

- seasonal waste collection events conducted by municipalities are authorized under exemption rather than registration or permit, which will not create negative impacts given the small volumes of waste managed during these events.

- regulated medical waste facilities that hold federal authorizations will be allowed to operate under registrations rather than permits, which, since the facilities continue to be regulated by both state and federal agencies, will reduce overly burdensome permitting obligations.

- revisions to waste transporter requirements were considered that would have removed the requirement to submit waste tracking documents to the department. However, based on comments that emphasized the contribution these forms make to the Department's recordkeeping and enforcement efforts against potential violators, the requirement to submit completed forms to the Department has been retained.

- The proposed revisions removed the specific jurat language related to certification of information on the waste tracking document. Based upon comments received, which emphasized the role waste tracking documents, and in particular the jurat statement, have in deterring illegal waste disposal, explicit jurat language has been restored in the proposed regulation. This change does not prevent use of a company's own ticketing format and system if it can be adapted to include the jurat language.

COSTS

Cost to the Regulated Community:

The majority of the criteria in the rulemaking are derived from the current regulatory program in Part 360. In addition, costs may rise in some circumstances based on implementation of state legislation as discussed above. For the majority of involved industries, the costs associated with complying will be similar or less than the costs currently incurred. However, the rulemaking includes many enhancements to the existing program, which will increase costs for some facilities:

-The revisions in Section 360.13 will expanded restrictions on use of Fill Type F4 and Fill Type F5 and grade adjustment materials in Westchester County, Putnam County, Nassau County, and Suffolk County, which will increase costs for entities who previously have been allowed to use these materials without further Department review and approval. These entities are being required to choose alternatives or petition for a case-specific BUD.

-The revisions to Subpart 361-2 include a requirement that mandates a permit versus a registration for the storage of septage. This is needed for groundwater protection but will increase the cost associated with these facilities. Most new septage storage facilities are tanks, so it is expected that few operations will be affected. The estimated cost for engineering associated with the permit is at about $10,000.

-The siting requirements in Subpart 363-5 are being amended to prohibit new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. This could potentially result in limiting the life of eight landfills in the state due to their inability to expand, resulting in increased disposal and transportation costs for residences and municipalities in the

affected areas. In addition, when a landfill laterally or vertically expands, the landfill adds disposal capacity and for each ton of added disposal capacity the landfill can charge a tip fee for disposal of waste into the expansion area. Language in the rulemaking has been adjusted to clarify that only expansion within 1,000 feet of a school or residence is prohibited, however, the proposed revision prohibiting lateral and vertical expansion in these areas could cause the landfills to lose between $60 per ton and $80 per ton in tip fees for this lost airspace.

-The design, construction and certification requirements in Subpart 363-6 will require the use of an 80-mil geomembrane in the primary and secondary composite liner systems. The material, installation and certification costs for the 80-mil geomembrane could result in an increased cost to a facility of approximately $2,200 per acre.

-The design, construction and certification requirements in Subpart 363-6 will require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills unless an alternative liner is justified. The material, installation and certification of the additional liner system components could result in an increased cost to a facility of between $100,000 to $150,000 per acre. This will also result in increased operating, maintenance, monitoring and reporting costs between $10,000 to $20,000 annually.

-The requirement in Subpart 363-7 for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions is expected to result in an increased cost to a facility of approximately $45 per liner foot of collection line plus approximately $7,000 for the wellhead and tie-in infrastructure and the condensate trap.

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.

Costs to Local Governments: These regulations will not impose any direct costs on local governments in general. However, local governments who own and operate solid waste management facilities, such as landfills, may incur additional or reduced costs associated with the regulations as described above. With respect to solid waste management planning, no additional costs are anticipated.

PAPERWORK

The proposed amendments to Subpart 362-1 Combustion and Thermal Treatment Facilities and Subpart 362-3 Transfer Facilities will eliminate the need for a Part 360 registration, thereby eliminating the paperwork associated with obtaining a Part 360 registration and eliminating any recordkeeping and reporting associated with facility monitoring and operational requirements.

-The proposed amendments to Subpart 362-1 Combustion and Thermal Treatment Facilities will require the submission of analytical results associated with ash residue sampling. This is currently required for facilities that are operating under the previous regulations and is required by a permit condition for facilities operating under the current regulations. This is not expected to result in increased paperwork.

-The proposed amendments to Subpart 362-3 Transfer Facilities will reduce the amount of paperwork associated with obtaining a Part 360 permit for facilities transferring septage waste from a single transporter.

-The proposed amendments to Subpart 362-4 Household Hazardous Waste Collection Facilities and Events will reduce the amount of paperwork that needs to be submitted to the Department with the registration application.

-The proposed addition of Subpart 362-5 Paint Collection Sites Collecting Postconsumer Architectural Paint Under a Department-Approved Postconsumer Paint Collection Program will reduce the amount of paperwork that needs to be submitted to the Department for the Part 360 authorization.

-The revisions to Subpart 363-6 to require a double composite liner system for C & D debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills may result in an increase in the amount of paperwork required for reporting and certification.

DUPLICATION

The proposed regulations are not intended to duplicate any other federal or State regulations or statutes. Additional discussion regarding duplication is included in the RIS.

ALTERNATIVE APPROACHES

A no action alternative was considered. For reasons described in the RIS, the no-action alternative was rejected.

FEDERAL STANDARDS

There are no federal regulations for most of the facilities and activities contained in the proposed rulemaking. Additional discussion regarding duplication is included in the RIS.

COMPLIANCE SCHEDULE

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

INITIAL REVIEW OF RULE

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

6 NYCRR Part 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Summary of Revised Regulatory Flexibility Analysis For Small Businesses And Local Governments

1. Effect of rule: The rulemaking is not expected to negatively affect small businesses and local governments. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities, in most cases providing additional flexibility and reduced regulatory burden for local governments or small businesses. 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.

2. Compliance requirements: The Department does not expect the regulations to have a negative impact on jobs and employment. The revised regulations build upon the amended regulations that were promulgated in November 2017. Since that time, the Department has seen no evidence of negative job or economic impacts caused by the new regulations.

3. Professional services: The need for additional professional services for small businesses and local governments is not anticipated. If a local government or small business is currently operating a solid waste management facility, they may already employ professional services to facilitate the operation of that facility and compliance with the regulatory requirements. The regulations are not expected to increase the level of professional services needed by those entities.

4. Compliance costs: These regulations are not likely to impose any significant new direct costs on small businesses or local governments. However, local governments and small businesses may own and operate solid waste management facilities or operate waste transportation businesses. If a small

business or local government owns and operates a solid waste management facility or waste transportation business, the costs associated with compliance with the rulemaking, including cost savings, are described below, organized by Part. In most cases the regulations will reduce costs associated with compliance. In others, as outlined below, the costs may increase.

Part 360

In most instances, revisions to Sections 360.12 and 360.13 will expand the types of materials eligible for pre-determined beneficial use. Avoidance of disposal through legitimate reuse will lower costs for construction contractors, industry, municipalities and the public.

Part 361

Many proposed amendments to Part 361 would reduce or maintain current costs. Those that could increase costs include:

- The revisions to Subpart 361-2 include a requirement that mandates a permit versus a registration for the storage of septage. The estimated cost for engineering associated with the permit is approximately $10,000.

- Subparts 361-3 and 361-4 contain revisions that include groundwater monitoring and other controls for composting and mulch facilities located on Long Island. The costs associated with these requirements will vary significantly based on the size and

characteristics of the operation but could range from a few thousand dollars per site or significantly higher.

Part 362

Proposed amendments to Part 362 would reduce or maintain current costs.

Part 363

Many proposed amendments to Part 363 would reduce or maintain costs. Those that could increase costs include:

- Subpart 363-3 is being amended to add restrictions onto the exemption for the disposal of animal mortalities on farms. The revisions in Subpart 363-3 could result in additional labor time for farmers to dispose of animal carcasses. This additional labor time could translate into additional costs for farmers.

- The siting requirements in Subpart 363-5 are being amended to prohibit new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. The proposed revision prohibiting lateral and vertical expansion could cause the landfills to lose between $60 per ton and $80 per ton in tip fees for this lost airspace.

- The Subpart 363-6 design, construction and certification requirements will require the use of an 80-mil geomembrane in the primary composite liner systems. The material, installation and certification costs for the 80-mil geomembrane could result in an increased cost to a facility of approximately $3,250 per acre.

- The Subpart 363-6 design, construction and certification requirements will require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills unless an alternative liner is justified. The material, installation and certification of the additional liner system components could result in an increased cost to a facility of between $100,000 to $150,000 per acre. This will also result in increased operating, maintenance, monitoring and reporting costs between $10,000 to $20,000 annually.

- The Subpart 363-7 requirement for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions is expected to result in an increased cost to a facility of approximately $45 per liner foot of collection line plus approximately $7,000 for the wellhead and tie-in infrastructure and the condensate trap.

Part 364

Proposed amendments to Part 364 would reduce or maintain current costs.

Part 365

Proposed amendments to Part 365 would reduce or maintain current costs.

Part 366

Proposed amendments to Part 366 would reduce or maintain current costs.

Part 369

Proposed amendments to Part 369 would reduce or maintain current costs.

5. Economic and technological feasibility: The Department has focused on revising the regulations in a manner that is technically sound and economical. The regulations that apply to facilities that are currently subject to regulation are not expected to significantly alter the operation or costs associated with those operations. However, changes in the law required the addition of new facility requirements in the regulations, such as groundwater sampling and protections at some Long Island facilities and enhanced construction and groundwater protections standards at certain solid waste landfills. In most cases, however, the regulations include reduced regulatory oversight, through expanded exemptions, predetermined beneficial use determinations, and registration provisions, which will reduce the costs associated with some solid waste facilities and activities.

6. Minimizing adverse impact: These regulations will not impose any direct costs on small businesses or local governments. However, local governments and small businesses may own and operate solid waste management facilities or operate waste transportation businesses. If a small business or local government owns and operates a solid waste management facility or waste transportation business, the costs associated with compliance with the rulemaking, including cost savings, are described above. In some cases, the regulations will reduce costs associated with compliance. In others, the costs may increase. However, the department has provided options for municipalities to provide waste management services, especially for waste transfer facilities, that require registrations rather than permits and therefore significantly reduce the regulatory burden and costs. In most other cases, proper management of solid wastes is necessary to protect public health, safety, and general welfare. Therefore, the rule does not exempt small business or local governments from its provisions as allowed under SAPA Section 202-b(1)(c).

7. Small business and local government participation: This rulemaking is a continuation of the rulemaking that became effective in November 2017, which provided significant opportunities for outreach and feedback from the regulated community. Since November 2017, the department has received significant additional feedback from members of the regulated community, including from small businesses and local governments and as discussed above has included many amendments to the Part 360 Series regulations that will reduce the regulatory burden on the regulated community.

8. For rules that either establish or modify a violation or penalties associated with a violation: Pursuant to SAPA 202-b (1-a)(a) and (b), the rulemaking includes transition provisions that provide adequate time for regulated parties to come into compliance with any new provisions. Otherwise,

there is no such cure period included in the rule because of the potential for adverse impacts on human health and the environment. Cure periods for the illegal management or disposal of solid waste are neither desirable nor recommended as compliance is required to ensure the general welfare of the public and the environment is protected.

9. Initial review of the rule, pursuant to SAPA §207 as amended by L. 2012, ch. 462: The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

6 NYCRR Part 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Revised Consolidated Regulatory Impact Statement

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 proposed 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 proposed 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 proposed regulations. An assessment of the potential costs associated with the proposed 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 proposed rules. Finally, Sections 9 and 10 describe the applicability of any federal programs to the activities covered by the proposed regulations and the compliance schedule of the proposed rules for the regulated community.

This proposed rulemaking is a revision to the Department's existing solid waste regulations which were promulgated on November 4, 2017. The existing regulations for solid waste management activities and facilities are currently found in Part 360 Solid Waste Management Facilities, Part 361 Material Recovery Facilities, Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities, Part 363 Landfills, and Part 365 Regulated Medical Waste and Other Infectious Wastes. In addition to the solid waste management facilities and activities currently regulated under those Parts, this proposed rulemaking 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).

This rulemaking will also incorporate minor amendments to Part 371 Identification and Listing of Hazardous Wastes and Part 377 Siting of Industrial Hazardous Waste Facilities as outlined below:

- The proposed amendment to subparagraph 371.1(e)(2)(v) addresses a provision in which certain solid wastes are not hazardous wastes. The current provision at 371.1(e)(2)(v) excludes all drilling fluids, produced waters, and other wastes associated with the exploration, development, production of crude oil, natural gas or geothermal energy from being hazardous wastes. The proposed revision narrows this exclusion to all drilling fluids, produced waters, and other wastes associated with the exploration, development, and production of geothermal energy.
- The proposed amendment to paragraph 371.1(c)(6) provides clarifying language that although certain materials are not solid waste under the hazardous waste definition, when recycled, those materials remain solid waste as defined in Part 360.
- The proposed amendments to clause 371.1(f)(6)(iii)(e) and clause 371.1(f)(7)(iii)(e) address which facilities may accept waste from Conditionally Exempt Small Quantity Generators (CESQGs). The current provision allows CESQGs to send their hazardous waste to permitted Part 360 facilities. The proposed revision allows Part 360 facilities that have a NYSDEC Part 360 permit, license or registration to accept hazardous waste from CESQGs and is consistent with the federal requirements.
- As part of the last comprehensive revision to the 6 NYCRR Part 360 Series regulations in 2017, the former Part 361 was renumbered to Part 377. However, internal references within Part 377 were not updated and in several cases still refer to the former Part 361. These internal references are corrected in this rulemaking.

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, Titles 1, 3, 5, 7, 15, 20, 21, 22 of Article 27, ECL Sections 27-1901, 27-1903, 27-1911, 54-0103, and Title 7 of Article 54.

- 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 15-0517 requires DEC to adopt regulations for Nassau and Suffolk counties to prevent water quality and other environmental impairments resulting from land clearing debris facilities or composting facilities. Those regulations must include water quality monitoring and setback requirements from water resources.

- ECL Article 27, Title 1 empowers the department to regulate the collection, treatment and disposal of solid waste. Section 27-0107(2) provides the authority to promulgate regulations to implement legislative requirements 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 27-0305 authorizes the department to adopt rules and regulations implementing this Title.

- ECL Article 27, Title 5 contains provisions relating to state aid for implementation of resources recovery and improved solid waste management systems. Section 27-0505 authorizes the Department to promulgate rules and regulations to effectively carry out the provisions of this Title.

- ECL Article 27, Title 7 authorizes the department to regulate solid waste management and resource recovery facilities. 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.

- ECL Article 27, Title 15, contains provisions concerning the storage, treatment, disposal and transportation of regulated medical waste. Section 27–1504 requires the department to promulgate regulations establishing a regulated medical waste tracking program. Section 27-1510 requires the department to promulgate regulations establishing standards applicable to all generators of any quantity of regulated medical waste to protect human health and the environment. Section 27-1511 requires the department to promulgate regulations establishing standards applicable to transporters of regulated medical waste identified or listed under Title 15 of Article 27 to protect human health and the environment. 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.

- ECL Article 27, Title 19 provides for the management and recycling of waste tires in the state. 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 20 provides for establishment of a postconsumer paint

collection program. Section 27-2003 requires producers to submit for department approval a plan for establishing a postconsumer paint collection program. Section 27-2005 establishes reporting requirements related to the programs. Section 27-2007 empowers the department to promulgate necessary rules and regulations and requires the department to post related information on the department's website.

- ECL Article 27, Title 21 regulates mercury-added consumer products. Section 27–2101 defines terms used in in this Title. Section 27–2111 declares that the department shall promulgate and enforce any regulations necessary to implement the provisions of this Title.

- ECL Article 27, Title 22, the Food Donation and Food Scraps Recycling Law, regulates food donation and food scraps recycling. Sections 27-2211 and 27-2213 outline DEC's responsibilities. Section 27-2211 requires the Department to publish the methodology for determining regulated entities, the waiver process, methods to control odors and vectors, and lists of generators and other entities. The Section also requires the Department to regulate organics recyclers to ensure that their activities do not impair water quality or otherwise harm human health and the environment. Section 27-2213 directs the Department to promulgate rules and regulations necessary to implement the provisions of Title 22.

- 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. Section 27-2303 specifies requirements for vehicle dismantlers owning or controlling a facility for the dismantling of end of life vehicles.

- 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.

2. LEGISLATIVE OBJECTIVES

The last comprehensive revision to the 6 NYCRR Part 360 series regulations became effective on November 4, 2017. The revisions in this proposed rulemaking are primarily based on the Department's experience with implementing the existing 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 of ECL Article 27. 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 (i) water pollution, (ii) air pollution, (iii) noise pollution, (iv) obnoxious odors, (v) unsightly conditions, caused by uncontrolled release of litter, (vi) infestation of flies and vermin, and (vii) 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.

3. NEEDS AND BENEFITS

Part 360 General Requirements

360.2 Definitions

The definition of solid waste is being revised to add several items that will be excluded from the definition of solid waste, such as consumer products intended for reuse in their original function and laboratory samples. These items present a minimal risk to the environment due to the limited quantity managed and the character of the materials.

-A new definition is being added for "Designated Food Scraps Generator". This definition is needed to conform with the Food Donation and Food Scraps Recycling Law enacted in 2019. The law sets forth requirements for how certain large food scraps generators must manage their excess edible food and food scraps. It also contains requirements for transporters, transfer facilities, combustors, and landfills to ensure the separated food scraps reach the required organics recycler.

-Definitions for Commercial Land Use and Industrial Land Use, which support beneficial use determinations for fill and cover materials, are being added to Part 360. Previously Part 360 referenced definitions in Part 375.

-Several new definitions related to soil and fill are being added and existing definitions are being modified or removed:

-A new definition, “Excavated Material,” is being added to provide an umbrella term for materials of all sizes, composition and potential usability that may be generated by excavation at a construction or maintenance project and is not needed by the project for backfill.

-The definition of “Fill Material” is being replaced by a definition of “Fill” with the clarification that it is a subset of excavated material consisting of granular, compactible excavated material.

-Five numbered Fill Types are being added to the definitions for the purpose of predetermined beneficial use pursuant to Section 360.13.

-Existing fill definitions including General Fill, Restricted-Use Fill, and Limited-Use Fill, are being removed.

-A new term “inactivation” is being added and defined to mean, for the purpose of Part 365, the rendering of a disease-causing organism harmless to other organisms.

-Definitions describing categories of scrap metal are being added, including “home scrap metal”, “processed scrap metal”, and “prompt scrap metal.”, These definitions are consistent with industry terms and will facilitate the implementation of Part 360.

-A definition for “New York City Metropolitan Area Waste Impact Zone,” which includes Nassau County, Suffolk County, the City of New York, Putnam County and Westchester County is being added to identify the geographic area where specific requirements in Section 360.13 and Part 364 for the transportation and reuse of excavated material will apply. The portion of the New York City Watershed west of the Hudson River is not included in this Waste Impact Zone, since, as pointed out by commenters, the remote location of this area from New York City greatly reduces the likelihood that contaminated or inappropriate materials from the City would be placed as fill in this area versus locally-generated materials. Furthermore, the 1997 Memorandum of Agreement between the City of New York, NYSDEC, NYSDOH, USEPA, environmental organizations and local municipalities for protection of the Watershed already provides adequate protection of water quality as evidenced by renewal of the Filtration Avoidance Determination for the City water supplies from this area. The Department agreed with commenters that for the West of Hudson portion of the Watershed, inclusion in the

Waste Impact Zone would not be necessary for water supply protection and would pose undue regulatory and financial burdens on less populated, rural communities in this area. The Department also agreed with commenters that it may be difficult to identify whether an activity was taking place within the Watershed, so the rule has been revised to identify Westchester County and Putnam County as part of the Waste Impact Zone and reference to the Watershed has been removed.

-A definition for “suspect asbestos-containing material”, which refers to the list of presumed asbestos containing material included in 12 NYCRR 56-5.1(f)(1)(i) and (ii), is being added.

-The definition of “thermal treatment” is clarified to include non-combustion treatment using elevated temperatures. Therefore, reference to chemicals and combustion have been removed from the definition.

-A new definition of “Traditional Fuel” is being added to Subpart 362-1 to clarify that substances that are considered to be fuels rather than wastes under the department’s Air Resources regulations are separate designations from alternative fuel or waste.

-The definition of “under the control” is being amended to include franchise agreements or easements to clarify that these methods are acceptable to allow wastes to be managed as exempt activities at locations under the control of the generator.

-The definition of “vehicle” is being amended, for purposes of Part 364, to include devices which will contain, and transport regulated waste. This adjustment is being made to clarify that only vehicles that are used to transport regulated waste must be listed on a Part 364 waste transporter permit.

-The definition of “vehicle dismantling facility” is being amended to include storage of end of life vehicles to be consistent with Subpart 361-7 and the definition in ECL Article 27 Title 23.

360.4 Transition

-Existing Section 360.4 is being repealed and is being replaced with a new Section 360.4 which includes updates to transition dates where appropriate. The new transition requirements are being added to reflect proposed amendments of each of the subparts.

-A provision is being added to allow land clearing debris landfills which were registered with the Department prior to November 4, 2017 to continue to operate until their authorized capacity is utilized. These facilities provide a low-cost public service to their communities and avoid reduction of airspace at MSW landfills.

-A provision is being added for the construction of the first landfill cell for which the department previously approved construction plans and drawings. This first cell must be designed, constructed and certified in accordance with the requirements in the Part 360 effective on the date of that approval. Construction of any subsequent cells must comply with the design, construction and certification requirements of Subpart 363-6.

-A provision is being added to allow landfills to design, construct and certify final cover systems on previously constructed cells in accordance with the requirements in Subpart 363-6. This will eliminate the need for landfills to obtain a variance to reduce the thickness of the barrier protection layer in the final cover system.

360.8 Prohibited Actions

-Two new prohibitions are being added. The first provision prohibits the location of a composting facility, mulch processing facility, or construction and demolition debris handling facility in any mine located on Long Island. This prohibition is needed to protect the sensitive drinking water resources on Long Island. The other provision concerns the acceptance of cannabis waste. Pursuant to New York State Department of Health regulations, only cannabis waste generated by a cannabis processor or business that has been rendered unrecoverable and beyond reclamation can be accepted at solid waste management facilities other than one located at the site of generation.

-The Department has established programs to conserve and protect endangered species, and the regulatory requirements for solid waste management facilities are not intended to supersede those programs. Therefore, language in 360.8(b) has been added to clarify that endangered or threatened species or their habitat is not to be taken, destroyed, or adversely modified without consideration and approval by DEC or other state or federal authority, as appropriate.

360.11 Comprehensive Recycling Analysis

-This section is being amended to clarify the information and data pertaining to the waste stream identification, selected alternatives and recyclables recovery program identification, and projection of MSW generated portions of the comprehensive recycling analysis that must be included with the comprehensive recycling analysis.

360.12 Beneficial Use

-Section 360.12(a) Applicability is being amended to state that beneficial use determinations no longer apply to fuels (Subpart 362-1) or to materials used as operational cover or equivalent design in landfills (Section 363-6.21). In addition, solid wastes that do not meet Section 360.12 beneficial use requirements must be processed at a facility that complies with Part 360 solid waste management facility regulations, including exempt facility regulations.

- Subdivision 360.12(a) is being amended to identify the decision criteria the Department will use to determine whether land placement of any material will require a non-specific facility permit rather than a BUD.

-The provision setting a default limit of 365 days for storage of materials under a BUD is being removed. This limit is already addressed for specific materials elsewhere if deterioration of the material is a concern and could hinder the reuse of materials, or if a longer timeframe to collect a sufficient amount of material is necessary.

-All types of fill material are being addressed in one pre-determined beneficial use for "excavated material" pursuant to Section 360.13.

-The exemption in 360.13(c) for on-site use of excavated materials now appears as a pre-determined use in 360.12(c)(1). This predetermined use is being expanded to also include concrete and concrete products asphalt pavement and millings, and brick generated from demolition of on-site structures, as allowable on-site backfill materials. This provision will aid and encourage responsible and economical on-site management of these materials. Wastes which are excluded from the disposal exemption at 363-2.1(a) are also excluded from this pre-determined BUD.

-The predetermined beneficial use in paragraph 360.12(c)(2) for waste tires on farms to anchor tarps is being modified to clarify how many tires can be used and to allow the use of whole, unaltered tires provided storage methods prevent the collection of water.

-A predetermined beneficial use is being added to paragraph 360.12(c)(2) for unsold fruits and vegetables from farmers' markets and similar events used as animal feed in order to maximize higher value uses of foods and to reduce disposal of food scraps in accordance with the Food Donation and Food Scrap Recycling Law.

-Grade adjustment for site development use of uncontaminated concrete, rock, brick, asphalt pavement or millings, and newly defined Fill Types 1, 2 or 3, separately or mixed, is proposed to be allowed outside of the counties of Putnam, Westchester, Nassau and Suffolk under a new predetermined beneficial use in paragraph 360.12(c)(2). This predetermined use replaces exempt landfilling of these materials pursuant to Part 363, which was limited to 5000 cubic yards per site. Removing this volume limit allows volumes of material that are necessary for grade adjustment projects to be used without arbitrary restriction. De minimis amounts of wood included with these materials are acceptable.

-Two new predetermined BUDs are being added to allow an aggregate product made from concrete, brick, rock and asphalt together for use as subbase – the first predetermined BUD for material produced from a facility regulated under Subpart 361-5and the second from other sources. This product, often termed "R2" or "contractor

blend," is commonly produced on Long Island and in and around New York City, and it has been difficult to market pursuant to current beneficial use regulations. De minimis amounts of soil or wood with these materials are acceptable. Unlike aggregate products made separately from concrete/ brick/ rock and asphalt pavement/ millings, this mixed aggregate does not cease to be regulated as a waste until it is received at its location of use.

-Language requiring that commercial aggregates made from concrete/ brick/ rock or asphalt pavement/millings meet municipal or State specifications or standards is being removed. These predetermined uses now allow for inclusion of de minimis amounts of soil or wood. The language for these BUDs has been revised to clarify that any necessary processing must be performed at an authorized facility.

-A new predetermined beneficial use is being added for concrete or other masonry products received at a ready-mix plant for incorporation into a concrete product. This use is similar to the existing BUD for asphalt pavement received at an asphalt manufacturing plant.

-A predetermined use is being added for excavated materials managed under a municipally administered soil reuse program under an agreement with the Department. This new BUD will allow successful programs such as the New York City Clean Soil Bank to continue to operate under practices equivalently protective as, though not necessarily identical to, Parts 360, 361 and 364 for management of excavated material.

-Predetermined beneficial use of scrap metal is added to clearly establish that scrap metal which meets a commercial commodity specification for use in an industrial or manufacturing process is no longer a solid waste but instead is a commodity.

-New predetermined BUDs are being included for reuse of dewatered solids and wet slurry generated by concrete grinding slurry operations on road construction or maintenance projects. Uses include, but are not limited to, commercial aggregate or ingredients in other construction products.

-Language is being added to 360.12(d)(7) to clarify that one-time case-specific BUD uses (e.g., navigational dredge material as grade adjustment fill in a construction project, etc.) do not require renewal after 5 years. The renewal is only required for BUD uses of an ongoing nature where waste continues to be received and reused.

-Chemical concentration criteria for use of oil and gas well brine and LPG storage brine on roads are being modified for constituents to reflect concentrations of minerals in road salt and commercial or manufactured brine. Use for road stabilization, a one-time unpaved road treatment event per year, is no longer subject to these limits but will be reviewed on a case-specific basis. These changes will not diminish environmental protection but will allow appropriate beneficial use of these brines from local gas wells

and gas storage facilities. Municipalities must maintain local public roads, whether in winter through ice and snow removal, or in summer, through stabilization and periodic dust control on unpaved roads to keep them passable and protect air quality; these changes will make it possible for municipalities to continue to use low-cost, local sources of production and storage brine that are environmentally protective. Interpretation of laboratory reporting is being clarified, the deadline for annual reporting is being made consistent with the same for other types of BUDs, and the requirement of a signed statement by a responsible official to accompany the annual report is being made consistent with other case-specific BUDs.

360.13 Special Requirements for pre-determined beneficial use of excavated material

-This section reflects new definitions of Excavated Material and Fill, including various subset Fill Types. Restrictions on the use of general fill, referred to in the proposed revisions as Fill Type 2 or F2, now harmonize with Part 375 land-use categories.

-Language is being added to clarify that excavated material may be sent to an authorized solid waste management facility without consideration of requirements in Section 360.13, but that fill material leaving those facilities must comply with Section 360.13 requirements.

-The exemption for on-site use of excavated material is being moved to and expanded in Section 360.12(c), Pre-determined Beneficial Uses.

-Specific points at which fill is no longer considered solid waste are being clarified and expanded. In general, fill is no longer considered a solid waste when it is delivered to the site of reuse. The exceptions are that Fill Types 1, 2 and 3, outside of the New York City Metropolitan Area Waste Impact Zone, cease to be a solid waste when a determination has been made that material meets the requirements of these Fill Types.

- Requirements for notification are being moved to a new location and clarified to state that only fill transported from the site of excavation directly to the site of reuse requires a notification to the Department. Fill that is transported from an authorized Part 360 solid waste management facility does not require submission of a notification form.

-The requirement that any fill originating from a site with industrial land use designation must be tested prior to reuse is being removed.

-Fill must be sampled for asbestos only if suspect asbestos-containing material is observed by the New York State Department of Labor (NYSDOL) or a NYSDOL certified inspector.

-A new fill type, Fill Type 3, is introduced with these proposed revisions. This fill is similar to Fill Type 2 (general fill) with two exceptions. The first exception is that Fill

Type 3 may include de minimis amounts of asphalt or concrete. The second exception is that Fill Type 3 may only be used on residential properties under an impervious surface or under at least three inches of Fill Type 1, Fill Type 2, or commercial soil.

-Fill Type 4 (formerly Restricted-Use Fill) now has no limit for non-soil material and is only distinguished from Fill Type 5 (formerly Limited-Use Fill) by limits on chemical contamination.

-Fill Type 4, when used within Suffolk County, Nassau County, Putnam County or Westchester County must be generated within the county where it is used. Fill Type 4 may only be used in Suffolk County if it is generated in Suffolk County, and so forth. In Suffolk, Nassau, Putnam and Westchester Counties, Fill Type 4 cannot be used in the same manner as Fill Type 5 (i.e., below impermeable surfaces and above the water table) but can be used in transportation corridors or sites where in-situ materials exceed Fill Type 4 or Fill Type 5 criteria. In Suffolk, Nassau, Putnam and Westchester Counties, placement of Fill Type 5 is prohibited.

360.14 Exempt facilities or activities

- Under the current regulations, paragraph 360.14(b)(1) exempts from regulation by the department most types of solid waste management at the site of waste generation. New exclusions to this exemption include composting of most industrial wastes or any animal mortalities or parts, and storage of waste tires. The exclusion for storage of waste tires is being added to avoid a conflict with a separate exemption in this section (see below) for tire storage.

-The exemption for storage of nonputrescible waste on a vehicle is being amended to match 6 NYCRR 372.3(a)(6) and (7).

-The exemption for storage of putrescible wastes on a vehicle is extended to allow storage over a weekend so long as the conditions of the exemption are met. This allows collection vehicles to continue on their routes even if the disposal facility has closed or in the event that they will continue to collect or consolidate loads on Monday morning.

- An exemption is being added for the transfer of solid waste from vehicle to vehicle for the purpose of consolidating loads as part of the initial collection process. This will allow waste transporters to consolidate loads along the collection route without the need for a Part 360 transfer facility authorization.

- The exemption for handling waste tires is being clarified to include only storage, or storage with transfer, of less than 1000 tires at any one time. Activities beyond storage of waste tires, including tire processing, must meet the requirements of Subpart 361-6 and are not included under this exemption.

360.15 Registered facilities, transporters and collection events

-The requirements to declare the intended storage volume and the maximum throughput limit on a registration form are not applicable for household hazardous waste collection events. The regulations are being amended to explicitly indicate that this information is not required for the household hazardous waste collection event registration.

-Provisions are being added to clarify what documentation must be submitted by applicants for registrations to establish their authorization to conduct business in the State, including conducting business under an assumed name.

360.16 Permit application requirements and permit provisions

-The closure cost estimate must include the costs for the design, materials, equipment, labor, administration, and quality assurance identified for closure of the facility in the closure plan. A requirement is being added for the closure cost estimate to be submitted as part of the closure plan.

-The term “operations and maintenance manual” was used in the previous Part 360. This term is being updated to reflect the new terminology, facility manual.

-Provisions are being added to clarify what documentation must be submitted by permit applicants to establish their authorization to conduct business in the State, including conducting business under an assumed name.

360.19 Operating requirements

-Language is being added to clarify that facilities that have a residential drop-off area for non-commercial vehicles to unload waste and recyclables are not required to provide for additional collection of source-separated recyclables.

-Several facility types are required to obtain and maintain financial assurance in their respective Subparts. An operating requirement is being added to clarify that the department can require financial assurance for any facility, not just the facilities with requirements in the Subparts.

360.22 Financial Assurance

-The cost estimate requirements for facilities other than landfills are being revised to require an adjustment for contingencies and to require department review and approval of the estimates. This will help to assure that the necessary funds are available if the department needs to hire a third party to close the facility.

-Although the United States Environmental Protection Agency (EPA) regulations pertaining to financial assurance requirements indicate that Gross National Product (GNP) should be used, in December 1991 the U. S. Department of Commerce Bureau of Economic Analysis began using Gross Domestic Product (GDP) rather than GNP as the primary measure of U.S. production. Therefore, the reference to Section 373-2.8(c)(2) is being removed. Requirements for adjusting the cost estimate for inflation that reflect this practice have been added.

-Municipalities may require a form of financial assurance for closure of a solid waste management facility. The regulations allow the department to reduce the amount of financial assurance required for purposes of closure under Part 360 by the amount provided to the municipality. The regulations are being revised to clarify these requirements.

-Under the current regulations, the owner or operator of a solid waste management facility can satisfy the financial assurance requirements by establishing a trust fund. The requirements for the trustee of the trust fund are being amended to clarify that documentation must be submitted to the department that indicates that the trustee is authorized by the State of New York, another state, or the federal government to act as trustee. In the event that an attorney is acting as trustee, language is being added to clarify that the attorney must not represent the owner or operator in other legal matters.

-The requirements for the surety bond are being revised to allow owners or operators to use the financial surety fund, instead of a standby trust agreement, for bonds less than $50,000. This is consistent with the surety bond requirements in paragraph 360.22(d)(2). The revisions will reflect the correct acknowledgements by the principal and the surety company.

-The trust agreement acknowledgements were inadvertently used in the surety bond wording. The acknowledgements for the surety bond are being corrected.

Part 361 Material Recovery Facilities

Subpart 361-1 Recyclables Handling and Recovery Facilities

-The proposed regulations clarify that Recyclables Handling and Recovery Facilities (RHRFs) must receive source-separated recyclables for the purpose of ‘processing’, not merely for transfer. Facilities that receive recyclables for transfer are regulated under Subpart 362-3, Transfer Facilities. This Subpart further clarifies that RHRFs do not include facilities or portions of facilities that primarily handle scrap metal; these are regulated under Subpart 361-7. These clarifications are necessary to eliminate confusion, but do not change substantive authorization or operating requirements in the current regulations.

-A new exemption is being added in the proposed regulations for RHRFs owned or operated by a municipality or a contractor on a municipality's behalf that accept no more than 20 cubic yards of source-separated recyclables per day and which comply with the operating conditions in this exemption. This exemption is needed to accommodate a common type of drop-off center that municipalities may operate for the convenience of residents.

-The current regulations place a limit on 250 tons per day based on weekly average received at an RHRF for the RHRF to be eligible for registration. Section 361-1.3 is being amended to remove this limit. This amendment leaves the only criteria for registration to be that the facility maintains a 15 percent limit on residue based on a full year of operation, and that the facility complies with operational, recordkeeping and reporting requirements in Part 360 and Subpart 361-1.

-Both the current and proposed regulations exempt facilities accepting no more than five tons per day, based on weekly average, from weighing and recording materials delivered to or leaving the facility. In the current regulations, this exemption was included in registration criteria discussed in Section 361-1.3. In the proposed regulations, Section 361-1.5 Operating Requirements states that only facilities receiving more than five tons per day must weigh and record. This change has the effect of clarifying RHRF registration criteria but continuing to allow small facilities to operate without the requirement of a vehicle scale or other weighing procedure.

Subpart 361-2 Land Application and Associated Storage Facilities

-Both the concentrated animal feeding operation (CAFO) program in the Department's Division of Water and Subpart 361-2 have regulatory jurisdiction over land application of manure on farms. The Department has worked over many years to develop the two regulatory programs so that both programs do not have duplicative regulations over the same activity and that all activities that need to be regulated are covered by one of the regulatory programs. The Department's proposal to require registration for third party appliers is another step in this process. Since current CAFO regulations do not cover this practice, a proposed revision to Subpart 361-2 requires private companies that apply manure to the land from CAFO to obtain a registration and to comply with the nutrient management plan for the farm. This is a new requirement to address concerns with third party land appliers that may not be following the required land application criteria under the CAFO program. These operations have become much more prevalent in the last few years and could cause water quality concerns if the application does not occur properly.

-The proposed revisions require surface impoundments (lagoons) that store septage to obtain a permit. Under the current regulations, some of these surface impoundments could operate with a registration. Due to the need for engineering design and construction oversight, a permit is the appropriate mechanism for DEC to have

appropriate review and oversight for these operations to preclude potential groundwater impacts.

-The proposed revisions remove the exemptions for certain land application and storage facilities on a farm with a certified nutrient management plan (CNMP) that is not a CAFO. Since these farms are not covered by a CAFO permit, there would be no oversight of these operations if they are also exempt from Part 361. Therefore, they will be required to obtain a registration under Subpart 361-2 and comply with applicable operating conditions.

Subpart 361-3 Composting and Other Organics Processing Facilities

-In compliance with recently passed State law, outlined in ECL Article 15, Section 15-0517, groundwater monitoring and protection procedures applicable to Nassau County and Suffolk County were added to the revised regulations. The law requires groundwater monitoring around certain composting facilities located in Nassau County and Suffolk County to protect groundwater resources.

-The proposed revisions implement the statutory requirements for the various uses of digestate from anaerobic digestion. The regulation of the uses will depend on the wastes that enter the digester. Anaerobic digesters can accept a variety of materials, such as manure, food waste, biosolids, etc., and the regulations governing the use of the resultant digestate will depend on the type and quantity of material processed. Clarification was needed due to confusion arising from the criteria in the current regulations.

-The proposed revisions include a clarification of pathogen reduction alternative two. The current regulations limit that option to thermophilic digestion, but clarification obtained from the EPA indicates that this pathogen reduction method can also apply to other treatment processes, such as heat drying. Therefore, the limitation to digestion was removed.

-Biosolids products imported into New York State must comply with the standards applicable to similar products generated in New York State. The proposed revisions include a new provision that allows the department to impose time limits and other criteria on the storage of these products, because they sometimes can be odorous if stored for an excessive time period prior to land application.

Subpart 361-4 Mulch Processing Facilities

-In compliance with recently passed State law, found in ECL Section 15-0517, groundwater monitoring and protection procedures applicable to Nassau County and Suffolk County were added to the revised regulations. Groundwater monitoring is not routinely required for mulch facilities. However, ECL Section 15-0517 requires the

department to include these monitoring requirements for most mulch facilities located in Nassau County and Suffolk County.

Subpart 361-5 Construction and Demolition Debris Handling and Recovery Facilities

Section 361-5.2 Exempt facilities

-The exemption in 360.14(b)(1) allows waste to be managed at a location under the same ownership or control as the site of generation. However, this exemption does not extend to locations under the ownership or control of contractors who generate wastes during highway construction and who assume responsibility for those wastes as part of their contracted work. To address this situation, the proposed revisions include an exemption that allows the storage of Fill Type 2, Fill Type 3, or recognizable, uncontaminated concrete, asphalt, brick or rock that are anticipated to be reused under a beneficial use determination. The allowed storage of unprocessed materials at the exempt location would be capped at 500 cubic yards within the New York City Metropolitan Waste Impact Zone. Outside the Zone, storage of unprocessed material is capped at 10,000 cubic yards and requires notification to the Department on an annual basis for storage greater than 2500 cubic yards. This proposed exemption will allow contractors to manage highway construction and maintenance wastes according to longstanding industry practice, while limiting this activity in areas where it may have greater adverse or nuisance impacts.

Section 361-5.3 Registered facilities

-Current regulations restrict the amount of material received at a registered Construction and Demolition Debris Handling and Recovery Facilities (CDDHRFs) to less than 500 tons per day. This restriction was established because of concerns with truck traffic associated with a registered facility impacting surrounding communities and because issuance of Part 360 registrations are ministerial actions and do not require State Environmental Quality Review under 6 NYCRR Part 617. The limit is only associated with truck traffic and is not an indication of environmental concern associated with the materials being managed at the registered facility. However, local municipalities have authority to perform environmental quality reviews associated with development within their jurisdictions, and therefore a separate requirement imposed under the Part 360 series regulations is not necessary. Based on these considerations, the proposed revisions remove the 500 tons per day limit from CDDHRFs.

-The existing regulations require that registered facilities may only accept source separated asphalt, and source separated concrete, rock and brick. These restrictions reflected pre-determined BUDs which required that asphalt be separated from other materials prior to reuse. However, additional pre-determined BUDs are being added as part of this proposed rulemaking to allow combinations of asphalt, concrete, brick, and rock to be utilized. Therefore, it is appropriate to modify the Subpart 361-5

requirements to allow mixed loads of these materials to be received at a registered facility. The proposed revisions include this adjustment.

-The existing regulations include a “clean soil” registration for facilities that receive soil, sand, gravel or rock that exhibits no evidence of contamination. A second current registration allows for receipt of material that meets the definition of restricted-use fill and/or limited-use fill. In an effort to ensure that contaminated excavated material is managed properly and only appropriate excavated material is directed to beneficial use, the proposed revisions adjust the “clean soil” registration to only allow soil received directly from the site of excavation and to exclude soil generated within the City of New York unless the facility is owned or controlled by the City of New York. Excavated material generated within the City of New York would otherwise have to be directed to a permitted CDDHRF. In addition, the proposed revisions remove the registration for restricted-use fill and limited-use fill (or Fill Type 4 and Fill Type 5 under the newly proposed designations), obligating facilities that receive this material to operate under a permit.

-A new registration is being added for storage only of concrete, brick, rock, asphalt pavement, or mixtures of these materials. Operating requirements are reduced, but processing is prohibited. This registration is intended to accommodate the need expressed by the construction industry for storage of these materials at locations convenient to ongoing projects. By not allowing processing at these registered sites, noise and dust impacts to the surrounding community will be minimized.

-The current registration provision for a facility receiving multiple types of waste streams under other registration provisions (a “stacked” registration), is being eliminated in the proposed revisions. This type of “stacked” registration with multiple streams is no longer necessary or appropriate because of the expansion of allowable throughput, and newly proposed combinations of allowable materials at registered facilities in the proposed rulemaking. If the facility is receiving multiple waste streams that individually or in combination do not conform to allowable materials to qualify for a registration, it must obtain a permit.

Section 361-5.5 Design and operating requirements for registered and permitted facilities

-Current regulations require that any fill material or residue leaving a CDDHRF must be analyzed in accordance with Section 360.13 requirements at a minimum of one analysis every 1,000 cubic yards. The proposed revisions retain this frequency for Fill Type 4, Fill Type 5, or residues leaving the facility. Fill Types 4 and 5 are similar to the current Restricted-Use and Limited-Use Fill categories and reflect materials with a significant proportion of non-soil content and elevated concentrations of pollutants. By contrast, the revisions establish a new frequency for Fill Type 2 or Fill Type 3, which consist mostly of natural soils, gravel and rock; for these cleaner streams the proposed

revisions would require sampling at a minimum of four times per year though the Department would have the discretion of directing the facility that this sampling be performed at any time during the calendar year. These revisions will reduce the regulatory obligation on facilities that manage these cleaner types of fill while allowing Department discretion to closely monitor fill quality when appropriate.

-As discussed below, the proposed rulemaking removes the CDDHRF-specific waste tracking document included in the current regulation. However, the proposed rulemaking adds an operating requirement for CDDHRFs that clarifies that Part 364 waste tracking documents must be considered facility records and must be maintained under the recordkeeping requirements for the facility.

Section 361-5.6 Recordkeeping and reporting requirements

-Under current regulations, a separate waste tracking document is required for some types of material leaving a CDDHRF. This requirement is in addition to waste tracking document requirements established in Part 364 and has caused confusion and complication with the waste transporting industry. In order to improve the usefulness and efficiency of the waste tracking system, the proposed revisions remove the CDDHRF-specific waste tracking document requirement but leaves in the place the Part 364 requirements.

Subpart 361-6 Waste Tire Handling and Recovery Facilities

-An exemption is being added that allows an owner of a farm to process waste tires in order to produce a product that meets the beneficial use provisions of Section 360.12(c)(2)(iv). This will reduce any unnecessary burden on farmers who cut tires in half or drill holes in tires for use on the farm to secure tarpaulins. Without this exemption, farmers who carried out the activity of processing tires would be required to obtain a permit.

-An exemption is being added for the processing of waste tires at a waste tire stockpile site undergoing abatement pursuant to the New York State Waste Tire Stockpile Abatement Plan for the purpose of producing products meeting any requirements of Parts 360, 362 or 363. This provision may encourage these facilities to process tires in a manner that will allow them to be used pursuant to beneficial use provisions, as fuel, or as alternative operating cover at landfills.

-The operating requirements for registered waste tire handling and recovery facilities to prevent unauthorized access are being amended to be consistent with the operating requirements in Section 360.19. Under the new proposal, in addition from choosing to use fencing, registered waste tire handling and recovery facilities may alternatively use signs, natural barriers, or other suitable means as determined by

the department to prevent unauthorized access. This could result in significant potential cost savings to registered facilities.

-The design and operating requirements for permitted Waste Tire Handling and Recovery Facilities are being amended to reduce the limit of storage of tires at facilities where the tires are processed, from the 90-day production capacity allowed under current regulations to no more than the 30-day production capacity of the facility under the proposed rulemaking. For facilities permitted only for storage, the waste control plan must include a market analysis that identifies markets for waste tires. These limitations are intended to better prevent uncontrolled or speculative accumulation of waste tires.

-A requirement for fencing at larger permitted storage facilities is being added, but this addition is consistent with general operating requirements for permitted facilities in Section 360.19, serving primarily to clarify minimum security measures in this context of tire storage.

Subpart 361-7 Scrap Metal Processing and Vehicle Dismantling Facilities

-The exemption for motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store no more than 25 end-of-life vehicles on site at any one time is being expanded to allow the storage of no more than 50 end-of-life vehicles on-site at any one time. This is consistent with the definition of “Vehicle Dismantler” in Title 23 of Article 27 of the ECL. The registration for motor vehicle shops that store between 26 and 50 end-of-life vehicles on-site at any one time is being removed.

-The registration for vehicle dismantling facilities that receive no more than 25 end-of-life vehicles per year and store no more than 50 end-of-life vehicles on-site at any one time is being changed to an exemption to be consistent with the definition of “Vehicle Dismantler” in Title 23 of Article 27 of the ECL.

-A new section 360-7.5 is being added to establish specific operating requirements for scrap metal processors. The section requires all metal shavings and cuttings to be collected inside a building or within a secondary containment area within an impermeable surface. The containment area must be cleaned at a minimum on a weekly basis or at the end of a shift before a precipitation event. All oily liquid must be drained and properly disposed or otherwise managed for reuse as part of the cleaning.

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

-No substantive changes have been made to this Subpart.

Subpart 361-9 Navigational Dredged Material Handling and Recovery Facilities

-The reference to “relocation to other sites” pursuant to the rules for pre-determined beneficial use of excavated material is being removed. Except where excluded or subject to predetermined use in Section 360.12(c), navigational dredged material can only be reused pursuant to a case-specific BUD. While excavated material reuse criteria can guide a case-specific determination for NDM, NDM is not excavated material and will be reviewed for reuse on a case-by-case basis.

Part 362 Combustion, Treatment, Transfer, and Collection Facilities

Subpart 362-1 Combustion Facilities and Treatment Facilities
- The headings for Part 362 and for Subpart 362-1 are being amended to clarify that the type of treatment facilities that are covered under this Part and Subpart include both thermal treatment and chemical treatment.

-The applicability is being amended to clarify that Part 362 applies to chemical treatment and thermal treatment facilities. This resolves the inconsistency between the title of the part and the applicability.

-The exemption and registration provisions related to the combustion of a traditional fuel or an alternative fuel are being amended to clarify that the exemption only applies if the fuel is not stored at the facility prior to combustion. If the fuel is stored at the facility prior to combustion, a registration is required.

-6 NYCRR Part 215 restricts the burning of any material in an open fire, except for those specific instances identified in 6 NYCRR 215.3. All but one of the allowed exemptions and restricted burning practices described in 6 NYCRR 215.3 explicitly or potentially involve solid wastes. 6 NYCRR 360.14(b)(1) exempts from regulation under 6 NYCRR Part 360 a transfer, storage, treatment, processing or combustion facility located at the site of waste generation or at a location under the same ownership or control as the site of waste generation. Therefore, the activities described in 6 NYCRR 215.3(a), (d) and (i), which are described as on-site burning of solid wastes, are excluded from regulation under 6 NYCRR Part 360. The other activities described in 6 NYCRR 215.3(b), (c), (f), (g), (h), (j), (k), and (l) would require a registration or permit because the combustion of solid waste is limited under 6 NYCRR 360.9(a)(1) to facilities authorized to combust solid waste in accordance with a registration or a permit issued by the department. A primary concern associated with the combustion of solid wastes is air emissions. However, given that the Division of Air, which is responsible for regulation of air emissions from waste combustion, has concluded that the activities identified in 6 NYCRR 215.3 may take place provided such activities are not contrary to other law or regulation, it would be an unnecessary regulatory burden to require 6 NYCRR Part 360 authorization for the same activities. Therefore, an exemption is being added to Subpart 362-1 for facilities that combust solid wastes in conformance with the requirements of 6 NYCRR Part 215.

-The Division of Air Resources considers uncontaminated, unadulterated wood to be a traditional fuel that is not designated pursuant to Part 200 as a refuse. Therefore, the requirement for a facility that only combusts or thermally treats uncontaminated, unadulterated wood to obtain a Part 360 registration is being removed. The combustion of traditional fuel without storage prior to combustion is being added to the existing exemption.

-These revisions remove the requirement that information related to fuel storage, steam generation, and cooling water management be included in the engineering report. This information is not used for compliance with the Part 360 Series regulations, and the change will eliminate the need to unnecessarily report the same data to multiple DEC programs.

-Source separation is the best means of keeping recyclable metals out of municipal solid waste (MSW). However, when MSW is combusted at a municipal waste combustion (MWC) facility, a second opportunity is available to collect metals that were not source-separated. Metals are not destroyed in the combustion process and can be recovered at the MWC facility. Therefore, metals extracted at the MWC facility subsequent to combustion will not be considered part of the facility's approved design capacity to encourage this second opportunity to collect recyclables.

-The requirements for the acceptance of regulated medical waste or pharmaceutical waste are being amended to ensure proper handling of these waste types.

-The regulations are being revised to clarify that a facility can submit a request for approval to the department to reduce the number of parameters required for toxicity characteristic testing and total metals testing of combustor ash residue. This will reduce unnecessary ash testing while providing for periodic verification of the content of the ash residue.

-The regulations are being amended to clarify the laboratory certification requirements and the methods and procedures used for analyses. These requirements will help to ensure consistency among laboratory analyses and accurate waste characterization.

-Requirements are being added for combustion and thermal treatment facilities that receive food scraps as required under the 2019 Food Donation and Food Scraps Recycling Law. The Law sets forth requirements for how certain large food scraps generators must manage their excess edible food and food scraps and contains requirements for transporters, transfer facilities, combustors, and landfills to ensure the separated food scraps reach the required organics recycler. As the Law is implemented, revisions to Subpart 362-1 may be needed.

-The regulations are being amended to require the submission of analytical results associated with the ash residue sampling. This requirement existed in the previous regulations and is standard practice for these facilities. A clarification is being added to require the results of all ash residue analyses that is performed for purposes of compliance with subdivision 362-1.5(c) and the facility's residue sampling and analysis plan required under paragraph 362-1.4(c)(4) be submitted within 30 days of receipt.

Subpart 362-2 Municipal Solid Waste Processing Facilities

-The applicability is being amended to be consistent with the format of the other Subparts in Part 362.

Subpart 362-3 Transfer Facilities

-Facilities that transfer regulated medical waste are regulated under Part 365 and facilities that transfer used oil are regulated under Subpart 374-2. The applicability section for transfer facilities is being amended to clarify that these types of facilities do not also need to comply with Subpart 362-3.

-The requirements for facilities that transfer source-separated recyclables are being amended to simplify the Part 360 authorization process. The exemption for municipal facilities that transfer no more than 20 cubic yards of waste per day is being amended to allow the facility to also transfer up to 20 cubic yards of source-separated recyclables per day. This will encourage small municipal transfer facilities to also manage source-separated recyclables without the need for a Part 360 authorization.

-An exemption is being added for municipal transfer facilities that receive no more than 3,000 tons per year of yard trimmings provided the facilities meet the specified criteria. This exemption will encourage municipalities to properly manage yard trimmings by eliminating the Part 360 registration, operating, and reporting requirements for these facilities.

-An exemption is being added for municipal transfer facilities that accept waste no more than five days per year provided that the facilities meet the specified criteria. This exemption will eliminate the Part 360 registration, operating, and reporting requirements for municipalities that hold seasonal collection events.

-The operating requirement for the removal of waste from a registered municipal transfer station is being amended to ensure the waste is removed from the facility in a timely manner to prevent odors.

-The operating requirement for the collection of source-separated recyclables is being amended to consider alternative recyclables collection methods being used by municipalities.

-Subpart 362-3 is being amended to add a registration requirement for facilities that transfer septage waste from a single transporter using no more than two vehicles for the collection of residuals from a composting toilet. Facilities will be allowed to operate under a registration rather than a permit, thereby reducing the costs and requirements associated with the Part 360 authorization process. In addition, design and operating requirements are being added to this Subpart for those facilities that handle septage waste.

-A registration is being added for facilities that receive source-separated recyclables. This registration currently exists in Subpart 361-1. Moving the registration requirements to Subpart 362-3 will simplify the Part 360 authorization process.

-Subpart 362-3 is being amended to add requirements for transfer facilities that receive food scraps as required under the 2019 Food Donation and Food Scraps Recycling Law. The Law sets forth requirements for how certain large food scraps generators must manage their excess edible food and food scraps and contains requirements for transporters, transfer facilities, combustors, and landfills to ensure the separated food scraps reach the required organics recycler. As the Law is implemented, revisions to Subpart 362-3 may be needed.

Subpart 362-4 Household Hazardous Waste Collection Facilities and Events

-The applicability section is being amended to be consistent with the format of the other Subparts in Part 362.

-The site plan will be required to be available on-site during the household hazardous waste collection event rather than being submitted with the registration application. This simplifies the household hazardous waste collection event registration process by reducing the information that needs to be submitted to the department.

Subpart 362-5 Paint Collection Sites Collecting Postconsumer Architectural Paint Under A Department-Approved Postconsumer Paint Collection Program

-With the adoption of the Postconsumer Paint Collection Program Law, producers of architectural paint are required to implement a Postconsumer Paint Collection Program (PPCP) in accordance with a plan approved by the Department. Title 20 of Article 27 of the ECL explicitly requires a PPCP to minimize public sector involvement in paint collection and envisions that retailers who sell architectural paint, as well as reuse stores, may voluntarily collect postconsumer paint at their retail locations. The collection and transfer of source-separated, non-hazardous postconsumer paint is exempt from the Part 360 registration and permitting requirements in Subpart 361-1. However, some postconsumer paint meets the definition of household hazardous waste or conditionally exempt small quantity generator (CESQG) waste. Current regulations require facilities that accept household hazardous wastes from households and/or CESQGs to comply with the applicable registration and permitting requirements

in Subpart 362-4. To help foster the collection and recycling of all unwanted postconsumer paint, a new Subpart is being added to allow sites that are collecting and storing postconsumer architectural paint from households and CESQGs pursuant to a department-approved PPCP plan to register with the department instead of obtaining a permit.

Part 363 Landfills

Subpart 363-2 Exempt Facilities

-Subpart 363-2 allows for the storage, processing, and disposal of solid waste generated from farm-related activities provided all storage, processing and disposal occurs on a farm. The regulation is being amended to restrict the disposal of animal mortalities to ensure groundwater protection.

-Subpart 363-2 is being amended to remove the exemption for disposal of up to 5,000 cubic yards of concrete, asphalt, brick, glass, rock and general fill originating from construction or demolition sites. The change makes Part 363 more consistent with the regulation of similar C&D debris in other portions of the regulations including Subpart 361-5. The addition of a grade adjustment pre-BUD in Section 360.12 provides an alternative management approach for these materials and does not include a maximum volume.

-The disposal of certain types of waste generated by state or municipal highway projects and managed on highway rights-of-way or municipally owned properties is exempt from the Part 363 regulations if the specified conditions are met. The list of exempt facilities is being amended to be consistent with the revisions to the regulation of similar C&D debris in Section 360.12 and Subpart 361-5.

-An exemption is being added for disposal within a state, municipal or utility right-of-way of tree debris generated by the clearing of the right-of-way. Since the tree debris does not pose any adverse impacts to human health or the environment, this will facilitate the maintenance of a right-of-way without imposing added costs for tree debris removal.

Subpart 363-3 Inactive Disposal Facilities

-The end use requirements in Section 363-9.7 apply to all landfills that closed prior to November 4, 2017. Language is being added to clarify that the inactive disposal facilities regulated under Subpart 363-3 must also comply with these end use requirements.

Subpart 363-4 Permit Application Requirements

-Language is being added to the structural integrity and overall slope stability analysis requirements to clarify the design considerations that must be submitted as part of this analysis.

-As of November 4, 2017, Part 363 reduced the acceptable displacement of a liner system component from 12 inches to 6 inches. However, to match the decreased displacement threshold, the requisite seismic coefficient should have been increased from 0.5 to 0.75 of the free field peak ground acceleration at the site of the design earthquake. This coefficient is being amended to reflect the conservative nature of New York State's MSW landfill liner requirements and to be consistent with the industry's standard of practice for designing critical containment systems such as landfill liner systems. Failure of a landfill liner system because of an earthquake can result in a massive breach of the liner system and threaten the quality of ground water in the area and should be avoided by proper design.

-The engineering report must include a description of the how the components of the landfill liner and leachate collection and removal system will allow for the effective monitoring of leachate flow and liner system performance. To clarify this, a reference to the performance requirements for the primary leachate collection and removal system is being added to the regulations.

-The mined land use plan requirements of the engineering report are being amended to clarify that a mined land use plan is not required if the landfill plans to perform on-site excavation of material to be used as an operating cover at the landfill and the landfill footprint will be situated in the area from which the material is being removed. A mined land use plan is required if the landfill footprint will not be situated in the area from which the material is being removed and a mining permit is required if the excavated material is being used off-site.

-Well extension requirements are being amended to eliminate the requirement to remove the outer casing and concrete pad when extending a well. The removal of these could compromise the integrity of the well. Language is being added to ensure well extensions are designed to maintain the future integrity of the well casing and to prevent surface water intrusion into the well casing.

-The regulations are being amended to clarify that the sustainability plan that is submitted with the permit application must be updated no less than every five years and at the time of permit renewal.

-The sampling and analysis of landfill gas condensate is being added to the environmental monitoring plan. These requirements were included in Part 360 prior to November 4, 2017. These requirements are consistent with leachate monitoring requirements, will enhance groundwater protection, and will reflect the standard industry practice.

-References are being corrected in the environmental monitoring plan contingency water quality requirements. In addition, the regulations are being restructured to clarify the requirements if one or more parameters are detected at levels above the groundwater protection standard.

-In addition to the Part 360 series landfill regulations, NYS landfills must also meet the federal regulatory requirements contained within 40 CFR Part 258. Language is being added to the gas monitoring and emission control plan to make the requirements consistent with the federal regulations. Footnotes are being added to the tables in Section 363-4.6 to make the Part 360 series requirements consistent with 40 CFR Part 258.

Subpart 363-5 Siting Requirements

-In addition to the Part 360 series landfill regulations, NYS landfills must also meet the federal regulatory requirements contained within 40 CFR Part 258. Siting requirements are being added to protect state and federal wetlands and to eliminate any inconsistencies between the federal and state siting requirements.

-Language is being added to prohibit the siting of new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. This revision is intended to increase the distance between future landfill disposal locations and school or residences, thereby limiting any potential impacts. The regulations exclude schools and residences that have entered into legal agreement with the landfill owner or operator or that are constructed within 1000 feet of a planned landfill footprint after a complete application identifying the disposal area has been submitted to the Department.

Subpart 363-6 Design, Construction and Certification Requirements

-The requirements for the double composite liner system are being amended to require an 80 mil HDPE geomembrane in the primary composite liner system. This is a thicker geomembrane than the 60 mil HDPE geomembrane currently required in the primary composite liner. The thicker geomembrane is more robust against damage resulting from installation of the material and construction of the remaining layers of the liner system. The thicker geomembrane will also have a longer service-life, increasing the longevity of the liner system to ensure added long-term groundwater protection. The 80 mil HDPE geomembrane will also make the baseline landfill liner requirements for all landfills across the state consistent with current Part 363 regulatory requirements for landfills located within the deep flow recharge area in Nassau and Suffolk Counties on Long Island.

-The regulations are being amended to require double composite liner systems for construction and demolition debris landfills, papermill sludge monofills, municipal waste

combustion ash monofills and other industrial waste monofils, unless it is demonstrated by the applicant that an alternative liner system will not adversely impact groundwater quality. This double composite liner system adds a second geomembrane liner and leachate collection system to the existing requirements to enhance environmental performance and to prevent adverse impacts to groundwater.

-The reference to the final cover system requirements is being corrected to refer to closure, post-closure and custodial care requirements in Subpart 363-9 rather than the corrective measures requirements in Subpart 363-10.

-Part 363 currently requires the primary composite liner to be constructed with a properly specified GCL. This was a change from the previous regulations that were in effect prior to November 4, 2017 that allowed for the use of a constructed clay liner. However, current Part 363 does not adjust the required hydraulic conductivity for the GCL component of the upper composite liner system to be representative of the permeability of GCLs that are widely available to the industry. The proposed revisions include decreasing the required hydraulic conductivity of the GCL barrier component of the upper composite liner to $1x10^{-8}$ cm/sec.

-Storage requirements for geosynthetic materials used in landfill construction are being added to the regulations. The geosynthetic materials play an important role in the performance of the landfill and proper storage of the materials will ensure that the material is not compromised before use. These requirements are based on industry standards and should already be standard practice during landfill construction.

-Part 363 currently requires the geomembrane to be installed in a manner that eliminates waves entirely to ensure that the material is installed in direct and uniform contact with the underlying low-permeability soil layer or GCL. The regulated community has indicated that eliminating waves during construction is not practical and has been unable to meet this requirement during construction inspections. These construction requirements are being amended to allow the geomembrane to be installed in a manner that minimizes waves and any waves must be less than 2 inches in height. This will result in a more implementable and enforceable requirement while ensuring that the waves are small enough to avoid creases in the geomembrane to allow for direct and uniform contact as the overlying liner layers are placed.

-Requirements for measuring the temperatures during geomembrane seaming operations are being added to reflect industry standards.

-Because over 95 percent of landfill liner system defects happen during construction, Part 363 requires that all landfill primary and secondary liner systems be subject to electrical resistivity leak location upon placement of the soil drainage layer. However, to provide consistency in performing this construction quality assurance testing under these provisions, language specifying the minimum

requirements for performing these tests is being added to the regulation to standardize the reporting to the Department in the final construction certification report.

-The soil drainage certification requirements are being amended to include a requirement for the project engineer to certify that the requirements of subdivision 363-6.10(a) are met. This will be additional confirmation that the proper material is used in the soil drainage layer.

-The design, construction and certification requirements in Section 363-6.11 are being amended to clarify that the requirements also apply to the gas condensate pipes.

-The current regulations allow for the use of a department approved geosynthetic final cover system in place of the final cover topsoil requirement in Section 363-6.18. Language is being added to Section 363-6.16 and Section 363-6.17 to mirror the language in Section 363-6.18 to also allow for the use of a department approved geosynthetic final cover in place of the barrier protection layer and the drainage layer. This will allow a designed geosynthetic final cover system to be reviewed and approved through the permitting documents and engineering drawings and will clarify that these final cover systems can be approved without the need for a variance from the Section 363-6.16 and Section 363-6.17 requirements.

-The equivalent design requirements are being amended to clarify that the use of waste and non-waste materials as alternative operation cover is not subject to the variance requirements.

Subpart 363-7 Operating Requirements

-The operating requirement for the use of alternative operating cover is being amended to clarify that the total amount used must not exceed the total annual tonnage of alternative operating cover specified in the facility's permit to operate. Language is being added to clarify the reporting of any exceedance in accordance with the facility's permit and the reporting requirements in Section 363-8.2.

-Requirements are being added for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions.

-The regulation is being amended to clarify the deed restriction requirements to provide more detail on the type of document required, the contents of the document and the timing of the submittals to the department.

-The regulation is being amended to incorporate the requirements of the 2019 Food Donation and Food Scraps Recycling Law for landfills that receive food scraps, including how certain large food scraps generators must manage their excess edible food and food scraps and requirements for transporters, transfer facilities, and

combustors to ensure that the separated food scraps reach the required organics recycler.

-While the landfill is in operation, financial assurance must be provided to cover the closure of the landfill and the post-closure care period. Financial assurance for custodial care is not required until it is demonstrated that the threat to public health and the environment has been reduced to a level where environmental monitoring and maintenance can be reduced. The financial assurance requirements are being amended to make this distinction.

Subpart 363-9 Closure, Post-closure and Custodial Care

-The applicability section in Subpart 363-9 is being revised to clarify which requirements apply to which landfills. Landfills that stopped accepting waste prior to November 4, 2017 are subject to the end use requirements in Section 363-9.7.

-Part 363 currently does not specify when the updated deed restriction should be submitted to the Department. The regulation is being revised to require the submission of the updated deed restriction with the facility closure plan.

-The regulations require the leachate collection and removal system be maintained and operated in accordance with the leachate management operating requirements during post-closure care. The language is being amended to clarify that the leachate collection and removal system must also be maintained and operated during post-closure care in accordance with the maintenance for primary and secondary leachate collection and removal system requirements in Subpart 363-7.

-Language requiring gas to be destroyed in a flare or equivalent equipment is being removed to be consistent with the design, construction and certification requirements in Subpart 363-6. Part 363 currently requires active gas collection systems to be maintained and operated during the post-closure care period. Language is being added to clarify that the maintenance and operation of this system must be done in accordance with the operating requirements in Subpart 363-7.

-Post-closure and custodial care operating requirements are being amended to clarify when inspections after seismic events are required.

-Post-closure care and custodial care operating requirements are being added to clarify that landfills must continue to maintain a form of financial assurance during these periods. This is consistent with the financial assurance requirements in Section 360.22.

Subpart 363-10 Corrective Measures

-In addition to the Part 360 series landfill regulations, landfills must also meet the federal regulatory requirements contained within 40 CFR Part 258. Language is being added to the regulations to require the certification be submitted within fourteen days of completion of the corrective measure to ensure consistency between the federal and state requirements.

Subpart 363-11 Landfill Reclamation

-The landfill reclamation regulations are being amended to clarify the timeframe for obtaining the required registration and for submitting the drawings and work plans. This clarification will ensure the reclamation project has authorization from the Department before the feasibility study field investigation takes place, allowing the Department to ensure sufficient measures will be implemented to control odors, vectors and infiltration as the landfill cover system is disturbed.

-The landfill reclamation work plan must include a description of the procedures to excavate, process, store, transfer, use and dispose of the excavated material. The regulations incorrectly refer to the beneficial use determination regulations for the off-site reuse of soil components or residues. The reference to the beneficial use determination regulations is being corrected to refer to Section 360.12.

Part 364 Waste Transporters

364-1 General

-The term “excavated material” is being added to Section 360.13 to identify material generated during construction and excavation activities, as opposed to fill material, which is excavated material that is beneficially used as authorized under Section 360.12 or Section 360.13. The term is being utilized throughout the Part 360 Series including in Part 364.

-The location of the term “infectious wastes” has been reorganized to improve the flow of the section.

364-2 Exemptions

-A standard exemption exists for transport of regulated wastes in quantities less than or equal to 2,000 pounds. In addition, other exemptions exist for specific regulated wastes using other units or amounts. Subpart 364-2 is being amended to bring all of these exemptions under one paragraph to make the requirements simpler to understand.

-The exemption for residential and institutional waste is being amended to clarify that certain wastes that are generated by residences or institutions are explicitly identified in ECL 27-0303 as regulated wastes and therefore should not be exempted from Part 364 oversight.

-Requirements for hazardous waste are being amended, including clarification that transportation of hazardous waste in any quantity is not exempt, so that only source-separated, self-transported HHW is exempt. In addition, explicit reference to rechargeable batteries is removed from the regulation. Instead, rechargeable batteries will be included under the waste transporter requirement for universal wastes.

-The exemption provisions are being amended to add a new exemption for the transportation of tree debris.

-In addition to the amendments discussed above, the exemption for transport of waste tires is being revised under current regulations, the transport of waste tires in quantities less than or equal to 2000 pounds is exempt. This equates to the transport of approximately 80 waste tires, which creates the potential for large quantities of waste tires to be transported legally to illegal disposal sites. To address this, the proposed revision restricts exempt transport of waste tires to 20 or fewer waste tires.

-Under current regulations, Section 360.13 references transportation requirements for reused fill material. This can cause confusion and potential contradictions with the requirements in Part 364. Therefore, the proposed revisions include removing the transportation references in Section 360.13 and placing them into Part 364. In general, material with an approved beneficial use determination (BUD) is exempt from Part 364 requirements, provided the point of waste cessation identified in the predetermined BUD is when material is determined to meet BUD requirements at the site of generation. To simplify transport requirements, where possible the point of waste cessation has been set when materials are delivered to the site of reuse wherever Part 364-authorized transporters, waste tracking and recordkeeping are required. Revisions identify Fill Type 1, Fill Type 2, and Fill Type 3 as subject to Part 364 requirements when transported within the New York City Metropolitan Area Waste Impact Zone, and Fill Type 4 and Fill Type 5 anywhere in the state.

-Current Part 364 regulations require that concrete, asphalt, brick and rock, or mixtures of these materials, that do not meet the requirements of a pre-determined BUD must be transported under a Part 364 registration. The proposed revisions include a new exemption for the transport of these materials beyond the BUD exemption, so that the material can be transported without registration or permit except within the New York City Metropolitan Area Waste Impact Zone.

-Current Part 364 regulations require that transportation of used oil in any volume requires a Part 364 permit. The proposed revisions include as a new exemption the transport of 55 gallons or less of waste oil. This will reduce the regulatory burden and cost associated with transport of small volumes of waste oil.

-Current Part 364 regulations exempt on-site transport of regulated wastes. The proposed revisions clarify this exemption to allow exempt transport on or across any privately or publicly owned parcel so long as the transport does not take place on any public way.

364-3 Registrations

-The existing regulations allow transportation under a registration of C&D debris in single shipments of greater than 10 cubic yards. The proposed revisions include the following additional conditions for transportation of specific types of fill material, which will provide additional oversight of transportation within areas that have been particularly affected by illegal disposal of fill material:

- transportation under registration of Fill Type 1, Fill Type 2 or Fill Type 3 is only required if the material is transported in the New York City Metropolitan Area Waste Impact Zone.

-Under current regulations, transport of approximately 80 or fewer waste tires is exempt from waste transporter regulations. As already mentioned, the proposed revisions will reduce this exemption to 20 or fewer waste tires per load. This proposed revision will allow the transport under a registration of waste tires in quantities greater than 20 but less than 80 waste tires. Costs associated with transport under a registration may increase incrementally due to paperwork requirements, however, there is no fee associated with registrations so new costs will be limited.

-Current Part 364 regulations require that transportation of used oil in any volume requires a Part 364 permit. As already mentioned, the proposed revisions will exempt from waste transporter regulations the transport of 55 gallons or less of waste oil. The proposed revisions will allow transport under a registration of waste oil in quantities greater than 55 gallons but less than or equal to 275 gallons in a single shipment.

-Operating requirements for registered transporters are being amended to acknowledge that transporters may carry justification to verify that their load does not require a waste transporter registration or permit. This justification may take the form of DEC guidance documents related to pre-determined beneficial use determinations that specify whether or not a Part 364 authorization is required for the transport of the material. This change will make it easier for transporters to comply with regulatory requirements and for officials to understand what transportation requirements are necessary.

-The proposed revisions include clarifying language that a transporter is allowed to return a load of regulated waste to the site of generation, even if the site of generation is not an authorized receiving facility, if an authorized receiving facility cannot be located or a receiving facility refuses to accept the waste. This change will reduce additional disposal costs by allowing the waste to be returned to the generator for disposal at an authorized disposal facility.

364-4 Permits

-The proposed revisions relocate language that requires a receiving facility to be authorized to accept a particular regulated waste from the Permitting Requirements and Standards section to the Operating Requirements for Permitted Transporters section.

-The proposed revisions are being amended to include new language that the Department may conduct inspections of transport vehicles regulated under Part 364 as a condition of the transporter authorization, that the transporter must ensure that any vehicle used to transport regulated waste under the authority of the permit must be listed on the permit, that the transporter must ensure that any receiving facility to which regulated waste is delivered must be listed on the permit, and that the transporter must comply with all applicable state and federal laws. These changes make clear the transporters responsibilities and obligations under the regulations and will help reduce costs associated with enforcement brought against transporters by the Department.

364-5 Recordkeeping and Reporting Requirements

-The proposed revisions require that waste tracking documents accompany Fill Type 1, Fill Type 2, or Fill Type 3 transported in the New York City Metropolitan Area Waste Impact Zone. Tracking documents are also required for Fill Type 4 or Fill Type 5 transported anywhere in the state. The use of tracking documents is intended to help ensure that fill material is transported to and used only in areas authorized for its use, and to help enforcement officials identify improper transportation and use.

-The proposed revisions replace the phrase ‘contaminated fill’ with the phrase ‘excavated material’ that does not meet any of the requirements of Section 360.13 of this Part.

-As discussed previously, transporter requirements which are included in Section 360.13 in the existing regulations are relocated to Part 364. In addition, the current regulations require waste tracking documents for the transport of any C&D debris generated in the City of New York. The proposed revisions expand that requirement to include waste tracking documents for the transport of C&D debris generated in the New York City Metropolitan Area Waste Impact Zone, areas where illegal disposal of fill material has been a particular concern.

-The feedback that the Department received from the regulated community indicated that waste transporters required to return copies of waste tracking documents to the waste generator and the Department have experienced difficulty in complying with these requirements. Recordkeeping requirements in the current regulations obligate waste transporters to maintain copies of their waste tracking documents, and the proposed revisions specify that C&D Debris Handling and Recovery Facilities must maintain waste tracking documents for covered materials which leave their facilities. The Department considered this feedback and initially removed the requirement to

return copies of waste tracking documents to the Department in the proposed revisions; however, based on comments on the proposed revisions that emphasized the contribution these forms make to the Department's recordkeeping and enforcement against potential violators, the requirement to submit completed forms to the Department within 15 days of the waste delivery, has been reinstated.

-The proposed revisions allow for an equivalent document that has been approved by the department to be used in place of the waste tracking document provided by the Department. This change will reduce the cost of compliance for transportation companies that utilize their own ticketing system and can adjust it to meet the Department's requirements.

-The proposed revisions removed the specific jurat language related to certification of information on the waste tracking document. This change along with other proposed revisions would make it easier for a waste transporter, with Department approval, to use an existing weigh scale ticketing or manifesting system that includes the same information to be used in place of the Department's waste tracking document forms. As with the proposed changes related to waste tracking documents, the allowance would ease a regulatory burden on waste transporters. Based upon comments received, however, that emphasized the role waste tracking documents, and in particular the jurat statement, have in deterring illegal waste disposal, explicit jurat language has been restored in the proposed regulation. This change does not prevent use of a company's own ticketing format and system if it can be adapted to include the jurat language.

-The proposed revisions allow an acknowledgment by the generator or the receiving facility to be used in place of the signature of an authorized representative. This change would allow the use of weigh scale tickets or similar documents to acknowledge receipt of material. This change would reduce the need to coordinate with receiving facility staff and therefore will reduce the regulatory burden currently faced by waste transporters.

-The proposed revisions allow transporters with both a Part 364 permit and a Part 364 registration to submit one combined annual report that includes the necessary information for both authorizations, reducing the reporting costs and complications faced by the industry.

Part 365 Regulated Medical Waste and Other Infectious Wastes

Subpart 365-1 RMW Generators

-Requirements to remove sharps and other regulated medical waste (RMW) containers from patient care areas, laboratories or other generation areas within certain definite time periods is being changed to require removal only when containers become full or if the container starts to generate odors or other evidence of putrefaction. Since many RMW containers do not fill quickly, and they provide an important means for

proper handling of RMW in these settings, the requirement to remove these containers from use within 90 days (in the case of sharps containers) or shorter periods for other RMW is unnecessary.

-The 60-day time limit for storage of RMW for generators of less than 50 pounds of RMW per month, who do not accept RMW for treatment from other facilities, is being eliminated. Under the proposed revisions, these generators can store RMW until containers are full or produce odors or other evidence of putrefaction.

-Disposal requirements for pharmaceutical waste that cannot be separated from RMW at the site of generation are being clarified to indicate on the disposal packaging that incineration is required. Clarification is also being added that saline and nutrient solutions are not subject to wastewater disposal prohibitions.

-A new subdivision is being added to Section 365-1.2 to consolidate all existing and new provisions for registration for the activity of on-site processing of RMW. This new subdivision incorporates the registration previously in Subpart 365-2 for Biosafety Level (BSL)- 2 and Animal BSL (ABSL)-2 laboratories treating less than 500 pounds per month of their own waste. This subdivision also incorporates a new registration for BSL-3 and ABSL-3 laboratories treating less than 500 pounds per month of their own waste on site, provided these BSL-3 or ABSL-3 labs hold a Federal Select Agent Program (FSAP) registration with associated safety protocols. In allowing these FSAP-registered BSL-3 and ABSL-3 laboratories to register in place of obtaining a permit, the Department recognizes the additional safety protocols required for FSAP labs in handling of biohazard materials, and that the registration provisions of Part 365 for outgoing wastes from FSAP facilities are sufficient to protect public health and the environment. Other BSL-3 laboratories under the same institutional oversight may be included in this registration.

-The new proposed subdivision for registered facilities for on-site processing of RMW includes operational requirements for all such registered facilities, whereas previously these appeared in Subpart 365-2. Furthermore, this subdivision clarifies which RMW generators will continue to be subject to permitting pursuant to Subpart 365-2.

-Clarification is being added in this Subpart and also in Subpart 365-2 that regulated Biosafety Level 2, 3, and 4 facilities include both traditional laboratories and other generation areas as well as animal facilities.

Subpart 365-2 RMW Treatment, Storage and Transfer Facilities

-The requirement for a permit for treatment facilities located at and operated by BSL 3 laboratories with a FSAP registration is being removed, as explained under Subpart 365-1, because the Department proposes allowing these RMW generators to register. Clarification is being added to the Applicability section of this Subpart

to indicate that permitting requirements in this Subpart apply to BSL-3 laboratories without valid FSAP registration, and to all BSL-4 laboratories.

-A requirement for facility operators to immediately report of all spills or releases of RMW and other emergency situations to the Department is being added to operational requirements for registered RMW facilities to facilitate timely inspection and oversight of emergency response by the Department at these facilities. This notification requirement currently exists only for facilities with a permit, and this change is proposed to enhance safety at registered facilities.

-The requirements to obtain liability insurance and financial assurance for closure costs, as discussed in Part 360, are proposed to be added in this Subpart to make clear that these requirements apply to permitted RMW facilities.

Subpart 365-3 Other Infectious Wastes

-This Subpart is being amended to clarify that it applies to waste that is presumed to be contaminated with infectious agents or toxins of biological origin, but does not apply to infectious materials that are likely to pose a health risk to humans or animals, such as samples of contaminated food or environmental samples, if they are treated before disposal.

-Two exemptions are proposed to be added for facilities or activities with little or no potential public health or environmental impact. The first exemption is for facilities or activities that handle a material containing an infectious agent at a concentration naturally occurring in the environment. The second exemption is for facilities or activities handling contaminated foodstuffs or samples of foodstuffs being sent for routine quality control or environmental analysis, provided that any culture samples or devices posing biohazards are treated before disposal.

Part 366 Local Solid Waste Management Planning

Subpart 366-2 Local Solid Waste Management Plan (LSWMP) Contents

-The requirement to include the projections of municipal solid waste generation in the waste generation and materials recovery data is being removed because this information is also included in the waste stream projections requirements in Section 366-2.7. This will eliminate the need to report the same data in two different locations in the same document.

-The LSWMP must include a description of the existing solid waste management system. A revision is being made to clarify that all facilities that serve the planning unit must be described.

Subpart 366-4 LSWMP Approval

-The LSWMP approval requirements are being amended to clarify that an annual planning unit report is not required.

Subpart 366-5 LSWMP Biennial Updates

-The due date for the biennial update is being amended from May 1 to October 1 to give the planning units more time to compile and analyze the solid waste management facility data that is made available by DEC on June 1.

-The summary report requirements are being amended to give additional detail to the planning units on the data that must be submitted in the biennial update and to clarify that comparisons and reasons for deviations from the projections are only required for the municipal solid waste stream.

-The requirements for the optional planning period extension are being amended to give the planning units the flexibility of requesting an extension at any time during the planning period and to ensure timely review of the submission by the department. This optional planning period extension allows planning units to request five two-year extensions, thereby potentially extending the original planning period by ten years.

Part 369 State Assistance Projects

369-2 Municipal Waste Reduction, Recycling, Household Hazardous Waste Collection and Beverage Container Assistance Capital Projects

-Every year, the department is allocated limited funds to distribute to municipalities engaged in recycling activities. To conserve and properly allocate those resources, it is important to articulate permissible uses of the funds. Therefore, equipment that is used for activities other than recycling is not eligible for grant reimbursement. The proposed revisions clarify ineligible costs for equipment in Section 369-2.4. The current rule includes a list of specific ineligible vehicles and has led to confusion among some applicants that only the specific vehicles identified were ineligible. To address this, the regulations are being amended to identify the types of vehicles and the uses that are ineligible for grant reimbursement. For example, rather than identifying a list of ineligible equipment used for road repair and maintenance, the proposed regulations indicate that, in general, equipment used for road repair and maintenance is ineligible. Similarly, general purpose vehicles are identified as ineligible in the proposed revisions, rather than identifying each of the vehicle types listed in the current regulations.

-The proposed revisions specify that any project that is required as part of a settlement of an enforcement action is not eligible for reimbursement under Subpart 369-2. It is inappropriate for the department to provide reimbursement for projects that result from enforcement cases against municipalities. This

is already emphasized in the current Subpart 369-4, which states that the costs of a household hazardous waste collection event or collection events that are required by the department as part of the settlement of an enforcement action are not eligible for reimbursement under Subpart 369-4. The proposed revisions add a similar restriction to other state assistance grants administered under Part 369.

369-3 Municipal Waste Reduction, Recycling Education, Promotion, Planning and Coordination Projects

-Based on DEC's review of grant applications submitted during the 2018 application period, DEC determined that eligible costs needed to be clarified. The proposed revisions clarify that salary and fringe benefits expenses for recycling educators may be included in the costs for eligible projects. However, those costs are limited to the employer cost of providing health and/or medical insurance to the recycling educator or coordinator and the employer costs for contributions towards the retirement or pension plan of the recycling educator or coordinator. This clarification aligns the regulations with how the Department currently implements them, so it does not add any eligible costs to a project. The proposed amendments also clarify that any project that is required as part of a consent order, including a compliance schedule, is not eligible for reimbursement under Subpart 369-3. It is inappropriate for the department to provide reimbursement for projects that result from an enforcement action against municipalities. As already mentioned, this is already emphasized in the current Subpart 369-4 which states that costs of a household hazardous waste collection event or collection events that are required by the department as part of a settlement of an enforcement action are not eligible for reimbursement under Subpart 369-4. The proposed revisions add a similar restriction to other state assistance grants administered under Part 369.

Part 371 Identification and Listing of Hazardous Wastes

-Subdivision 371.1(c) defines the term solid waste for purposes of the Part 370 Series regulations. This definition of solid waste is associated with federal hazardous waste regulations and the associated 6 NYCRR Part 370 Series hazardous waste management regulations. However, the Department's regulation of solid waste under 6 NYCRR Part 360 Series is a separate and distinct regulatory framework, and the definition of solid waste under Part 360 is a separate definition that carries obligations and opportunities for reuse under the Part 360 regulations which are distinct from Part 370 Series obligations. These two separate regulatory frameworks have caused confusion within the regulated community. To clarify the distinctions, language is being amended in paragraph 371.1(c)(6) to clarify that, though a material may not be considered a solid waste under Part 371, that material remains a solid waste as defined under section 360.2. This is a clarification of current regulations and therefore there is no cost to industry associated with this revision.

-Current state and federal regulations include an exclusion from the definition of hazardous waste under subdivision 371.1(e) for wastes produced by oil and natural gas exploration and production wastes. Recent state legislation commonly known as the "Uniform Treatment of Waste Law" (S3392/A265) was passed which requires that the exclusion be removed from state regulations. Therefore, the language is being amended to implement the statutory requirement by removing reference to oil or natural gas-related waste from the exclusion. There may be increased costs to waste generators associated with making initial hazardous waste determinations for these wastes based upon sampling which can range between $700 to $3000 for Toxic Characteristic Leaching Procedure analytical suite. Afterwards generator knowledge of previous sampling or the waste generation process may be used to make future hazardous waste determinations.

-Federal regulations allow wastes generated by conditionally exempt small quantity generators (CESQG waste) to be received by permitted, licensed, or registered solid waste management facilities authorized to receive those waste. However, current state hazardous waste regulations restrict receipt of CESQG waste to only authorized permitted solid waste management facilities. The language in clauses 371.1(f)(6)(iii)('e') and 371.1(f)(7)(iii)('e') is being amended to allow licensed or registered solid waste management facilities to receive CESQG waste if they are authorized to do so. Along with amendments being made to Subpart 362-5, the proposed amendments will reduce the permitting costs for the solid waste management facilities that receive CESQG waste, which can range from $20,000 to $50,000 for a Part 360 Permit.

Part 377 Siting of Industrial Hazardous Waste Facilities

- As part of the last comprehensive revision to the 6 NYCRR Part 360 Series in 2017, the former Part 361 was renumbered to Part 377. However, internal references within Part 377 were not updated and in several cases still refer to former Part 361. These internal references are corrected in this rulemaking. Specifically, in subdivision 377.2(a), the reference to 361.1(f) is corrected to 377.1(f); in subdivision 377.4(c), the reference to 361.3(g) and (h) is corrected to 377.3(g) and (h); and in paragraph 377.4(f)(3), the reference to section 361.7 is corrected to section 377.7.

4. COSTS

-In most instances, revisions to Sections 360.12 and 360.13 will expand the types of materials eligible for pre-determined beneficial use. Avoidance of disposal through legitimate reuse will lower costs for construction contractors, industry, municipalities and the public by reducing the transportation costs and tipping fees associated with landfill disposal.

-Municipalities in western New York use natural brine from gas wells and LPG storage caverns to repair unpaved roads (road stabilization) and to reduce dust. This brine is obtained by municipalities at little or no cost, compared to purchased brine, rock salt or calcium chloride which can range in cost from $10,000 to $300,000 annually (even the lower end of this range may constitute a significant portion of a small municipal highway maintenance budget). Two changes are proposed to allow continued use of these types of brine without increased harm to the environment: first, to increase the allowable concentration of sulfate, a natural constituent in these types of brine, from the current 2500 milligrams per liter to 8200 milligrams per liter, a concentration typical of sulfate in brine formulated from rock salt; and secondly, to allow case-by-case review of brine composition for use in road stabilization, which is typically performed only once per year.

-New Fill Type 3 will create a material similar to clean soil but with de minimis quantities of concrete, brick or asphalt pavement. This pre-determined beneficial use will expand markets for this material which is especially prevalent in high-population areas.

-Expanded restrictions on use of Fill Type F5 and grade adjustment materials into Westchester County and Putnam County will increase costs for entities who previously have been allowed to use these materials without further DEC review and approval. These entities are being required to choose alternatives or petition for a case-specific BUD. In response to public comments, the portion of the New York City Watershed west of the Hudson River is not subject to these restrictions, easing the associated regulatory and cost burden on their use in this area.

-The proposed amendments to Subpart 361-1, Recyclables Handling and Recovery Facilities primarily serve to clarify existing requirements, and do not add any requirements with associated application, construction, or operating costs. The removal of the 250 ton/day limit on registered facilities will reduce application costs for facilities who otherwise would require a Part 360 permit.

-The revisions to Subpart 361-2 include a requirement that mandates a permit versus a registration for the storage of septage. This is needed for groundwater protection but will increase the cost associated with these facilities. Most new septage storage facilities are tanks, so it is expected that few operations will be affected. The estimated cost for engineering associated with the permit is at about $10,000.

-Subparts 361-3 and 361-4 contain revisions that include groundwater monitoring and other controls for composting and mulch facilities located in Nassau County and Suffolk County. These requirements are required by ECL Section 15-0517 and cannot be waived. The statute requires the department to promulgate regulations requiring groundwater monitoring at composting and mulch facilities in Nassau County and Suffolk County. The cost associated with these requirements will vary significantly

based on the size and characteristics of the operation but could range from a few thousand dollars per site or significantly higher.

-The proposed amendments to Subpart 361-5, Construction & Demolition Debris Handling and Recovery Facilities (CDDHRFs) on balance will reduce paperwork and costs to industry. The exemption for contractors responsible for generation of materials to store them off the site of generation, in anticipation of beneficial use, will save contractors the paperwork and costs of registration or permitting. Removal of the waste tracking document requirement will reduce duplication and related costs.

-Elimination of the throughput limitation of 500 tons per day (weekly average) for registered CDDHRFs will enable more facilities to be eligible for registration, eliminating paperwork, time, and costs of a permit application. Allowing receipt of mixed loads of certain materials at registered facilities, especially concrete, brick, rock, and asphalt pavement, will also enable more facilities to obtain registration instead of a permit. The new proposed registration for storage of these materials, with no processing allowed, will accommodate the needs of the construction industry while minimizing noise and other adverse impacts to communities. Sampling requirements for outgoing fill products are significantly reduced for the cleaner fill types (Fill Type 2 and Fill Type 3), with only four analyses per year at roughly $1000 each versus every 1000 cubic yards for annual costs potentially in a range of $100,000 to $1.0 million at a large CDDHRF. Tracking requirements in this Subpart for outgoing materials are being eliminated with associated paperwork and costs.

-A permit will be required, however, for a CDDHRF receiving mildly contaminated (Fill Type 4 or Fill Type 5) excavated materials with the elimination of the current registration.

-The proposed amendments to Subpart 361-6 for Waste Tire Handling and Recovery Facilities, to exempt tire processing at farms and at illegal disposal abatement sites will eliminate a cost and paperwork burden to farmers and abatement contractors engaging in activities to convert discarded tires into usable products. Allowing alternatives to fencing for security at registered tire storage and resale facilities will make it feasible for more facilities to register, while still ensuring prevention of unauthorized access, and avoiding the cost and paperwork associated with a permit application.

-The proposed amendments to Subpart 361-7, Scrap Metal and Vehicle Dismantling Facilities, primarily clarify existing requirements and rectify potential inconsistency with State law. Collection of metal shavings and cutting oils (“swarf”) is a new requirement for scrap metal processors, but in most cases will coincide with industry best management practices and not impose additional costs.

-Subpart 362-1 is being amended to eliminate the requirement for facilities that only combust or thermally treat uncontaminated, unadulterated wood to obtain a Part 360

registration, thus eliminating the costs to these facilities associated with obtaining a Part 360 registration and completing solid waste management facility annual report forms. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

-Subpart 362-1 is being amended to clarify the laboratory certification requirements and the methods and procedures used for analyses. These requirements are not expected to result in increased costs to the facilities.

-Subpart 362-1 is being amended to require the submission of analytical results associated with ash residue sampling. This is currently required for facilities that are operating under the previous regulations and is required by permit condition for facilities operating under the current regulations. This is not expected to result in increased costs to the facilities.

-Subpart 362-3 is being amended to allow small municipal transfer facilities to manage source-separated recyclables without the need for a Part 360 authorization, thereby eliminating the costs associated with the Part 360 registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

-Subpart 362-3 is being amended to add an exemption for municipal transfer facilities that receive no more than 3,000 tons per year of yard trimmings. This exemption will encourage municipalities to properly manage yard trimmings and will eliminate costs to municipalities associated with the Part 360 registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

-Subpart 362-3 is being amended to add an exemption for municipalities that hold seasonal collection events, thereby eliminating the costs associated with the Part 360 registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

-Facilities transferring septage waste from a single transporter using no more than two vehicles for the collection of residuals from a composting toilet will be allowed to operate under a Part 360 registration rather than a Part 360 permit, thereby reducing the costs associated with the Part 360 authorization process. Costs associated with registrations are estimated at $3,000 to $5,000 annually. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

-Subpart 362-3 is being amended to allow facilities that transfer more than 250 tons/day of source-separated recyclables to operate under a Part 360 registration rather than a Part 360 permit, thereby reducing the costs associated with the Part 360 authorization process. Costs associated with registrations are estimated at $3,000 to $5,000 annually. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

-Proposed amendments to Subpart 362-4 Household Hazardous Waste Collection Facilities and Events will not increase costs or reduce costs to the regulated community.

-The addition of Subpart 362-5 is expected to reduce costs for collection sites operating under a department-approved postconsumer paint collection program plan. This Subpart will allow facilities that would have otherwise required a permit to obtain a registration. Costs associated with these registrations should be minimal. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

-Subpart 363-2 is being amended to remove the exemption for disposal of up to 5,000 cubic yards of concrete, asphalt, brick, glass, rock and general fill originating from construction or demolition sites. The addition of a grade adjustment pre-BUD in Section 360.12 provides an alternative management approach for these materials and therefore this amendment is not expected to result in increased costs for the management of these materials.

-Subpart 363-2 is being amended to add an exemption for disposal within a state, municipal or utility right-of-way of tree debris generated by the clearing of the right-of-way. This is expected to decrease costs associated with managing and removing tree debris.

-Subpart 363-2 is being amended to add restrictions to the exemption for the disposal of animal mortalities on farms. The revisions in 363-2 could result in additional labor time for farmers to dispose of animal carcasses. This additional labor time could translate into additional costs for farmers.

-Subpart 363-3 is being amended to clarify inactive landfills are subject to the end use requirements in Section 363-9.7. This amendment is not expected to result in increased costs for inactive disposal facilities.

-The requirement to sample and analyze landfill gas condensate is being added to the environmental monitoring plan. Since landfills are already performing sampling and analysis of gas condensate, this reflects the standard industry practice and is not expected to increase the costs for environmental monitoring.

-Requirements are being added to Subpart 363-5 to protect state and federal wetlands and to eliminate any inconsistencies between the federal and state requirements. These additions are not expected to result in an increase in siting costs.

-The siting requirements in Subpart 363-5 are being amended to prohibit new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. This could potentially result in limiting the life of eight landfills in the

state due to their inability to expand, resulting in increased disposal and transportation costs for residences and municipalities in the affected areas. In addition, when a landfill laterally or vertically expands, the landfill adds disposal capacity and for each ton of added disposal capacity the landfill can charge a tip fee for disposal of waste into the expansion area. The proposed revision prohibiting lateral and vertical expansion could cause the landfills to lose between $60 per ton and $80 per ton in tip fees for this lost airspace.

-The design, construction and certification requirements in Subpart 363-6 will require the use of an 80-mil geomembrane in the primary composite liner system. The material, installation and certification costs for the 80-mil geomembrane could result in an increased cost to a facility of approximately $2,200 per acre.

-The design, construction and certification requirements in Subpart 363-6 will require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills unless an alternative liner is justified. The material, installation and certification of the additional liner system components could result in an increased cost to a facility of between $100,000 to $150,000 per acre. This will also result in increased operating, maintenance, monitoring and reporting costs between $10,000 to $20,000 annually.

-The required hydraulic conductivity for the GCL component of the upper composite liner system in Subpart 363-6 is being amended to be representative of the permeability of GCLs that are widely available to the industry. This amendment is not expected to result in an increase of the cost of the GCL.

-The requirements for storage of geosynthetic materials reflect standard industry practice and are not expected to increase landfill construction costs.

-The requirement to allow waves 2 inches in height or less during the installation of geomembranes reflects recommendations from industry experts and is not expected to increase landfill construction costs.

-The requirement for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions is expected to result in an increased cost to a facility of approximately $45 per liner foot of collection line plus approximately $7,000 for the wellhead and tie-in infrastructure and the condensate trap.

-Subpart 363-9 is being amended to clarify requirements related to the operation and maintenance of the leachate collection and removal system and the gas collection system during the post-closure care period. These amendments are not expected to increase the costs of post-closure care.

-The post-closure care and custodial care operating requirements in Subpart 363-9 are being added to clarify that landfills must continue to maintain a form of financial assurance during these periods. These amendments are not expected to increase the costs of financial assurance.

-Subpart 363-10 is being amended to clarify submission requirements. This amendment is not expected to increase the costs of corrective measures.

-Subpart 363-11 is being amended to clarify submission requirements and correct a reference to the beneficial use determination requirements. These amendments are not expected to increase landfill reclamation costs.

-Current Part 364 regulations require that transportation of used oil in any volume requires a Part 364 permit. The proposed revisions to Subpart 364-2 include as a new exemption the transport of 55 gallons or less of waste oil. The proposed revisions to Subpart 364-3 will allow transport under a registration of waste oil in quantities greater than 55 gallons but less than or equal to 275 gallons in a single shipment. This will reduce the regulatory burden and cost associated with transport of small volumes of waste oil.

- Subparts 364-2 and 364-3 are being amended to require registrations or permits for transportation of waste tires in quantities above 20 tires and 80 tires, respectively. Costs associated with transport under a registration may increase incrementally due to paperwork requirements, however, there is no fee associated with registrations so new costs will be limited. Costs associated with a permit would include regulatory fees for each permitted vehicle, required liability insurance and paperwork and recordkeeping costs.

- Subpart 364-3 is being amended to include clarifying language that a transporter is allowed to return a load of regulated waste to the site of generation, even if the site of generation is not an authorized receiving facility, if an authorized receiving facility cannot be located or a receiving facility refuses to accept the waste. This change will reduce additional disposal costs by allowing the waste to be returned to the generator for disposal at an authorized disposal facility.

- Subpart 364-5 is being amended to allow an equivalent document that has been approved by the department to be used in place of the waste tracking document provided by the Department. This change will reduce the cost of compliance for transportation companies that utilize their own ticketing system, while still meeting the Department's requirements. On consideration of public comments, however, the Department-specified jurat language has been reinstated as a requirement for any tracking document whether the Department's or an equivalent.

-Allowing generators of non-radiological RMW to keep collection and storage containers until full or showing evidence of putrefaction, in various patient care areas, laboratories, and for pre-disposal storage below 50 pounds per month, is anticipated to reduce the number of shipments of RMW for disposal and, accordingly, reduce costs to generators.

-Expanding registration eligibility to treatment facilities at Biosafety Level 3 laboratories registered under FSAP will reduce costs associated with obtaining a facility permit, even though these facilities will still need to meet substantive operating requirements of a permitted facility.

-All other proposed changes to Part 365 will not increase or decrease costs to the regulated community but will clarify some requirements in this Part for the regulated community.

-Revisions to Part 366 Local Solid Waste Management Planning primarily serve to clarify existing requirements and do not increase or reduce costs to the planning units.

-The proposed revisions to Part 369 discussed above clarify requirements that the Department currently applies to grant applications so there is no cost impact to the regulated community.

-Subdivision 371.1(c) revisions are clarifications of current regulations and therefore there is no cost to industry associated with this revision.

-Implementation of the “Uniform Treatment of Waste Law” (S3392/A265) may increase costs to waste generators associated with making initial hazardous waste determinations for these wastes based upon sampling which can range between $700 to $3000 for Toxic Characteristic Leaching Procedure analytical suite. After the initial testing determination generator knowledge of previous sampling or the waste generation process may be used to make future hazardous waste determinations.

-Along with amendments being made to Subpart 362-5, the revisions that allow registered, permitted, or licensed facilities to receive CESQG waste will reduce the permitting costs for the solid waste management facilities that receive CESQG waste, which can range from $20,000 to $50,000 for a Part 360 Permit.

5. LOCAL GOVERNMENT MANDATES

This proposal does not directly mandate the expenditure of funds by any sector of local government. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities. If a local government operates a solid waste management facility, the costs associated with revisions to criteria for that facility apply,

as discussed in Section 4. The proposed rulemaking is not expected to negatively affect local governments.

6. PAPERWORK

-The proposed amendments to Subpart 362-1 Combustion and Thermal Treatment Facilities and Subpart 362-3 Transfer Facilities will eliminate the need for a Part 360 registration, thereby eliminating the paperwork associated with obtaining a Part 360 registration and eliminating any recordkeeping and reporting associated with facility monitoring and operational requirements.

-The proposed amendments to Subpart 362-1 Combustion and Thermal Treatment Facilities will require the submission of analytical results associated with ash residue sampling. This is currently required for facilities that are operating under the previous regulations and is required by permit condition for facilities operating under the current regulations. This is not expected to result in increased paperwork.

-The proposed amendments to Subpart 362-3 Transfer Facilities will reduce the amount of paperwork associated with obtaining a Part 360 permit for facilities transferring septage waste from a single transporter.

-The proposed amendments to Subpart 362-4 Household Hazardous Waste Collection Facilities and Events will reduce the amount of paperwork that needs to be submitted to the Department with the registration application.

-The proposed addition of Subpart 362-5 Paint Collection Sites Collecting Postconsumer Architectural Paint Under A Department-Approved Postconsumer Paint Collection Program will reduce the amount of paperwork that needs to be submitted to the Department for the Part 360 authorization.

-The revisions to Subpart 363-6 to require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills may result in an increase in the amount of paperwork required for reporting and certification.

-Proposed amendments to Part 366 Local Solid Waste Management Planning primarily clarify existing requirements to specify when paperwork needs to be submitted and do not increase or reduce the amount of paperwork associated with the development of LSWMPs or the LSWMP biennial updates.

7. DUPLICATION

The proposed 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 EPA to implement the federal Part 258 criteria. On June 13, 2019, the Department received notification from the EPA that the November 4, 2017 Part 360 General Requirements and Part 363 Landfill regulations are consistent with the minimum federal requirements established in 40 CFR Part 258. Although New York State does not have a delegated program, the federal criteria applicable to biosolids recycling were moved to Part 361 in the November 4, 2017 rulemaking.

8. ALTERNATIVE APPROACHES

A no action alternative was considered. Without revision to the November 4, 2017 Part 360 series regulations, the Department would have to rely on on-going enforcement discretion and guidance which includes clarification of specific areas of the regulations, especially the regulations which govern C&D debris handling and recovery and the beneficial use of C&D debris. Significant time has been invested in discussing amendments with regulated entities who have concerns with particular provisions of current Part 360, including C&D management, beneficial use of tires on farms, beneficial use of brine on roads, and groundwater quality on Long Island. The Department is proposing amendments to the regulations where it has found that the amendments will increase beneficial use of waste material, will reduce the regulatory burden on the regulated community and simplify compliance with the regulations. For these reasons, the no-action alternative was rejected.

The rulemaking has been the subject of both extensive public review and discussion. The revisions have been discussed with the regulated community in public forums and professional conferences. The result of this process is the subject proposed rulemaking that the Department considers protective of environmental resources in a manner that limits the cost to the regulated community.

9. FEDERAL STANDARDS

As stated above, there are no federal regulations for most of the facilities and activities contained in the proposed rulemaking. The current and proposed regulations for landfills and biosolids recycling exceed the federal regulatory framework found in 40 CFR Parts 258 and 503, respectively. The packaging of RMW during transport is regulated by United States Department of Transportation and the appropriate reference is included in 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 proposed 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.

6 NYCRR PART 360, 361, 362, 363, 364, 365, 366, 369, 371, AND 377

Revised Regulatory Flexibility Analysis For Small Businesses And Local Governments

1. Effect of rule: The rulemaking is not expected to negatively affect small businesses and local governments. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities, in most cases providing additional flexibility and reduced regulatory burden for local governments or small businesses. 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.

2. Compliance requirements: The Department does not expect the regulations to have a negative impact on jobs and employment. The revised regulations build upon the amended regulations that were promulgated in November 2017. Since that time, the Department has seen no evidence of negative job or economic impacts caused by the new regulations.

In these revisions, adjusted requirements for C&D debris and excavated material will make it easier to handle and reuse these materials while maintaining requirements that will aid in enforcement of improper placement and illegal disposal, newly added facility types will ease the regulatory burden on paint recyclers, removal of upper throughput limits on registered recyclables handling and recovery facilities will simplify their authorization, seasonal waste collection events conducted by municipalities are exempted, and new allowances for registration of regulated medical waste facilities with federal authorizations will ease the regulatory burden on these facilities, among other revisions. These regulatory provisions not only relieve burdens on the regulated community but also on Department staff.

Statutory changes related to composting facilities, mulch processors, and C&D debris facilities on Long Island that will require additional groundwater monitoring and operating requirements. In addition, prohibition on siting of these facilities in mines will enhance groundwater protection near these facilities but are not expected to impact jobs. Several landfill requirements that increase environmental protectiveness at the facilities are included, such as thicker geomembranes for liner construction, default double composite liners for all solid waste landfills, horizontal gas collection lines at C&D debris landfills, and prohibition on new landfills or lateral and vertical expansion of existing landfills within 1000 feet of a school or residence. Most of these requirements are not unusual in the waste industry and they are not expected to have significant impacts on jobs in the industry. Statutory changes removed the hazardous waste exclusion for wastes produced by oil and natural gas exploration and production. These adjustments, which have been included in Part 371 Series regulations, may increase costs related to these wastes are not expected to affect jobs in the state.

3. Professional services: The need for additional professional services for small businesses and local governments is not anticipated. If a local government or small business is currently operating a solid waste management facility, they may already employ professional services to facilitate the operation of that facility and compliance

with the regulatory requirements. The regulations are not expected to increase the level of professional services needed by those entities.

4. Compliance costs: These regulations are not likely to impose any significant new direct costs on small businesses or local governments. However, local governments and small businesses may own and operate solid waste management facilities or operate waste transportation businesses. If a small business or local government owns and operates a solid waste management facility or waste transportation business, the costs associated with compliance with the rulemaking, including cost savings, are described below, organized by Part. As outlined below, in some cases the regulations will reduce costs associated with compliance. In others, the costs may increase.

Part 360

In most instances, revisions to Sections 360.12 and 360.13 will expand the types of materials eligible for pre-determined beneficial use. Avoidance of disposal through legitimate reuse will lower costs for construction contractors, industry, municipalities and the public.

Part 361

The proposed amendments to Subpart 361-1 Recyclables Handling and Recovery Facilities primarily serve to clarify existing requirements, and do not add any requirements with associated application, construction or operating costs. The removal of the 250 ton per day limit on registered facilities will reduce application costs for facilities who otherwise would require a Part 360 permit.

The revisions to Subpart 361-2 include a requirement that mandates a permit versus a registration for the storage of septage. This is needed for groundwater protection but will increase the cost associated with these facilities. Most new septage storage facilities are actually tanks, so it is expected that few operations will be affected. The estimated cost for engineering associated with the permit is at about $10,000.

Subparts 361-3 and 361-4 contain revisions that include groundwater monitoring and other controls for composting and mulch facilities located on Long Island. These requirements are required by ECL Section 15-0517 and cannot be waived. The statute requires the department to promulgate regulations requiring groundwater monitoring at composting and mulch facilities on Long Island. The costs associated with these requirements will vary significantly based on the size and characteristics of the operation but could range from a few thousand dollars per site or significantly higher.

The proposed amendments to Subpart 361-5 Construction & Demolition Debris Handling and Recovery Facilities (CDDHRFs) on balance will reduce paperwork and costs to industry. The exemption for contractors responsible for generation of materials to store them off the site of generation, in anticipation of beneficial use, will save

contractors the paperwork and costs of registration or permitting. Removal of the waste tracking document requirement will reduce duplication and related costs.

Elimination of the throughput limitation of 500 tons per day (weekly average) for registered CDDHRFs will enable more facilities to be eligible for registration, eliminating the paperwork, time and costs of a permit application. Allowing receipt of mixed loads of certain materials at registered facilities, especially concrete, brick, rock and asphalt pavement, will also enable more facilities to obtain registration instead of a permit without negative environmental impacts. The new proposed registration for storage of these materials, with no processing allowed, will accommodate the needs of the construction industry while minimizing noise and other adverse impacts to communities. Sampling requirements for outgoing fill products are significantly reduced for the cleaner fill types (Fill Type 2 and Fill Type 3), with only four analyses per year at roughly $1000 each sample versus every 1000 cubic yards for annual costs potentially in a range of $100,000 to $1.0 million at a large CDDHRF. Tracking requirements in this Subpart for outgoing materials are being eliminated to avoid duplicated paperwork and costs. A permit will be required, however, for a facility receiving mildly contaminated (Fill Type 4 or Fill Type 5) excavated materials with the elimination of the current registration.

The proposed amendments to Subpart 361-6 Waste Tire Handling and Recovery Facilities to exempt tire processing at farms and at illegal disposal abatement sites will eliminate a cost and paperwork burden to farmers and abatement contractors engaging in activities to convert discarded tires into usable products. Allowing alternatives to fencing for security at registered tire storage and resale facilities will make it feasible for more of these facilities to register, while still ensuring prevention of unauthorized access, and avoiding the cost and paperwork associated with a permit application.

The proposed amendments to Subpart 361-7, Scrap Metal and Vehicle Dismantling Facilities, primarily clarify existing requirements and rectify potential inconsistency with State law. Collection of metal shavings and cutting oils (“swarf”) is a new requirement for scrap metal processors, but in most cases will coincide with industry best management practices and not impose additional costs.

Part 362

Subpart 362-1 is being amended to eliminate the requirement for facilities that only combust or thermally treat uncontaminated, unadulterated wood to obtain a Part 360 registration, thus eliminating the costs to these facilities associated with obtaining a Part 360 registration and completing solid waste management facility annual report forms. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Subpart 362-3 is being amended to allow small municipal transfer facilities to manage source-separated recyclables without the need for a Part 360 authorization, thereby eliminating the costs associated with the Part 360 registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Subpart 362-3 is being amended to add an exemption for municipal transfer facilities that receive no more than 3,000 tons per year of yard trimmings. This exemption will encourage municipalities to properly manage yard trimmings and will eliminate costs to municipalities associated with the Part 360 registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Subpart 362-3 is being amended to add an exemption for municipalities that hold seasonal collection events, thereby eliminating the costs associated with the Part 360 registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Facilities transferring septage waste from a single transporter using no more than two vehicles for the collection of residuals from a composting toilet will be allowed to operate under a Part 360 registration rather than a Part 360 permit, thereby reducing the costs associated with the Part 360 authorization process. Costs associated with registrations are estimated at $3,000 to $5,000 annually. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

Subpart 362-3 is being amended to allow facilities that transfer more than 250 tons per day of source-separated recyclables to operate under a Part 360 registration rather than a Part 360 permit, thereby reducing the costs associated with the Part 360 authorization process. Costs associated with registrations are estimated at $3,000 to $5,000 annually. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

Subpart 362-5 is being added and is expected to reduce costs for collection sites operating under a department-approved postconsumer paint collection program plan. This Subpart will allow facilities that would have otherwise required a permit to obtain a registration. Costs associated with these registrations should be minimal. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

Part 363

Subpart 363-2 is being amended to remove the exemption for disposal of up to 5,000 cubic yards of concrete, asphalt, brick, glass, rock and general fill originating from construction or demolition sites. The addition of a grade adjustment pre-BUD in Section 360.12 provides an alternative management approach for these materials and therefore this amendment is not expected to result in increased costs for the management of these materials.

Subpart 363-2 is being amended to add an exemption for disposal within a state, municipal or utility right-of-way of tree debris generated by the clearing of the right-of-way. This is expected to decrease costs associated with managing and removing tree debris.

Subpart 363-3 is being amended to add restrictions onto the exemption for the disposal of animal mortalities on farms. The revisions in Subpart 363-3 could result in additional labor time for farmers to dispose of animal carcasses. This additional labor time could translate into additional costs for farmers.

The siting requirements in Subpart 363-5 are being amended to prohibit new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. This could potentially result in limiting the life of eight landfills in the state due to their reduced ability to expand, resulting in increased disposal and transportation costs for residences and municipalities in the affected areas. In addition, when a landfill laterally or vertically expands, the landfill adds disposal capacity and for each ton of added disposal capacity the landfill can charge a tip fee for disposal of waste into the expansion area. The proposed revision prohibiting lateral and vertical expansion within 1000 feet of a school or residence could cause the landfills to lose between $60 per ton and $80 per ton in tip fees for this lost airspace.

The Subpart 363-6 design, construction and certification requirements will require the use of an 80-mil geomembrane in the primary and secondary composite liner systems. The material, installation and certification costs for the 80-mil geomembrane could result in an increased cost to a facility of approximately $2,200 per acre.

The Subpart 363-6 design, construction and certification requirements will require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills unless an alternative liner is justified. The material, installation and certification of the additional liner system components could result in an increased cost to a facility of between $100,000 to $150,000 per acre. This will also result in increased operating, maintenance, monitoring and reporting costs between $10,000 to $20,000 annually.

The Subpart 363-7 requirement for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions is expected to result in an increased cost to a facility of approximately $45 per liner foot of collection line plus approximately $7,000 for the wellhead and tie-in infrastructure and the condensate trap.

Part 364

Part 364 exemption and registration requirements for waste are being amended to limit exempt transport of waste tires to 20 or fewer and registered transport to 80 or fewer. Previous regulations allow exempt transport of 80 or fewer waste tires. There are no fees and minimal expenses associated with Part 364 registrations, so these changes are not expected to increase waste transporter costs.

Current Part 364 regulations require that transportation of used oil in any volume requires a Part 364 permit. The proposed revisions include as a new exemption the

transport of 55 gallons or less of waste oil from Part 364 requirements. This will reduce the regulatory burden and costs associated with transport of small volumes of waste oil.

The proposed revisions allow for an equivalent document that has been approved by the Department to be used in place of the waste tracking document provided by the Department. This change will reduce the cost of compliance for transportation companies that utilize their own ticketing system and can adjust it to meet the Department's requirements.

The Department found that the requirement for the return of waste tracking documents to the Department was an unnecessary burden, and in the amended revisions proposed to remove those requirements, instead requiring that the waste transporter provide copies of the completed waste tracking documents only to the receiving user or facility within 15 days of the waste delivery. This change was expected to reduce the compliance and paperwork costs imposed on waste transporters. However, based on comments that emphasized the contribution these forms make to the Department's recordkeeping and enforcement efforts against potential violators, the requirement to submit completed forms to the Department has been retained.

Part 365

Allowing generators of non-radiological RMW to keep collection and storage containers until full or showing evidence of putrefaction, in various patient care areas, laboratories, and for pre-disposal storage below 50 pounds per month, is anticipated to reduce the number of shipments of RMW for disposal and, accordingly, reduce costs to generators.

Expanding registration eligibility to treatment facilities at Biosafety Level 3 and 4 laboratories registered under a Federal Select Agent Program (FSAP) registration will reduce costs associated with obtaining a facility permit, even though these facilities will still need to meet substantive operating requirements of a permitted facility.

Part 366

Revisions to Part 366 Local Solid Waste Management Planning primarily serve to clarify existing requirements and do not increase or reduce costs to the planning units.

Part 369

The amendments to Part 369 clarify requirements that the Department currently applies to grant applications so there is no cost impact to the regulated community.

5. Economic and technological feasibility: The Department has focused on revising the regulations in a manner that is technically sound and economical. The regulations that apply to facilities that are currently subject to regulation are not expected to significantly alter the operation or costs associated with those operations. However, changes in the

law required the addition of new facility requirements in the regulations, such as groundwater sampling and protections at some Long Island facilities and enhanced construction and groundwater protections standards at certain solid waste landfills. In most cases, however, the regulations include reduced regulatory oversight, through expanded exemptions, predetermined beneficial use determinations, and registration provisions, which will reduce the costs associated with some solid waste facilities and activities.

6. Minimizing adverse impact: These regulations will not impose any direct costs on small businesses or local governments. However, local governments and small businesses may own and operate solid waste management facilities or operate waste transportation businesses. If a small business or local government owns and operates a solid waste management facility or waste transportation business, the costs associated with compliance with the rulemaking, including cost savings, are described above. In some cases, the regulations will reduce costs associated with compliance. In others, the costs may increase. However, the department has provided options for municipalities to provide waste management services, especially for waste transfer facilities, that require registrations rather than permits and therefore significantly reduce the regulatory burden and costs. In most other cases, proper management of solid wastes is necessary to protect public health, safety, and general welfare. Therefore, the rule does not exempt small businesses or local governments from its provisions as allowed under SAPA Section 202-b(1)(c).

7. Small business and local government participation: This rulemaking is a continuation of the rulemaking that became effective in November 2017, which provided significant opportunities for outreach and feedback from the regulated community. Since November 2017, the Department has received significant additional feedback from members of the regulated community, including from small businesses and local governments and as discussed above has included many amendments to the Part 360 Series regulations that will reduce the regulatory burden on the regulated community.

8. For rules that either establish or modify a violation or penalties associated with a violation: Pursuant to SAPA 202-b (1-a)(a) and (b), the rulemaking includes transition provisions that provide adequate time for regulated parties to come into compliance with any new provisions. Otherwise, there is no such cure period included in the rule because of the potential for adverse impacts on human health and the environment. Cure periods for the illegal management or disposal of solid waste are neither desirable nor recommended as compliance is required to ensure the general welfare of the public and the environment is protected.

9. Initial review of the rule, pursuant to SAPA §207 as amended by L. 2012, ch. 462: The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

6 NYCRR Part 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Revised Summary of Rural Area Flexibility Analysis

The rulemaking will amend the Department of Environmental Conservation's (Department) regulations governing solid waste management activities including facilities, waste transporters, local solid waste management planning, and state assistance projects that became effective in November 2017. The amendments will in some cases increase requirements on facilities and activities in order to improve environmental protection. In other cases, the amendments will simplify compliance for the regulated community in situations where the Department has determined that, due to the nature of the solid waste or the type of activity under consideration, the amendment will not negatively impact human health or the environment. In addition, developments in solid waste management and legislative initiatives have led to new types of solid waste collection and management; in these cases, new designated facility types within the Part 360 Series will allow for simpler and more effective collection and management while continuing to protect human health and the environment.

1. Types and estimated numbers of rural areas: All areas of the state, including rural areas, generate solid waste and will be affected directly or indirectly by the rulemaking.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rulemaking does not impose additional paperwork requirements for the majority of facilities affected by this rulemaking, including facilities located in rural areas. The rulemaking will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district or fire district in a rural area. This rulemaking does not directly mandate the expenditure of funds by any

sector of local government. If a local government in a rural area chooses to own and operate a solid waste management facility or a waste transportation business in the State, the rulemaking may require the additional expenditure of funds to comply with the requirements of Parts 360, 361, 362, 363, and 364, which govern those solid waste facilities and waste transportation businesses.

3. Costs: These regulations are not likely to impose any significant new direct costs on public or private sector interests in rural areas. However, if a local government or private company in a rural area owns and operates a solid waste management facility or a waste transportation business, the costs associated with compliance with the rulemaking, including cost savings, are described below, organized by Part. As discussed below, in some cases the regulations will reduce costs associated with compliance. In others, the costs may increase.

Part 360

In most instances, revisions to Sections 360.12 and 360.13 will expand the types of materials eligible for pre-determined beneficial use. Avoidance of disposal through legitimate reuse will lower costs for construction contractors, industry, municipalities and the public.

Part 361

Many proposed amendments to Part 361 would reduce or maintain current costs. Those that could increase costs include:

- The revisions to Subpart 361-2 include a requirement that mandates a permit versus a registration for the storage of septage. The estimated cost for engineering associated with the permit is approximately $10,000.

- Subparts 361-3 and 361-4 contain revisions that include groundwater monitoring and other controls for composting and mulch facilities located on Long Island. The costs associated with these requirements will vary significantly based on the size and characteristics of the operation but could range from a few thousand dollars per site or significantly higher.

Part 362

Proposed amendments to Part 362 would reduce or maintain current costs.

Part 363

Many proposed amendments to Part 363 would reduce or maintain costs. Those that could increase costs include:

- Subpart 363-3 is being amended to add restrictions onto the exemption for the disposal of animal mortalities on farms. The revisions in Subpart 363-3 could result in additional labor time for farmers to dispose of animal carcasses. This additional labor time could translate into additional costs for farmers.

- The siting requirements in Subpart 363-5 are being amended to prohibit new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. The proposed revision prohibiting lateral and vertical expansion could cause the landfills to lose between $60 per ton and $80 per ton in tip fees for this lost airspace.

- The Subpart 363-6 design, construction and certification requirements will require the use of an 80-mil geomembrane in the primary composite liner systems. The material, installation and certification costs for the 80-mil geomembrane could result in an increased cost to a facility of approximately $2,200 per acre.

- The Subpart 363-6 design, construction and certification requirements will require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills unless an alternative liner is justified. The material, installation and certification of the additional liner system components could result in an increased cost to a facility of between $100,000 to $150,000 per acre. This will also result in increased operating, maintenance, monitoring and reporting costs between $10,000 to $20,000 annually.

- The Subpart 363-7 requirement for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions is expected to result in an increased cost to a facility of approximately $45 per liner foot of collection line plus approximately $7,000 for the wellhead and tie-in infrastructure and the condensate trap.

Part 364

Proposed amendments to Part 364 would reduce or maintain current costs.

Part 365

Proposed amendments to Part 365 would reduce or maintain current costs.

Part 366

Proposed amendments to Part 366 would reduce or maintain current costs.

Part 369

Proposed amendments to Part 369 would reduce or maintain current costs.

4. Minimizing adverse impact: The rulemaking is not expected to have adverse impacts on rural areas of New York State. The updated regulatory criteria for solid waste facilities that may be located in a rural area are not expected to significantly change the cost of the operation of these facilities. However, there could be increased costs for landfill owners and operators associated with Subparts 363-6 and 363-7. These regulatory changes, however, are necessary to ensure the protection of the environment. It is not expected that rural area governments, businesses and residents will see a

significant increase in the cost of solid waste management due to the rulemaking. The department has provided options for municipalities, including rural area local governments, to provide waste management services, especially for waste transfer facilities, that require registrations rather than permits and therefore significantly reduce the regulatory burden and costs.

Proper management of solid waste is necessary to protect public health, safety, and general welfare. Therefore, with respect to the revisions in Subparts 363-3, 363-5, 363-6 and 363-7, the Department did not find alternative approaches or an exemption from applicability would accomplish the same objectives for environmental protection.

5. Rural area participation: This rulemaking is a continuation of the rulemaking that became effective in November 2017, which provided significant opportunities for outreach and feedback from the regulated community, both public and private, in rural areas. Since November 2017, the Department has received significant additional feedback from members of the regulated community, including from small businesses and local governments and as discussed above has included many amendments to the Part 360 Series regulations that will reduce the regulatory burden on the regulated community.

6. Initial review of the rule, pursuant to SAPA §207 as amended by L. 2012, ch. 462: The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

6 NYCRR Part 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Revised Rural Area Flexibility Analysis

The rulemaking will amend the Department of Environmental Conservation's (Department) regulations governing solid waste management activities including facilities, waste transporters, local solid waste management planning, and state assistance projects that became effective in November 2017. The amendments will in some cases increase requirements on facilities and activities in order to improve environmental protection. In other cases, the amendments will simplify compliance for the regulated community in situations where the Department has determined that, due to the nature of the solid waste or the type of activity under consideration, the amendment will not negatively impact human health or the environment. In addition, developments in solid waste management and legislative initiatives have led to new types of solid waste collection and management; in these cases, new designated facility types within the Part 360 Series will allow for simpler and more effective collection and management while continuing to protect human health and the environment.

1. Types and estimated numbers of rural areas: All areas of the state, including rural areas, generate solid waste and will be affected directly or indirectly by the rulemaking.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rulemaking does not impose additional paperwork requirements for the majority of facilities affected by this rulemaking, including facilities located in rural areas. The existing regulations require annual reports from most solid waste management facilities, and these requirements continue under the amended regulations. The regulations allow electronic submissions whenever possible to ease the transfer of data and information, and the amendments to waste transporter requirements will ease the recordkeeping and reporting requirements. The Department developed new forms to simplify and standardize electronic reporting to ease the paperwork requirements imposed by the regulations and will continue to do so. The rulemaking will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district or fire district in a rural area. This rulemaking does not directly mandate the expenditure of funds by any sector of local government. If a local government in a rural area chooses to own and operate a solid waste management facility or a waste transportation business in the State, the rulemaking may require the additional expenditure of funds to comply with the requirements of Parts 360, 361, 362, 363, and 364, which govern those solid waste facilities and waste transportation businesses.

3. Costs: These regulations are not likely to impose any significant new direct costs on public or private sector interests in rural areas. However, rural area local governments may own and operate solid waste management facilities or operate waste transportation businesses. If a local government or private company in a rural area owns and operates a solid waste management facility, the costs associated with compliance with the rulemaking, including cost savings, are described below, organized by Part. As

discussed below, in some cases the regulations will reduce costs associated with compliance. In others, the costs may increase.

Part 360

In most instances, revisions to Sections 360.12 and 360.13 will expand the types of materials eligible for pre-determined beneficial use. Avoidance of disposal through legitimate reuse will lower costs for construction contractors, industry, municipalities and the public.

Part 361

The proposed amendments to Subpart 361-1 Recyclables Handling and Recovery Facilities primarily serve to clarify existing requirements, and do not add any requirements with associated application, construction or operating costs. The removal of the 250 ton per day limit on registered facilities will reduce application costs for facilities who otherwise would require a Part 360 permit.

The revisions to Subpart 361-2 include a requirement that mandates a permit versus a registration for the storage of septage. This is needed for groundwater protection but will increase the cost associated with these facilities. Most new septage storage facilities are actually tanks, so it is expected that few operations will be affected. The estimated cost for engineering associated with the permit is approximately $10,000.

Subparts 361-3 and 361-4 contain revisions that include groundwater monitoring and other controls for composting and mulch facilities located on Long Island. These requirements are required by ECL Section 15-0517 and cannot be waived. The statute requires the Department to promulgate regulations requiring groundwater monitoring at composting and mulch facilities on Long Island. The costs associated with these requirements will vary significantly based on the size and characteristics of the operation but could range from a few thousand dollars per site or significantly higher.

The proposed amendments to Subpart 361-5 Construction & Demolition Debris Handling and Recovery Facilities (CDDHRFs) on balance will reduce paperwork and costs to industry. The exemption for contractors responsible for generation of materials to store them off the site of generation, in anticipation of beneficial use, will save contractors the paperwork and costs of registration or permitting. Removal of the waste tracking document requirement will reduce duplication and related costs.

Elimination of the throughput limitation of 500 tons per day (weekly average) for registered CDDHRFs will enable more facilities to be eligible for registration, eliminating the paperwork, time and costs of a permit application. Allowing receipt of mixed loads of certain materials at registered facilities, especially concrete, brick, rock and asphalt pavement, will also enable more facilities to obtain a registration instead of a permit without negative environmental impacts. The new proposed registration for storage of

these materials, with no processing allowed, will accommodate the needs of the construction industry while minimizing noise and other adverse impacts to communities. Sampling requirements for outgoing fill products are significantly reduced for the cleaner fill types (Fill Type 2 and Fill Type 3), with only four analyses per year at roughly $1000 each sample versus every 1000 cubic yards for annual costs potentially in a range of $100,000 to $1.0 million at a large CDDHRF. Tracking requirements in this Subpart for outgoing materials are being eliminated to avoid duplicated paperwork and costs. A permit will be required, however, for a facility receiving mildly contaminated (Fill Type 4 or Fill Type 5) excavated materials with the elimination of the current registration.

The proposed amendments to Subpart 361-6 Waste Tire Handling and Recovery Facilities to exempt tire processing at farms and at illegal disposal abatement sites will eliminate a cost and paperwork burden to farmers and abatement contractors engaging in activities to convert discarded tires into usable products. Allowing alternatives to fencing for security at registered tire storage and resale facilities will make it feasible for more of these facilities to register, while still ensuring prevention of unauthorized access, and avoiding the cost and paperwork associated with a permit application.

The proposed amendments to Subpart 361-7, Scrap Metal and Vehicle Dismantling Facilities, primarily clarify existing requirements and rectify potential inconsistency with State law. Collection of metal shavings and cutting oils (“swarf”) is a new requirement for scrap metal processors, but in most cases will coincide with industry best management practices and not impose additional costs.

Part 362

Subpart 362-1 is being amended to eliminate the requirement for facilities that only combust or thermally treat uncontaminated, unadulterated wood to obtain a registration, thus eliminating the costs to these facilities associated with obtaining a registration and completing solid waste management facility annual report forms. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Subpart 362-3 is being amended to allow small municipal transfer facilities, which are more likely to be located in rural areas, to manage source-separated recyclables without the need for a Part 360 authorization, thereby eliminating the costs associated with the registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Subpart 362-3 is being amended to add an exemption for municipal transfer facilities that receive no more than 3,000 tons per year of yard trimmings. This exemption will encourage municipalities to properly manage yard trimmings and will eliminate costs to municipalities associated with the registration. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Subpart 362-3 is being amended to add an exemption for municipalities that hold seasonal collection events, thereby eliminating the costs associated with the registration. Seasonal collection events are more likely to occur in rural areas. Costs associated with registrations are estimated at $3,000 to $5,000 annually.

Facilities transferring septage waste from a single transporter using no more than two vehicles for the collection of residuals from a composting toilet will be allowed to operate under a registration rather than a permit, thereby reducing the costs associated with the authorization process. Costs associated with registrations are estimated at $3,000 to $5,000 annually. When compared to the $20,000 to $50,000 for a permit, this will result in a reduced cost to the regulated community.

Subpart 362-3 is being amended to allow facilities that transfer more than 250 tons per day of source-separated recyclables to operate under a registration rather than a permit, thereby reducing the costs associated with the authorization process. Costs associated with registrations are estimated at $3,000 to $5,000 annually. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

Subpart 362-5 is being added and is expected to reduce costs for collection sites operating under a Department-approved postconsumer paint collection program plan. This Subpart will allow facilities that would have otherwise required a permit to obtain a registration. Costs associated with these registrations should be minimal. When compared to the $20,000 to $50,000 for a Part 360 permit, this will result in a reduced cost to the regulated community.

Part 363

Subpart 363-2 is being amended to remove the exemption for disposal of up to 5,000 cubic yards of concrete, asphalt, brick, glass, rock and general fill originating from construction or demolition sites. The addition of a grade adjustment predetermined beneficial use in Section 360.12 provides an alternative management approach for these materials and therefore this amendment is not expected to result in increased costs for the management of these materials.

Subpart 363-2 is being amended to add an exemption for disposal within a state, municipal or utility right-of-way of tree debris generated by the clearing of the right-of-way. This is expected to decrease costs associated with managing and removing tree debris.

Subpart 363-3 is being amended to add restrictions onto the exemption for the disposal of animal mortalities on farms. The revisions in Subpart 363-3 could result in additional labor time for farmers to dispose of animal carcasses. This additional labor time could translate into additional costs for farmers.

The siting requirements in Subpart 363-5 are being amended to prohibit new landfills and lateral and vertical expansions of existing landfills within 1,000 feet of a school or residence. This could potentially result in limiting the life of eight landfills in the state due to their reduced ability to expand, resulting in increased disposal and transportation costs for residences and municipalities in the affected areas. In addition, when a landfill laterally or vertically expands, the landfill adds disposal capacity and for each ton of added disposal capacity the landfill can charge a tip fee for disposal of waste into the expansion area. The proposed revision prohibiting lateral and vertical expansion within 1000 feet of a school or residence could cause the landfills to lose between $60 per ton and $80 per ton in tip fees for this lost airspace.

The Subpart 363-6 design, construction and certification requirements will require the use of an 80-mil geomembrane in the primary composite liner systems. The material, installation and certification costs for the 80-mil geomembrane could result in an increased cost to a facility of approximately $2,200 per acre.

The Subpart 363-6 design, construction and certification requirements will require a double composite liner system for construction and demolition debris landfills, papermill sludge landfills, and municipal waste combustion ash monofills unless an alternative liner is justified. The material, installation and certification of the additional liner system components could result in an increased cost to a facility of between $100,000 to $150,000 per acre. This will also result in increased operating, maintenance, monitoring and reporting costs between $10,000 to $20,000 annually.

The Subpart 363-7 requirement for landfills that accept construction and demolition debris to install horizontal gas collection lines to control odors and reduce the amount of landfill gas emissions is expected to result in an increased cost to a facility of approximately $45 per liner foot of collection line plus approximately $7,000 for the wellhead and tie-in infrastructure and the condensate trap.

Part 364

Part 364 exemption and registration requirements for waste are being amended to limit exempt transport of waste tires to 20 or fewer and registered transport to 80 or fewer. Current regulations allow exempt transport of 80 or fewer waste tires. There are no fees and minimal expenses associated with Part 364 registrations, so these changes are not expected to increase waste transporter costs.

Current Part 364 regulations require that transportation of used oil in any volume requires a Part 364 permit. The proposed revisions include as a new exemption the transport of 55 gallons or less of waste oil from Part 364 requirements. This will reduce the regulatory burden and costs associated with transport of small volumes of waste oil.

The proposed revisions allow for an equivalent document that has been approved by the Department to be used in place of the waste tracking document provided by the

Department. This change will reduce the cost and ease the burden of compliance for transportation companies that utilize their own ticketing system, allowing them to adjust their ticketing system to meet the Department's requirements.

The Department found that the requirement for the return of waste tracking documents to the Department was an unnecessary burden, and proposed to remove those requirements, instead requiring that the waste transporter provide copies of the completed waste tracking documents only to the receiving user or facility within 15 days of the waste delivery. This change was expected to reduce the compliance and paperwork costs imposed on waste transporters. However, based on comments that emphasized the contribution these forms make to the Department's recordkeeping and enforcement efforts against potential violators, the requirement to submit completed forms to the Department has been retained.

Part 365

Allowing generators of non-radiological RMW to keep collection and storage containers until full or showing evidence of putrefaction, in various patient care areas, laboratories, and for pre-disposal storage below 50 pounds per month, is anticipated to reduce the number of shipments of RMW for disposal and, accordingly, reduce costs to generators.

Expanding registration eligibility to treatment facilities at Biosafety Level 3 and 4 laboratories registered under a Federal Select Agent Program (FSAP) registration will reduce costs associated with obtaining a facility permit, even though these facilities will still need to meet substantive operating requirements of a permitted facility.

Part 366

Revisions to Part 366 Local Solid Waste Management Planning primarily serve to clarify existing requirements and do not increase or reduce costs to the planning units.

Part 369

The amendments to Part 369 clarify requirements that the Department currently applies to grant applications so there is no cost impact to the regulated community.

4. Minimizing adverse impact: The rulemaking is not expected to have adverse impacts on rural areas of New York State. The updated regulatory criteria for solid waste facilities that may be located in a rural area are not expected to significantly change the cost of the operation of these facilities. However, there could be increased costs for landfill owners and operators associated with Subparts 363-6 and 363-7. These regulatory changes, however, are necessary to ensure the protection of the environment. It is not expected that rural area governments, businesses and residents will see a significant increase in the cost of solid waste management due to the

rulemaking. The Department has provided options for municipalities, including rural area local governments, to provide waste management services, especially for waste transfer facilities, that require registrations rather than permits and therefore significantly reduce the regulatory burden and costs.

Proper management of solid waste is necessary to protect public health, safety, and general welfare. Therefore, with respect to the revisions in Subparts 363-3, 363-5, 363-6 and 363-7, the Department did not find alternative approaches or an exemption from applicability would accomplish the same objectives for environmental protection.

5. Rural area participation: This rulemaking is a continuation of the rulemaking that became effective in November 2017, which provided significant opportunities for outreach and feedback from the regulated community, both public and private, in rural areas. Since November 2017, the Department has received significant additional feedback from members of the regulated community, including from small businesses and local governments and as discussed above has included many amendments to the Part 360 Series regulations that will reduce the regulatory burden on the regulated community.

6. Initial review of the rule, pursuant to SAPA §207 as amended by L. 2012, ch. 462: The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

6 NYCRR Part 360, 361, 362, 363, 364, 365, 366, 369, 371, and 377

Revised Job Impact Statement

The New York State Department of Environmental Conservation (Department) is revising 6 NYCRR Parts 360-366 and 369 (Part 360 Series) and 6 NYCRR Parts 371 and 377. The revised regulations will apply statewide. The Department does not expect the revised regulations to have a negative impact on jobs and employment opportunities in the State. The revisions update the existing regulations that relate to solid waste management facilities, waste transportation, local solid waste management planning, and state assistance grants for recycling and household hazardous waste collection. Amendments to the Part 360 Series regulations that were adopted in 2017 will improve environmental protection, institute new facility types, and simplify compliance for the regulated community.

1. NATURE OF IMPACT

The Department does not expect the revised regulations to have a negative impact on jobs and employment. The revised regulations build upon the amended regulations that were promulgated in November 2017. Since that time, the Department has seen no evidence of negative job or economic impacts caused by the new regulations.

In these revisions, adjusted requirements for C&D debris and excavated material will make it easier to handle and reuse these materials while maintaining requirements that will aid in enforcement of

improper placement and illegal disposal, newly added facility types will ease the regulatory burden on paint recyclers, removal of upper throughput limits on registered recyclables handling and recovery facilities will simplify their authorization, seasonal waste collection events conducted by municipalities are exempted, and new allowances for registration of regulated medical waste facilities with federal authorizations will ease the regulatory burden on these facilities, among other revisions. These regulatory provisions not only relieve burdens on the regulated community but also on Department staff.

Statutory changes related to composting facilities, mulch processors, and C&D debris facilities on Long Island that will require additional groundwater monitoring and operating requirements. In addition, prohibitions on siting of these facilities in mines will enhance groundwater protection near these facilities but are not expected to impact jobs. Several landfill requirements that increase environmental protectiveness at the facilities are included, such as thicker geomembranes for liner construction, default double composite liners for all solid waste landfills, horizontal gas collection lines at C&D debris landfills, and prohibition on new landfills or lateral and vertical expansion of existing landfills within 1000 feet of a school or residence. Most of these requirements are not unusual in the waste industry and they are not expected to have significant impacts on jobs in the industry. Statutory changes removed the hazardous waste exclusion for wastes produced by oil and natural gas exploration and production. These revisions, which have been included in Part 371 Series regulations, may increase costs related to these wastes, but are not expected to affect jobs in the state.

2. CATEGORIES AND NUMBERS AFFECTED

The revised regulations are not expected to negatively affect employment opportunities.

3. REGIONS OF ADVERSE IMPACT

There are no regions of the State expected to be negatively impacted from the revised regulations. Rules related to reuse of excavated material establish enhanced reuse and transportation requirements in areas of the state where impacts from illegal disposal have been significant. These areas include Long Island, the New York City metro area, Westchester County and Putnam County. In general, the revisions reflect current industry practices and address new facility types based on feedback from the regulated community.

4. MINIMIZING ADVERSE IMPACT

The revised regulations are not expected to have an adverse impact on jobs and employment. The Department already regulates the solid waste management activities covered by the regulations. For most facilities and activities covered by the regulations, the revisions will have no direct impact on jobs and employment. The revised regulations continue the use of registrations in lieu of full permits for both solid waste management facilities and for solid waste transporters to ease regulatory burden on these industry sectors while still allowing the Department to provide proper oversight of these activities.

5. SELF-EMPLOYMENT OPPORTUNITIES

The revised regulations are not expected to negatively impact self-employment opportunities.

6. INITIAL REVIEW OF THE RULE

The Department will conduct an initial review of the regulations within three years of promulgation as required by SAPA § 207.