NEW YORK STATE | Department of Environmental Conservation

Kathy Hochul, Governor | Basil Seggos, Commissioner

6 NYCRR Part 360 Series

PART 360
Solid Waste Management Facilities General Requirements

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PART 360

SOLID WASTE MANAGEMENT FACILITIES GENERAL REQUIREMENTS

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PART 360
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Section 360.1 Purpose and applicability.

(a) Purpose.

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

(i) Parts 372, 373 or 376 of this Title, or Subpart 374-1 or 374-3 of this Title; or

(ii) Parts 380, 382, and 383 of this Title.

(2) This Part sets forth the definitions for Part 369 of this Title.

(3) This Part sets forth the definitions, transition, and registration criteria for Part 364 of this Title.

(b) Applicability.

All solid waste, other than waste subject to the criteria in subparagraphs (a)(1)(i) or (ii) of this section, must be transferred, processed, recovered, stored, reclaimed or

disposed of in a manner consistent with Parts 360, 361, 362, 363, and 365, and Subpart 374-2 of this Title. However, the management of nonhazardous solid waste in a portion of a facility that also handles hazardous waste is subject to the requirements of Part 373 of this Title unless the facility or collection event is exempted under that Part. Any facility or collection event exempt from regulation under Part 372, 373, or 376 or from Subpart 374-1 or 374-3 of this Title is subject to Parts 360, 361, 362, 363, and 365 of this Title. The requirements governing the transportation of waste are set forth in Part 364 of this Title. The provisions of sections 360.6(b), 360.10, 360.11, 360.12, 360.14, 360.17, 360.18, 360.19(c), and 360.19(k) through (n), of this Part do not apply to the portion of any solid waste management facility subject to regulation under Subpart 374-2 of this Title. The standards for the content, review and approval of a local solid waste management plan are set forth in Part 366 of this Title. The application, review, and contracting procedures for State assistance grant programs under title 5 and title 7 of article 54 of the Environmental Conservation Law are set forth in Part 369 of this Title.

Section 360.2 Definitions.

As used in Parts 360, 361, 362, 363, 364, 365, 366 and 369 of this Title, the following terms have the following meanings:

(a) Solid waste and related terms.

(1) *Solid waste* or *waste* means, except as described in paragraph (3) of this subdivision, discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, municipal, commercial, institutional, mining or agricultural operations or from residential activities including materials that are recycled or that may have value.

(2) A material is considered discarded if it is spent, worthless, or in excess to the generator, and is:

(i) thermally, physically, chemically or biologically processed;

(ii) disposed through discharge, deposit, injection, dumping, spilling, leaking or placement into or on any land or water so that the material or any constituent thereof may enter the environment or be emitted into the air or discharged into groundwater or surface water; or

(iii) accumulated or transferred instead of or before being processed or disposed.

(3) The following are not solid waste for the purposes of Parts 360, 361, 362, 363, 364, 365 and 366 of this Title:

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

(ii) materials that are incorporated into food products for human consumption;

(iii) unadulterated wood generated from sources other than construction and demolition that is burned in campfires, ceremonial burns, cooking fires, wood stoves, or other similar uses;

(iv) any mixture of domestic sewage and other wastes that pass through a

sewer system to a publicly or privately-owned treatment works for treatment;

(v) industrial wastewater discharges that are point source discharges subject to permits under Environmental Conservation Law (ECL) article 17;

(vi) irrigation return flows;

(vii) materials subject to in-situ mining techniques which are not removed from the ground as part of the extraction process;

(viii) crumb rubber;

(ix) materials that are used in accordance with a determination by the department pursuant to the provisions of section 360.12 of this Part;

(x) materials that are used for artificial reefs in compliance with applicable water quality criteria;

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

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

(b) Other definitions of general applicability.

Unless otherwise noted, all words and terms contained in this Part and in Parts 361, 362, 363, 364, 365, 366 and 369 of this Title are defined by their plain meaning. The terms defined in this subdivision appear throughout these Parts.

(1) *Active life* means that period of time during which waste is or will be received. In the case of landfills, active life ends at the completion of closure activities in accordance with Part 363 of this Title.

(2) *Acute hazardous waste* means hazardous wastes that meet the listing criteria in section 371.2(b)(1)(ii) of this Title and are either listed in section 371.4(b) of this Title with the assigned hazard code of (H) or are listed in section 371.4(d)(5) of this Title.

(3) *Aerobic digestion* means the biochemical decomposition of organic matter primarily into stabilized solids and carbon dioxide by microorganisms in the presence of air.

(4) *Agricultural waste* means manure, crop residue, animal carcasses, and other similar waste that is generated on a farm.

(5) *Agronomic rate* means the rate of nitrogen addition designed to provide the amount of nitrogen needed by a crop or vegetation grown on the land, and to

minimize the amount of nitrogen that passes below the root zone of the crop or vegetation grown on the land to ground water.

(6) *Airport* means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities; and an active military airfield.

(7) *Alternative fuel* means a waste or byproduct material that is not subject to Commercial and Industrial Solid Waste Incineration Units: New Source Performance Standards and Emission Guidelines for Existing Sourcesreferenced in Part 200 of this Title.

(8) *Alternative treatment system* means a device, method, and/or technology approved by the Commissioner of Health pursuant to 10 NYCRR Subpart 70-5 for the treatment of regulated medical waste.

(9) *Amendment* for the purposes of section 360.12 of this Part means the thorough mixing into navigational dredged material (NDM) of any material that physically or chemically alters the NDM to improve its engineering, environmental, or other characteristics.

(10) *Anaerobic digestion* means the biochemical decomposition of organic matter primarily into stabilized solids, methane and carbon dioxide by microorganisms in the absence of air.

(11) *Animal research facility* means any location where research is conducted using infectious agents or toxins and animals for the purposes of producing, modifying or testing biologicals or other products used in the diagnosis, treatment or immunization of humans or animals.

(12) *Apparent opening size* means the number of the U.S. Bureau of Standards sieve, or its opening size in millimeters or inches, having openings closest in size to the diameter of uniform particles.

(13) *Applicant* means the person applying for a permit or registration under this Part.

(14) *Approved design capacity* means the amount of waste authorized to be received at a facility over a time period as specified in that facility's permit.

(15) *Approved design volume* means the maximum in-place volume of waste, operating cover, and intermediate cover material to be received at a facility during its active life.

(16) *Aquifer* means a consolidated or unconsolidated geologic formation, group of formations or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Two types of highly productive aquifers in unconsolidated (non-bedrock) formations are defined in subparagraphs (i) and (ii) of this paragraph.

(i) *Primary water supply aquifer* or *primary aquifer* means a highly productive aquifer which is presently used as a source of public water supply by major municipal water supply systems.

(ii) *Principal aquifer* means a highly productive aquifer or deposits whose geology suggests abundant potential

water supply, but which is not intensively used as a source of water supply by major municipal systems at the present time. Some water supply development has taken place in some of these areas but it is generally not as intensive as in the primary aquifer areas.

(iii) *Sole source aquifer* means an aquifer which has been designated by the EPA as supplying at least 50 percent of the drinking water for its service area and which is the only reasonably available drinking water source should the aquifer become contaminated.

(iv) *Uppermost aquifer* means the aquifer nearest the ground surface and includes any lower aquifers that are hydraulically connected to it.

(17) *Ash residue* means all the residue and any entrained liquids resulting from the combustion of waste, fossil fuel or waste in combination with fossil fuel at a combustor, including bottom ash, boiler ash, fly ash and the residue of any air pollution control device.

(18) *Authorized collector* means a manufacturer, reverse distributor, distributor, narcotic treatment program, hospital or clinic with an on-site pharmacy, or retail pharmacy that has modified its United States Drug Enforcement Administration (DEA) registration to obtain authorization to receive controlled substances for the purpose of destruction.

(19) *Authorized representative* means an individual authorized by the owner or operator of a facility to act on the owner's or operator's behalf.

(20) *Autoclave* means a device for decontaminating and/or sterilizing materials through exposure to steam under pressure.

(21) *Bedrock* means cemented or consolidated earth materials that are exposed on the earth's surface or that underlie unconsolidated earth materials.

(22) *Beverage container assistance project* for the purposes of Part 369 of this Title means equipment costs or the acquisition or rehabilitation costs of real property or structures related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of title 10 of article 27 of the ECL.

(23) *Bioburden* means the degree of microbial contamination, including the type and total population of organisms, the number of spore formers present, and their resistance on any material and in a given amount of waste material prior to undergoing treatment.

(24) *Bio-challenge testing* means periodic monitoring or testing of a regulated medical waste or other infectious waste treatment device or system that employs the use of biological indicators to demonstrate continued operation of the device or system.

(25) *Biodiesel* is a fuel produced by the transesterification of plant or animal oils or fats.

(26) *Biofuels* are any fuels, including biodiesel, derived from vegetable or animal fat sources that meet fuel standards set by EPA or a nationally recognized standards association.

(27) *Biological drug waste* means a discarded biopharmaceutical or biological medical product derived from biological sources, especially one produced by biotechnology (*i.e.*, involving use of live organisms or their active components). These include but are not limited to all recombinant proteins, (monoclonal) antibodies, vaccines, blood/plasma derived products, non-recombinant culture derived proteins, and cultured cells and tissues.

(28) *Biological indicator* means a specific microorganism used to evaluate the capability of a process to decontaminate or treat regulated medical waste or other infectious waste. For the purposes of this definition, biological indicators include bacterial spores or other microorganisms inoculated on carriers, suspensions or self-contained indicators.

(29) *Biologicals* means any preparations (sera, nonviable vaccines, vaccines attenuated in a manner which prevents propagation, antigens, toxins and antitoxins) derived from a living organism or its products for use in diagnosis, immunization, or treatment of human beings or animals.

(30) *Biosafety level (BSL)* means the laboratory designation associated with the handling and containment of infectious microorganisms and hazardous biological materials as outlined in U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health publication *Biosafety in Microbiological and Biomedical Laboratories*, as incorporated by reference in section 360.3 of this Part.

(31) *Biosolids* means the accumulated semi-solids or solids resulting from treatment of wastewaters from publicly or privately owned or operated sewage treatment plants. Biosolids does not include grit or screenings, or ash generated from the incineration of biosolids.

(32) *Bird hazard* means an increase in the likelihood of bird collisions with aircraft that may cause damage to the aircraft or injury to its occupants.

(33) *Bottom ash* means the ash residue remaining after combustion of waste that is discharged through and from grates of a combustor.

(34) *Brown grease* means grease trap waste.

(35) *Bulk liquid* means a liquid or semi-liquid material which is contained within, or discharged from, any truck, vehicle, vessel, tank, or other container and which contains five gallons of liquid or more.

(36) *Bulk outer packaging* means a wheeled cart or a container, including a transport vehicle or freight container, other than a vessel or a barge, in which regulated medical waste or other infectious wastes are loaded with no intermediate form of rigid containment (*e.g.*, individually boxed) and which has a maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid; a maximum net mass greater than 400 kg (882 pounds) as a receptacle for a solid; or a water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas.

(37) *Bulking agent* means a material, other than leaves, added to organic waste to increase porosity and facilitate aeration during composting.

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

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

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

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

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

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

(39) *Bypass waste* means any waste that is destined for treatment, but cannot be treated due to downtime, capacity issues or the inability of the facility to treat the waste.

(40) *Cash plus marketable securities* means all the cash plus marketable securities held by the municipality on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

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

(42) *Certificate of treatment* means a form prescribed by the Commissioner of the New York State Department of Health to document treatment of regulated medical waste, signed by a person authorized at the treatment facility attesting to the treatment.

(43) *Certification* means a written statement of professional opinion based upon investigation, analysis, knowledge and belief that is stated to be true and accurate.

(44) *Clinical laboratory* means the same as defined in section 571 of the Public Health Law.

(45) *Collection event* means a planned activity of limited duration which includes the collection or management of solid waste.

(46) *Combustion* means the thermal destruction of waste in a device which uses elevated temperatures with oxygen as the primary means to change the chemical, physical, or biological character or composition of the waste.

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

(48 *Combustor* means an enclosed device using controlled flame combustion to thermally break down waste to an ash residue that contains little or no combustible materials.

(49) *Commercial aggregate* means sand, gravel, crushed stone, bank or crusher run, or other similar engineered or recycled material used as a marketable commodity in concrete manufacturing, asphalt manufacturing, production of concrete products, or the construction of foundations, bases and subbases, drainage layers, subsurface drains, roads, or other engineered applications according to a standard aggregate specification, or an area-specific or location-specific aggregate specification prepared by a professional engineer.

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

(51) *Commercial waste* means waste that is not residential waste, institutional waste or industrial waste and is discarded from stores, offices, restaurants, warehouses and other nonmanufacturing activities.

(52) *Commissioner* means the Commissioner of the New York State Department of Environmental Conservation or that individual's duly designated representative.

(53) *Communities of disproportionate impact* means communities, neighborhoods or areas that are low-income and/or communities of color that host a disproportionate number of environmentally burdensome or regulated facilities, as determined by the department.

(54) *Comparability* means a qualitative parameter expressing the confidence with which one data set can be correlated with another based upon, among other criteria, the similarities of sample collection and analysis techniques from one sampling event to another.

(55) *Complete application* means the same as defined in Part 621 of this Title.

(56) *Composting* means aerobic, thermophilic decomposition of organic waste to produce a stable, humus-like material.

(57) *Composting and other organics processing facility* means a facility that treats the readily biodegradable organic components in waste to produce a mature product for use as a source of nutrients, organic matter, liming value, or other essential constituent for a soil or to help sustain plant growth. The processes include, but are not limited to, composting, vermiculture, anaerobic digestion, fermentation, and class A processes. An organics waste processing facility also includes processes to convert biodegradable organic components in food scraps into animal feed including pet food.

(58) *Comprehensive recycling analysis* or *CRA* means a recycling analysis and plan prepared by a municipality pursuant to section 360.11 of this Part.

(59) *Concentrated animal feeding operation* or *CAFO* means an animal feeding operation as defined in section 750-1.2(a)(23) of this Title.

(60) *Confined aquifer* means an aquifer bound above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; or an aquifer containing groundwater whose potentiometric head lies above the top of the aquifer itself.

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

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

(63) *Construction and demolition debris handling and recovery facility* means a facility that processes and separates construction and demolition debris in order to extract recyclable materials.

(64) *Construction waste* means any material generated during the construction of structures and roads.

(65) *Container* means a portable piece of equipment in which waste is stored, transported, treated, disposed of, or otherwise handled.

(66) *Cost* for the purpose of Part 369 of this Title means:

(i) the capital cost of an approved project, including: engineering and architectural services, surveys, plans and specifications; consultant and legal services; and other direct capital expenses incident to the project, less any Federal, State or

other assistance received or to be received;

(ii) the capital, planning, and promotional costs associated with waste reduction projects;

(iii) the planning, educational, and promotional costs associated with a recyclables recovery program;

(iv) household hazardous waste collection and disposal costs;

(v) the capital cost of equipment and/or the acquisition and/or rehabilitation of real property or structures related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of title 10 of article 27 of the ECL; or

(vi) other items identified in ECL article 54, title 7.

(67) *Critical stratigraphic section* means all stratigraphic units, both unconsolidated deposits and bedrock, including but not limited to the unsaturated zone, uppermost aquifer, and first water-bearing unit into which contaminants that escape from a facility might reasonably be expected to enter and cause contamination.

(68) *Crumb rubber* means rubber granules that are produced from waste tires and that are less than or equal to, one-quarter inch or six millimeters in size, 99.9 percent free of wire and fiber.

(69) *Cultures and stocks* means materials derived from the management (*e.g.*, the systems used to grow and maintain infectious agents in vitro, including but not limited to: nutrient agars, gels, broths, human and primate cell lines and impure animal cell lines) of agents infectious to humans, and associated biologicals, from medical or pathological laboratories, from research and industrial laboratories, or from the production of biologicals and includes discarded live or attenuated vaccines capable of propagation, or culture dishes and devices used to transfer, inoculate or mix cultures.

(70) *Cumulative loading limit* means the maximum amount of metal, in pounds, that is allowed to be applied to an acre of land.

(71) *Curing area* means an area where organic material that has undergone the rapid initial stage of decomposition is further stabilized into a humus-like material.

(72) *Custodial care period* means the period after the post-closure care period when, as the department will determine, the landfill poses a significantly reduced threat to public health and the environment and environmental monitoring and maintenance can be reduced.

(73) *Cycle* for the purposes of Part 365 of this Title means total operating time required for a device to treat regulated medical waste or other infectious waste, and, for an autoclave, includes warm-up, residence and cool down time.

(740 *DEA* means the United States Drug Enforcement Administration.

(75) *Debt service* means the amount of principal and interest due on a loan in a given time period.

(76) *Decommission* for the purpose of Subpart 361-7 of this Title means the removal of potential environmental contaminants from an end-of-life vehicle including, but not limited to, fluids, batteries, refrigerants, mercury switches and airbags.

(77) *Decontamination* for the purposes of Part 365 of this Title means a method that results in the reduction in the concentration of microorganisms or biological toxins of concern to a level considered safe for the intended use, handling or disposal. Washing with water (with or without soap), antisepsis, disinfection, and some types of treatment are all forms of decontamination.

(78) *Demolition wastes* means any material generated during the demolition of structures and roads.

(79) *Department* means the New York State Department of Environmental Conservation.

(80) *Department of Health* means the New York State Department of Health.

(81) *Department of Transportation* means the New York State Department of Transportation.

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

(83) *Destroyed* for the purposes of Part 365 of this Title means torn apart or mutilated through combustion, melting, shredding, grinding, tearing, breaking or another process, to render unusable and generally unrecognizable as the item that underwent destruction. Destroyed does not mean compacted following treatment or encapsulation. For sharps, unrecognizable means that 100 percent of the sharps must be rendered unidentifiable as intact sharps devices.

(84) *Discharge* means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of any material, including waste or leachate, into or on any air, land or water.

(85) *Disinfectant* means an antimicrobial product used on hard inanimate surfaces and objects to destroy or irreversibly inactivate infectious agents but not necessarily their spores.

(86) *Disinfection* means any procedure that involves the application of an antimicrobial agent (disinfectant), approved by an appropriate regulatory authority, consistent with its approved use. Disinfection is not a form of treatment.

(87) *Disposal facility* means a facility where waste is intentionally placed and where the waste is intended to remain.

(88) *Disturbed* means excavated, re-graded, removed, physically relocated, uncovered or exposed as part of a construction or earth-moving activity.

(89) *Drainage swale* means a natural or man-made channel that provides a path for stormwater.

(90) *Drilling and production waste* means waste that has emanated from a wellbore during the drilling, completion or production of an oil well, gas well, or solution mining well, or during the drilling or completion of a stratigraphic, brine disposal or geothermal well that has a planned total depth deeper than 500 feet below the earth's surface. Drilling and production wastes include, but are not limited to, used drilling and completion fluids that are not intended for reuse at the originating well or another well, drill cuttings, flowback waters or fluids, production water or brine and flowback waters or fluids that are not intended for use or reuse at the originating well or another well and production water or brine that is not intended for use or reuse at the originating well or another well.

(i) *Flowback water* or *flowback fluid* means the fluid, possibly containing connate water, returned to the surface during the period between well stimulation and the commencement of production of oil or gas from a well.

(ii) *Production water* or *brine* means the associated fluid brought to the surface during the production of oil or gas from a well, or during natural gas withdrawal from an underground storage reservoir.

(91) *Dry weight basis* means calculated on the basis of having been dried until reaching a constant mass.

(92) *ECL* means chapter 43-B of the Consolidated Laws of the State of New York, entitled the Environmental Conservation Law.

(93) *Ecologically sensitive area* means any land designated as habitat for threatened or endangered species; or area intended to encourage natural habitat development by Federal, State or local government.

(94) *Efficacy testing* means testing of an autoclave, alternative regulated medical waste treatment system or device, or effluent decontamination system, conducted by a laboratory, independent of the system manufacturer, in conformance with generally recognized scientific principles, microbiologic examinations or other pertinent assessments of waste material to establish operating parameters for effective treatment of regulated medical waste or other infectious waste.

(95) *Electronic waste* or *E-waste* means the same as defined in ECL article 27, title 26.

(96) *End of life vehicle* or *ELV* means any motor vehicle which is sold, given, or otherwise discarded as junk or salvage.

(97) *Environmental monitoring points* means designated locations, monitoring wells and devices for sampling air, soil, groundwater or surface water outside of the containment system of a facility.

(98) *EPA* means the United States Environmental Protection Agency.

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

(100) *Excluded waste* for the purposes of Part 362 of this Title, means that portion of a waste stream which cannot be treated through combustion and/or gasification of alternative fuel due to legal, technical or environmental limitations. Excluded wastes include but are not limited to: untreatable waste, prohibited radioactive materials, electronic waste, batteries, mercury-added consumer products, mercury-containing devices, mercury-added thermostats, source-separated yard trimmings, source-separated recyclables; and source-separated food scraps.

(101) *Existing water quality* means the chemical composition of ground or surface water before initial deposition of waste.

(102) *Expansion* means an increase in the approved design capacity or throughput beyond the limits approved in the permit for a facility. In the case of landfills, *expansion* also means a lateral or vertical increase in size beyond the limits approved in the permit.

(103) *External slope* means any slope in a landfill which is constructed along the outer boundary of an existing liner system.

(104) *Facility* means a location and associated devices employed in the management of solid waste beyond the initial collection process. The term includes all structures, appurtenances or improvements on the land used for the management or disposal of solid waste. For the purpose of Part 365 of this Title, *facility* also includes the location and associated devices where initial collection occurs.

(105) *Farm* means an area or location actively used for the raising or harvesting of any agricultural or horticultural commodity through the cultivation of soil, hydroponics, or the raising, shearing, feeding, caring for, training, or management of livestock, bees, poultry, furbearing animals, fish, domestic animals or wildlife.

(106) *Fault* means a fracture or zone of fractures in consolidated materials or rock along which strata on one side are displaced with respect to strata on the other side.

(107) *Federal assistance* means funds available, other than by loan, from the Federal government, either directly or through allocation by the State for construction or program purposes pursuant to any Federal Law or program.

(108) *Feed crops* means crops produced primarily for consumption by animals.

(109) *Fiber crops* means crops such as flax and cotton.

(110) *Fill* means excavated material including soil or other granular, compactible material that is used as authorized under Section 360.13 of this Part but does not include overburden generated from mining operations regulated pursuant to Parts 420 through 425 of this Title.

(111) *Fill Type 1* or *F1* means excavated material that meets criteria in section 360.13(f) of this Part.

(112) *Fill Type 2* or *F2* means excavated material that meets criteria in section 360.13(f) of this Part.

(113) *Fill Type 3* or *F3* means excavated material that meets criteria in section 360.13(f) of this Part.

(114) *Fill Type 4* or *F4* means excavated material that meets criteria in section 360.13(f) of this Part.

(115) *Fill Type 5* or *F5* means excavated material that meets criteria in section 360.13(f) of this Part.

(116) *Final cover system* means an engineered layer of materials approved by the department in accordance with Part 363 of this Title that is placed on any surface of a landfill where no additional waste will be deposited, and serves to restrict infiltration, prevent erosion, control landfill gas and promote surface drainage.

(117) *First water-bearing unit* means the first major water-bearing geologic unit, group of units or portion of a unit likely to be impacted by contamination from a facility. This includes the migration pathway to that unit and extends to the first demonstrated aquiclude, aquitard or other demonstrable change in permeability which will impede contaminant migration to lower units.

(118) *Flowable fill* means a self-compacting, low-strength mixture of commercial aggregate, water and a cementitious binder, used to backfill excavations and capable of being pumped.

(119) *Fly ash* means the ash residue from combustion that is entrained in the gas stream of a combustor and removed by air pollution control equipment.

(120) *Food crops* means crops consumed by humans, including, but not limited to, fruits, vegetables, and tobacco.

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

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

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

(122) *Force account work* means personal services or activities directly associated with a proposed project performed by an applicant's municipal workforce, excluding salaries of municipal chief executive or legislative officials.

(123) *Foreign animal disease waste* means animal waste from animals infected or inoculated with, or exposed to, diseases that have an economic impact on human society (*e.g.*, Foot and Mouth Disease, Exotic Newcastle Disease, etc.) and includes those that are indigenous to other countries but not found in domestic animals or poultry, wildlife, or the environment within the United States. Foreign animal disease waste includes, but is not limited to, animal carcasses, body parts, body fluids, blood, or bedding originating from animals. Body fluids include urine and feces when infectious agents are known to be shed in the urine and feces.

(124) *Freeboard* means the vertical distance between the lowest elevation of the top of a tank, surface impoundment, or dike, and the highest level of the surface of the waste contained within.

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

(126) *Gas recovery equipment* means the equipment (*e.g.*, fan, blower, compressor, etc.) used to collect and transport landfill gas through the header system.

(127) *Gas storage brine* means the fluid used to facilitate the underground storage and withdrawal of liquefied petroleum gas from a salt cavern or other underground reservoir.

(128) *Gasification* means the thermal conversion of organic material in waste by direct or indirect heating in the presence of air into syngas products.

(129) *Generator* means any person whose act or process produces a waste or whose act first causes waste to be subject to regulation under this Title.

(130) *Geocomposite* means a laminated or composite material comprised of geotextiles, geogrids, geonets and/or geomembranes.

(131) *Geogrid* means a netlike polymeric material used with subgrade materials, soil, rock, earth or any other geotechnical engineering-related material as an integral part of the structure or system to provide reinforcement to soil slopes.

(132) *Geomembrane* means an essentially impermeable membrane used with subgrade materials, soil, rock, earth or any other geotechnical engineering-related material as an integral part of a structure or system designed to limit the movement of liquid or gas in the system.

(133) *Geocushion* means a nonwoven needle-punched geotextile used to provide puncture protection to a geomembrane.

(134) *Geonet* means a type of a geosynthetic material that allows planar flow of liquids and serves as a drainage system.

(135) *Geosynthetic clay liner* or *GCL* means a low-permeability material composed of both geosynthetic material and low permeability clay.

(136) *Geosynthetics* means the generic classification of all synthetic materials used in geotechnical engineering applications, including geotextiles, geogrids, geomembranes, geonets, geosynthetic clay liners and geocomposites.

(137) *Geotextile* means any permeable textile used with subgrade materials, soil, rock, earth or any other geotechnical engineering-related material as an integral part of a structure or system designed to act as a filter to prevent the flow of soil fines into drainage systems, to provide planar flow for drainage, to serve as a cushion to protect geomembranes, or to provide structural support.

(138) *Governing body* for the purposes of Part 369 of this Title means:

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

(ii) in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;

(iii) in the case of a town, the town board;

(iv) in the case of a public authority, the governing board of directors, members, or trustees thereof;

(v) in the case of a public benefit corporation, the board of directors, members, or trustees thereof;

(vi) in the case of a not for profit corporation, the board of directors thereof or other body designated in the certificate of incorporation to manage the corporation;

(vii) in the case of a Native American tribe or nation, any governing body recognized by the United States or the State of New York;

(viii) in the case of a school district or supervisory district, the board of education, or board of directors, members, or trustees thereof; and

(ix) in the case of a State agency, the commissioner of the State agency.

(139) *Grease trap waste* means fats, oils, grease, and food residues generated from a food establishment that are captured in a device meant to prevent these materials from entering the sewer or septic system. It is also known as brown grease.

(140) *Gross contaminants* means constituents of the waste stream that are not readily decomposed and may be present in an organic product including, but not limited to, pieces of metal, glass, plastic, rubber, bones, and leather. Gross contaminants do not include sand, rocks, wood pieces, and other similar materials.

(141) *Groundwater* means water below the land surface in a saturated zone of soil or rock. This includes perched water separated from the main body of groundwater by an unsaturated zone.

(142) *Hazardous waste* means a material that is defined in Part 371 of this Title to be both a solid waste and a hazardous waste.

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

(144) *Household* means single and multiple-family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas.

(145) *Household hazardous waste* means waste from a household which, but for its point of origin, would be a hazardous waste under Part 371 of this Title, and includes all pesticides as defined in ECL article 33.

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

(147) *Household Hazardous Waste Collection Program* for the purpose of Part 369 of this Title, means municipal collection events and facilities approved by the department.

(148) *Household medical waste* means household waste which, but for its point of generation, would be a regulated medical waste and includes residential sharps (*e.g.*, lancets, hypodermic needles and syringes) generated in a household in the course of medical self-management. Regulated medical waste collected by mobile units, home health care providers, hotels or other commercially operated temporary residences, including those facilities operating as an extension of a healthcare treatment process as de facto outpatient recovery facilities, is not considered household medical waste.

(149) *Humus* means stable, degraded organic matter.

(150) *Hydraulic conductivity* means the rate of flow of water through a cross section of a material when the hydraulic gradient is equal to 1.0.

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

(152) *Industrial land use* means the use of land primarily for the purpose of manufacturing, production, fabrication or assembly processes and ancillary services. Industrial land use does not include any recreational component.

(153) *Industrial waste* means waste generated by manufacturing or industrial processes.

(154) *Inert material* for the purpose of Part 363 of this Title means material that is non-putrescible and, when analyzed using the EPA SW-846 synthetic precipitation leaching procedure (SPLP)

method, does not exceed groundwater quality standards found in Part 703 of this Title.

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

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

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

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

(157) *Intermediate cover* means a geomembrane or soil layer which will inhibit precipitation from entering the waste mass, contain leachate outbreaks, and inhibit migration of decomposition gases.

(158) *Land application facility* means an area or location where waste is applied to agricultural soil to improve soil quality or provide plant nutrients.

(159) *Land with a high potential for public exposure* means land that the public uses frequently. This includes, but is not limited to, a public contact area and a land reclamation site located in a populated area (*e.g.*, a construction site located in a city).

(160) *Land with a low potential for public exposure* means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest land, and a reclamation site located in an unpopulated area (*e.g.*, a surface mine located in a rural area).

(161) *Landfill* means a facility where waste is intentionally placed and intended to remain and which is designed, constructed, operated and closed to minimize adverse environmental impacts.

(162) *Landfill cell* means a discrete portion of a landfill which uses a liner and leachate collection and removal system to provide operational isolation from adjacent cells.

(163) *Landfill gas management system* means a system for the control, capture, and management of gas created within and emitted from a landfill.

(164) *Landfill reclamation* means the excavation of a portion or all of a landfill for purposes including, but not limited to, creating capacity, reducing closure

costs, recovering recyclables, or reducing environmental impacts with the ultimate goal of either removing the landfill or reducing the landfill's volume.

(165) *Landfill re-contouring* means the reshaping of the landfill surface for purposes including, but not limited to, enhancing stormwater run-off, restoring the original side slopes of the landfill or reducing the landfill footprint in size.

(166) *Leachate* means any solid waste in the form of a liquid, including any suspended components, that results from contact with waste.

(167) *Leachate collection and removal system* means a system or device that is designed, constructed, maintained, and operated to collect and remove leachate from a facility.

(168) *Leak-proof* means designed and maintained to prevent the escape of contained liquids or other materials from sides or bottom, when appropriately closed regardless of container orientation (*e.g.*, upright, tipped over, etc.).

(169) *Lift* means the vertical thickness of compacted waste and the cover material immediately above it, or the vertical thickness of soil applied during construction.

(170) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

(171) *Lower explosive limit (LEL)* means the lowest percentage by volume of a mixture of explosive gases which will propagate a flame in air at 25 degrees centigrade and atmospheric pressure.

(172) *Local solid waste management plan* or *LSWMP* means a plan prepared by a planning unit pursuant to Part 366 of this Title.

(173) *Lumber and engineered wood* means wood that has been processed into a product, such as boards, used for building and other purposes, and wood products manufactured by binding or fixing wood particles together using adhesives or other methods.

(174) *Manufactured home* means the same as defined in article 21-B, section 601 of the New York State Executive Law.

(175) *Mature* means the characteristics of a soil conditioning material that render it harmless to plant growth when used as a topsoil or soil supplement and make it sufficiently stable that it will not generate nuisance odors during storage, handling, or ultimate use, as determined by the department.

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

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

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

(179) *Mobile vehicle crusher* means any person engaged in operating a transportable vehicle crusher.

(180) *Mulch* means the materials produced from tree debris, yard trimmings or other suitable materials and intended for use on soil surfaces to prevent the growth of weeds and erosion.

(181) *Mulch processing facility* means facilities that process yard trimmings (other than grass clippings), tree debris, and wood debris into mulch. It does not include the processing of construction and demolition debris into mulch.

(182) *Municipal landfill closure project* for the purposes of Part 369 of this Title means activities undertaken to close, including by reclamation, a landfill owned or operated by a municipality to achieve compliance with regulations promulgated by the department.

(183) *Municipal landfill gas management project* for the purposes of Part 369 of this Title means activities undertaken to implement a landfill gas management system at a landfill which is owned or operated by a municipality.

(184) *Municipal solid waste (MSW)* means residential waste, commercial waste, or institutional waste, or any component or combination thereof, excluding construction and demolition debris and biosolids unless they are commingled.

(185) *Municipal solid waste processing facility* means a facility that primarily performs post-collection separation or processing of municipal solid waste to recover recyclables or to produce a refuse-derived fuel.

(186) *Municipal waste reduction and recycling project* for the purposes of Part 369 of this Title means:

(i) a capital project for municipal waste reduction, recycling, and household hazardous waste collection; or

(ii) a coordination and education project for municipal waste reduction and recycling.

(187) *Municipality*, except for the purposes of Part 369 of this Title, means a county, village, town, city, any

designated agency thereof, a solid waste management district, a public benefit corporation having power granted otherwise than under ECL article 51 to construct, operate and maintain a solid waste management facility, including a public corporation created pursuant to agreement or compact with another state; or any combination thereof.

(188) *Municipality*, for the purposes of Part 369 of this Title, means a county, city, town, village, a local public authority or public benefit corporation, or Native American tribe or nation residing within New York State, or a school district or supervisory district or any combination thereof. For municipal landfill closure and municipal landfill gas management projects, *Municipality* also means a State agency, State public authority or State public benefit corporation except for purposes of expenditures of the Clean Water/Clean Air Bond Act of 1996, where a municipality does not include a State agency, State public authority or State public benefit corporation.

(189) *Navigational dredged material (NDM)* means that material, other than material dredged primarily to remove contamination, which is dredged or excavated from the waters of the State, including sediment, soil, mud, sand, shells, gravel or other aggregate, for the direct or indirect purpose of establishing, maintaining, or increasing water depth, or increasing the surface or cross-sectional area of the water body.

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

(191) *Not-for-profit organization* means a corporation formed pursuant to the New York State Not-For-Profit Corporation Law and qualified for tax-exempt status under the Federal Internal Revenue Code.

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

(193) *On-site* means the same or geographically contiguous property under the control or ownership of the same person. It may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is gained by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access, are also considered on-site property.

(194) *Operating cover* means a compacted layer of soil placed on all exposed waste.

(195) *Operational water quality* means the chemical quality of groundwater or surface water once placement of waste has begun at a landfill.

(196) *Operator* means the person responsible for the overall operation of a facility or collection event, with the authority to make and implement decisions, whose actions or failure to act may result in noncompliance with any requirement of this Title or of any department-approved operating condition pertaining to that facility or collection event.

(197) *Organic* means derived from living matter or living organisms and is readily biodegradable.

(198) *Organic-derived soil conditioning product* means a mature material that can be used as a source of nutrients, organic matter, liming value, or other essential constituent for a soil or plant.

(199) *Organics recycling facility* means a facility that processes the organic components in waste to produce a mature product for use as a source of nutrients, organic matter, liming value, or other essential constituent for a soil to help sustain plant growth. The processes include, but are not limited to, composting, vermiculture, anaerobic digestion, fermentation, and Class A processes. An organics recycling facility also includes processes to convert biodegradable organic components in waste to produce animal feed. The product no longer has the visual appearance of the waste from which it was produced.

(200) *Owner* means a person who owns a solid waste management facility or part of a facility.

(201) *Papermill residuals* means the solids generated during the treatment of wastewater generated from the production of paper products. For Subparts 361-2 and 361-3 of this Title, papermill residuals are limited to those residuals that originate only from an elemental chlorine-free (ECF) or totally chlorine-free (TCF) pulping process.

(202) *Parametric control* means a device designed to monitor, regulate, or operate a regulated medical waste treatment system and maintain preset operating parameters.

(203) *Partial closure* means the closure of portion of a facility in compliance with the applicable closure requirements of this Part, or Parts 361, 362, 363, or 365 of this Title.

(204) *Passenger tire equivalent* means a conversion measurement that is used to estimate waste tire weights and volume amounts and in which one passenger car tire with a rim diameter of 17 inches or less is equal to 20 pounds. One cubic yard of volume shall contain 15 passenger tire equivalents. Tires larger than a passenger car tire shall be evaluated for volume using this conversion measurement.

(205) *Pathogenic organisms* means disease-causing organisms including, but not limited to, certain bacteria, viruses, protozoa and viable helminth ova.

(206) *Patient care area* means a room or location where a hospital, nursing home, pharmacy or clinical laboratory engages in medical services and/or specimen collection that results in the generation of regulated medical waste. A patient service center (*e.g.*, collection station) and a health fair operated by a clinical laboratory are patient care areas.

(207) *Permittee* means the person who has received a permit under this Part.

(208) *Person* means any individual, public or private corporation, political subdivision, government agency, school, institution, university, authority, department or bureau of the State, municipality, industry, partnership,

association, firm, trust, estate, or any other legal entity.

(209) *Pharmaceutical waste* means solid waste that is a discarded, unwanted, or expired drug (as defined in article 137, section 6802 of the New York Education Law) including veterinary drugs, a prescription drug (as defined in article 2-A section 270, of the New York Public Health Law) or over-the-counter remedy, toxic drug, medicine, or biological drug formula or mixture used or administered as an immunization, or an aid in the diagnosis, treatment or prevention of disease and the maintenance of health, or used in research or the production and testing of biologicals. Pharmaceutical waste does not include any drug waste that is regulated as a hazardous waste under Part 371 of this Title or prohibited radioactive materials as defined in this Part.

(210) *Planning unit* means, for locations within New York State, a county; two or more counties acting jointly; a local government agency or authority established pursuant to State Law for the purposes of managing solid waste; any city in the county of Nassau; any of the above in combination with one or more neighboring cities, towns, or villages; or two or more cities, towns, or villages, or any combination of them, that the department determines to be capable of implementing a regional waste management program. In order for a county to be a planning unit, it must include all cities, towns, and villages within its borders.

(211) *Post-closure care period* means the period after final closure of a landfill that continues until the owner or operator of the landfill can demonstrate to the department that the threat to public health or the environment has been reduced.

(212) *Primary container* means the inner packaging or containment system that is in direct contact with, holding and securing regulated medical waste (*e.g.*, a red bag or sharps container, etc.).

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

(214) *Processing* for the purposes of Subpart 361-8 of this Title, consists of filtration to remove food particles, heating to remove water, or any other physical separation process to purify waste cooking oil or yellow grease.

(215) *Processing* for the purposes other than Subpart 361-8 of this Title, means the use of a combination of structures, machinery or devices to alter the volume or the chemical or physical characteristics of solid waste. Basic handling or compacting of waste at a transfer facility is not considered processing.

(216) *Product stewardship* means the act of producer responsibility, which may be voluntary, mandatory or shared with all product stakeholders, for minimizing a

product's health and environmental impacts throughout all stages of the product's life cycle including end-of-life management.

(217) *Prohibited radioactive material* means radioactive material subject to Part 380 of this Title.

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

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

(220) *Public contact area* means, for the purposes of Part 361 of this Title, land with a high potential for contact by the public including, but not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, golf courses and school yards.

(221) *Public water supply* means a public water system as defined in the State Sanitary Code (10 NYCRR Part 5).

(222) *Public water supply stabilized cone of depression area* means the surface and subsurface area between a public water supply well or well field and the 99 percent theoretical maximum extent of the stabilized cone of depression of that well or well field considering all flow system boundaries and seasonal fluctuations.

(223) *Pulverized* means processed by mechanical means, including, but not limited to, crushing, grinding, chipping, or shredding, by mobile or fixed equipment that breaks and intermixes the components of waste into small fragments so that the basic constituents of these fragments are not recognizable.

(224) *Putrescible* means the tendency of organic matter to decompose with the formation of malodorous byproducts. For the purposes of Subparts 361-1 and 361-5 of this Title, uncontaminated wood and paper products are not considered putrescible.

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

(i) hold a current professional engineer's or a professional geologist's license or registration issued by the State or another state, and have the equivalent of three years of full-time relevant experience; or

(ii) be a site remediation professional licensed or certified by the Federal government, a state or a recognized

accrediting agency, to perform investigation or remediation tasks consistent with department guidance, and have the equivalent of three years of full-time relevant experience.

(226) *Qualified groundwater scientist* or *licensed New York State professional geologist* means a scientist or engineer who has received a baccalaureate or graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology or related fields to enable that individual to make sound professional judgments regarding hydrogeological investigations, groundwater monitoring, contaminant fate and transport, and corrective actions and corrective measures.

(227) *Radiopharmacy* means a specialized pharmacy, registered by the New York State Department of Education, Board of Pharmacy, that compounds and dispenses radiopharmaceuticals.

(228) *Raw sewage* means any untreated sanitary waste, consisting primarily of human feces and water.

(229) *Receiving facility* means the solid waste management facility or hazardous waste management facility authorized to accept the specified waste for transfer, storage, treatment or disposal.

(230) *Recognizable* means the individual components of waste can be readily identified by unaided visual observation.

(231) *Record drawings* means, with respect to the construction of a facility, each drawing, specification, addendum, written amendment, change order, work directive change, field order, and written interpretation and clarifications in good order and annotated to show all changes made during construction that constitutes a physical record detailing how a particular facility was constructed in accordance with the permit for the facility.

(232) *Recyclable* means a component of waste which exhibits the potential to be recycled.

(233) *Recyclables handling and recovery facility* means a facility that processes source-separated non-putrescible recyclables.

(234) *Recyclables recovery equipment* means structures, machinery or devices, singly or in combination, that are designed, constructed and required primarily to separate, process, modify, convert, treat, or prepare collected recyclable waste components. The equipment is included as part of a recyclables recovery program so that waste component materials or substances or recoverable resources may be used as a raw material for new products or for useful purposes other than energy recovery.

(235) *Recyclables recovery program* means a program approved by the commissioner, which is undertaken by a municipality consistent with requirements of section 120-aa of the New York State General Municipal Law and any local solid waste management plan (LSWMP) or comprehensive recycling analysis (CRA) in effect pursuant to Part 366 of this Title or section 360-1.11 of this Part respectively, to provide for the

environmentally sound recovery of recyclables, primarily involving the collection, aggregation and processing of recyclable materials for their use as raw materials for new products or for other useful purposes other than energy recovery, through facilities planned, designed and constructed to ensure environmental protection and to maximize the potential for recyclables recovery.

(236) *Recycle* means the series of activities by which recyclables are collected, sorted, processed, and converted into raw materials or used in the production of new products, or, in the case of organic recyclables, used productively for soil improvement. This term excludes thermal treatment (other than anaerobic digestion) or the use of waste as a fuel substitute or for energy production, alternate operating cover, or within the footprint of a landfill.

(237) *Redemption center* means the same as defined in Part 367 of this Title.

(238) *Refuse-derived fuel* means waste that is processed at a municipal solid waste processing facility and used as a feedstock in a thermal treatment facility.

(239) *Regulated waste* for purposes of Part 364 of this Title, means wastes that must be transported by persons authorized under Part 364 of this Title and which are identified in section 364-1.2 of this Title.

(240) *Regulated medical waste (RMW)* for the purpose of this Title, means waste generated in diagnosis, treatment or immunization of humans, or animals, in research pertaining thereto, or in production and testing of biologicals; provided, however, that regulated medical waste must not include hazardous waste and household medical waste, except as prescribed in subparagraph (ii) of this paragraph.

(i) Regulated medical waste includes:

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

(b) human pathological waste, including tissue, organs, body parts, excluding teeth and contiguous structures of bone and gum, body fluids removed during surgery, autopsy or other medical procedures, specimens of body fluids and their containers, and discarded materials saturated with body fluids other than urine. Human pathological waste must not include urine or fecal material submitted for purposes other than diagnosis of infectious diseases;

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

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

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

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

(ii) Regulated medical waste does not include:

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

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

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

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

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

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

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

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

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

(j) pharmaceutical waste generated in a household;

(k) contaminated foodstuffs;

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

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

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

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

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

(241) *Remediation* means the actions taken to correct or prevent a release of a contaminant into the environment.

(242) *Representativeness* means the degree to which analytical data accurately and precisely represent parameter variations at a sample location or the level of contaminants in the medium being sampled.

(243) *Representative sample* means a sample that exhibits the average or typical properties of the larger population.

(244) *Reprocessed* with respect to a single-use device, means an original device that has been used on a patient and has been subjected to additional processing and manufacturing for the purpose of an additional single use on a patient.

(245) *Residence time* means the time necessary for effective treatment of

waste at a specific temperature, pressure, irradiation level or chemical concentration.

(246) *Residential waste* means waste generated from a household.

(247) *Residue* means waste remaining after processing or treatment at a facility.

(248) *Revenue-oriented municipal facility* means any landfill that receives waste for disposal from outside its municipality for the purpose of generating revenue beyond that necessary to operate that landfill or associated solid waste management activities.

(249) *Riparian* means the special flood hazard area and any adjacent wetland integral to the surface water.

(250) *Rural* means an area in the state with a population density less than 325 people per square mile.

(251) *Saturated zone* means the zone in which the voids in the rock or soil are filled with water at a pressure equal to or greater than atmospheric. The water table is the top of the saturated zone in an unconfined aquifer.

(252) *Scrap metal processor* means a facility that receives, decommissions, processes, dismantles, stores, or recycles ferrous and/or non-ferrous metal and discarded metal-containing products, including appliances.

(253) *Secondary container* means the non-bulk outer packaging or containment system used to hold and secure a primary container. A secondary container is a disposable or reusable rigid pail, carton, drum or portable bin that is, under normal conditions of use, leak-resistant, strong enough to prevent tearing or bursting, puncture resistant, impervious to moisture, has leak-proof sides and bottom, has a tight-fitting cover or is otherwise closeable, and is in good repair.

(254) *Seismic impact zone* means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years (or two percent or greater probability in 50 years) as delineated on a United States Geological Survey (USGS) National Earthquake Hazard Reduction Program (NEHRP) Probabilistic Earthquake Acceleration and Velocity Map for the United States and Puerto Rico, or other equivalent seismic hazard map, or site-specific probabilistic seismic hazard analysis approved by the department.

(255) *Select agent* or *toxin* means a biological agent or toxin determined to have the potential to pose a severe threat to public health or safety, to animal or plant health, or to animal or plant products as outlined in 7 CFR part 331, 9 CFR part 121, and 42 CFR part 73, as incorporated by reference in section 360.3 of this Title.

(256) *Septage* means the contents of a septic tank, composting toilet, or other individual sewage treatment facility that receives raw sewage, but does not include the contents of portable toilets or holding tanks.

(257) *Service area* means the geographical area from which waste is received.

(258) *Sharp* means an item capable of causing percutaneous injury including, but not limited to, hypodermic, intravenous or other medical needles (used or unused and including self-sheathing or retractable needles); hypodermic or intravenous syringes to which a needle (used or unused) or other sharp is attached; Pasteur pipettes; scalpel blades; blood vials; and broken and unbroken glass, including microscope slides and cover slips, and broken or fractured rigid plastic ware (including plastic micropipette tips capable of causing a puncture) in contact with infectious agents. Sharps do not include those parts of syringes specifically designed to allow easy removal of a hypodermic, intravenous or other medical needle, and are intended for recycling or other disposal, provided the needle has been removed and the syringe has not been in contact with infectious agents.

(259) *Site life* for the purposes of Subpart 361-2 of this Title, means the maximum number of years that waste can be applied to an identified area or location without exceeding the cumulative loading limit.

(260) *Sludge* means solid, semi-solid or liquid waste generated by a process that separates the liquid and solid fractions of the waste from a wastewater treatment plant, water supply treatment plant, industrial process, or wet air pollution control technology but does not include the treated effluent from a wastewater treatment plant.

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

(262) *Solid waste management facility* means the same as facility.

(263) *Source separation* means the segregation of recyclables from the waste stream at the point of generation for separate collection, transportation, sale, recycling or other lawful management.

(264) *Source separation equipment* for the purposes of Part 369 of this Title means municipally-owned:

(i) containers for the source separation and temporary storage of recyclables by commercial, industrial and institutional generators, and for the source separation and temporary storage of recyclables by single-family and multiple-family dwellings before collection;

(ii) add-ons or trailers designed to modify collection vehicles to allow sorting and separation of collected wastes held for the purpose of recycling;

(iii) bins, sheds or other structures for the temporary storage of materials before transport for the purposes of recycling; and

(iv) collection vehicles specifically dedicated to holding and transporting source-separated recyclables for the useful life of the vehicles.

(265) *Source-separated organics* means organic material that has been separated at the point of generation including, but not limited to, food scraps, food

processing waste, soiled or unrecyclable paper, and yard trimmings. Source-separated organics do not include industrial waste, animal mortalities or parts, biosolids, sludge, septage, or other waste with significant pathogen content.

(266) *Source-separated recyclables* means recyclables that have been separated from the waste stream at the point of generation pursuant to State or local law or ordinance or a voluntary program where the transporter manages the materials in a source-separated manner.

(267) *Special flood hazard area* means the 100-year floodplain as designated on a map acceptable to the department.

(268) *Specific oxygen uptake rate* or *SOUR* means the mass of oxygen consumed per unit time per unit mass of total solids on a dry weight basis.

(269) *Stabilized sludge* means sludge that has been digested or otherwise treated to reduce putrescibility and odor, pathogenic organisms and, except for treatment by lime stabilization, volatile solids content.

(270) *State assistance* means funds available, other than by loan, from the State government for construction or program purposes pursuant to any State law or program.

(271) *State assistance payment* means the payment of monies by the State to municipalities or other eligible entities for undertaking, pursuant to contract, projects authorized under Part 369 of this Title.

(272) *State fiscal year* means the period of April 1st through March 31st of the following year.

(273) *Storage* means the temporary holding or containment of waste in a manner which does not constitute disposal. However, any waste retained on-site for a period in excess of 12 months constitutes disposal, unless otherwise specified in this Part or Parts 361 through 365 of this Title.

(274) *Storage area* for the purposes of Part 365 of this Title means a room, delineated area or designated space designed for storage of regulated medical waste or other infectious waste, within a building, or within or on any permanent structure attached or unattached to a building, including a loading dock, situated on property owned by or under management of the facility operator. Storage area does not include a trailer, bulk outer container, and other transportable container or vehicle not owned by the facility but situated on a facility property.

(275) *Suburban* means an area in the State with a population density between 325 and 5,000 people per square mile.

(276) *Surface impoundment* means a structure that is designed to hold waste in semi-solid or liquid form and that is not an injection well or a tank, or container.

(277) *Surface water* means lakes, bays, sounds, ponds, impounding reservoirs, perennial streams and springs, rivers, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of New York State, and all other perennial bodies of surface water,

natural or artificial, inland or coastal, fresh or salt, public or private.

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

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

(280) *Tank* means a non-earthen structure designed to contain waste in semi-solid or liquid form.

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

(282) *Third party* means a party who is neither the owner or operator of a facility, or a parent or subsidiary company of the owner or operator.

(283) *Title* means Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York, unless otherwise indicated.

(284) *Total expenditures* means all expenditures excluding capital outlays and debt repayment

(285) *Total revenues* means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by a municipality on behalf of a another party.

(286) *Toxic drug waste* means waste contaminated by or mixed with chemotherapeutic materials (*e.g.*, cytotoxic, antimetabolite or antineoplastic formulations containing pharmaceuticals that are designed to have destructive effects on human or animal cells), DEA controlled substances (*e.g.*, narcotic pharmaceuticals) or infectious nanopharmaceuticals (*e.g.*, drugs with delivery systems in the nanometer range) not regulated as hazardous waste under 6 NYCRR Part 371 of this Title.

(287) *Toxin* means the toxic biological material, whatever its origin and method of production, from plants, animals, or microorganisms including, but not limited to, bacteria, viruses, fungi, rickettsia, or protozoa; infectious substances; or a recombinant or synthesized molecule. Toxin includes any poisonous substance or biological product that may be: engineered as a result of biotechnology; produced by a living organism; or any poisonous isomer or biological product, homolog, or derivative of such a substance.

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

(289) *Transfer facility* means a facility that receives solid waste, including source-separated recyclables, for the purpose of transfer to another facility for

processing, treatment, disposal or further transfer.

(290) *Transport vehicle* means a cargo-carrying motor vehicle or part of a vehicle including an automobile, van, tractor, truck, semitrailer, cargo tank vehicle or other device or contrivance. In the case of a semi-trailer combination, the trailer is considered to be the transport vehicle; and in the case of a roll-off container, bulk package or other removable containment device, it is the mobile flatbed or the undercarriage that is considered to be the transport vehicle. Each cargo-carrying motor vehicle is a separate transport vehicle.

(291) *Transportation corridor* is the area surrounding a public road where public access is limited by institutional or physical means so as to prevent direct contact with soils.

(292) *Transporter* means a person engaged in the off-site transportation of waste by means of air, rail, highway, or water conveyance.

(293) *Treated regulated medical waste* means regulated medical waste and other infectious waste that has been properly treated by authorized facilities in accordance with Part 365 of this Title.

(294) *Treatment* means, except as used in Part 365 of this Title, any method, technique, or process designed to change the chemical or biological character or composition of any waste to recover energy or materials from it, to render it safer to transport, store or dispose of or to make it amenable for reuse, recovery, storage, or reduction in volume.

(295) *Treatment* for the purposes of Part 365 of this Title means any method, technology or process designed to irreversibly change the character or composition of any regulated medical waste or other infectious waste so that it no longer constitutes a threat to public health and the environment. Treatment does not include compaction or disinfection.

(296) *Tree debris* means waste consisting of tree and shrub parts, including branches, stumps, and trunks, as well as other similar woody vegetation. Tree debris does not include pallets or dimensional lumber and other similar wood material used in construction.

(297) *Ultimate user* for the purposes of this Title means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for a member of his household.

(298) *Unadulterated wood* means wood products, that are not painted, chemically treated (*e.g.*, pressure-treated wood or treated railroad ties), or manufactured with chemicals such as glues or adhesives (*e.g.*, plywood or particle board).

(299) *Uncontaminated* means material that is not commingled with, and does not contain the following:

(i) other unauthorized waste;

(ii) petroleum and petroleum products, except those present solely as a result of normal use of vehicles on roadways or parking areas;

(iii) pesticides except those present solely as a result of the proper application in normal agricultural or horticultural practices; and

(iv) hazardous waste.

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

(301) *Underground tank* means any stationary tank which has 10 percent or more of its volume beneath the surface of the ground or is covered by materials.

(302) *Undeveloped land* means land with no structures, no infrastructure, and no grading or site improvement.

(303) *USDOT* means the United States Department of Transportation.

(304) *USFDA* means the United States Food and Drug Administration.

(305) *Unsaturated zone* means the zone between the land surface and the water table in which the voids in the rock or soil are partially or intermittently filled with water. Saturated bodies, such as perched groundwater, may exist in the unsaturated zone.

(306) *Unstable area* means land subject to natural or human-induced forces that may damage the structural components of a facility. This includes, but is not limited to, land on which the soils are subject to mass movement.

(307) *Untreatable waste* means, as defined in ECL 27 0704, material that because of its size or composition cannot be processed by a treatment facility.

(308) *Untreated solids* means the organic materials in biosolids that have not been treated in either an aerobic or anaerobic treatment process.

(309) *Upgradient water quality* means the chemical composition of water in the water body or groundwater that is hydraulically upgradient of a facility and which is representative of the flow system before it has passed by or beneath the facility.

(310) *Urban* means an area in the State with a population density of more than 5,000 people per square mile.

(311) *Used cooking oil* means a vegetable or animal-based oil that is generated from cooking or frying foods and is a liquid at room temperature (68 degrees Fahrenheit). Used cooking oil may contain food particles and water. Used cooking oil does not include brown grease.

(312) *Used cooking oil and yellow grease processing facility* means a facility that accepts used cooking oil or yellow grease for processing to produce ingredients for manufactured products (such as animal feed, etc.) or biofuels, including biodiesel.

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

(314) *Validation testing* means procedures conducted at the site of an alternative waste treatment system, a

combustor, an effluent decontamination system or an autoclave prior to initial operation for waste treatment, the purpose of which is to demonstrate, under pre-established operating parameters, the effective treatment of regulated medical waste or other infectious waste at the installation site.

(315) *Vector* means a carrier organism that is capable of transmitting a pathogen to another organism and includes, but is not limited to, flies and other insects, rodents, birds and vermin.

(316) *Vector attraction* means the characteristic of certain waste that attracts rodents, flies, mosquitoes, vermin, or other organisms capable of transporting infectious agents.

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

(318) *Vehicle dismantling facility* means a facility that stores, decommissions, dismantles, and recycles end of life vehicles.

(319) *Volatile solids* means the amount of the total solids lost when waste is combusted at 550 degrees Celsius in the presence of excess air.

(320) *Waste oil* for purposes of Part 364 of this Title is used engine lubricating oil and any other oil, including but not limited to, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residue, animal oil, and vegetable oil which has been contaminated by physical or chemical impurities, through use or accident, and has not subsequently been re-refined.

(321) *Waste reduction projects* means projects undertaken to reduce the volume (quantity) or toxicity of materials entering the municipal solid waste stream, by reducing the volume (quantity) or toxicity of the materials at the point of generation. Waste reduction projects include planning and educational or promotional activities to increase public awareness of:

(i) methods to prevent the generation of waste;

(ii) the recovery and reuse of certain materials;

(iii) the use of refillable or reusable packaging;

(iv) audits of procedures and practices, resulting in the elimination or reduction of materials disposed;

(v) substitution of nontoxic household products; and

(vi) the promotion of backyard or on-site composting.

(322) *Waste tire* means waste which consists of whole tires (on or off the rims) or portions of tires from a vehicle or motor vehicle as defined in ECL section 27-1901, including tire casings separated for retreading and tires with sufficient tread suitable for resale. Waste tire does not include crumb rubber derived from waste tires.

(323) *Waste tire handling and recovery facility* means a facility that stores, handles and/or processes waste tires.

(324) *Waste transporter* means a person engaged in the transport of regulated waste originating or terminating at a location in New York State.

(325) *Water table* means the surface of a body of unconfined groundwater between the saturated zone and the unsaturated zone at which the pressure is equal to that of the atmosphere. The groundwater table does not include the potentiometric head level in a confined aquifer.

(326) *Wood debris* means unadulterated wood pallets and unadulterated wood that originates from wood product manufacturing or other similar sources and does not include construction and demolition debris wood.

(327) *Working face* means that portion or portions of a landfill where waste is deposited and compacted before placement of operating cover material.

(328) *Yard trimmings* means, leaves, grass clippings, garden and other plant debris, small tree branches and limbs (less than four inches in diameter). Yard trimmings does not include agricultural waste.

(329) *Yellow grease* means vegetable or animal-based oil that is generated from cooking or frying foods and is a solid at room temperature (68 degrees Fahrenheit). It may contain food particles and water. Yellow grease does not include grease trap waste.

Section 360.3 References.

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

(a) United States Code

(1) Marine Protection, Research and Sanctuaries Act of 1972 33 U.S.C. Section 1401 'et seq.' & 16 U.S.C. Section 1431 'et seq.' (1972) as amended by Pub. L 110-114 (2007)

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

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

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

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

(4) 29 CFR Part 1910 :

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

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

(5) 40 CFR:

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

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

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

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

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

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

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

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

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

(7) 49 CFR

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

(ii) Part 173 Sections 173.134, 173.196, 173.197 and 173.199 (October 1, 2014) (iii) Part 387 (October 1, 2014).

(c) United States Environmental Protection Agency:

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

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

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

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

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

(d) Other:

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

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

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

Section 360.4 Transition

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

(a) A permitted facility or transporter must comply with the conditions of the permit and the solid waste management facility regulations in effect on the day when the permit was issued for the duration of the permit, unless a modification under Part 621 of this title is approved. At the time of

permit renewal, the application from a facility operating under the Part 360 regulation in effect prior to November 4, 2017 will be considered a permit modification request and the facility or transporter must comply with the regulations that pertain to the type of facility or transporter in effect at the time of permit renewal. Nothing in this subdivision can be construed to limit or prohibit a department-initiated modification of a permit under the provisions of Part 621 of this Title.

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

(c) Subpart 361-5 Facilities

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

(2) Existing facilities that hold registrations issued prior to November 4, 2017 under section 360.16 of this Part and which now require a permit to operate under Subpart 361-5 of this Title must have a complete application on file with the Department within 365 days of the effective date of this rulemaking. A complete application must contain sufficient information to define the activities to be conducted at the facility, but it need not include all the discrete technical details that will be required to be included for the technical review, and any applicable State Environmental Quality Review Act requirements must be commenced, but a negative declaration or acceptance of a draft environmental impact statement need not be completed by the end of the 365-day term. Facilities must remain in compliance with the conditions of the registration issued under section 360.16 of this Part until a permit is issued by the department.

(d) Facilities subject to section 360.13 of this Part must comply with all applicable requirements of those regulations within 180 days of the effective date of this rulemaking.

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

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

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

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

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

(h) An expansion of any facility is subject to all applicable requirements of this Part and Parts 361, 362, 363, 365, 366 and Subpart 374-2 of this Title.

(i) Facilities that closed in compliance with the Part 360, 361, 362, 363 and 365 regulations in effect on the date of closure remain subject to all the requirements in effect on the date of closure. For landfills, the requirements of Subpart 363-3 and Section 363-9.7 of this Title also apply.

(j) The following financial assurance criteria apply to permitted and registered facilities.

(1) A registered facility that did not have a valid financial assurance mechanism in place on the day before November 4, 2017, but which is required to obtain financial assurance after that date, must comply with the financial assurance provisions of section 360.22 of this Part by November 4, 2021.

(2) A registered facility that had a valid financial assurance mechanism in place prior to November 4, 2017, and is required to obtain additional financial assurance after that date, must comply with the financial assurance provisions of section 360.22 of this Part by November 4, 2023.

(3) A permitted facility that had a valid financial assurance mechanism in place prior to November 4, 2017, and is required to obtain additional financial assurance after that date, must comply with the financial assurance provisions of section 360.22 of this Part at the time of permit renewal.

(k) In addition to the other criteria in this section, the following criteria apply to landfills.

(1) Subsequent landfill development, such as the construction of additional lined landfill areas, or vertical height or waste loading

(2) increases for areas included in the permit but for which construction plans and drawings have not been approved by the department, must comply with the design, construction and certification requirements of Part 363 of this Title.

(3) Construction of the first landfill cell, for which construction plans and drawings were approved by the department prior to 180 following the effective date of this rulemaking must comply with the design, construction and certification requirements of the Part 360 and Subpart 363-6 regulations in effect on the date of that approval. Construction of any subsequent landfill cells must comply with the design, construction and certification requirements of Part 363 of this Title.

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

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

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

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

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

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

asphalt pavement, brick, glass, soil and rock until the authorized capacity is utilized.

(l) Beneficial use.

Pre-determined beneficial use determinations in effect prior to November 4, 2017 that are no longer included in section 360.12 of this Part expired on May 4, 2018 but may be eligible for a case-specific beneficial use determination. All beneficial use determinations in effect prior to November 4, 2017 are subject to the reporting requirements of this Part on November 4, 2017. In addition, all beneficial use determinations in effect prior to November 4, 2017 that did not contain a condition with a specific expiration date expired on May 4, 2018 unless a request for renewal was submitted to the department by May 4, 2018. In those instances, the beneficial use determination will remain in effect until the department notifies the applicant of renewal approval or denial.

(m) Local solid waste management plans.

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

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

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

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

(3) applicants with education, promotion, planning and coordination projects who were on the waiting list that existed on November 3, 2017 and seek reimbursement for costs that will occur after November 4, 2017 must

submit an application in accordance with section 369-3.1(b) of this Title.

(o) State assistance grants for landfill closure/landfill gas projects.

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

Section 360.5 Severability.

If any provision of this Part or of Parts 361, 362, 363, 364, 365, 366, 369, or Subpart 374-2 of this Title or the application of any provision of any of these Parts to any person or circumstance is held invalid, the remainder of this Part and of Parts 361, 362, 363, 364, 365, 366, 369, and Subpart 374-2 of this Title, and the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 360.6 Submission requirements and use of professional engineers and certified laboratories.

(a) Engineering related documents, except quarterly and annual reports, submitted under any provision of this Part or of Parts 361, 362, 363, 365, or Subpart 374-2 of this Title for a permitted facility must be submitted under the stamp and signature of a professional engineer licensed and currently registered to practice in the State of New York. All documents submitted to the department must be submitted in print as well as in an electronic format acceptable to the department.

(b) Any laboratory tests or analyses required under this Part and Parts 361, 362, 363, and 365 of this Title, including those for which the commissioner of the New York State Department of Health issues certificates of approval, must be performed by a laboratory certified to perform those tests or analyses pursuant to the New York State Department of Health Environmental Laboratory Approval Program (ELAP) or Clinical Laboratory Evaluation Program (CLEP), unless otherwise specified in this Part or Parts 361-365 of this Title.

Section 360.7 Inspection of facilities.

Department personnel can enter and inspect any facility and any property, premises, books, papers, documents, or records of the facility, at all reasonable times, locations, whether announced or unannounced, for the purpose of ascertaining compliance or noncompliance with an exemption, registration, permit, administrative or judicial order or decree, the ECL, and this Title. The construction or operation of a facility in this state is deemed to constitute consent to inspection of the facility and of the records and documents required to be maintained under this Part or under Part 361, 362, 363, 365, or Subpart 374-2 of this Title as they pertain to the facility.

(a) The refusal to consent to inspection of the facility or of any of the records or documents required to be maintained under the provisions of this Part or Part 361, 362, 363, 365, or Subpart 374-2 of this Title as they pertain to the facility, established after an opportunity for a hearing, can result in revocation of any and all facility permits issued by the department or in revocation of the facility’s status as a registered facility, as

well as any other penalties as the law may provide.

(b) In a hearing to revoke a permit or registration based on a refusal to consent to inspection, the hearing will be limited to the following issues:

(1) whether authorized department staff requested access to the facility or to any of the records or documents required to be maintained under this Part or under Part 361, 362, 363, 365, or Subpart 374-2 of this Title;

(2) whether the owner or operator was given sufficient warning, in clear or unequivocal language before the refusal, that the refusal could result in revocation of the registration or permit; and

(3) whether the owner or operator refused to consent to the inspection.

Section 360.8 Prohibited actions.

(a) Special flood hazard areas.

A new facility or the lateral expansion of an existing facility must not be located in a special flood hazard area, unless provisions acceptable to the department have been made to prevent flooding of the facility, constriction of floodwaters, reduction in the temporary storage of floodwaters, and washout of solid waste. The facility must not pose a significant hazard to human life, wildlife, fisheries, or land or water resources.

(b) Endangered species.

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

(c) Wetlands.

A new facility or the lateral expansion an existing facility must not occur within the boundary of either state or federally-regulated wetlands, unless the required permits are obtained from the U.S. Army Corps of Engineers and/or the department.

(d) Long Island.

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

(e) Cannabis.

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

Section 360.9 Prohibited activities.

(a) Except as provided in sections 360.4 and 360.14 of this Part, a person or persons must not:

(1) construct or operate a facility, or any phase of it, except in accordance with a registration or a permit issued by the department; nor

(2) modify or expand any aspect of the approved construction or operation of a permitted facility in advance of

receiving an approval from the department.

(b) Person(s) must not:

(1) allow the management of waste on land under their ownership, custody, or control in violation of:

(i) any provision of this Title, or the ECL;

(ii) any term or condition of any permit or registration issued pursuant to this Title;

(iii) any term or condition of any final determination or order of the commissioner made pursuant to the ECL, whether issued on consent or otherwise; or

(iv) any term or condition of any judicial order or decree, whether issued on consent or otherwise;

(2) construct or operate a facility in violation of:

(i) any provision of this Title, or the ECL;

(ii) any term or condition of any permit or registration issued pursuant to this Title;

(iii) any term or condition of any final determination or order of the commissioner made pursuant to the ECL, whether issued on consent or otherwise; or

(iv) any term or condition of any judicial order or decree, whether issued on consent or otherwise;

(3) dispose of waste, beyond initial collection, except at:

(i) a disposal facility exempt from the requirements of Part 360 or 363 of this Title; or

(ii) a disposal facility authorized by the department to accept the waste;

(4) discard waste, beyond initial collection, except at a facility or collection event allowed under this Part and Parts 361, 362, 363, 365, or Subpart 374-2 of this Title;

(5) accept waste except at:

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

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

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

(c) In the case of a facility or collection event owned or operated by or on behalf of a municipality that is in violation of any provisions of this Title, in addition to any other penalties the department may assess, the department may suspend the making of

payments of State assistance as provided under Part 369 of this Title.

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

(e) A person who operates, or who causes or allows the operation of a facility or collection event without a requisite permit or registration is also subject to penalties arising out of that person's failure to submit to the department all reports, plans, and other materials relating to the facility's or collection event's operation and closure identified in Parts 360, 361, 362, 363, 365, 366, or Subpart 374-2 of this Title as they pertain to the facility or collection event; and each failure will constitute a separate and distinct violation and a violation separate and distinct from the violation of operation of the facility or collection event without the requisite permit or registration.

Section 360.10 Variances.

(a) Applicability.

(1) Unless otherwise precluded by law, the department may, upon written application, grant a variance from one or more specific provisions contained in Parts 360, 361, 362, 363, 364, 365, or 366 of this Title, under the conditions set forth in this section.

(2) Variances will not be granted for the following:

(i) any provision contained in Part 363 of this Title which would authorize a landfill to be designed, constructed, operated, closed, or monitored in a manner less stringent than as provided in 40 CFR Part 258, Criteria For Municipal Solid Waste Landfills, as incorporated by reference in section 360.3 of this Title;

(ii) the content of any definition contained in Parts 360, 361, 362, 363, 364, or 365, of this Title;

(iii) the requirements of any exemption, or pre-determined beneficial use determination;

(iv) the requirements related to registered facilities;

(v) the requirements contained in any provision which is required by federal or state law; or

(vi) a requirement to obtain a permit or registration.

(b) Variance applications.

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

(1) identify the specific provisions from which a variance is sought;

(2) demonstrate that compliance with the identified provision would, on the basis of site-specific conditions, impose one or more of the following: an unreasonable financial, technological, or safety burden on the person or the public; and

(3) demonstrate that the proposed variance is expected to result in equivalent environmental performance and will have no significant adverse impact on public health, safety or welfare, the environment or natural resources.

(c) In granting any variance under this section, the department may impose specific conditions, as necessary.

(d) The department may modify or revoke any variance approval based on discovery of any of the following:

(1) materially false or inaccurate statements in the variance application or supporting papers;

(2) failure by the permittee to comply with any terms or conditions of the variance approval;

(3) exceeding the scope of the project as described in the variance application;

(4) material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the granting of the variance; or

(5) noncompliance with previously approved variance conditions, orders of the commissioner, any provisions of the ECL or regulations of the department, related to the permitted activity subject of the variance.

(e) Issuance of a variance in no way limits or prohibits department-initiated modification or revocation of a facility's permit under the provisions of Part 621 of this Title.

Section 360.11 Comprehensive recycling analysis.

The following sets forth the requirements for preparation of a municipality's comprehensive recycling analysis (CRA). The purpose of a CRA is to ensure the development and implementation of a sound, long-range, recyclables recovery program that is an integral component of a sustainable solid waste management system by a municipality, which maximizes the recovery of recyclables and reduces the amount of waste managed through thermal treatment or disposal. A CRA must consider the objectives of the State solid waste management policy set forth in section 27-0106 of the ECL and consider the goals and objectives of the current State solid waste management plan and provide for a 10-year planning period. For the purpose of Parts 360, 361, 362, 363, 365, and 369, a Local Solid Waste Management Plan satisfying the requirements of Part 366 of this Title will satisfy the preparation requirements of a CRA.

(a) CRA contents.

The CRA must include the following:

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

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

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

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

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

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

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

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

(2) An evaluation of existing efforts to recover recyclables. This evaluation must include the following:

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

(ii) a summary of any efforts to enforce local disposal and recycling laws during the previous planning period;

(iii) an identification of any volume-based pricing incentives or other financial incentives used;

(iv) a summary of current recycling market agreements;

(v) a description of any local transporter licensing requirements if applicable;

(vi) a summary of recycling data collection efforts; and

(vii) a summary assessment of any data gaps and information needs.

(3) An identification of available and potential markets for recovered recyclables. This identification must be determined by:

(i) a review of available information concerning potential markets;

(ii) a survey of potential markets for recovered recyclables including an identification of all local and regional markets contacted, and the material quality requirements and market pricing structures, if available from each of the markets contacted; and

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

(4) A description of the existing administrative and financial structure of the municipality(ies). The description must include:

(i) an organizational chart(s) depicting the staff or entities responsible for implementing each element of the solid waste management system, including but not limited to, operations, administration, finance, outreach and education, enforcement, and data collection and evaluation;

(ii) the financial structure for all solid waste management facilities and programs operated or administered by the municipality(ies) including:

(a) costs, including capital investments, insurance, operation, maintenance, closure and post-closure costs (if applicable), administration, and financing;

(b) revenues, including fees, fines, and recyclables or recovered energy revenues, general fund contributions, special district charges; and

(c) funding mechanisms that are used to finance any facility operations, maintenance, and programs and events administered by the municipality(ies);

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

(a) the source separation laws adopted pursuant to section 120-aa of the General Municipal Law (GML);

(b) waste importation and/or disposal prohibitions, flow control or local waste transporter licensing laws;

(c) local product stewardship, green procurement and sustainability initiatives;

(d) zoning laws;

(e) local environmental justice requirements; and

(f) a description of any other local laws adopted or used to implement the solid waste management programs of the municipality that could affect recycling, an assessment of their

effectiveness, and a description of any proposed amendments, or new legislation being considered.

(5) An identification of alternative source separation/recyclables recovery programs considered. This identification must include a qualitative assessment of alternatives and enhancements to the existing solid waste management program that will decrease the amount of waste managed through disposal and thermal treatment by increasing waste reduction, reuse and the recovery of recyclables to the maximum extent practicable over the term of the planning period. The assessment must address, at a minimum, the introduction or enhancement of the following efforts or describe why they are not applicable:

(i) waste reduction programs;

(ii) reuse programs;

(iii) recyclables recovery programs for paper, metal, glass, plastic, and textiles;

(iv) organics recovery programs for food scraps and yard trimmings;

(v) programs to develop or improve local and regional markets for recyclables;

(vi) enforcement programs;

(vii) incentive-based pricing;

(viii) education and outreach;

(ix) data collection and evaluation efforts;

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

(xi) flow control and districting potential;

(xii) C&D debris reduction, including deconstruction, reuse and recovery programs; and

(xiii) private sector management and coordination opportunities.

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

(6) Alternative evaluation. An evaluation of the alternatives determined to be applicable for either enhancements of existing source separation/recyclables recovery program elements or the addition of program elements. For each alternative evaluated, the following must be addressed:

(i) administrative/technical impacts. An evaluation of the economic and administrative feasibility of implementation within the municipality(ies) including the following information:

(a) the estimated quantitative and qualitative impact of each alternative on the various components of the waste stream;

(b) the appropriate types and sizing of facilities or programs needed, based on the projected quantities and composition of the solid waste generated;

(c) a summary of the cost data used for evaluation, including consideration of any available life-cycle analysis data for the various alternatives; and

(d) the impact or effect on natural resource conservation, energy production and employment-creating opportunities;

(ii) jurisdictional impacts. An analysis of the impact on neighboring planning units and other neighboring jurisdictions, and environmental justice within the municipality including:

(a) an assessment of interest in participation by other neighboring planning units or other neighboring jurisdictions;

(b) alternatives that would be available if any neighboring planning units or other neighboring jurisdictions participated;

(c) comments and recommendations received from any neighboring planning units or other neighboring jurisdictions;

(d) an assessment of the environmental justice impacts in the municipality.

(7) Selected alternatives and recyclables recovery program identification. After the various alternatives have been evaluated, a summary of the preferred alternatives and programs to be pursued by the municipality(ies) must be described, including:

(i) the alternatives chosen and reasons for their selection;

(ii) an identification of expected qualitative and quantitative impacts, including, but not limited to, waste reduction, reuse, materials recovery, increased participation in recovery opportunities and product stewardship programs, as well as any economic, administrative or partnership benefits;

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

(iv) an identification of any new or modified local laws, ordinances or regulations that may be required to fully implement the selected alternatives.

(8) Implementation schedule. An implementation schedule, must be included with specific dates for implementation of the selected program, including dates to attain specified, progressively decreasing quantities of MSW generated in the municipality that will be managed through thermal treatment and disposal.

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

(i) provided for each year of the planning period based on the implementation plan and schedule.

(ii) based on changes in population and must account for seasonal

variations and any additional applicable factors impacting waste generation.

(iii) accompanied with an explanation of the assumptions and data used for:

(a) projected MSW generation;

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

(c) progressively decreasing quantities of MSW generated in the municipality managed through thermal treatment and disposal.

(b) CRA approval process.

(1) A CRA submitted to the department for review and approval must be in a format acceptable to the department.

(2) The department will review the CRA to determine whether it adequately addresses all required elements identified in this section and will provide written notification to the municipality(ies) of its determination within 120 calendar days after the date the CRA is received. If written notification is not provided within 120 calendar days, the CRA will be considered approved.

(i) If the department determines that the CRA adequately addresses all required elements, the department will provide written notification to the municipality(ies) that the CRA is approved.

(ii) If the department determines that the CRA does not adequately address all required elements, the municipality(ies) will be advised of the deficiencies and will be required to resubmit a revised CRA for review. For the second and subsequent reviews of the revised CRA, the revised CRA will be considered approved if written notification to the municipality(ies) advising of any deficiencies is not provided from the department within 60 calendar days of receipt of the revised CRA.

(c) CRA revocation.

(1) The department may revoke approval of a CRA if the municipality fails to adhere to all or a substantial portion of its commitments and responsibilities under this section or the approved CRA. The department will issue a written declaration of its intent to withdraw approval of the CRA that identifies what must be provided to bring the CRA back into effect. The CRA will no longer be in effect within 30 calendar days of the declaration of intent if no objection is received from the municipality.

(2) Within 30 calendar days of receipt of the written declaration from the department, the municipality may submit a written objection to the department giving reasons why the CRA should not be revoked. The department will respond to the municipality within 30 days of receipt of the objections and either ask for additional information, approve the request to keep the CRA in effect, or revoke approval of the CRA.

(3) The municipality has the right to request a hearing if the department

issues a written notice of intent to revoke approval of the CRA. Such requests must be received by the department within 30 days of the issuance of a written declaration of intent to revoke. to revoke a CRA

(d) CRA reporting.

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

(2) The annual report must include the following:

(i) implementation schedule progress;

(ii) waste generation and recovery data; and

(iii) updated MSW projections.

Section 360.12 Beneficial use.

(a) Applicability.

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

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

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

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

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

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

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

(4) The department reserves the right to require a permit pursuant to section 360.17 of this Part for land placement, including mine reclamation or subsurface mine filling, in place of a beneficial use determination, if deemed necessary by the department to prevent adverse impacts to public health and the environment. Proposed land placement requiring a permit may include, but are not limited to the following:

(i) Receipt of a fee or other form of consideration for acceptance of any quantity of material;

(ii) Receipt of material not conforming to pre-determined uses in this section and section 360.13 of this Part;

(iii) Receipt of material in quantities of more than 100,000 cubic yards at any one site;

(iv) Receipt of material from more than one source;

(v) Receipt of material over a period exceeding 365 days.

(b) Unacceptable uses.

Wastes used in the following manner are not eligible for a beneficial use determination:

(1) the use of flowable fill for mined land reclamation;

(2) the encasement of waste tires in concrete;

(3) the use of waste tires as fences or screening.

(c) Pre-determined beneficial uses.

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

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

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

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

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

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

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

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

(i) uncontaminated newsprint used as animal bedding;

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

(iii) street sweepings, car wash grit, and water system catch basin materials that consist of sand and

gravel and are free from litter and objectionable odors, when used in the following applications:

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

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

(*c*) or in locations subject to commercial or industrial land use;

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

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

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

(*c*) the tires must meet one of the following:

(*1*) be cut in half;

(*2*) have one side wall removed and placed with the cut side facing down;

(*3*) have sufficient number of holes drilled in them to prevent retention of water; or

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

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

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

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

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

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

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

(ix) except in Putnam County, Nassau County, Suffolk County, and Westchester County, material consisting only of recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), asphalt pavement or millings, brick, rock, Fill Type 1, Fill Type 2, Fill Type 3 or mixtures of these materials. De minimis amounts of wood included with these materials are acceptable under this determination. The material must meet the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

or wood included with these materials are acceptable under this determination.

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

(3) The following cease to be waste when the material meets the requirements for the intended use identified in this paragraph:

(i) ground granulated blast-furnace slag for use as a raw feed in the manufacture of cement and in concrete which meets an industry standard acceptable to the department;

(ii) unadulterated wood combustion ash for use as a soil amendment, provided the application rate is limited to the soil pH requirement of the crops grown;

(iii) industrial wastes historically used as an ingredient in a manufacturing process;

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

(v) coal combustion fly ash which meets an industry standard acceptable to the department for use in concrete, concrete products, light-weight block, light-weight aggregate and flowable fill;

(vi) flue gas desulfurization or other gas-scrubbing byproducts when used to replace manufactured gypsum or manufactured calcium chloride, except for land application;

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

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

(ix) uncontaminated, recognizable asphalt pavement and asphalt millings for use as an ingredient in asphalt pavement or in other paved surface construction and maintenance applications if separated from other material prior to any necessary processing at an authorized facility and stored in a separate area as a discrete material stream. De minimis amounts of soil or wood included with these materials are acceptable under this determination.

(x) asphalt pavement and asphalt millings received at an asphalt manufacturing plant for incorporation into an asphalt product. De minimis

amounts of soil or wood included with these materials are acceptable under this determination.

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

(xii) clay, till, or rock excavated as part of navigational dredging, which is separated from overlying navigational dredged material and used as fill or aggregate.

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

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

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

('a') commercial aggregate; or

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

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

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

(i) materials produced by a recyclables handling and recovery facility for use as an ingredient in a manufacturing process or other acceptable end use. For glass, this includes uncontaminated glass-derived aggregate that meets a governmental or industrial organization specification acceptable to the department. The glass aggregate must not exceed the following measure of non-glass material content:

(a) five percent by volume; or

(b) 0.05 percent by mass of paper and one percent by mass of other non-glass materials;

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

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

(iv) tire-derived aggregate for use as:

(a) residential on-site septic system drainage media, provided the tire-derived aggregate meets the specification found in 10 NYCRR Appendix 75-A;

(b) mulch provided the tire-derived aggregate has a nominal size of less than one inch in any direction, is at least 99.9 percent wire free, and has no protruding wire; or

(c) playground surface and athletic field material, provided the tire-derived aggregate has a nominal size of less than 3/8 inches in any direction, is at least 99.9 percent wire free, and has no protruding wire;

(v) scrap metal;

(vi) used cooking oil and yellow grease processed in accordance with Subpart 361-8 of this Title, for use in animal feed, soap or other products, provided an applicable industry and/or government standard is met.

(5) By March 1st following each calendar year of operation, any person that distributes 10,000 tons or more of any pre-determined beneficial use material must submit a report to the department on a form acceptable to the department identifying the type and quantity of material beneficially used during the previous calendar year.

(d) Case-specific beneficial use determinations – general.

(1) For a determination that a specific waste may be beneficially used either in a manufacturing process to make a product, or as an effective substitute for a commercial product or raw material, a written petition must be submitted to the department.

(2) A petition must contain the following information:

(i) a detailed description of the waste and the proposed use of the waste;

(ii) a description of the annual quantity, by weight and volume, of the waste proposed for beneficial use;

(iii) a detailed description of the source, process, or treatment systems from which the waste originated, including a list of all chemicals and the quantity of all chemicals added during these processes;

(iv) analytical data concerning the chemical and physical characteristics of the waste and of each type of proposed product, and the chemical and physical characteristics of any analogous raw material or commercial product for which the waste is proposed to be an effective substitute;

(v) justification that the waste functions as an effective substitute for the commercial product or raw material and that the use meets or

exceeds governmental or industry standards or specifications;

(vi) demonstration that there is a known or reasonably probable market for the intended use of the quantity and type of waste and of all proposed products by providing one or more of the following:

(a) a contract or agreement to purchase the proposed product or to have the waste used in the manner proposed; or

(b) other documentation that a market for the proposed product or use exists; and

(vii) demonstration that the management of the waste when used in accordance with the beneficial use will not adversely affect public health and the environment by providing, at a minimum:

(a) a waste control plan that describes the following:

(1) procedures for periodic testing of the waste, and as necessary, the product;

(2) the type of storage and the maximum anticipated volume of the waste to be stored before beneficial use. Storage before beneficial use must not exceed 365 days, unless a different time period for storage is approved by the department;

(3) procedures for run-on and run-off control at the storage areas for the waste; and

(4) a program and implementation schedule of best management practices designed to minimize uncontrolled dispersion of the waste before and during all aspects of its storage as inventory and during beneficial use;

(b) a comparison of the chemical and physical characteristics of the waste to applicable or relevant and appropriate criteria for the proposed beneficial use; and

(c) other information as the department determines to be appropriate to demonstrate that the proposed use will not adversely affect public health and the environment.

(3) The department will determine that the use constitutes a beneficial use only if the following criteria are satisfied:

(i) the petition contains all necessary technical information as required under paragraph (2) of this subdivision;

(ii) the essential nature of the proposed use of the waste constitutes use rather than disposal;

(iii) the waste will be managed as a commodity and intended to function or serve as an effective substitute for an analogous commercial product or raw material;

(iv) at the point of beneficial use, the waste will not require decontamination or other processing;

(v) a market exists or is reasonably certain to be developed for the proposed quantity and use of the waste or the product into which the waste is proposed to be incorporated;

(vi) heavy metals or other pollutants present in the waste are present at acceptable concentrations for the proposed product or use as determined by the department. For use of materials on the land as fill or cover, the material must not be used in ecologically sensitive areas and must not contain pollutants above the concentrations indicated in section 375-6.8(b) of this Title, for Residential Use and Protection of Groundwater, unless the petitioner can demonstrate properties or characteristics unique to the material or use that are acceptable to the department. Nothing in this subparagraph will have the effect of modifying any existing Memorandum of Understanding to which the department is a party; and

(vii) the proposed use will not significantly adversely affect public health and the environment.

(4) Approved petitions will be subject to conditions the department deems necessary to prevent adverse environmental impacts. When granting a beneficial use determination, the department will determine the precise point at which the waste ceases to be waste. Unless otherwise determined by the department, that point occurs when it is received for use in a manufacturing process, or for use as an effective substitute for a commercial product or raw material.

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

(6) Processing and review of a petition will be suspended if an enforcement action has been commenced against the petitioner for alleged violations of the ECL or other environmental laws administered by the department at the facility or site that is the subject of the petition.

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

(8) By March 1st following each calendar year of approval, the petitioners of an approved case-specific beneficial use determinations must submit a report to the department, on a form acceptable to the department that includes the quantity of waste beneficially used during the previous calendar year of operation and any analytical data or other information required in the approved case-specific beneficial use

determination. The report must also contain a signed statement by a responsible official of the petitioner's organization that the organization has been in compliance with the terms and conditions of the approved case-specific beneficial use determination during the reporting period.

(e) Case-specific beneficial use determinations - navigational dredged materials (NDM).

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

(2) Case-specific NDM beneficial use determination petition. A written petition must be submitted to the department, containing the following information:

(i) the source of the NDM, estimated quantity for use, and the proposed schedule of use;

(ii) a sampling plan that describes how representative samples of the NDM will be obtained and the analytical methods that will be used to assess the samples;

(iii) analytical results of the untreated, unamended NDM and of the treated or amended NDM in compliance with subdivision (d) of this section;

(iv) a description of known or probable markets for the intended use of the NDM or end product, including one or more of the following:

(a) the location and description of the placement site and a description of the intended end use of the NDM or end product at that site;

(b) a contract to purchase the NDM or end product after processing, or to use the NDM in the manner proposed;

(c) a demonstration that the NDM or end product after processing complies with industry standards and specifications for that product; or

(d) other documentation that a legitimate market for the NDM or end product exists;

(v) a material management plan that describes the following:

(a) the disposition of any waste (*e.g.*, separated debris) which may result from processing of the NDM;

(b) a description of the type of storage and maximum anticipated inventory of NDM before being used;

(c) procedures for run-on and run-off control at the storage areas for the NDM and end product after processing;

(d) a program and implementation schedule of best

management practices designed to minimize uncontrolled dispersion of the NDM before and during all aspects of its processing, transportation, and storage as inventory and during beneficial use;

(e) if applicable, a description of how unamended or amended NDM that will be used as structural fill will attain project-specific fill geotechnical or engineering specifications when received at the site of placement; and

(vi) a detailed description of all amendment or treatment that will occur before NDM use. The description must include the type and quantity of amendment or treatment procedures, and location of all processing operations.

(3) General provisions.

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

(ii) NDM approved for beneficial use under this section ceases to be a waste when it meets the technical requirements or specifications for the intended end use, provided it is not stored for longer than 365 days after meeting the technical requirements or specifications, unless otherwise approved by the department.

(4) Sampling protocol and analytical methods. In support of a petition for a beneficial use determination, the petitioner may submit analytical results generated for another purpose, including 'in-situ' sediment sampling performed in support of a state or federal permit to dredge, which may not conform to the sampling described in this paragraph.

(i) Untreated, unamended NDM and treated or amended NDM must be analyzed for the following parameters, unless otherwise approved by the department, using department-approved analytical methods: volatile organic compounds; semivolatile organic compounds; pesticides; polychlorinated biphenyls; metals; sulfides; salt content; grain-size distribution; chlorinated dioxins/furans; carbazole; mirex; hexavalent chromium and cyanides. In addition, the department may require the submission of Synthetic Precipitation Leaching Procedure (EPA SW-846 Method 1312) or Toxicity Characteristic Leaching Procedure (EPA SW-846 Method 1311) results, as incorporated by reference in section 360.3 of this Part, and other data needed to justify the proposed end use (*e.g.*, nutrient content, geotechnical testing, etc.).

(ii) The NDM must be analyzed as prescribed in the following table unless otherwise approved by the

department. If the source of the NDM has a history of significant contamination or highly variable contamination, additional sampling will be required. The sampling plan must be submitted and approved by the department prior to sampling the NDM.

TABLE: Analyses Required for NDM

Cubic Yards of NDM	Minimum Number of Analyses
Under 5,000	1 for each 1,000 Cubic Yards
5,000-10,000	6
10,000-20,000	7
20,000-30,000	8
Over 30,000	*

*The department will require a project-specific approved sampling frequency.

(iii) All samples taken must be representative of the NDM that will be used. A written record of all sampling details must be submitted to the department and must include the date, location, and protocol used to obtain representative samples.

(iv) Statistical analysis in accordance with USEPA SW-846, as incorporated by reference in section 360.3 of this Part, may be used to justify compliance of NDM with contaminant limits where results show an exceedance.

(f) Case-specific beneficial use determinations – gas storage brine or production brine (brine).

(1) Applicability. In addition to the criteria outlined in subdivision (d) of this section, this subdivision applies to the use of gas storage brine or production brine on roads to control dust, stabilize unpaved road surfaces, reduce ice, or reduce snow.

(2) Case-specific brine beneficial use determination petition. The department will determine in writing, on a case-specific basis, whether the petition constitutes a beneficial use, based on requirements described in this section and subdivision (d) of this section. A written petition must be submitted to the department, containing the following information:

(i) the name, address and telephone number of the person or entity that is road spreading the brine;

(ii) a map or a listing of roads where brine will be applied;

(iii) an original, signed, and dated brine spreading authorization letter from the government agency or other property owner of the road(s);

(iv) the physical address of the brine storage location(s) or wells from which the brine is transported;

(v) a description of any system used at the well location(s) to separate brine and minimize any oil or gas in brine;

(vi) an analysis of a representative sample of the brine, obtained at a proposed point of use, for the parameters found in subparagraph (3)(iii) of this subdivision. All analyses must be performed by a laboratory certified by the New York State Department of Health using methods specified in this subdivision or otherwise acceptable to the department;

(vii) a road spreading plan that includes a description of the procedures to prevent the brine from flowing or running off into streams, creeks, lakes and other bodies of water. The plan should include, at a minimum:

(a) the type of use: dust control, road stabilization, or ice and snow control;

(b) a description of how the brine will be applied, including the equipment to be used and the method for controlling the rate of application;

(c) the proposed rate and frequency of application; and

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

(3) Conditions for brine use. The conditions set forth below apply to all case specific beneficial use determinations for gas storage brine and production brine on all roads.

(i) Only gas storage brine and production brine from wells producing from formations other than the Marcellus Shale are approvable for road spreading.

(ii) Road spreading of drilling fluids and flowback water is prohibited.

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

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

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

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

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

(iv) Methods must be employed at the well site to minimize the amount of hydrocarbons present in the brine.

(v) Brine application within 50 feet of a stream, creek, lake, or other body of water is prohibited.

(vi) Brine application measurement methods must be used to ensure that brine application rates are within limits.

(vii) The vehicle used for brine application must be dedicated for that use or must be cleaned to remove any waste material prior to loading with brine.

(viii) Personnel that will be applying brine must be properly trained and educated on the equipment that will be used for brine application, the allowable application rates, and the use restrictions.

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

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

(*a*) the source of the brine;

(*b*) analytical data;

(*c*) total amount of brine applied;

(*u*) dates of brine application;

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

(*f*) effectiveness of brine application (excellent, good, fair, poor), etc; and

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

(xi) Brine approved for beneficial use under this section ceases to be a waste when it meets the technical requirements or specifications for the intended end use.

(4) The following additional conditions set forth below apply to case specific beneficial use determinations for gas storage brine and production brine on unpaved roads for dust control and road stabilization:

(i) brine application is prohibited between sundown and sunrise;

(ii) brine application is prohibited on sections of road with a grade exceeding 10 percent;

(iii) brine application is prohibited on wet or frozen roads, during rain, or when rain is imminent;

(iv) brine application for dust control must occur only on unpaved roads;

(v) a spreader bar or similar device designed to deliver a uniform application of brine must be used;

(vi) the application vehicle must have brine shut-off controls in the cab;

(vii) brine cannot be applied directly to vegetation near the surface that is being treated;

(viii) application of brine within 12 feet of structures crossing bodies of water or crossing drainage ditches is prohibited;

(ix) when the application vehicle stops, the discharge of brine must stop;

(x) the vehicle must be moving at least five miles per hour when brine is being applied.

(5) The following additional conditions set forth below apply to case specific beneficial use determinations for gas storage brine and production brine on roads for ice and snow reduction:

(i) the brine application must not be used at a rate greater than needed for snow and ice control.

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

(a) Applicability.

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

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

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

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

(1) Fill Type 1

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

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

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

(2) Fill Type 2 and Fill Type 3

(i) Fill Type 2 and Fill Type 3 generated outside of the New York City Metropolitan Area Waste Impact Zone – once a determination

has been made that the material is Fill Type 2 or Fill Type 3.

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

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

(c) Notification requirements.

(1) Notification in the City of New York. For Fill Type 2, Fill Type 3, Fill Type 4 and Fill Type 5 generated within the City of New York, the department must be notified at least five days before the first load greater than 10 cubic yards is planned to be transported from the site of excavation directly to a site of reuse. Notifications must be made on forms acceptable to the department and must include any information required by the department, including analytical data required by this section. The department reserves the right to inspect any site of excavation or site of reuse of fill.

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

(d) Testing requirements for excavated material as fill.

Excavated material that is not otherwise excluded or exempt from regulation under this section must be sampled and analyzed pursuant to subdivision (e) of this section if:

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

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

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

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

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

(1) Sample method and frequency. Samples must be representative of the fill. The sampling program must be designed and implemented by or under the direction of a qualified environmental professional (QEP), using Table 1 below as a minimum sampling

frequency. Written documentation of the sampling program with certification from the QEP that samples were representative of the fill must be retained for three years after the sampling occurs and must be provided to the department upon request.

TABLE 1: Minimum Analysis Frequency for Fill

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

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

(i) the Metals, PCBs/Pesticides, and Semivolatile organic compounds listed in section 375-6.8(b) of this Title;

(ii) asbestos, if suspect asbestos-containing material is observed as determined by the New York State Department of Labor or a New York State Department of Labor certified inspector. If sampling is required, at least two samples must be collected from each suspect asbestos-containing excavated material to be used;

(iii) volume of physical contaminants, if present, based on visual observation; and

(iv) volatile organic compounds listed in section 375-6.8(b) of this Title, if their presence is possible based on site events such as an historic petroleum spill, odors, photoionization detector meter or other field instrument readings.

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

(f) Acceptable fill uses.

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

TABLE 2: Fill Beneficial Use

Fill Type	Fill End Use	Physical Criteria	Maximum Concentration Levels
Fill Type 1 (F1)	Any end use.	Only soil, sand, gravel, or rock which is generated outside of New York City with no evidence of historical contamination based on site use, reported spill events, or visual or other indication (odors, etc.) of chemical or physical contamination; no non-soil constituents. Must not produce objectionable petroleum or other odors.	No testing required.
Fill Type 2 (F2)	Any setting where the fill meets the engineering criteria for use, except: agricultural land used for raising livestock or producing animal products for human consumption. Fill Type 2 may also be used in the same manner as Fill Type 3, Fill Type 4 and Fill Type 5.	Only soil, sand, gravel or rock; no non-soil constituents. Must not produce objectionable petroleum or other odors.	Lower level between Protection of Public Health-Residential Land Use and Protection of Groundwater Soil Cleanup Objectives in section 375-6.8(b) of this Title.
Fill Type 3 (F3)	Any setting where the fill meets the engineering criteria, for use, except: 1. Undeveloped land; and 2. Agricultural crop on land used for raising livestock or producing animal products for human consumption. If used on residential property, material must be under impermeable surface or under a	Only soil, sand, gravel, and de minimis amounts of brick, concrete or asphalt; no other non-soil constituents. Must not produce objectionable petroleum or other odors.	Lower level between Protection of Public Health-Residential Land Use and Protection of Groundwater Soil Cleanup Objectives in section 375-6.8(b) of this Title.

	minimum three inches of Fill Type 1, Fill Type 2 or commercial soil. Fill Type 3 may also be used in the same manner as Fill Type 4 and Fill Type 5.		
Fill Type 4 (F4)	Engineered use for embankments or subgrade: A) in transportation corridors, or B) on sites where in-situ materials contain higher levels of contaminants than Fill Type 4 or Fill Type 5 criteria. Must be placed above the seasonal highwater table. May also be used in the same manner as Fill Type 5, except in locations where using Fill Type 5 is prohibited in accordance with paragraph 360.13(g)(2).	No volume limit for granular, compactible non-soil constituents.[1]	Same levels as Fill Type 2, except that polycyclic aromatic hydrocarbons must not exceed 3 mg/kg (dry weight) total benzo(a)pyrene (BAP) equivalent.[2] No greater than one percent by weight for any single suspect asbestos-containing material. In Nassau or Suffolk County, Individual polycyclic aromatic hydrocarbons must not exceed Protection of Groundwater Soil Cleanup Objectives in the table in section 375-6.8(b) of this Title. (BAP equivalent does not apply.)
Fill Type 5 (F5)	Engineered use under foundations and pavements above the seasonal highwater table.[3]	No volume limit for granular, compactible non-soil constituents.[1]	Same levels as Fill Type 2, except metals must not exceed Protection of Public Health-Commercial Soil Cleanup Objectives in the table in section 375-6.8(b) of this Title; and BAP equivalent must not exceed 3 mg/kg (dry weight).[2] No greater than one percent by weight for any single suspect asbestos-containing material.

Footnotes

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

[2] Benzo(a)pyrene (BAP) equivalent is calculated using the following formula: BAP Equivalent = 1 x conc. Benzo(a)pyrene + 0.1 x [conc. Benz(a)anthracene + conc. Benzo(b)fluoranthene + conc. Benzo(k)fluoranthene + conc. Dibenz(a,h)anthracene + conc. Indeno(1,2,3-c,d)pyrene] + 0.01 x conc. Chrysene (All concentrations in mg/kg or ppm, dry weight.)

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

(g) Other fill use criteria.

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

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

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

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

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

Section 360.14 Exempt facilities and activities.

(a) While this Part or Parts 361 through 365 of this Title may exempt solid waste management activities from regulation by the department, other activities, unrelated to solid waste management, occurring at the facility identified as an exempt facility may be subject to other regulations promulgated by the department.

(b) General exemptions.

In addition to exemptions provided in Parts 361 to 365 of this Title, the following facilities or activities are exempt from this Part:

(1) transfer, storage, treatment, processing, or combustion activities at the site of waste generation or at a location under the same ownership or control as the site of waste generation. For the purposes of this Part, all locations under the ownership or control of municipal agencies and departments

are considered under the ownership or control of the parent municipality. This exemption does not apply to the following facilities or activities:

(i) a facility subject to regulation under Part 365 of this Title;

(ii) a composting facility for animal carcasses and parts;

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

(iv) a mobile vehicle crusher;

(v) a person who deconstructs manufactured homes;

(vi) storage of petroleum-contaminated soils for more than 60 days, unless a longer time period is approved by the department;

(vii) a surface impoundment for handling of coal ash or coal combustion residuals: :; or

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

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

(3) The storage of nonputrescible waste on a vehicle for 10 days or less, provided:

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

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

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

(iv) if handling hazardous waste from conditionally exempt small quantity generators, the facility complies with the standards for hazardous waste discharges from transporters specified in section 372.3(d) of this Title.

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

(i) if containers, trailers, and roll-offs are used, they must remain on or attached to the vehicles that transported them;

(ii) no container, trailer, roll-off or transport vehicle can be opened or uncovered for any purpose, including transfer or treatment, unless otherwise allowed by United States Department of Transportation; and

(iii) storage is conducted in manner that does not cause odor.

(5) The storage of waste on a vehicle during routine transportation operations such as stops for meals, rest periods and fuel.

(6) A facility that treats wastewater that is subject to regulation under Part 750 of this Title.

(7) A rendering facility for animal or food-derived fats, oil, grease, and animal parts.

(8) Collection of pharmaceutical waste generated by a household or ultimate user, including controlled substances, by the following entities, provided there is compliance under the requirements of 21 CFR Parts 1300, 1301, 1304, 1305, 1307, and 1317, as incorporated by reference in section 360.3 of this Title, and provided that if disposal occurs in New York State, the collected pharmaceutical waste is destroyed in a municipal waste combustion facility or by another method approved by the department:

(i) Manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies that collect pharmaceutical waste from ultimate users, including controlled substances, by voluntarily administering mail back programs and maintaining collection receptacles provided they have received authorization from the United States Department of Justice Drug Enforcement Administration as an authorized collector.

(ii) Federal, State, tribal or local law enforcement agencies who conduct take-back events or maintain a collection receptacle for household pharmaceuticals at their own law enforcement location.

(iii) Federal, State, tribal, or local law enforcement agencies who partner with any person or community group to conduct take-back events at a location other than their own law enforcement location.

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

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

Section 360.15 Registered facilities, transporters and collection events.

(a) General.

(1) Certain facilities, transporters, or collection events may be eligible for registration pursuant to the conditions specified in this section and under Parts 361, 362, 363, 364, and 365, and Subpart 374-2 of this Title. The owner or operator of the facility or collection event required to be registered must

comply with the design, operating, closure, and financial assurance criteria found in this Part and in Parts 361, 362, 363 and 365 of this Title unless otherwise excluded. Transporters required to be registered must comply with the operating requirements in section 364-3.3 of this Title.

(2) Registrations are ministerial actions for purposes of Part 617 of this Title and are not subject to Part 621 of this Title.

(3) Multiple registered facilities. For facilities registered or eligible for registration under Part 361 or 362 of this Title:

(i) on-site operation of more than one registered facility engaged in the same solid waste management activity is prohibited; and

(ii) for two or more solid waste management activities registered or eligible for registration pursuant to Part 361 and 362 of this Part, the department may, in lieu of a registration, require a permit if the combined activities on-site have the potential to cause a significant adverse impact on the environment.

(4) Facilities or collection events that would otherwise qualify for registration and are located at a permitted facility, or on contiguous property with the same ownership or control as the permitted facility, may be required to have the facilities or collection events incorporated into the permit and comply with any permit conditions placed on those activities.

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

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

(2) the owner, operator or applicant provides materially false or inaccurate information or statements on the registration form;

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

(4) the owner, operator or applicant is either:

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

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

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

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

(1) The owner or operator must notify the department on a form prescribed by the department before commencement of construction or operation of any facility or activity subject to registration requirements found in this Part or Parts 361 through 365 of this Title. In addition, the owner or operator must provide information on any exempt facilities, collection events, or activities that will take place at the registered facility.

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

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

(i) corporations: by a duly authorized principal executive officer of at least the level of vice president;

(ii) partnership or limited partnership: by a general partner;

(iii) sole proprietorship: by the proprietor; or

(iv) a municipal, State or other government entity: duly authorized executive officer or duly authorized elected official;

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

(4) The owner or operator must furnish to the department any information requested by the department to determine compliance with the registration requirements. This information must include, at a minimum, a site plan which describes the management of solid waste at the facility. If the owner or operator is a corporation or a limited liability corporation, the owner or operator must submit, a certificate of status with the seal of the New York State Department of State and the certificate of doing business under assumed name ("D/B/A") filed with the county clerk in the county where the facility is located. The name of the facility owner and operator on any registration filed with the department must appear exactly as it does on the certificate of status provided by the New York State Department of State and the certified copy of the certificate of doing business under assumed name ("D/B/A") provided by the county clerk's office if one has been filed.

(d) Financial assurance.

Financial assurance may be required under section 360.22 of this Part. If financial assurance is required, a closure cost estimate must be submitted as part of the registration submittal.

(e) Validation.

Commencement of construction or operations must not occur until the owner or operator receives a validated copy of the registration from the department. The validated copy of the registration must be available or posted at that facility or collection event. All construction and operation must be in accordance with the information provided in the registration notification and the applicable requirements of this Part, Parts 361, 362, 363, 364, and 365, and Subpart 374-2 of this Title.

(f) Registration term.

A validated registration will be effective for a maximum of five years, except in the case of Part 364 of this Title waste transporters and households hazardous waste collection events. The registration term for household hazardous waste collection events and Part 364 waste transporters is specified in sections 362-4.2 and 364-3.2 of this Title, respectively. Requests for renewal of a registration must be received by the department at least 60 days prior to expiration of the registration.

(g) Registration modification.

The owner or operator of a registered facility or collection event or transporter must submit a new registration modification to the department when there is a proposed change in any information provided on any prior registration notification submitted to the department. The modification cannot be implemented until the owner or operator receives a validated copy of the modified registration from the department.

(h) Closure.

The owner or operator of a registered facility is required to close the facility in accordance with the requirements of this Part, Parts 361, 362, 363, and 365 and Subpart 374-2 of this Title as they pertain to the facility.

Section 360.16 Permit application requirements and permit provisions.

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

(1) corporations: by a duly authorized principal executive officer of at least the level of vice president;

(2) partnership or limited partnership: by a general partner;

(3) sole proprietorship: by the proprietor;

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

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

(b) Level of detail.

The information contained in an application must contain sufficient detail to:

(1) allow the documents to be readily understood;

(2) allow the department to ascertain the potential environmental impacts of the proposed facility; and

(3) demonstrate that the siting, design, construction, operation, and closure of the facility will be capable of compliance with the applicable requirements of this Part and Parts 361, 362, 363, and 365, and Subpart 374-2 of this Title.

(c) Contents of a new application for a permit.

In addition to the information identified in Part 621 of this Title, an application for a new permit must include at a minimum, the following information:

(1) Contact information and written permission, including:

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

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

(iii) written permission from the owner(s) of the real property on which the facility is located or the proposed facility would be located for unaccompanied access by department representatives to the property occupied by the facility or proposed facility, including any adjacent areas, during normal

business hours (7:00 am to 7:00 pm Monday through Friday). If the property is posted with "keep out" signs or fenced with an unlocked gate, department representatives may still enter the property. Department representatives may traverse the property, inspect the facility, take measurements, analyze physical site characteristics, take soil and vegetation samples, sketch and photograph the property and conduct other activities necessary to evaluate the permit application or assess the facility's compliance with the permit and any other applicable statutory or regulatory requirements.

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

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

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

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

(2) Maps and plans. A regional map, a vicinity map, and a site plan, as described in this paragraph.

(i) Regional map. A regional map (having a minimum scale of 1:62,500) that delineates the location of the proposed facility, the location of the closest population centers, communities of disproportionate impact, and transportation systems including highways.

(ii) Vicinity map. A vicinity map (having a minimum scale of 1:24,000) that delineates zoning and

land use, communities of disproportionate impact, residences, principal aquifers, primary aquifers, surface waters, wetlands, access roads, and other existing and proposed features on the property and within one-half mile of the perimeter of the property.

(iii) Site plan. A site plan having a minimum scale of 1:2,400 with 5-foot contour intervals (10-foot intervals for land application facilities) that shows:

(a) the location of the proposed facility and its acreage, and the location of any State or Federally-regulated wetland or special flood hazard area, including 100-year flood elevations and location of any floodways pursuant to Part 502 of this Title, on the property and within 800 feet of the perimeter of the property;

(b) the location of all public and private water wells, monitoring well, surface water bodies, roads, residences, public areas and buildings, including the identification of any buildings which are owned by the applicant or operator, on the property and within 800 feet of the perimeter of the property;

(c) the location of all proposed structures, appurtenances, screening, fences, gates, roads, parking areas, and areas designated for management of waste;

(d) the drainage characteristics of the proposed facility and of the property on which it is proposed to be located, identifying the direction of stormwater, ditches, and drainage swales together with any drainage controls that exist or will be implemented with facility construction;

(e) the location of soil borings, if applicable;

(f) existing and proposed elevation contours;

(g) the direction of prevailing winds; and

(h) except in the case of land application facilities, the property boundaries, certified by an individual licensed to practice land surveying in the State of New York, of the property on which the facility is proposed to be located.

(3) Engineering report.

(i) An engineering report that contains a comprehensive description of the existing site conditions, a full engineering analysis of the facility including engineering calculations and all raw data, a description of the overall process, including flow diagrams, and a functional description of all equipment to be used, including design criteria, engineering calculations and anticipated performance. Engineering drawings and specifications submitted as part of the engineering report must depict process flows, dimensions,

elevations, floor plans, and cross sectional views of the facility, including all structures, areas designated for unloading, sorting, processing, storage, and loading, and other waste management areas and equipment. Engineering drawings must contain information on known site conditions and projected use of the site.

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

(4) Facility manual. A facility manual, which must include the following:

(i) Waste control plan. The waste control plan describing:

(a) the facility's service area, both inside and outside New York State, including a list of all planning units or Native American tribes or nations within New York State and counties, provinces or tribes or nations outside of New York State;

(b) the waste that will be accepted at the facility including the type, source, quantity, and, as required for a particular waste stream in Parts 361, 362, 363, or 365 of this Title, analytical results. The description of the quantity must specify the expected average and maximum daily and annual amounts, on a weight and volume basis, and must be specified for each individual type of waste and for the total amount of waste accepted;

(c) authorized locations where wastes, including residues, are transported when they leave the facility and what arrangements exist or will exist (contracts, etc.) that verify receiving entities will accept the waste;

(d) inspection, education, and contractual measures to ensure that the facility receives and treats only authorized waste, including a program to identify, control, segregate, quarantine, record, store, and dispose of unauthorized waste;

(e) if friable asbestos-containing waste is accepted at the facility, a detailed waste plan specific to that waste must be included that outlines the procedures for managing the waste;

(f) if recyclables are managed at the facility, a detailed plan must be included that describes the types of recyclables that will be recovered, the procedures that will be used for recovery and storage of the recyclables and the disposition of recyclables when they leave the facility;

(g) the procedures that will be used for managing mercury-added consumer products that are

separately delivered to the facility; and

(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.

(ii) Operations and maintenance plan. The plan must include the following:

(a) a description of the overall operation of the facility, including procedures to be followed during start up and scheduled and unscheduled shutdown of operations;

(b) the type, purpose, size, capacity, and associated detention times for all waste handling, storage, and processing equipment and structures, including back-up facilities and equipment;

(c) a process flow diagram for waste during normal operation. The flow diagram must indicate the average and maximum quantity of waste handled on a weight and volume basis;

(d) a description of all machinery, equipment, and structures used in waste management operations of the facility, including the design capacity;

(e) a description of the drainage system used for the collection and storage of leachate and the method and location used for disposal of the leachate;

(f) the monitoring, maintenance and inspection procedures related to waste management;

(g) a description of the actions to be taken in response to significant interruptions to the facility's normal operations;

(h) the schedule of operation including the days and hours when the facility will be open to accept and transfer waste, and the days and hours when operations will occur within the facility;

(i) a list of all equipment and instruments requiring calibration and a schedule of proposed calibration intervals;

(j) the estimated maximum daily traffic flow to and from the facility, the type and size of vehicles, and the maximum

number of vehicles that can be accommodated on site;

(k) where treatment of waste will occur at the facility, a detailed description of each treatment method and unit, including the operating parameters that will be attained to achieve the intended treatment and the frequency, location, and method for monitoring the operating parameters;

(l) a discussion of compliance with the operating requirements that are identified in section 360.19 of this Part and Parts 361, 362, 363, and 365, and Subpart 374-2 of this Title;

(m) the location of all facility records related to the permit; and

(n) a description of the operation of a residential drop-off area, if applicable, for non-commercial vehicles to unload waste and recyclables.

(iii) Training plan. A training plan that identifies all of the facility's personnel by title and responsibilities and that describes the training program, both classroom and on-the job, that will be used to educate each individual on the procedures necessary to ensure compliance with the requirements applicable to the facility, including but not limited to the plans and procedures identified in this section and all authorizations, permits, and approvals that will be required for the facility; and that describes the training that will be provided and all procedures and equipment that will be used during emergencies, contingencies and standard operations.

(iv) Emergency Response Plan. An emergency response plan must include the following:

(a) a description of actions that facility personnel would take in response to emergencies including fires, explosions, natural disasters, and spills that occur at the facility. The plan must identify the personnel, equipment, and protocols to be utilized in response to each type of emergency. The plan must also include contact information for designated emergency contacts;

(b) a description of the facility's ability and proposed methods to respond to a natural or manmade disaster that, although it may not have a direct impact on the facility itself, may call for expanded or non-standard services to be provided by the facility (for example, longer operating hours) if department approval is granted for those services.

(v) A noise monitoring and control plan, if required pursuant to subparagraph (3)(ii) of this subdivision, must include the following:

(a) a description of areas of operation where noise propagation off-site is most probable to occur;

(b) mitigation measures (*e.g.*, real-time monitoring system, noise barriers) or modified operational controls that would be utilized to mitigate facility noise when operations are occurring (*e.g.*, reduced equipment operation, limiting trucks tipping in the specified area, limited hours of operation);

(c) protocol for noise monitoring including monitoring locations, methods and equipment, monitoring frequency and duration, and action levels;

(d) criteria for discontinuing the noise monitoring and control plan.

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

(5) State and local plan consistency. A demonstration that the facility is consistent with the goals and objectives of:

(i) the New York State solid waste management policy identified under subdivision (1) of ECL section 27-0106, with an emphasis on diversion from thermal treatment and disposal;

(ii) the New York State solid waste management plan; and

(iii) the department-approved local solid waste management plan (LSWMP) in effect, if one exists, for the municipalities in the facility's service area;

(iv) for those municipalities in the service area that do not have a LSWMP in effect, an identification that the municipalities have a department-approved CRA in effect.

(6) If a facility requiring a permit includes facilities or collection events which would qualify as an exempt or registered facility or collection event, those operations must be described in the permit application.

(d) New applications submitted by or on behalf of a municipality for a permit under Part 362 or 363 of this Title will not be complete until a LSWMP is in effect for the municipality.

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

(1) whether the owner or operator has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL or

other environmental law administered by the department, any order or determination of the commissioner, any regulation of the department, or any similar statute, regulation, order or permit condition of the federal, other state, or local government agency, on one or more occasions the violation that was the basis for the action posed a potential for significant adverse impacts to public health or the environment, or represents a pattern of noncompliance;

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

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

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

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

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

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

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

(i) the owner, operator, or applicant has been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving the handling, storing, treating, disposing or transporting of solid waste;

(ii) the owner, operator or applicant has been convicted of a criminal offense, under the laws of any state

or of the United States, which involves a violent felony offense, fraud, bribery, perjury, theft or an offense against public administration as that term is used in article 195 of the Penal Law; or

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

(f) Permit modifications.

An application to modify a permit must include a description of the proposed modification, a description of the impacts of the proposed modification on the facility, and a demonstration that, under the modified permit, the facility will comply with applicable parts of this Title.

(1) For the purposes of Part 621 of this Title, the department will treat an application to modify a permit for a facility as a new application if, in addition to the reasons described in section 621.11(h) of this Title, any of the following conditions are met:

(i) a horizontal or vertical increase in size of a landfill beyond the limits approved in the permit; or

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

(2) A permit modification may be required if the owner or operator of a facility with a permit proposes to include a facility component on the site that would otherwise qualify as a registered facility or collection event.

(g) Permit renewals.

(1) Submission deadline. A complete application for renewal of a permit must be submitted at least 180 days before the existing permit expires in order to be considered timely for the purposes of the State Administrative Procedure Act. An application for renewal of the permit must be made on forms authorized by the department.

(2) Renewal application contents. An application for renewal of a permit must include the following:

(i) an updated record of compliance and a demonstration that the facility will be capable of compliance with all applicable requirements of the ECL and this Title and with all permit conditions and a description of how compliance with the requirements and conditions will be ensured;

(ii) a demonstration that the facility is consistent with the State solid waste management policy identified under subdivision (1) of ECL section 27-0106 and the goals and objectives of the New York State solid waste management plan, with an emphasis on diversion from thermal treatment and disposal; and

(iii) for a renewal application submitted by or on behalf of a municipality for a facility subject to Part 362 or 363 of this Title, a comprehensive recycling analysis in accordance with section 360.11 of this Part.

(iv) submission of an updated facility manual.

(3) An application for renewal that includes physical or operational changes to the facility will also be considered a permit modification request.

(h) Facilities at or near sites undergoing a remedial program.

(1) If a facility permitted under this Part is proposed to be located at or within 150 feet of the boundary of a site undergoing a remedial program, the applicant must submit an report that discusses the potential impacts of the facility on the remedial program for that site. For the purposes of this subdivision, a *remedial program* is any activity defined in 6 NYCRR 375-1.2 and subject to ECL article 27 title 13 (Inactive Hazardous Waste Disposal Sites), ECL article 27 title 14 (Brownfields Cleanup Program sites), ECL article 56 title 5 (Environmental Restoration Project sites), ECL article 52 title 3 (Hazardous Waste Site Remediation Projects), ECL article 27 title 9 (RCRA Corrective Action Program) or the department's Voluntary Cleanup Program, or in Navigation Law section 176 (Spill Response Program for the cleanup of petroleum discharges). The proposed facility must not interfere significantly with any potential, ongoing or completed remedial program.

(2) If a new facility or an expansion of an existing facility is proposed to be located at an inactive hazardous waste site classified as a P site by the department, the applicant must submit as part of a complete application, sufficient information to enable the department to classify the site in question as class 1, 2, 3, 4 or 5 or to delete the site from the Registry of Inactive Hazardous Waste Disposal Sites.

(i) Duration of permits.

A permit issued pursuant to this Part will be issued for a period not to exceed 10 years.

(j) Supervision and certification of construction.

The construction of a facility and each stage of construction of a facility must be undertaken under the supervision of an individual licensed to practice engineering in the State of New York. Upon completion of construction, that individual must certify in writing that the construction is in accordance with the terms of the department-issued permit. Operation of the facility and any stage in the operation of a facility cannot commence until approval from the department is received.

Section 360.17 Nonspecific facilities.

The owner or operator of a facility that is not specified in this Part or in Parts 361, 362, 363, or 365 of this Title must obtain a permit under this section prior to construction and operation. The department may require information in addition to what is required under section 360.16 of this Part, and the facility's design and operation will be subject to the applicable requirements identified in section 360.19 of this Part as well as to any additional requirements that

the department may determine to be appropriate.

Section 360.18 Research, development, and demonstration registrations and permits.

The department may issue a research, development and demonstration (RD&D) registration or permit for any project that involves an innovative, experimental or unproven process or technology for solid waste management at a facility.

(a) Registration for small-scale RD&D projects.

The department may issue a registration pursuant to this Part for a project that involves 1,000 pounds of waste per day or less. The project must protect public health and the environment. A registration issued pursuant to this subdivision will have a specified term, not to exceed two years and will not be renewed.

(b) Permit application contents in lieu of the requirements of section 360.16 of this Part.

A permit application for an RD&D project which includes construction of buildings or structures must be prepared by a professional engineer. A permit for any other RD&D project must be prepared by a professional engineer or a research scientist affiliated with an accredited university or research institution. An application for a RD&D permit must:

(1) include a detailed discussion of:

(i) the project's objectives, schedule, location and characteristics;

(ii) the equipment to be used in carrying out the project;

(iii) the waste that is to be managed;

(iv) the methods to be used to monitor environmental impacts; and

(v) qualitative and quantitative methods for evaluating project performance;

(2) discuss the effects that the proposed technology or process could have on public health and the environment and demonstrate that adequate protection of public health and the environment will be maintained during all phases of the RD&D project;

(3) identify all personnel involved, their backgrounds and qualifications to conduct the project and their responsibilities;

(4) contain any information the department determines to be necessary, including, but not limited to, monitoring, operating conditions, financial assurance, and testing protocols;

(5) include a written statement from the applicant that the land on which the project is proposed to be located is under the ownership or control of the applicant; and

(6) demonstrate that the quantity and types of waste proposed for use in the project are no more than those needed to satisfy the project's objectives.

(c) Prohibited projects.

The department will not issue an RD&D permit under this section that would authorize:

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

(2) the project involves sanitary waste; or

(3) an activity whose primary purpose is to process commercial quantities of waste.

(d) Design and operating requirements.

(1) RD&D projects which include construction of buildings or structures must be performed under the direction of a professional engineer. All other RD&D projects must be performed under the direction of a professional engineer or a research scientist affiliated with an accredited university or research institution.

(2) Compliance with the 40 CFR part 258 Criteria for Municipal Solid Waste Landfills, as incorporated by reference in section 360.3 of this Title, must be maintained for landfills subject to those requirements.

(3) The quantity and types of waste subject to the RD&D permit must not exceed those needed to effectively address the research objectives. After completion of the RD&D project, all waste must be removed from the project site unless the department authorizes the waste to remain on the project site.

(4) The department may require the permittee to comply with one or more of the design and operating requirements under this Part and Parts 361, 362, 363, and 365 of this Title.

(5) Within 90 days after the expiration date of the RD&D permit, the permittee must submit to the department a project summary report that includes, at a minimum, the following information:

(i) a summary of the project objectives, information gathered, analyses conducted, and project results, including all monitoring and testing results; and

(ii) a description of any operating problems and the status of their resolution, any other limitations encountered, and areas of further study to be considered.

(e) Permit duration and renewal.

RD&D permits issued under this section will have a specified permit term not to exceed one year. Permits issued under this section will not be renewed more than three times.

Section 360.19 Operating requirements.

(a) Applicability.

Except as otherwise provided in this Part or in Parts 361, 362, 363, or 365, or Subpart 374-2 of this Title, the owner or operator of a facility that requires a permit or registration must comply with the requirements of this section.

(b) Water protection.

(1) The owner or operator of a facility must prevent waste from being deposited in or entering surface waters or groundwater.

(2) The owner or operator of a facility must operate the facility in a manner that minimizes the generation of leachate and

that does not allow any leachate to enter surface waters or groundwater except under authority of a State Pollutant Discharge Elimination System permit.

(c) Waste acceptance and control.

(1) The owner or operator of a facility must institute, maintain, and enforce a waste control plan. Components of this plan must include, but not be limited to, the following measures to ensure that only authorized waste is accepted at the facility:

(i) posting clearly legible signs at all public access points indicating hours of operation and the types of waste accepted and not accepted;

(ii) inspecting incoming loads of waste;

(iii) specifying which types of waste are authorized to be accepted in contracts with waste suppliers;

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

(v) in addition, landfills, combustion facilities, thermal treatment facilities, municipal solid waste processing facilities and transfer facilities must:

(a) educate users of their facilities on the proper methods for the management of electronic waste, including:

(1) providing written information annually to all potential users of the facility on the proper methods of recycling electronic waste;

(2) maintaining written information on-site and upon request, providing the information to users of the facility;

(3) posting, in conspicuous locations at the facility, signs stating that electronic waste cannot be disposed of at the facility; and

(b) post a sign, in a conspicuous location, stating that mercury-added thermostats are not accepted at the facility.

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

(3) The owner or operator of a facility must develop and implement a program to train facility staff to implement the waste control plan.

(4) If unauthorized waste is delivered to the facility it must be adequately segregated, secured, and contained in order to prevent leakage or contamination of the environment and must be removed within seven days after receipt, unless a different period is authorized by the department in the

waste control plan. Transportation must be performed by a person authorized to transport the waste, and disposition must be to a facility or location authorized to receive the waste for management.

(i) If the owner or operator accepts unauthorized waste, the owner or operator must maintain at the facility a record of each incident identifying the type of waste and its final disposition. The owner or operator must include this information in the facility annual report. For each incident, the owner or operator must record:

(a) the date and time;

(b) a description of the incident;

(c) contact and vehicle information for the waste transporter that delivered the unauthorized waste;

(d) contact information for the generator of the unauthorized waste; and

(e) a description of the response to the incident and the disposition of the waste.

(5) The owner or operator of a facility must not accept waste unless the vehicle transporting the waste is adequately covered or the waste is containerized. When leaving the facility, all vehicles containing waste must utilize a cover which prevents waste and leachate from escaping the vehicle, or the waste must be containerized.

(6) The owner or operator of a facility which is authorized to manage mercury-containing devices or mercury-added consumer products must not place any of those materials in a combustor or landfill or direct the material to a combustor or landfill.

(7) If a facility provides a residential drop-off area for non-commercial vehicles to unload waste and recyclables, the owner or operator must provide a separate, designated area for that activity.

(8) The owner or operator of a facility must ensure that all waste leaving the facility is destined to be managed at a facility authorized by the department if located in this State, or authorized by the appropriate governmental agency or agencies if located in another state, territory, or nation.

(9) The owner or operator of a facility must ensure that all unloading and loading areas are adequate in size and designed to facilitate efficient movement of waste to and from the collection vehicles and to facilitate the unobstructed movement of vehicles.

(10) The owner or operator of a facility must ensure that all areas containing waste are strictly and continuously secured to prevent unauthorized access by use of fencing, gates, signs, natural barriers, or other suitable means as determined by the department. Waste must not be used as a barrier.

(11) The owner or operator of a facility must ensure that storage volumes and throughput limits established by the requirements of this Part or Part 361, 362, 363, or 365 of this Title or by the volumes and throughput declared on the

registration form for the facility are not exceeded.

(12) An attendant must be on duty at a facility which has permanent operating mechanical equipment whenever the facility is open.

(d) Operation and maintenance.

The owner or operator of a facility must ensure that the following criteria are satisfied:

(1) All maintenance and operating activities at the facility are performed in accordance with the facility manual required by section 360.16(c)(4) of this Part, if applicable.

(2) The facility accommodates expected traffic flow in a safe and efficient manner. Facility roadways are passable in all weather conditions.

(3) Tracking of soil, waste, leachate and other materials from the facility onto off-site roadways is prevented.

(4) All equipment, storage containers, and storage areas are sufficient for the quantity and type of waste managed at the facility. Adequate numbers, types, and sizes of properly maintained equipment are available during all hours of operation.

(5) All floors and working areas are adequately drained, properly maintained, and standing water is minimized. All drainage and wash waters are collected and handled in a manner acceptable to the department.

(6) The facility is properly graded to prevent soil erosion and to minimize ponding.

(7) Equipment and systems required to manage waste at the facility are properly operated, calibrated, and maintained at all times.

(8) Prior to leaving the facility, any vehicle containing waste must be covered with, at a minimum, a mesh or fabric cover acceptable to the department.

(9) If an unscheduled total facility shutdown exceeds 24 hours, the facility will immediately notify the department describing the incident and the proposed waste management activities.

(e) Routine inspection.

The owner or operator of a facility must monitor and inspect the facility for malfunctions, deteriorations, operator errors, and incidents no less frequently than on a daily basis when the facility is open. The owner or operator of a facility must immediately undertake any and all measures needed to eliminate any violation of an operational, closure, or post-closure care requirement of this Part and of Part 361, 362, 363, and 365 of this Title. Measures taken do not preclude the department from exercising its enforcement powers.

(f) Confinement of waste.

The owner or operator of a facility must ensure that waste at the facility is confined to an area that can be effectively maintained, operated, and controlled; and that blowing litter is confined to waste holding and operating areas by fencing or other suitable

means. Any litter outside the waste holding area must be controlled.

(g) Dust control.

The owner or operator of a facility must ensure that dust is effectively controlled so that it does not constitute a nuisance as determined by the department; and must undertake any and all measures as required by the department to maintain and control dust at and emanating from the facility.

(h) Vector control.

The owner or operator of a facility must effectively control on-site populations of vectors.

(i) Odor control.

The owner or operator of a facility must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by the department.

(j) Noise.

The owner or operator of a facility must ensure that noise (other than that occurring during construction of the facility) resulting from equipment or operations at the facility does not exceed the following energy equivalent sound levels beyond the property line owned or controlled by the owner or operator of the facility at locations authorized for residential purposes:

Character of Community within a one-mile radius of facility	Leq Energy Equivalent Sound Levels	
	7 a.m. to 10 p.m.	10 p.m. to 7 a.m.
Rural	57 decibels (A)	47 decibels (A)
Suburban	62 decibels (A)	52 decibels (A)
Urban	67 decibels (A)	57 decibels (A)

The Leq is the equivalent steady-state sound level which contains the same acoustic energy as the time varying sound level during a one-hour period. It is not necessary that the measurements be taken over a full one-hour time interval, but sufficient measurements must be available to allow a valid extrapolation to a one-hour time interval.

(1) If the background sound level exceeds the referenced Leq sound level limit, the Leq sound levels from facility sources and background sources when combined must not exceed the Leq sound level of the background sources alone by more than three decibels (A).

(2) The background sound level, measured as Leq, is the existing ambient sound level during a period of peak acoustical energy measured in the absence of sound produced by equipment or operations at the facility. A background sound level monitoring protocol must be submitted to the

department for approval prior to conducting background measurements.

(3) Sound levels must be measured using the slow time constant and A-weighting. During the measurement period, no precipitation must occur and wind speeds must not exceed 12 miles per hour.

(4) Measuring instruments must be type 1 or class 1 precision sound level meters, type 2 or class 2 general purpose sound level meters, or corresponding special sound level meters type S1A or S2A.

(5) Noise assessments must include details of the attenuation factors and calculations utilized. Noise assessment calculations are allowed to utilize average annual conditions when calculating atmospheric attenuation.

(6) Mufflers are required on all internal combustion-powered equipment used at the facility.

(k) Recordkeeping and reporting.

(1) Application documents. The owner or operator of a facility must maintain at the facility or other approved location, and make readily available for inspection throughout the life of the facility including the post-closure care period and the custodial care period, a copy of all information and data required as part of the application for the permit or submittal for registration, as well as construction certification and closure construction certification documents.

(2) Operating records. The owner or operator of a facility must maintain at the facility or other approved location, and make readily available for inspection for a period of no less than seven years from the date a particular record was created, the following operating records:

(i) a daily log of wastes received that identifies the waste type, quantity, date received, and planning unit where the waste was generated, and the quantity and destination of any waste, products or recyclables that are removed from the facility;

(ii) routine inspection logs that must include, at a minimum, the following information: the date and time of the inspection, the name of the inspector, a description of the inspection including the identity of specific equipment and structures inspected, the observations recorded, and the date and nature of any remedial actions implemented, or repairs made as a result of the inspection;

(iii) all monitoring information necessary for compliance with the requirements of this Part and the requirements applicable to permitted facilities in Parts 361, 362, 363, and 365 of this Title;

(iv) records documenting training programs, schedules, and certifications as required;

(v) any other information required in a permit or registration under this Part or that the department may require be created and maintained as part of the daily operating records.

(3) Annual report.

(i) The owner or operator of a facility must submit a completed annual report in a format acceptable to the department no later than

March 1 of each year for the previous calendar year, on forms prescribed by the department. A copy of the most recent annual report must be maintained at the facility and be available for inspection.

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

I certify, under penalty of law, that the data and other information identified in this report have been prepared under my direction and supervision in compliance with a system designed to ensure that qualified personnel properly and accurately gather and evaluate this information. I am aware that any false statement I make in this report is punishable pursuant to section 71-2703(2) of the Environmental Conservation Law and section 210.45 of the Penal Law.

(l) Personnel training.

The owner or operator of a facility must ensure sufficient and appropriately trained staff are available to manage the quantity and type of waste that will be handled at the facility.

(m) Emergency response.

The owner or operator of a facility must adequately respond to emergencies such as fires, explosions, natural disasters, and spills that occur at the facility.

(n) Tank requirements.

The owner or operator of a facility that includes tanks for waste storage must comply with the following requirements:

(1) All tanks must:

(i) be chemically compatible with the waste being stored;

(ii) be equipped with an overfill prevention system in good working order; and

(iii) have double-walled construction with leak detection, if deemed necessary by the department.

(2) If required by the department, above ground tanks must:

(i) have and maintain a secondary containment system that is compatible with the waste being stored;

(ii) have a secondary containment system designed and built to contain 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater;

(iii) be located on a stable surface which prevents movement, rolling, or settling;

(iv) have a system to remove stormwater from the secondary containment area. Precipitation removal (rain, snow, or ice) must be initiated before 10 percent of the storage capacity is reached; and

(v) have a minimum of two feet of freeboard if open on the top.

(3) Self inspection requirements for tanks and related equipment:

(i) tanks must be inspected on no less than a monthly basis when waste is present in the tank, and the interior inspected whenever emptied;

(ii) if the inspection reveals a leak or any other deficiency that would result in failure of the tank, remedial measures must be taken immediately to eliminate the leak or correct the deficiency; and

(iii) the overfill protection system must be inspected monthly when waste is present in the tank.

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

Section 360.20 Environmental monitoring services.

(a) The department may require environmental monitoring services at any facility anytime during the construction, operation, closure, and post-closure of the facility to be paid for by the facility where:

(1) environmental monitoring services are required by law;

(2) the compliance history or past practices of the owner or operator over the past five years reveals an inability or unwillingness to comply with environmental laws and regulations or has included a conviction of an environmental crime or other criminal environmental violation, execution of an order on consent or consent decree, or the issuance of a commissioner's decision or judgment finding one or more violations;

(3) the past or current practices at the facility have resulted in conditions which pose a significant threat to public health or the environment, or indicate that significant adverse environmental or health impacts are likely to occur; or

(4) the department determines the regulated facility, site or regulated activity needs additional oversight due to exceptional circumstances related to its size, throughput, materials handled or location (such as proximity to human use or habitation, to drinking water supplies, to critical or sole source aquifers, to endangered species, to other sensitive receptors or to environmental justice areas) or relating to the nature of its operations.

(b) If the owner or operator of a facility required to make environmental monitoring payments to the department fails to submit payment by the required submission date, the owner or operator will be notified of their payment delinquency and will be directed to cease acceptance of any and all waste at the facility and commence closure of the facility in accordance with the requirements of this Part and any permit or order to which the owner or operator is subject.

(1) The owner or operator has the right to object to the direction given pursuant to section 360.20(b) of this Part. Within

20 calendar days of receipt of the written directive from the department, the owner or operator may submit a written objection to the department citing reasons why the facility should not be required to cease accepting waste and commence facility closure, may request a hearing, or both. Submission of the written objection will stay the directive that the facility must cease accepting at the facility and commence closure.

(2) Within 30 calendar days of receipt of a written objection from an owner or operator, the department will respond in writing.

Section 360.21 Closure requirements.

(a) Except as otherwise provided in this Part or in Part 361, 362, 363, 365 or Subpart 374-2 of this Title, the owner or operator of a facility that requires a permit or registration must comply with the following requirements:

(1) notify the department in writing 30 days prior to the anticipated final receipt of waste and within seven days of completion of all closure activities;

(2) within 30 day after receiving the final quantity of wastes, submit an annual report to the department as required under this Part;

(3) within 60 days after receiving the final quantity of waste, remove and deliver any remaining waste to a facility authorized to accept the waste;

(4) within 90 days after receiving the final quantity of waste, complete all closure activities, including removal of all products resulting from the processing of waste and decontamination of all equipment and structures involved in any aspect of waste management, in a manner acceptable to the department.

Section 360.22 Financial assurance.

(a) Applicability.

Except as otherwise provided in this Part or in Parts 361, 362, 363, 365, or Subpart 374-2 of this Title, the owner or operator of a facility that requires financial assurance must comply with the requirements of this section.

(1) Except as provided in section 360.4 of this Part, each owner or operator of a facility required to obtain financial assurance must provide continuous coverage beginning no later than 60 days prior to the initial receipt of waste and until released by the department from financial assurance requirements by demonstrating compliance with the applicable closure, post-closure care, custodial care, and corrective measures requirements pertaining to the facility, and demonstrating that the facility and any waste remaining at the facility do not pose a threat to public health or the environment.

(b) Closure, post-closure care, custodial care, and corrective measures cost estimates.

(1) The owner or operator of any facility required to obtain financial assurance, other than a landfill, must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform closure in compliance with the requirements in section 360.21 of this Part and Subpart 374-2 of this Title.

(i) At a minimum, the closure cost estimate must include the cost to

load, transport and dispose of the maximum permitted storage capacity at that facility. Cost estimates must also include or reflect the design, materials, equipment, labor, administration, and quality assurance for closure in accordance with the facility-specific closure plan. Additional financial assurance may be required on a site-specific basis if the potential exists for storage beyond the permitted storage capacity.

(ii) The closure cost estimate must not incorporate any salvage value that may be realized with the sale of materials, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

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

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

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

(2) The owner or operator of a landfill must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform closure, post-closure care, custodial care, and, if necessary, corrective measures in compliance with the requirements in this Part, Part 363 of this Title, and a department-approved closure plan, post-closure care plan, custodial care plan and corrective measures plan.

(i) At a minimum, the closure cost estimate must equal the cost to close the greatest number of landfill cells which, at any given point during the lifetime of the facility, have received waste but have not undergone final closure, as indicated by the closure plan.

(a) The closure cost estimates must include or reflect the design, materials, equipment, labor, administration, and quality assurance for closure in accordance with the facility-specific closure plan.

(b) The closure cost estimate for a landfill’s preliminary closure plan must include the costs of developing final closure, post closure care and custodial care plans as well as the costs to prepare engineering drawings and specifications, bidding documents, and other construction-related documents.

(c) The closure cost estimate must not incorporate any salvage value that may be realized with the sale of materials, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(ii) At a minimum, the post closure care cost estimate must be based on the number of landfill cells that are actively receiving waste and those

that have undergone final closure, as indicated by the post-closure care plan. The post closure care cost estimate must account for the total costs of conducting post closure care, including annual and periodic costs, as well as replacement costs related to the predicted service life of landfill components as described in the post-closure care plan, over a rolling 30-year post closure care period.

(iii) At a minimum, the custodial care cost estimate must be based on the number of landfill cells that have undergone final closure, as indicated by the custodial care plan. The custodial care cost estimate must account for the total costs of conducting custodial care after the landfill concludes post-closure care activities, including annual and periodic costs, as well as replacement costs related to the predicted service life of landfill components as described in the custodial care plan, over a rolling 30-year custodial care period. The initial custodial care cost estimate must be submitted to the department as part of the demonstration that the threat to public health or the environment has been reduced to a level where environmental monitoring and maintenance can be reduced.

(iv) The corrective measures cost estimate must account for the total costs of corrective measures as described in the corrective measures work plan for the entire corrective measures period as described in Subpart 363-10 of this Title.

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

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

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

(3) Annual cost estimate adjustments.

(i) During the active life of a facility, other than a landfill that requires financial assurance, the owner or operator must annually submit to the department for review and approval adjusted closure cost estimates, including supporting justification to account for inflation and changes in facility conditions.

(ii) During the active life of a landfill and during its closure, post-closure care, and custodial care periods, the owner or operator must annually submit to the department for review and approval adjusted closure, post-closure care, custodial care, and corrective measures cost estimates including supporting justification to account for inflation and changes in facility conditions.

(iii) The adjusted cost estimates can be made by:

(a) recalculating the maximum costs estimates in current dollars; or

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

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

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

(iv) Each annual adjustment to the post-closure care cost estimate and the custodial care cost estimate must reflect the cost for a combined 30-year period from the date of each annual adjustment.

(v) For owners and operators that use a local government financial test or guarantee, the cost estimates must be updated for inflation within 90 days after the close of the municipality's fiscal year.

(4) Discounting. The department may approve discounted estimates of post-closure care, custodial care costs and/or of corrective measures costs up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

(i) the department determines that the cost estimates are complete and accurate and the owner or operator of the facility that is the subject of the cost estimates has submitted a certification from a professional engineer that the estimates are complete and accurate;

(ii) the department finds the facility that is the subject of the cost estimates is in compliance with applicable permit or other department conditions, this Part, and with Parts 361, 362, 363, or 365, or Subpart 374-2 of this Title as they pertain to the facility;

(iii) the department determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the remaining active life of the facility; and

(iv) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining active life and/or years remaining in the period covered by the estimate.

(5) Submission. The owner or operator must include the cost estimates in the facility annual report submitted to the department and keep a copy at the facility or other approved location.

(c) Financial assurance requirements.

(1) The terms of any financial assurance mechanisms provided to the department

to satisfy compliance with any financial assurance obligation imposed by this Part or Parts 361, 362, 363, and 365 of this Title must ensure that:

(i) the amount of funds assured is sufficient to cover the costs of closure, and in the case of landfills, post closure care, custodial care, and corrective measures for known releases when needed. The amount of coverage must be revised whenever necessary to cover a revised cost estimate;

(ii) the funds will be available when needed;

(iii) for landfills, mechanisms for custodial care must be effective no later than 60 days after the determination that the landfill's post-closure care period is complete;

(iv) mechanisms for corrective measures must be effective no later than 120 days after the department's approval of the corrective measures remedy;

(v) the mechanisms must be legally valid, binding, and enforceable under State and Federal Law;

(vi) if the financial assurance mechanism is provided by the private operator of a municipally owned landfill, the post-closure mechanism must be one that is transferrable and the fully funded post-closure mechanism must be transferred to the municipality upon closure of the landfill or when the operator is no longer responsible for the facility under agreement with the municipality.

(2) The department may reduce, to zero if appropriate, the amount of financial assurance required under this section by the amount of financial assurance obtained by a facility for the benefit of the municipality for closure, post-closure, custodial care or corrective measures, provided this financial assurance is sufficient to meet the requirements of any closure, post-closure, custodial care or corrective measures plan required under this Part or Parts 361, 362, 363 and 365 and Subpart 374-2 of this Title. In the event that the amount of financial assurance obtained by a facility for the benefit of the municipality is sufficient to meet the requirements of these Parts, no additional financial assurance mechanism is required under subdivision 360.22(d). In the event that the financial assurance obtained for the benefit of the municipality is not sufficient to meet the requirements of these Parts, a separate financial assurance mechanism meeting the requirements of subdivision 360.22(d) is required.

(d) Allowable financial assurance mechanisms.

Except where otherwise indicated in paragraph (c)(2) of this section, owners and operators must choose from the options specified in paragraphs (1) through (9) of this subdivision for closure.

(1) Trust fund.

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by establishing an irrevocable trust fund that conforms to the requirements of this paragraph.

The trustee must be an entity that is authorized by the State of New York, another state, or the federal government to act as a trustee. A document indicating such authorization must be submitted to the department. If an attorney is acting as a trustee, then the attorney must not represent the owner or operator in other legal matters. An original, signed duplicate of the trust agreement must be submitted to the department along with evidence or a certification by the trustee that the trustee meets the requirements of this paragraph.

(ii) Pay-in period.

(a) For a trust fund used to demonstrate financial assurance for closure at a facility required to provide financial assurance, other than a landfill, the pay-in period may be no more than one year.

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

(1) Closure. For a trust fund used to demonstrate financial assurance for closure, the first payment into the fund must be made no later than 60 days before the initial receipt of waste and must be at least equal to the current cost estimate for closure, except as provided in paragraph (9) of this subdivision, divided by the number of years of remaining operating life of the facility if less than 10 years or by 10 if the remaining operating life is more than 10 years. The amount of subsequent payments must be determined by the following formula:

Next Payment = (CE – CV)/Y

where CE is the cost estimate for closure (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay in period. For pay-in periods less than one year, the amounts of each payment into the trust fund must be approved by the department.

(2) Post-closure and custodial care. For a trust fund used to demonstrate financial assurance for post-closure and custodial care, the first payment into the fund must be at least equal to the current cost estimate for post closure care and custodial care, except as provided in paragraph (9) of this subdivision, divided by the number of years of remaining operating life of the facility if less than 10 years or by 10 if the remaining operating life is more than 10 years. The amount of subsequent payments must be determined by the following formula:

Next Payment = (PCE – CV)/Y

where PCE is the cost estimate for post closure care and custodial care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay in period. For pay-in periods less than one year, the amounts of each payment into the trust fund must be approved by the department. The initial payment into the trust fund for post closure care and custodial care must be made no later than 60 days before the initial receipt of waste.

(3) Corrective measures. For a trust fund used to demonstrate financial assurance for corrective measures at a landfill, the owner or operator must make payments into the trust fund at least annually over one half of the estimated length of the corrective measures program. The first payment into the trust fund must be at least equal to one half of the current cost estimate for corrective measures, except as provided in paragraph (9) of this subdivision, divided by the number of years in the corrective measures pay in period. The amount of subsequent payments must be determined by the following formula:

Next Payment = (RB – CV)/Y

where RB is the most recent estimate of the required trust fund balance for corrective measures (*i.e.*, the total costs that will be incurred during the second half of the corrective measures period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay in period. For pay-in periods less than one year, the amounts of each payment into the trust fund must be approved by the department. The initial payment into the trust fund for corrective measures must be made no later than 120 days after the department's approval of the corrective measures remedy.

(c) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and payments made according to the specifications of this paragraph and paragraph (9) of this subdivision, as applicable.

(d) The owner or operator, or other person authorized to conduct closure, post closure care, custodial care, or corrective measures activities, may request reimbursement from the trustee for these expenditures by

submitting itemized bills and supporting documentation to the department for review and approval. If approved, the department will instruct the trustee to make reimbursements in those amounts the department specifies in writing. Requests for reimbursement will be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post closure care, custodial care or corrective measures. The owner or operator or other person authorized must notify the department that reimbursement has been received.

(e) The owner or operator may terminate the trust fund only if:

(1) the department authorizes termination in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(2) the owner or operator is no longer required to demonstrate financial assurance.

(2) Surety bond guaranteeing payment.

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by obtaining a payment surety bond that conforms to the requirements of this paragraph. Except as required under section 360.4(j) of this Part, the bond for closure and in the case of a landfill, post closure care, and custodial care must be effective no later than 60 days before the initial receipt of waste; and, the bond for corrective measures at a landfill must be effective no later than 120 days after the department's approval of the corrective measures remedy. The surety company issuing the bonds described in this subparagraph must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury. The original bond must be submitted to the department along with evidence or a certification by the surety company that the surety company meets the requirements of this subparagraph.

(ii) The penal sum of the bond must be an amount at least equal to the current cost estimate for closure, post closure care, custodial care, or corrective measures, if applicable, except as provided in paragraph (9) of this subdivision.

(iii) Under the terms of the bond, the surety will become liable on the bond obligation if the owner or operator fails to perform as guaranteed by the bond, or fails to provide alternate financial assurance as specified in this section and obtain the department's written approval of the assurance provided within 90 days after the owner or operator and

the department receive a notice of cancellation of the bond from the surety.

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

(v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund, or as otherwise directed by the department. Payments from the standby trust fund must be approved in advance by the department in writing.

(vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section. Any notice of cancellation, reinstatement, or renewal of the bond, or any other notice relating to the bond, must clearly identify the owner or operator and each facility for which the bond provides financial assurance, including the name and address of the owner or operator, and the name, address and amount guaranteed for each facility.

(vii) The owner or operator may cancel the bond only if:

(a) the department authorizes cancellation in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(b) the owner or operator is no longer required to demonstrate financial assurance.

(3) Letter of credit.

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by obtaining an irrevocable letter of credit that conforms to the requirements of this paragraph. The letter of credit for closure, post closure care and custodial care must be effective no later than 60 days before the initial receipt of waste, and the letter of credit for corrective measures at a landfill must be effective no later than 120 days after the department’s approval of the corrective measures

remedy. The issuing institution must be an entity that has the authority to issue letters of credit. The original letter of credit must be submitted to the department for review and approval along with evidence or a certification by the institution issuing the letter of credit that the institution meets the requirements of this subparagraph.

(ii) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility and the amount of funds assured.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post closure care, custodial care, or corrective measures, if applicable, except as provided in paragraph (9) of this subdivision. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance. Any notice of cancellation, reinstatement, or any other changes to the letter of credit must clearly identify each owner or operator and facility for which the letter of credit provides financial assurance, including the name and address of the owner or operator, and the name, address and amount guaranteed for each facility.

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

(v) The owner or operator may request cancellation of the letter of credit. The letter of credit may only be cancelled under the following conditions:

(a) the department authorizes that cancellation in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(b) the owner or operator is no longer required to demonstrate financial assurance.

(vi) Following a department determination that the owner or operator has failed to perform closure, post-closure care, custodial care, or corrective measures, the department may draw on the letter of credit.

(vii) If the owner or operator does not establish alternate financial assurance as specified in this subdivision and does not obtain written approval of alternate assurance from the department within 90 days after both the owner or operator and the department receive a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department will draw on the letter of credit. The department may delay the drawing if the issuing institution grants an extension of the term of credit. During the last 30 days of any extension the department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subdivision and obtain written approval of the assurance from the department.

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

(4) Local government financial test.

(i) A municipality that is an owner or operator of a facility required to provide financial assurance that satisfies the requirements of subparagraphs (ii) through (iv) of this paragraph may demonstrate financial assurance up to the amount specified in subparagraph (v) of this paragraph.

(ii) Financial component.

(a) The municipality must satisfy subclause (*1*) or (*2*) of this clause as applicable:

(1) if the municipality has outstanding rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all general obligation bonds; or

(2) the municipality must satisfy each of the following financial ratios based on the municipality’s most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total

expenditures less than or equal to 0.20.

(b) The municipality must prepare its financial statements in conformity with generally accepted accounting principles for governments and have its financial statements audited by an independent certified public accountant.

(c) The municipality is not eligible to assure its obligations under this subparagraph if it:

(1) is currently in default on any outstanding general obligation bonds; or

(2) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(3) operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

(4) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant auditing its financial statement as required under clause (*b*) of this subparagraph. However, the department may evaluate qualified opinions on a case-specific basis and allow use of the financial test in cases where the department deems the qualification insufficient to warrant disallowance of use of the test.

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

(iv) Recordkeeping and reporting requirements.

(a) Within 270 days following the close of the municipality's fiscal year, the municipality must submit the following items to the department and must place the following items in the facility's operating record.

(1) A letter signed by the municipality's chief financial officer that:

(i) lists all the current cost estimates covered by the local government financial test, as described in subdivision (b) of this section;

(ii) provides evidence and certifies that the municipality meets the conditions of clauses (ii)(*a*)-(*c*) of this paragraph; and

(iii) certifies that the municipality meets the conditions of subparagraphs (4)(iii) and (4)(v) of this subdivision.

(2) The municipality's independently audited year-end financial statements for the latest fiscal year (except for municipalities where audits are required every two years and where unaudited statements are allowed to be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant that conducts equivalent comprehensive audits.

(3) A report to the municipality from the municipality's independent certified public accountant (CPA) based on performing an agreed upon procedures engagement relative to the financial ratios required by subclause (ii)(*a*)(*2*) of this subparagraph, if applicable, and the requirements of clause (ii)(*b*) of this paragraph and subclauses (ii)(*c*)(*3*) and (*4*) of this paragraph. The CPA or State agency's report should describe the procedures performed and the CPA or State agency's findings and state that the chief financial officer's letter required by subclause (*1*) of this clause was reviewed and the data in the letter derived from the financial statements for the latest completed fiscal year were compared with the amounts in the financial statements.

(4) A copy of the CAFR used to comply with subparagraph (iii) of this paragraph.

(b) The items required in clause (*a*) of this subparagraph covering closure, post closure care and custodial care must be placed in the facility's operating record no later than 60 days before the

initial receipt of waste; and the items required in clause (*a*) of this subparagraph covering corrective measures must be placed in the facility's operating record no later than 120 days after the department's approval of the corrective measures remedy.

(c) After the initial placement of the items in the facility's operating record, the municipality must update the information and submit it to the department and place the updated information in the operating record within 270 days following the close of the municipality's fiscal year.

(d) The municipality is no longer required to meet the requirements of subparagraph (iv) of this paragraph when:

(1) the department authorizes termination in advance and in writing and the municipality substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the municipality is no longer required to demonstrate financial assurance; or

(2) the municipality is no longer required to demonstrate financial assurance.

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

(f) The department, based on a reasonable belief that the municipality may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the municipality at any time. If the department finds, on the basis of these reports or other information, that the municipality no longer meets the requirements of the local government financial test, the municipality must provide alternate financial assurance in compliance with this section.

(v) Calculation of costs to be assured. The portion of the closure, post-closure, custodial care, and corrective measures costs for which a municipality can assure under this paragraph is determined as follows:

(a) if the municipality does not assure other environmental obligations through a local government financial test and provides no other financial assurance instrument, it may assure closure, post-closure, custodial care and corrective measures costs that equal up to 43 percent of the municipality's total annual revenue;

(b) if the municipality assures other environmental obligations through a local government financial test, including those associated with Underground Injection Control (UIC) facilities under 40 CFR section 144.62 or Part 750 of this Title, petroleum underground storage tank facilities under 40 CFR part 280 or Part 612 of this Title, PCB storage facilities under 40 CFR part 761 or Subpart 373-2 of this Title, and hazardous waste treatment, storage, and disposal facilities under 40 CFR parts 264 and 265 or Subpart 373-2 or 373-3 of this Title, as incorporated by reference in section 360.3 of this Part, it must add those costs to the closure, post-closure, custodial care and corrective measures costs it seeks to assure under this paragraph. The total that may be assured in the absence of a financial assurance instrument must not exceed 43 percent of the municipality's total annual revenue;

(c) the municipality must obtain an alternate financial assurance instrument for those costs that exceed the limits set in clauses (*a*) and (*b*) of this subparagraph.

(5) Local government guarantee.

(i) An owner or operator required to provide financial assurance may demonstrate financial assurance for closure, post-closure, custodial care, and corrective measures, as required by this Part, by obtaining a written guarantee provided by a municipality. The guarantor must meet the requirements of the local government financial test in paragraph (4) of this subdivision,and must comply with the terms of a written guarantee.

(ii) Terms of a local government guarantee. The guarantee covering closure, post closure care, and custodial care, whichever is applicable, must be placed in the facility’s operating record no later than 60 days before the initial receipt of waste; and the guarantee covering corrective measures must be placed in the facility’s operating record no later than 120 days after the department’s approval of the corrective measures remedy. The guarantee must provide that:

(a) if the owner or operator fails to perform closure, post-closure care, custodial care and/or corrective measures of a facility covered by the guarantee, the guarantor will:

(1) perform, or pay a third party to perform, closure, post-closure care, custodial care and/or corrective measures as required; or

(2) establish a fully funded trust fund as identified in paragraph (1) of this subdivision in the name of the owner or operator.

(b) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the first 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(c) If the guarantor seeks to cancel the guarantee, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the department. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the department.

(d) The owner or operator may cancel the guarantee only if:

(1) the department authorizes cancellation in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(2) the owner or operator is no longer required to demonstrate financial assurance.

(iii) Recordkeeping and reporting.

(a) In the case of closure, post-closure care, and custodial care, the owner or operator must submit to the department and place into the facility's operating record, no later than 60 days before the initial receipt of waste, a certified copy of the guarantee covering closure, post-closure care, and custodial care and the items required under subparagraph (4)(iv) of this subdivision. In the case of corrective measures at a landfill, the owner or operator must submit to the department and place into the facility's operating record, no later than 120 days after the department's approval of the corrective measures

remedy for a landfill, a certified copy of the guarantee covering the corrective measures and the items required under subparagraph (4)(iv) of this subdivision.

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

(6) Reserve fund. A capital reserve fund or a solid waste management facility reserve fund established and funded pursuant to the General Municipal Law satisfies these requirements provided the pay in period is consistent with paragraph (1) of this subdivision.

(7) The full faith and credit of New York State or the Federal government shall be used for facilities owned or operated by New York State or the Federal government.

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

(9) Use of a financial mechanism for multiple facilities. An owner or operator required to provide financial assurance may use a financial assurance mechanism identified in subdivision (d) of this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanisms must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. If the owner or operator uses a surety bond or a letter of credit for multiple facilities, a standby trust fund

must be established for any individual facility having a cost estimate of $50,000 or more. In directing funds available through the mechanisms for closure, post-closure care, custodial care or corrective measures of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for the facility, unless its owner or operator agrees to the use of additional funds available under the mechanism.

(e) Wording of instruments.

(1) For instruments covering one or more facilities required to provide financial assurance located entirely within one administrative region of the department, the owner or operator of the facility or facilities must submit each original instrument to the director of the administrative region of the department in which the facility or facilities are located, and submit a copy to the director of the Division of Materials Management or successor administrative unit.

(2) For instruments covering one or more facilities required to provide financial assurance located in more than one administrative region of the department, the owner or operator of the facility or facilities must submit each original instrument to the director of the Division of Materials Management or successor administrative unit, and submit a copy to each director of the administrative regions of the department in which the facility or facilities are located.

(3) A trust agreement for a trust fund, as identified in paragraph (d)(1) of this section, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

[or insert STANDBY TRUST AGREEMENT if established as a standby trust to receive funds from a letter of credit, surety bond or other instrument]

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," partnership," "association," or "proprietorship"], the "Settlor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

WHEREAS, the New York State Department of Environmental Conservation (hereinafter referred to as "Department") has established certain regulations applicable to the Settlor, requiring that an owner or operator of a solid waste management facility shall provide financial assurance that funds will be available when needed [insert "for facility closure, and/or post-closure monitoring and maintenance, and/or custodial care monitoring and maintenance, and/or corrective measures, if necessary" or other language upon written approval of the commissioner of Department which limits or reduces the extent of the activities funded by this trust] [hereinafter referred to as [insert "Closure, Post Closure, Custodial Care and Corrective Measures"], and

WHEREAS, the Settlor has elected to establish a trust to provide all or part of such financial assurance for the [facility or facilities] identified herein, and

WHEREAS, the Settlor acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Settlor and the Trustee agree as follows:

Section 1. ‘Definitions’. As used in this Agreement:

(a) The term ‘Settlor’ means the owner or operator who enters into this Agreement and any successors or assigns of the Settlor.

(b) The term ‘Trustee’ means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term ‘Commissioner’ means the Commissioner of Environmental Conservation, or the Commissioner’s duly appointed designee.

Section 2. ‘Identification of Facilities and Cost Estimates’. This Agreement pertains to the [facility or facilities] and cost estimates identified on attached Schedule A [on Schedule A, for each facility, list the Department identification numbers, names, addresses, and the costs, as established or approved by the Commissioner, per facility for Closure, Post-Closure, Custodial Care and Corrective Measures, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. ‘Establishment of Fund’. The Settlor and the Trustee hereby establish a trust fund (hereinafter referred to as the "Fund") for the sole benefit of the Department. The Settlor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B annexed hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Settlor, any payments necessary to discharge any liabilities of the Settlor established by the Department.

Section 4. ‘Payment for Closure, Post-closure, Custodial Care and Corrective Measures’. The Trustee shall make payment from the Fund as the Commissioner shall direct, in writing, to provide for the payment of the costs of Closure, Post-closure, Custodial Care and/or Corrective Measures of the facilities covered by this Agreement. The Trustee shall reimburse the Settlor or other persons as identified by the Commissioner from the Fund for the expenditures of such covered activities in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Settlors such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. ‘Payments Comprising the Fund’. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. ‘Trustee Management’. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in compliance with general investment policies and guidelines which the Settlor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Settlor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, 15 USC 80a 2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or a state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. ‘Commingling and Investment’. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 80a 1 'et seq.', including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. 'Express Powers of Trustee'. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government;

(e) To accept additions to the Fund from sources other than the Settlor of the Trust; and

(f) To contest, compromise, or otherwise settle any claim in favor of the Fund or Trustee, or in favor of third persons and against the Fund or Trustee.

Section 9. 'Taxes and Expenses'. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the

compensation of the trustee to the extent not paid directly by the Settlor, and all of the proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. 'Annual Valuation'. The Trustee shall annually, at least 30 days before the anniversary date of establishment of the Fund, furnish to the Settlor and to the Commissioner, a statement confirming the value of the Trust. Any securities in the fund shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the Fund. The failure of the Settlor to object in writing to the Trustee within 90 days after the statement has been furnished to the Settlor and to the Commissioner shall constitute a conclusively binding assent by the Settlor, barring the Settlor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement. [For a standby trust agreement, insert "This provision does not apply to a standby trust fund until payments have been made to the Fund"]

Section 11. 'Advice of Counsel'. The Trustee may from time to time consult with counsel, who may be counsel to the Settlor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. 'Trustee Compensation'. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Settlor.

Section 13. 'Successor Trustee'. The Trustee may resign or the Settlor may replace the Trustee, but such resignation or replacement shall not be effective until the Settlor has appointed a Successor Trustee and this successor accepts the appointment. The Successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the Successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the Successor Trustee the funds and properties then constituting the Fund. If for any reason the Settlor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a Successor Trustee or for instruction. The Successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Settlor, the Commissioner, and the present Trustee by certified mail, return receipt requested, 30 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 14. 'Instructions to the Trustee'. All orders, requests, and instructions by the Settlor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Settlor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in compliance with the Settlor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in compliance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Settlor or Department hereunder has occurred. The Trustee shall have no duty to act in the

absence of such orders, requests, and instructions from the Settlor and/or Department except as provided for herein.

Section 15. 'Notice of Nonpayment'. The Trustee shall notify the Settlor and the Commissioner, by certified mail, return receipt requested, [if annual payments are to be made to the Fund insert "within 30 days after each anniversary of the establishment of the Trust" or if payments are to be made on a different basis, such as monthly or quarterly, then insert other language approved by the Department], if no payment is received from the Settlor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment. [For a standby trust agreement, insert "This provision does not apply to a standby trust fund unless and until payments have been made to the Fund."]

Section 16. 'Amendment of Agreement'. This Agreement may be amended by an instrument in writing executed by the Settlor, the Trustee, and the Commissioner or by the Trustee and the Commissioner if the Settlor ceases to exist.

Section 17. 'Irrevocability and Termination'. Subject to the right of the parties to amend this Agreement as provided in section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Settlor, the Trustee, and the Commissioner, or by the Trustee and the Commissioner if the Settlor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Settlor.

Section 18. 'Immunity and Indemnification'. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in the carrying out of any directions by the Settlor or the Commissioner issued in compliance with this Agreement. The Trustee shall be indemnified and saved harmless by the Settlor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Settlor fails to provide such defense.

Section 19. 'Choice of Law'. This Agreement shall be administered, construed, and enforced according to the laws of the State of New York.

Section 20. 'Fund Not an Asset of Settlor in Bankruptcy'. It is the Settlor's legal and equitable obligation under the permit and other applicable law, which obligation is not limited to the value of the Fund, to provide for the payment of the costs of Closure, Post-closure, Custodial Care, and/or Corrective Measures of the [facility or facilities], inter alia, in accordance with the terms of the permit, any subsequent modifications thereof, and 6 NYCRR Parts 360, 361, 362, 363, and 365. This trust is irrevocable and created for the sole benefit of the Department. The parties agree that normal principles of trust law apply, and that legal Title to the Fund shall be in the trustee and the Department, to ensure, inter alia, Proper Closure, Post-Closure, Custodial Care and/or Corrective Measures are carried out at the [facility or facilities] without adverse environmental or health impacts. The Settlor shall have no property interest in the Fund except a contingent remainder interest which shall entitle it to receive, upon the completion of Closure, Post-Closure, Custodial Care and/or Corrective Measures to the satisfaction of the Department, any funds remaining in the trust in excess of such costs and the final administrative costs of the trustee and

the Fund. The interest of any beneficiary, including any contingent remainder interest, of any trust created hereunder, either as to income or principal, shall not be anticipated, alienated or in any manner assigned by such beneficiary or contingent remainder interest holder, and shall not be subject to any legal process, bankruptcy proceedings or the interference or control of creditors or others.

Section 21. 'Interpretation'. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed, if appropriate, and attested as of the date first written below. The parties below certify that the wording of this Agreement is identical to the wording identified in 6 NYCRR 360.22(e)(3) as such regulations were constituted on the date first written below.

_____

Settlor

_____

Title

_____

Company Name

_____

Trustee

_____

Title

_____

Banking Institution or Trust Company

(ACKNOWLEDGMENT BY TRUSTEE) within New York

State of New York }

{ ss.:

County of }

On the day of , in the year 2 , before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(ACKNOWLEDGMENT BY TRUSTEE) outside New York

[Insert State, District of Columbia, Territory, Possession or Foreign Country] } ss.

On the day of , in the year 2 , before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the [Insert the City or other political subdivision and the state or country or other place the acknowledgement was taken].

Signature:

Name:

Office:

(ACKNOWLEDGMENT BY SETTLOR) within New York

State of New York }

} ss.:

County of }

On the day of , in the year 2 , before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(ACKNOWLEDGMENT BY SETTLOR) outside New York

[Insert State, District of Columbia, Territory, Possession or Foreign Country] } ss.

On the day of , in the year 2 , before me, the undersigned, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the [Insert the City or other political subdivision and the state or country or other place the acknowledgement was taken].

Signature:

Name:

Office:

Schedule A

Identification of Facility(ies) and Cost Estimates

[Provide the following information for each facility covered under the Trust Agreement.]

Name and Address of Facility(ies)_____

NYS DEC Identification Number(s): _____

Cost estimate(s):

Closure_____

Post-Closure Care _____

Custodial Care _____

Corrective Measures _____

Total _____

Schedule B

Identification of Property

The fund is established initially as consisting of the following:

Amount: $_____

Type of property: [identify the type of property used to establish the fund (e.g., cash, check, etc.)]

Source: [identify the name of the source of the funds (e.g., bank, facility owner or operator, etc.)]

Date: [insert date].

[For a Standby Trust Agreement insert "This agreement will be funded by the following:

Type of property and number: [Letter of Credit and #, Surety Bond and #, cash, etc.]

Issued by: [identify the name of the source of the funds (e.g.,. bank, facility owner or operator, etc.)]

Date: [insert date] in accordance with the terms of [(e.g., Letter of Credit, Surety Bond, etc.)]."]

Schedule C

Identification of Authorized Personnel

Any orders, requests or instructions by the Settlor to the Trustee may be signed by any one of the following persons:

[Provide the following contact information for each person authorized to give orders, requests or instructions.]

_____

Title:

_____

Name:

_____

Address:

_____

Phone Number:

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

SURETY BOND

(Financial Guarantee Bond)

Bond Number:

_____

Date bond executed:

_____

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

Effective date:

_____

Principal:

_____

[Legal name and business address of owner or operator]

Type of organization:

_____

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

State of Incorporation:

_____

Surety(ies):

_____

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

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

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

_____

_____

_____

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

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

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

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

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

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully perform and complete [insert "closure", "post-closure care", "custodial care" "and/or corrective measures"] whenever required to do so at each facility for which this bond guarantees payment for ["closure", "post-closure care", "custodial care" "and/or corrective measures"] in compliance with the ["closure plan", "post-closure care plan", "custodial care plan" "and/or corrective measures plan"] and other requirements of the permit, applicable rules, regulations, and orders of the department, and applicable provisions of the laws of the State of New York,

OR, if the Principal shall faithfully, before the beginning of final closure of each facility for which this bond guarantees payment, fund the standby trust fund or other mechanism as directed by the [Commissioner or Regional Director] in the amount(s) identified above for each facility,

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

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

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

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

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

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

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

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

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

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

PRINCIPAL

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

CORPORATE SURETY(IES)

[Name and Address]

State of Incorporation:

_____

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

$ _____

(Signature(s)) _____

(Name(s) and Title(s))

_____

(Corporate Seal)

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

Bond Premium: $ _____

(ACKNOWLEDGMENT BY PRINCIPAL, UNLESS IT BE A CORPORATION)

STATE OF :

: SS.:

COUNTY OF :

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

_____
Notary Public

(ACKNOWLEDGMENT BY PRINCIPAL, IF A CORPORATION)

STATE OF :

: SS.:

COUNTY OF :

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

_____

Signature and office of person taking acknowledgment

_____

Notary Public

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

STATE OF :

: SS.:

COUNTY OF :

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

_____

Signature and office of person taking acknowledgment

_____

Notary Public

(5) A letter of credit, as identified in paragraph (d)(3) of this section, must be worded exactly as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Letter of Credit

[Name and address of banking establishment] [Date]

[See instruction at 6 NYCRR 360.22(e)(1) and (2) of this Part for addressing]

Regional Director

Region [Number of the appropriate Department of Environmental Conservation Regional Office in which the facility is located, (i.e., 1 – 9)]

New York State Department of Environmental Conservation

[Address of the appropriate Regional Office]

OR

Commissioner

New York State Department of Environmental Conservation

Attn: Division of Materials Management [or successor administrative unit]

625 Broadway

Albany, New York 12233 7260

Re: Letter of Credit No. ————

Dear [insert “Commissioner” or “Regional Director”]:

We hereby establish and open our Irrevocable Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [insert amount of dollars in words] U.S. dollars ($), available upon presentation of:

(1) your sight draft, bearing reference to this Letter of Credit No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the New York State Environmental Conservation Law."

This letter of credit covers [insert “closure”, “post-closure care”, “custodial care”, and/or “corrective measures”, whichever apply] at the following [facility or facilities]: [identify each of the owner’s or operator’s facilities by name, address and Department of Environmental Conservation identification number, and the amounts for each].

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date thereafter, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail, return receipt requested, that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft and the above-referred-to signed statement for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

The [insert name of bank issuing letter of credit] agrees that whenever this letter of credit is drawn on, under and in compliance with the terms of this letter of credit, that [insert name of bank issuing letter of credit] shall duly honor such draft upon presentation to [insert name of bank issuing letter of credit] and the [insert name of bank issuing letter of credit] shall deposit the amount of the draft into the standby trust fund of [owner's or operator's name] or the amount will be otherwise disbursed in compliance with the [“Commissioner's” or “Regional Director’s”] instructions.

We certify that the wording of this letter of credit is identical to the wording identified in 6 NYCRR 360.22(e)(5), as such regulations were constituted on the date shown immediately below.

Very truly yours,

[Insert name of bank issuing credit]

By: _____

[insert name and Title of authorized employee or officer of bank issuing letter of credit.]

Date: _____

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," as described in 6 NYCRR Part 373-2.8(j)(3), or "the Uniform Commercial Code of the State of New York"].

PART 361

MATERIAL RECOVERY FACILITIES

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SUBPART 361-1

RECYCLABLES HANDLING AND RECOVERY FACILITIES

Section 361-1.1 Applicability
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361-1.5 Operating requirements
361-1.6 Recordkeeping and reporting requirements

Section 361-1.1 Applicability.

(a) This Subpart applies to any facility that receives source-separated nonputrescible recyclables for the purpose of processing. The requirements contained in Part 360 of this Title also apply to any facility that is subject to this Subpart.

(b) This Subpart does not apply to:

(1) a facility that receives organic waste, which is regulated under Subpart 361-2, 361-3, or 361-4 of this Part;

(2) a facility that receives construction and demolition debris for recovery, which is regulated under Subpart 361-5 of this Part;

(3) a facility that receives only motor vehicles or portions of motor vehicles, which is regulated under Subpart 361-7 of this Part;

(4) a facility that receives waste tires, which is regulated under Subpart 361-6 of this Part or 362-1 of this Title;

(5) a facility that receives electronic waste for recovery and recycling as authorized by department registration or permit issued pursuant to Part 360 of this Title;

(6) a facility that receives municipal solid waste for post-collection separation of recyclables. That type of facility, or a portion thereof, is regulated under Subpart 362-2 of this Title; and

(7) a facility that operates pursuant to the Universal Waste Rule in Subpart 374-3 of this Title;

(8) a facility that is a redemption center regulated under Part 367 of this Title and article 27, title 10 of the Environmental Conservation Law (ECL), which limits its activities to the collection, sorting, and packaging of empty beverage containers from redeemers, in bags and boxes for return to the deposit initiator or agent of the deposit initiator, without further processing, except through a reverse vending machine after the deposit initiator has authorized, in writing, processing through the reverse vending machine at the redemption center’s facility;

(9) a facility, or a portion of a facility, engaged primarily in the purchase, processing and shipment of ferrous and/or non-ferrous scrap metal, which is regulated under Subpart 361-7 of this Title;

(10) a facility, or portion of a facility, that receives source-separated

recyclables for the purpose of transfer. That type of facility, or a portion thereof, is regulated under Subpart 362-3 of this Title.

Section 361-1.2 Exempt facilities.

In addition to the exemptions provided for in section 360.14 of this Title, the following facilities are exempt from this Subpart:

(a) Take back sites, which for purposes of this Subpart, means sites at a retailer or wholesaler that are used for collection of recyclables similar in nature to those sold or distributed by the retailer or wholesaler, if the materials are collected for the purpose of recycling or reuse.

(b) Sites operated by government or not for profit organizations that take back consumer goods for reuse or secondary marketing.

(c) Recyclables handling and recovery facilities that are owned or operated by a municipality, or contracted by or on behalf of a municipality that accept less than 20 cubic yards of source-separated nonputrescible recyclables per day , provided the following criteria are met:

(1) the facility must only accept residential source-separated nonputrescible recyclables;

(2) the facility must be owned or leased by the municipality or a contractor working on behalf of the municipality;

(3) all source-separated nonputrescible recyclables must be transferred manually from incoming vehicles to the containers;

(4) the facility must only accept source-separated nonputrescible recyclables when an attendant is on duty.

(5) the source-separated nonputrescible recyclables must be placed in containers during operation of the facility;

(6) the source-separated nonputrescible recyclables must be stored in rigid leak-proof containers and covered at the end of the operating day; and

(7) the source-separated nonputrescible recyclables must be stored separately by waste type. Nonputrescible recyclables may be stored for up to 90 calendar days.

Section 361-1.3 Registered facilities.

(a) Unless otherwise exempt or required to obtain a permit pursuant to this Part, the following facilities must register with the department as specified in this Subpart and are subject to section 360.15 of this Title.

(1) Recyclables handling and recovery facilities that have residue below 15 percent of their intake based on a full year of operation.

(b)Each facility subject to this section must comply with the criteria outlined in Part 360 of this Title and the applicable requirements of this Subpart.

(c) Each facility subject to this section must comply with the recordkeeping and reporting requirements in section 361-1.6 of this Subpart.

Section 361-1.4 Permit application requirements.

A recyclables handling and recovery facility that is not an exempt facility or subject to the registration provisions of section 361-1.3 of this Subpart must obtain a permit from the department, and must submit an application which includes the information

required in section 360.16 of this Title and must include a description of how the facility will comply with the operating requirements in Part 360 of this Title and section 361-1.5 of this Subpart.

Section 361-1.5 Operating requirements.

A recyclables handling and recovery facility required to obtain a registration or a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) A recyclables handling and recovery facility can receive only source-separated, nonputrescible recyclables for further processing.

(b) Residues and processed recyclables must be stored separately. Recyclables must be maintained in a manner that ensures marketability is not adversely affected. Source-separated or processed and separated material that meets a beneficial use determination as specified in section 360.12 of this Title can be stored without time restriction so long as the storage volume conforms with the declared storage volume identified in the application or registration documents.

(c) Unprocessed and processed recyclables that are intended to be recovered can be stored for a maximum of 180 calendar days, unless the following criteria are satisfied to justify a longer storage period:

(1) there is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 180-day intervals or volumes that may take longer than 180 days to acquire;

(2) the facility has sufficient storage area to prevent a negative impact to public health or the environment;

(3) the facility implements an inventory control system, including daily logs, to ensure that the processed recyclables do not remain at the facility for longer than the period approved; and

(4) prior to storing unprocessed and processed recyclables for longer than 180 calendar days, the facility must notify the department of its intent and include justification based on the requirements of this subdivision.

(d) Unprocessed recyclables that the facility does not intend to recover and that do not contain putrescible waste can be stored for a period not to exceed 14 calendar days.

(e) Incidental putrescible waste received, or putrescible residues can be stored for a period not to exceed seven calendar days after receipt or generation.

(f) Refrigerants contained in materials being handled must be properly removed and managed prior to compaction, crushing or shredding.

(g) All recyclables and waste delivered to or leaving a facility that receives more than 5 tons per day must be weighed and recorded.

Section 361-1.6 Recordkeeping and reporting requirements.

Facilities registered and permitted pursuant to this Part must:

(a) Keep records as required by section 360.19(k) of this Title.

(b) Submit an annual report as required by section 360.19(k)(3) of this Title.

SUBPART 361-2

LAND APPLICATION AND ASSOCIATED STORAGE FACILITIES

Section 361-2.1 Applicability
361-2.2 Exempt facilities
361-2.3 Registered facilities
361-2.4 Permit application requirements for land application facilities
361-2.5 Design and operating requirements for land application facilities
361-2.6 Permit application requirements for storage facilities
361-2.7 Design and operating requirements for storage facilities

Section 361-2.1 Applicability.

This Subpart applies to the application of septage, biosolids, food processing waste, or other organic wastes onto or in the soil to improve soil quality or provide plant nutrients. This Subpart applies to any combination of these activities or materials. This Subpart also applies to the storage of these wastes before land application. The definitions and other criteria contained in Part 360 of this Title apply to this Subpart. The criteria applicable to digestate are found in section 361-3.3 of this Part.

Section 361-2.2 Exempt facilities.

In addition to the exemptions found in section 360.14 of this Title, the following facilities or activities are exempt from this Subpart, if odor migration is minimized, and vectors are controlled.

(a) A land application facility or storage facility for animal manure and associated bedding material, except at facilities that must register pursuant to section 361-2.3(b) and (c) of this Part. For purposes of this exemption, bedding material includes hay, straw, sawdust, wood shavings, shredded newsprint, sand, and materials approved pursuant to a case specific beneficial use determination under section 360.12 of this Title.

(b) A land application facility or storage facility for food processing wastes that are visually recognizable. The waste must be applied at or below agronomic rates. The storage is limited to a maximum of 20 cubic yards at any one time on any farm and for a maximum period of six months.

(c) A land application facility for fish-related material generated from a New York State-owned or licensed fish hatchery. The waste must be applied at or below agronomic rates.

(d) A land application facility or manure storage facility for food processing waste located on a farm covered by a CAFO permit provided:

(1) the facility is not located in the New York City watershed or on Long Island;

(2) the storage structure is built and operated in compliance with the National Resource Conservation Service (NRCS) code NY313;

(3) the waste does not contain human fecal matter (sewage sludge, septage, etc.) or industrial waste other than food processing waste; and

(4) the amount of food processing waste placed in the storage facility does not exceed 50 percent of the total volume of waste placed in the storage facility on an annual basis.

(e) A land application facility, including associated storage at the facility, for leaves, grass, or other similar vegetation, provided:

(1) physical contaminants (such as plastic bags and branches) are removed before land application and these contaminants are properly recycled or disposed;

(2) grass or other similar vegetation:

(i) is not shredded at the site of application;

(ii) is not stored on-site for more than three calendar days or in an amount exceeding 30 cubic yards;

(iii) is incorporated below the soil surface on the day it is land applied;

(iv) is applied at a rate not to exceed 20 tons per acre or a depth of one inch annually, whichever is less, and does not exceed 40 tons per acre during any three-year period; and

(3) leaves:

(i) are applied at a maximum depth of four inches per year;

(ii) are incorporated below the soil surface within seven calendar days after application to the soil;

(iii) must not be stored for more than 30 calendar days; and

(4) the blowing of grass, leaves, or vegetation is minimized.

(f) Land application of a mixture of manure and food processing waste or food scraps from a storage facility that qualifies for registration under section 361-2.3(b) of this Subpart.

Section 361-2.3 Registered facilities.

(a) Applicable requirements

(1) Unless otherwise exempt, the facilities and appliers listed in subdivisions (b) and (c) of this section must obtain a registration under section 360.15 of this Title.

(2) Facilities registered under this section are not required to have a closure plan or to obtain financial assurance.

(3) Each facility must comply with the criteria in section 360.19 of this Title, including the annual report requirement outlined in section 360.19(k)(3) of this Title.

(4) Written permission from the owner of real property on which the facility is located, if not the applicant, must be provided with the registration application.

(b) The following facilities must be registered.

(1) A storage facility on a farm, provided the following conditions are satisfied:

(i) the facility contains more than 20 cubic yards of recognizable food processing waste;

(ii) if the facility is a surface impoundment for liquid waste, the facility must be designed and built in accordance with NRCS code NY313; and

(iii) the facility meets the buffer areas specified in section 361-2.7(a) of this Subpart.

(2) A manure storage facility that also accepts uncontaminated food scraps or food processing wastes, provided the following conditions are satisfied:

(i) no sanitary waste is included in any waste stream.

(ii) no more than 10 percent of the total volume of waste entering the facility on an annual basis can consist of non-manure unless liner construction verification is provided.

(iii) up to 40 percent of the total volume of waste entering the facility on an annual basis can consist of non-manure, if the storage facility was designed and built in accordance with NRCS code NY313 and documentation is provided to the department.

(3) A land application facility for unrecognizable food processing wastes or papermill residuals (including temporary field storage), provided the following conditions are satisfied:

(i) the operating requirements of section 361-2.5(b) of this Subpart are met, except section 361-2.5(b)(2) and (3) do not apply to papermill residuals. The buffer zones may be reduced for low volume applications or low odor waste, as determined by the department;

(ii) three representative analyses of the waste for fecal coliform, total Kjeldahl nitrogen, ammonia, nitrate, total phosphorus, total potassium, total solids, total volatile solids, and pH must be submitted with the registration application and one analysis must be submitted annually during operation, unless the amount applied is 10,000 gallons per year or less. Application of 10,000 gallons per year or less requires one analysis with the registration application and one every two years thereafter. In addition, waste with lime value must also be analyzed for calcium carbonate equivalence and waste with salt content must also be analyzed for chlorides. Additional analyses may be required, as determined by the department;

(iii) the volume of waste land-applied does not cause ponding, except for temporary conditions within 12 hours of application;

(iv) the application rate of waste does not exceed the agronomic rate, a chloride loading of 170 pounds per acre per year, or results in an organic matter content above eight percent in the plow layer, whichever is more restrictive;

(v) the waste is beneficial to the crop grown and does not contain any human sanitary waste (*e.g.*, domestic sewage, biosolids, septage) or it is demonstrated that pathogen content is below detectable levels in the waste;

(vi) for papermill residuals, the residuals are 20 percent solids or greater and must not contain

secondary treatment (biological) residuals;

(vii) the facility submits an odor management plan to the department prior to land application and implements the plan when needed;

(viii) land application in the New York City water supply watershed or in Nassau or Suffolk county is addressed in a CNMP; and

(ix) the temporary field storage of papermill residuals and dry food processing waste prior to land application is allowed, provided the following criteria are met:

(a) the storage period is a maximum of 30 days or six months if under covered storage;

(b) unless stored under covered storage, the residuals are stored on the field where they will be applied, and the amount stored does not exceed the amount that will be land applied on the site;

(c) the storage area must not be located on areas with a slope greater than three percent;

(d) the residuals must have sufficient solids content that they will retain their shape if stacked three feet high and must be formed so that precipitation is shed from the pile;

(e) any run-off from the stockpile must be contained within the land application site; and

(f) after removal of the residuals, the storage area must be reseeded or returned to active cropland.

(4) A land application facility for septage from a transporter using no more than two vehicles at any one time for collection related to land application, or for the residuals from a composting toilet (liquid and solids) or source separated urine, provided the following conditions are satisfied:

(i) the operating requirements of section 361-2.5(b) of this Subpart are met, except section 361-2.5(b)(4) and (12) of this Subpart;

(ii) prior to land application, the septage is screened to remove visible nondegradable debris such as plastics, etc., and the larger nondegradable debris is disposed in a landfill or by other means approved by the department;

(iii) at least 15 acres are available for each vehicle, except for composting toilet residuals;

(iv) vegetation is grown at the application site that is sufficient to use all the available nitrogen provided from waste application;

(v) the liquid septage application rate does not exceed 25,000 gallons per acre per year, or the rate determined by the following calculation, whichever is less.

Application Rate (gallons/acre/year) = Crop nitrogen needs (pounds nitrogen/acre) x 385

The department can alter the allowed application rate if the septage is dewatered or is otherwise different than a typical septage;

(vi) the application rate for the composting toilet residuals does not exceed the agronomic rate;

(vii) for pathogen reduction, the pH of the waste is raised to 12 or higher by alkali addition and remains at 12 or higher for 30 minutes or analyses demonstrate an equivalent or greater level of pathogen reduction has been achieved. In addition, the following restrictions must be followed:

(a) public access must be restricted during land application and for at least one year after land application by the posting of signs, or the use of fences, gates or other department-approved means of preventing access;

(b) food crops with harvested parts that touch the soil and are totally above the land surface must not be grown for 14 months after land application. Food crops with harvested parts below the surface of the land must not be grown for 38 months after land application;

(c) feed crops, fiber crops, and food crops grown above the soil with harvested parts that do not touch the soil must not be grown for at least 30 days after land application;

(d) animals must not be grazed on the land for at least 30 days after land application; and

(e) turf grown on land where waste has been applied must not be grown for one year after land application when the harvested turf will be placed on either land with a high potential for public exposure or a lawn.

(5) A tank used for septage storage prior to land application, from a single transporter using no more than two vehicles for collection or for the residuals from a composting toilet (liquids and solids) or source separated urine, provided the following conditions are satisfied:

(i) the minimum horizontal separation distances from the perimeter of the tank(s) must meet the requirements found in section 361-2.5(b)(1) of this Subpart;

(ii) surface water must be directed away from the storage facility;

(iii) open tanks must be properly fenced and posted or otherwise constructed to prevent unauthorized access;

(iv) the tank(s) must be completely emptied, cleaned, and inspected at least once every 12 months or a leak detection process approved by the department must be used. The department must be notified at least one week before any internal tank inspection. Any damage or deterioration revealed must be

repaired before the facility begins receiving waste again;

(v) the storage tank must be constructed of a material (*e.g.*, concrete, steel, or fiberglass) that prevents leakage;

(vi) a minimum of two feet of freeboard must be maintained at all times.

(c) Registration requirements for third-party CAFO land appliers. The following persons must be registered.

(1) a person, other than the owner or employee of a CAFO, who land applies manure or process wastewater from a CAFO onto land that is under the control of a CAFO, referred to hereinafter as the manure applier, provided the following conditions are satisfied:

(i) the land application must be done in accordance with the CAFO's field-specific current nutrient management plan;

(ii) the manure applier must submit the signed contractor certification statement required by the CAFO permit to the CAFO prior to the initial application of nutrients on the date of service;

(iii) quantity of manure applied and fields used must be provided to the involved CAFO(s) within 21 days after the last day of consecutive service, or within 24 hours upon the request of the department;

(iv) applicator equipment must be calibrated annually, in a manner acceptable to the department; and

(v) in addition to other information that may be required by the department, the annual report required by section 360.19(k)(3) of this Title must include:

('a') the names of the CAFO(s) where the manure and/or process wastewater was generated;

('b') the quantity of manure and process wastewater applied from each CAFO;

('c') the name of the CAFO(s) where land application occurred;

('d') the source and total amount of manure and process wastewater applied on each CAFO; and

('e') a description of how the applicator equipment was calibrated.

Section 361-2.4 Permit application requirements for land application facilities.

A land application facility that is not an exempt facility or subject to the registration provisions of section 361-2.3 of this Subpart must obtain a permit and must submit an application, which includes the requirements identified in this section and section 360.16 of this Title. The application must include:

(a) A soil survey map from the U.S. Department of Agriculture's Soil Conservation Service, with a key to the soil survey, indicating the location of land application. Location-specific soil investigation results must be provided, if deemed necessary by the department, based

on soil and hydrogeologic conditions at the site.

(b) Information concerning the depth to bedrock and groundwater, and the source of the data.

(c) A land application operation plan that includes:

(1) the amount of land that will be used and the crops to be grown;

(2) timing of planting and harvesting;

(3) application rate and any supplemental waste or fertilizer that will be used (including manure);

(4) description of field stockpile storage, if applicable;

(5) provisions for waste storage or disposal when land application is restricted (e.g., due to weather or other site conditions); and

(6) a description of how the design and operating requirements in section 360.19 of this Title and section 361-2.5 of this Subpart will be satisfied.

(d) Written permission from the landowner is required for use of the land for land application, unless the landowner is the applicant.

(e) Calculations showing the proposed daily and annual hydraulic loading, in gallons per acre.

(f) Biosolids land application. In addition to the requirements outlined in subdivisions 361-2.4(a) through (d) of this section, an application for a permit for a land application facility involving biosolids must contain the following information:

(1) A description of the biosolids including:

(i) a description of each source including the name of the wastewater treatment plant, annual biosolids production, the amount of biosolids to be land applied and a description of the federal or state pretreatment program, where applicable. Wastewater and partially treated biosolids that are generated at one treatment plant and are treated at another wastewater treatment facility before land application are not considered separate sources;

(ii) a description of the quality of the biosolids, including analytical results, as identified below:

(a) the required parameters for analysis are found in Table 1 in section 361-3.9 of this Part;

(b) the minimum number of analyses, for each biosolids source is outlined in Table 2 in section 361-3.9 of this Part;

(c) for each analysis, the sampling date, location, and protocol used to obtain representative samples must be provided;

(d) a minimum of six months of biosolids production must be represented by the analytical results submitted. With the exception of pH and total solids, all results must be reported on a dry weight basis;

(e) analyses for other pollutants can be required by the department, on a case-specific basis, based on information from the pretreatment program and other sources;

(f) all analyses must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

(g) the analysis requirement can be satisfied in part or in whole by recent samples analyzed for and reported to the department;

(h) analyses performed more than one year before the date the permit application is submitted are not acceptable;

(i) all samples must be representative of the biosolids to be land applied; and

(j) a table summarizing the analytical results must be provided, including the mean and range of the results found.

(2) A detailed description of the processes to reduce pathogenic organism content and to reduce vector attraction including:

(i) the methods that will be used for pathogen reduction and vector attraction reduction;

(ii) the monitoring and data gathering procedures that will be undertaken to demonstrate compliance including type, location, and frequency; and

(iii) for existing systems, recent operating data and/or analytical data that demonstrate that the system can meet the pathogen and vector attraction reduction criteria.

(3) Calculations showing the proposed nutrient loading rates, including nitrogen, phosphorus, and potassium. The loading rate calculations must be based on the biosolids analyses, impacts of previous waste applications, addition of supplemental nutrients, and the nutrient requirements of the crops grown.

(i) The following formulas must be used to calculate plant-available nitrogen, unless the use of an alternative formula is approved by the department:

NI = percent inorganic nitrogen = percent ammonia + percent nitrate

NO = percent organic nitrogen = percent total Kjeldahl nitrogen - percent ammonia

NH3 = percent ammonia

NO3 = percent nitrate

N = nitrogen

A = value based on treatment method employed

A values: A = 2 for composted biosolids

A = 4 for anaerobically digested biosolids

A = 6 for aerobically digested, lime stabilized and air dried biosolids

For waste incorporated into the soil:

Pounds available N per dry ton biosolids = (NI x 20) + (NO x A)

For waste surface applied:

Pounds available N per dry ton biosolids = (NH3 x 10) + (NO3 x 20) + (NO x A)

(ii) If the soil has received biosolids in the past two years, the residual nitrogen in the soil must be included in the nutrient loading calculation. The residual nitrogen must be subtracted from the nitrogen needs of the crop grown before determining the appropriate application rate. The following values must be used to determine the release rate of residual nitrogen:

Release of Residual Nitrogen during Biosolids Decomposition in Soil			
Years since last biosolids application	AR Values		
	A=2	A=4	A=6
1	0.90	1.60	2.10
2	0.51	0.72	0.95
AR = Residual Nitrogen Factor			
Residual Available N (pounds N per acre) =			
Original Application Rate (dry ton per acre) x Original NO (percent) x AR			

(iii) The value(s) used for the nutrient needs of the crop(s) grown must be based on the results of a soil test and resulting nutrient recommendation, or equivalent justification for the value chosen. Copies of the nutrient recommendations must be submitted.

(iv) For phosphorus, 30 percent of the phosphorus applied with the biosolids must be assumed to be available for plant use. For potassium, 100 percent of the potassium applied with the biosolids must be assumed to be available for plant use.

(4) Information concerning the soil pH of the plow layer including the source of this information, and method for adjusting soil pH, if required.

(5) Soil quality data including analyses for pH, arsenic, cadmium, chromium (total), copper, lead, mercury, molybdenum, nickel, selenium, and zinc:

(i) A minimum of one analysis is required for every 50 acres, or fraction thereof.

(ii) Each soil sample must be a composite of a minimum of 10 randomly selected sample locations.

(iii) The sampling depth must be consistent with the depth of biosolids incorporation.

(iv) The criteria in clauses 361-2.4(f)(1)(ii)(*f*), (*g*), and (*j*) of this section must be followed.

(6) A biosolids monitoring, sampling, and analysis plan that outlines:

(i) the location, purpose, frequency and method for biosolids sampling; and

(ii) the protocol used to obtain representative samples, and the laboratory that will be used for each analysis.

(g) Industrial waste and other waste land application.

In addition to the requirements outlined in subdivisions 361-2.4(a)-(d) of this section, the application for a permit for a land application facility involving waste other than biosolids must contain the following information:

(1) A detailed description of each waste to be land applied, including, at a minimum, the following information:

(i) the source, process, or treatment systems from which the waste originates, including a list and the quantity of all chemicals added during these processes. Material safety data sheets or other data sources providing information specific to these chemicals must be included; and

(ii) treatment or processing techniques used before land application.

(2) Analyses of the waste in accordance with the frequency, parameters, and protocol outlined in paragraph 361-2.4(e)(1) of this section.

(3) In addition to the analyses required in paragraph 361-2.4(e)(1) of this section, the following analyses, in whole or part, may be required, as determined by the department:

(i) fecal coliform, salmonella sp., enteric viruses, viable helminth ova, or other applicable pathogens; and

(ii) any or all of the pollutants identified in Part 375 of this Title or by the department.

(4) An outline of the proposed application rates and justification for the values chosen.

(5) For waste containing any domestic sewage or septage, a detailed description of the processes to reduce pathogenic organisms and vector attraction or sufficient data to demonstrate that

human pathogenic organisms are not present in the waste.

(6) A waste monitoring, sampling, and analysis plan that outlines:

(i) the location, purpose, frequency and method for waste sampling;

(ii) the analytical parameters;

(iii) the protocol used to obtain representative samples and for the preparation and preservation of samples; and

(iv) the laboratory that will be used for analyses.

Section 361-2.5 Design and operating requirements for land application facilities.

A land application facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria. For facilities permitted under this section, a closure plan and financial assurance are not required.

(a) Pollutant limits.

(1) Each waste destined for land application must not exceed the pollutant concentrations found in Table 6 in section 361-3.9 of this Part.

(i) If the waste contains pollutants at concentrations greater than those set forth in this subdivision, a permit for a land application facility will not be issued unless the generator has implemented an identification and abatement program and has remained in compliance with the requirements of this subdivision for a period of at least six continuous months. At least six analyses for total solids and the parameter(s) of concern must be provided to the department to demonstrate compliance.

(2) Wastewater and partially treated biosolids that are generated at one treatment plant and treated at another wastewater treatment facility before land application are not considered separate waste sources.

(b) Land application criteria.

(1) The minimum horizontal distance from the perimeter of the land application area must comply with the values found in the following table with respect to listed features that exist at the time the initial permit application is submitted to the department.

Feature	Minimum horizontal separation distance (in feet)
Property line	50
Residence, place of business, or public contact area when waste is not injected*	500
Residence, place of business, or public contact area when waste is injected*	200
Potable water well	200
Surface water and State regulated wetland when waste is not injected**	200
Surface water and State regulated wetland when waste is injected	100
Drainage swale	25

*Excludes owner's or operator's residence. The separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas after the permit application has been submitted to the department.

**For food processing waste: 100 feet

(2) Land application is prohibited in areas where groundwater is within 24 inches of the ground surface at the time of application. Verification of depth to groundwater prior to application may be required by the department. If the field is tiled, the top of the tile must be at least 24 inches below the ground surface and the discharge of the tile must be at least 200 feet from a potable well, surface water, and State-regulated wetland. In areas where carbonate bedrock is present, a greater depth to groundwater may be required by the department.

(3) Land application is prohibited in areas where bedrock lies less than 24 inches below the ground surface.

(4) The hydraulic loading must not exceed 16,000 gallons per acre in any 24-hour period.

(5) Land application is prohibited on land with a slope exceeding 15 percent. Land application of waste with a total solids content of less than 15 percent is prohibited on land with a slope greater

than eight percent, unless incorporated within one hour of application along paths parallel to contour lines.

(6) Land application is prohibited in special flood hazard areas, unless approved by the department.

(7) The land application rate must not exceed the lower of the agronomic rate or, for waste with neutralizing value, the application rate needed to achieve a soil pH value in an acceptable range for the crop grown. The department can restrict the application rate based on a nutrient other than nitrogen, such as phosphorus. The application rate must be sufficiently reduced to ensure appropriate application rates are not exceeded if supplemental fertilizer (including manure) will be applied to the site.

(8) The waste must be incorporated into the soil within 24 hours after application, unless a cover crop would be damaged by incorporation and concerns regarding odor and run-off can be mitigated by other means approved by the department. If incorporation is used for vector attraction reduction, the period before incorporation is limited to six hours or less.

(9) Land application is prohibited on water-saturated ground or during heavy rainfall. Land application is prohibited on snow-covered or frozen ground, except by direct injection below the land surface. Adequate storage or disposal facilities must be available for periods during the year when waste cannot be applied.

(10) Land application is permitted on all soil types that can support the robust growth of the crop grown. The use of active farmland is sufficient to demonstrate compliance with this requirement. Otherwise, sufficient information must be provided to demonstrate compliance.

(11) Proper soil conservation practices and agricultural management practices must be used to minimize run-off and soil loss through erosion.

(12) The temporary field stacking of biosolids prior to land application is allowed, provided the following criteria are met:

(i) the storage period is a maximum of 30 days;

(ii) the biosolids are stored on the field where they will be applied and the amount stored does not exceed the amount that will be land applied on the site;

(iii) the storage area must not be located on areas with a slope greater than three percent;

(iv) the biosolids must have sufficient solids content that it will retain its shape if stacked three feet high and must be formed so that precipitation is shed from the pile;

(v) any run-off from the stockpile must be contained within the land application site; and

(vi) after removal of the residuals, the storage area must be reseeded or returned to active cropland.

(13) Written permission from the landowner is required for use of the land for land application, unless the landowner is the applicant.

(c) Monitoring, recordkeeping, and reporting.

(1) Sufficient monitoring data and other information needed to demonstrate compliance with the requirements of this Subpart must be obtained. The frequency and type of monitoring necessary for pathogen and vector attraction reduction will be determined by the department on a case-specific basis and will depend on the monitoring methods employed.

(2) The annual report required by section 360.19(k)(3) of this Title must include:

(i) the location of each field used for land application and the acreage used for land application on the field;

(ii) the crop(s) grown on each field;

(iii) the total quantity of waste applied on each field;

(iv) calculations showing the hydraulic loading and nutrient loading for the fields used for land application;

(v) all analytical results required by this Subpart, including copies of all laboratory reports;

(vi) monitoring data and information to demonstrate compliance with the pathogen and vector attraction reduction requirements of this Subpart, if required;

(vii) a description of any difficulties encountered during land application, any complaints arising because of the land application operation and the corrective measures taken; and

(viii) a revised management plan for land application for the next year based on previous application rates and crop planting patterns for the next year. The plan must include an identification of the crops to be grown, fields to be used, and revised nutrient and hydraulic loading rates. All calculations must be included.

(d) Biosolids application.

In addition to the requirements identified in subdivisions 361-2.5(a)-(c) of this section, a land application facility including biosolids must comply with the following criteria:

(1) Land application criteria.

(i) Soil pH must be adjusted to 6.0 standard units or higher before land application unless lime-stabilized biosolids is used. If lime-stabilized biosolids is used, the soil pH must be 6.0 standard units or higher after biosolids application.

(ii) Land application must not adversely affect a threatened or endangered species or its designated critical habitat.

(2) Pathogen and vector attraction reduction.

(i) One of the following Class B pathogen reduction alternatives must be satisfied:

(a) Class B - alternative 1. The biosolids must be treated by one of the following processes:

(1) Aerobic digestion. Biosolids is agitated with air or oxygen to maintain aerobic conditions for a mean cell residence time of at least 40 days at 20° C or greater or at least 60 days if the temperature is less than 20° C but greater than or equal to 15° C;

(2) Air drying. Biosolids is dried on sand beds or on paved or unpaved basins, at a maximum depth of nine inches. The biosolids must dry for a minimum of three months. During at least two of the three months, the ambient average daily temperature must be above 0° C;

(3) Anaerobic digestion. Biosolids is treated in the absence of air for a mean cell residence time of at least 15 days at 35° C or greater or at least 60 days at less than 35° C but greater than or equal to 20° C;

(4) Composting. Using the within-vessel, aerated static pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher and remains at 40° C or higher for five consecutive days. For at least four consecutive hours during the five days, the temperature in the compost pile must exceed 55° C;

(5) Lime stabilization. Sufficient lime must be added to the biosolids to raise the pH of the biosolids to 12 standard units and maintain this pH for a period of at least two hours;

(6) Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the above methods and must be approved by the department; or

(b) Class B - alternative 2. The geometric mean of the density of fecal coliform of seven analyses representative of the biosolids to be land-applied must be less than either 2,000,000 most probable number per gram of total solids (dry weight basis) or 2,000,000 colony forming units per gram of total solids (dry weight basis).

(ii) One of the following vector attraction reduction requirements must be satisfied:

(a) the mass of volatile solids in the biosolids is reduced by a minimum of 38 percent;

(b) if the volatile solids reduction requirement cannot be met for anaerobically digested biosolids, vector attraction reduction can be demonstrated by anaerobically digesting a portion of the previously digested waste in a

laboratory bench-scale unit for 40 additional days at a temperature between 30° and 37° C. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 17 percent reduction in volatile solids content;

(c) if the volatile solids reduction requirement cannot be met for aerobically digested biosolids, vector attraction reduction can be demonstrated by aerobically digesting a portion of the previously digested waste that has a percent solids of two percent or less in a laboratory bench-scale unit for an additional 30 days at 20° C. Vector attraction reduction is achieved if the bench scale digestion produces less than a 15 percent reduction in volatile solids content;

(d) the specific oxygen uptake rate (SOUR) for biosolids treated in an aerobic process must be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C;

(e) biosolids is treated by an aerobic process for a minimum of 14 consecutive days. Throughout that treatment time, the temperature of the waste must remain higher than 40° C and the average temperature of the waste must be higher than 45° C;

(f) the pH of the biosolids must be raised to 12 standard units or higher by alkali addition and, without the addition of more alkali, must remain at 12 standard units or higher for two hours and then remain at 11.5 standard units or higher for an additional 22 hours;

(g) for biosolids that does not contain untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 75 percent, before mixing with other materials, until land application;

(h) for biosolids that contains untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 90 percent, before mixing with other materials, until land application;

(i) biosolids must be injected below the surface of the land. No significant amount of waste can be present on the land surface within one hour after the waste is applied; or

(j) biosolids must be incorporated into the soil within six hours after application on the land.

(iii) Access and crop restrictions:

(a) public access to land must be restricted during land application and for at least one year after land application. Access must be

controlled during that period using posted signs, fences, gates or other appropriate means;

(b) food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface must not be grown for at least 14 months after land application. Food crops with harvested parts below the surface of the land must not be grown for at least 38 months after land application;

(c) feed crops, fiber crops, and food crops grown above the soil with harvested parts that do not touch the biosolids/soil mixture must not be grown for at least 30 days after land application;

(d) animals must not be grazed on the land for at least 30 days after land application; and

(e) turf grown on land where biosolids has been applied must not be grown for one year after land application when the harvested turf will be placed on either land with a high potential for public exposure or a lawn.

(3) Monitoring, recordkeeping and reporting.

(i) Each biosolids source must be analyzed annually in accordance with the following:

(a) the parameters for analysis are found in Table 1 in section 361-3.9 of this Part;

(b) the minimum number of analyses, for each biosolids source, is dependent upon the amount of waste that was land applied, as indicated in Table 3 in section 361-3.9 of this Part;

(c) with the exception of pH and total solids, all results must be reported on a dry weight basis. The analyses must comply with the criteria found in section 361-2.4(e)(1)(ii)(*f*), (*g*), (*i*) and (*j*) of this Subpart. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department may reduce the annual number of analyses required if the quality is consistently significantly below the quality standards; and

(d) wastewater and partially treated biosolids that are generated at one facility and treated at another wastewater treatment facility before land application are not considered separate sources subject to the criteria in this paragraph. The resultant biosolids generated for land application are subject to this paragraph.

(ii) Sufficient monitoring data and other information must be obtained and retained to demonstrate compliance with the requirements of this Subpart. The frequency and type of monitoring necessary to demonstrate compliance with pathogen and vector attraction reduction criteria will depend on the

methods used and will be determined by the department.

(iii) Annual soil sampling is required. Criteria applicable to annual soil sampling are found in section 361-2.4(e)(5) of this Subpart. Only the fields used for biosolids land application in the previous year must be sampled.

(e) Land application of other waste.

In addition to the requirements identified in subdivisions 361-2.5(a)-(c) of this section, land application of waste other than biosolids must comply with the following criteria:

(1) Domestic sewage or septage content. If there is any domestic sewage or septage contribution to the waste, the waste treatment process must satisfy the pathogen and vector attraction reduction requirements of this Subpart unless it can be demonstrated that the sanitary waste is a minor portion of the waste stream and that salmonella sp. bacteria, enteric viruses, and viable helminth ova are below detectable levels.

(2) Nutrient or lime content. The waste must contain at least one percent total Kjeldahl nitrogen, contains at least 50 percent calcium carbonate equivalence, or provide sufficient documentation to demonstrate in some other manner that the waste is a benefit to the soil or plant grown.

(3) Monitoring, recordkeeping, and reporting. Annual waste monitoring is required, depending on the characteristics of the waste. The parameters for analysis and the frequency will be determined by the department depending on the quantity and quality of the waste.

Section 361-2.6 Permit application requirements for storage facilities.

A storage facility for waste destined for land application, that is not an exempt facility or subject to the registration provisions of section 361-2.3 of this Subpart, must obtain a permit and must submit an application that includes the requirements identified in this section and section 360.16 of this Title. The application must include:

(a) For surface impoundments, a construction plan for the facility including a construction quality assurance/construction quality control plan.

(b) For surface impoundments, a hydrogeologic report that is consistent with the applicable provisions of Part 363 of this Title and that identifies or characterizes the depth to groundwater and bedrock, the critical stratigraphic section and the direction of groundwater flow. The report must also discuss the monitorability of the facility, location of any recharge areas for primary or principal aquifers and the location of any unstable areas.

(c) A description of how the facility will comply with the operating requirements in section 360.19 of this Title and section 361-2.7 of this Subpart.

Section 361-2.7 Design and operating requirements for storage facilities.

A storage facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design, construct, maintain, and operate the

facility in compliance with the following criteria.

(a) The minimum horizontal separation distances from the perimeter of the storage facility must be, at a minimum, 50 feet to the property line, 100 feet to a surface water body or potable water well, and 500 feet (1,500 feet for a surface impoundment or open tank) to a residence, place of business, or public contact area. The separation requirement does not apply to the landowner's or operator's residence.

(b) All samples obtained from the storage facility must be representative of the waste stored. The number of samples necessary will be determined by the department based on the waste type and quantity of waste stored.

(c) All storage facilities must be completely emptied, cleaned, and inspected at least once every 12 months or an acceptable leak detection procedure is employed. The department must be notified at least five business days before any internal tank inspection begins. Any damage or deterioration revealed by the inspection must be repaired before the storage facility begins receiving waste again.

(d) Surface impoundments must be constructed above the special flood hazard area and must be constructed with a liner system to minimize percolation. The liner system must consist of either a minimum of two feet of compacted soil having a maximum remolded hydraulic conductivity of $1x10^{-7}$ centimeters per second or a geomembrane material approved by the department. The soil material particles must be able to pass through a one-inch screen.

(e) For surface impoundments, the facility must be monitorable and must not be located within the recharge area of a primary or principal aquifer or in an unstable area.

(f) If soil is used for a liner, the construction criteria in section 363-6.7(b)(2)(ii) and (iii) of this Title apply.

(g) Surface impoundments must maintain a minimum of two feet of freeboard. The bottom of the impoundment liner system must be a minimum of five feet above both seasonal high groundwater and bedrock.

(h) A minimum of one upgradient and two downgradient monitoring wells, or more as determined by the department, must be installed at a surface impoundment facility. If multiple surface impoundments are used and are not near each other, then each impoundment must have separate monitoring well arrays.

(i) Existing water quality must be established before placement of any waste in a surface impoundment.

(j) Quarterly sampling of the wells at surface impoundments must be conducted for the following parameters: chloride, nitrate, ammonia, sulfate, specific conductivity, total hardness, alkalinity, total organic carbon and chemical oxygen demand. In addition, for biosolids storage facilities, annual sampling is required for the following parameters: arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, zinc, boron, barium, beryllium, cyanide, turbidity and volatile organic compounds. All samples must be representative of the material sampled. All analyses must be performed by a laboratory certified by the Department of Health, using

methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department.

(1) The department can require sampling for additional parameters based on the type of waste stored and past monitoring results.

(2) Sampling results reported to the department must include a copy of the laboratory results, sampling methods, sampling personnel, dates and times samples were taken, purge volumes, field parameters and other relevant information.

(3) The department must be notified at least five business days before each sampling event.

(k) Storage facilities other than surface impoundments may be constructed of concrete, steel, or other approved material. The storage facility must be designed to maintain a minimum of two feet of freeboard

SUBPART 361-3

COMPOSTING AND OTHER ORGANICS RECYCLING FACILITIES

Section 361-3.1 Applicability.
361-3.2 Composting facilities
361-3.3 Anaerobic digestion facilities
361-3.4 Fermentation facilities for source-separated organics
361-3.5 Animal feed production facilities
361-3.6 Other organics recycling facilities
361-3.7 Pathogen and vector attraction reduction criteria
361-3.8 Biosolids and other similar products generated outside New York State
361-3.9 Tables

Section 361-3.1 Applicability.

This Subpart applies to composting and other organics recycling facilities for municipal solid waste, source-separated organics (SSO), biosolids, septage, yard trimmings or other organic waste. This Subpart also applies to any combination of these activities or materials. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 361-3.2 Composting facilities.

(a) Exempt facilities.

In addition to the exemptions listed in section 360.14 of this Title, the following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department, and when no waste accepted remains on-site for more than 36 months. For geographically contiguous land owned or operated by the same person, if the land area exceeds 50 acres, one exempt facility can be located for every 50 acres, provided the exempt facilities are at least 1000 feet apart. For facilities located on a farm where the product will only be used on that farm as a soil amendment, multiple exempt facilities may be located on that farm, provided the exempt facilities are at least 500 feet apart. Multiple exempt facility types can be commingled on the same site and still considered to be an exempt facility, such as a mixture of yard trimmings and SSO.

(1) A composting facility located at a site controlled by the waste generator, in accordance with section 360.14(b)(1) of this Title.

(2) A composting facility that accepts, measured on a monthly average, no more than 1,000 pounds or one cubic yard, whichever is greater, of SSO per week provided no more than 2,000 pounds are accepted in any one week. Sufficient bulking agent must be used to provide proper aeration and control leachate migration.

(3) A composting facility that accepts no more than 3,000 cubic yards of yard trimmings per year. This quantity does not include tree debris that is not intended for composting. For these facilities, precipitation, surface water, and groundwater that has come in

contact with yard trimmings or the resultant product is not considered leachate; however, it must be managed within the site and must not enter a surface waterbody or a conveyance to a surface waterbody or cause a violation of water quality standards promulgated in Part 750 of this Title.

(4) A composting facility located on a farm for animal carcasses. If the farm composting facility is not covered by a CAFO permit, no more than five tons of carcasses per year can be from off-site sources and the animal carcasses must be placed within the compost pile on the day received.

(5) A composting facility on property controlled by a State agency or a municipal entity for animal carcasses generated on properties under their control.

(6) A composting facility for animal manure and bedding or crop residues.

(7) A composting facility on a farm covered by a CAFO permit, provided the waste accepted is limited to manure, food processing waste, and/or SSO. The waste cannot contain sanitary content.

(b) Registered facilities.

Unless otherwise exempt, the following facilities are subject to the registration provision of section 360.15 of this Title and must register with the department. Each facility registered pursuant to this subdivision must comply with the criteria in section 360.19 of this Title and the operational criteria in subdivision 361-3.2(c).

(1) A composting facility that accepts more than 3,000 cubic yards but not more than 10,000 cubic yards of yard trimmings per year. This quantity does not include tree debris that is not intended for composting. For windrow systems, the windrows must be turned a minimum of two times per year. Precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant compost is not considered leachate but must be managed in a manner acceptable to the department.

(2) A composting facility that accepts no more than 5,000 cubic yards or 2,500 wet tons, whichever is less, of SSO per year, provided that no more than 800 cubic yards are accepted in any month. The facility must use enough bulking agent to provide proper aeration and control leachate migration, with the amount of bulking agent, by volume, equal to or greater than the amount of organic waste.

(3) A composting facility for animal mortalities (including their parts), provided a sufficient amount of woodchips or other acceptable bulking agent are used, and no more than 100 large animals (or equivalent) are composted per acre at any given time. No more 1000 large animals (or equivalent) are composted on any site at any given time.

(c) Operating criteria for registered facilities.

A registered facility must be operated in compliance with section 360.19 of this Title and the following conditions.

(1) The maximum detention time, from material acceptance to compost distribution, is 24 months.

(2) Only tree debris and wood debris can be used as a wood source for use as an amendment or bulking agent.

(3) Methods of composting that result in a mature product must be followed.

(4) The facility must have a written run-on and run-off plan that is acceptable to the department, that outlines the methods that will be used to prevent run-on from entering and run-off from leaving the site and minimizing the movement of organic matter into the soil under the site.

(5) Storage facilities used for leachate collection must be designed in accordance with the Natural Resources Conservation Services (NRCS) code NY313 standards for liner specification, or an equivalent, as incorporated by reference in section 360.3 of this Title.

(6) The facility must be at least 200 feet from the nearest surface water body, potable water well and state-regulated wetland, unless provisions are implemented to prevent leachate from leaving the boundaries of the site, in a manner acceptable to the department.

(7) The facility must be at least 200 feet from the nearest residence or place of business. This requirement does not apply to the generating business or the operator's residence, or any residence or place of business built after the facility began operation. The buffer area can be reduced if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.

(8) The facility must keep written records that demonstrate compliance with the registration criteria.

(9) All waste received must be source-separated. Food and beverages received in their original packaging (off-spec bakery items, etc.) that will be depackaged prior to composting are allowed. If compostable products are accepted, they must comply with a standard acceptable to the department.

(10) The facility must not produce odors that unreasonably impact receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

(11) Other than leaves or packaged products, all bulk organic waste must be processed into compost piles on the day received. If the organics are received in, or placed directly in, closed containers (*e.g.*, toters, etc.), the waste can be stored up to 10 days, provided odors are controlled.

(12) The product must meet criteria outlined in subparagraphs 361-3.2(e)(3)(ii) -, (vi). If required by the department, the product must be analyzed for physical contaminants and maturity.

(13) In addition to the other requirements outlined in this subdivision, registered composting facilities located in Nassau and Suffolk Counties that accept more than 3000 cubic yards of waste per year must

comply with the criteria outlined in section 361-4.6 of this Part.

(d) Permit application requirements.

A composting facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this section and section 360.16 of this Title. The application must include the following:

(1) A detailed description of the source, quality, and quantity of all waste to be composted, including the source, quality, and expected quantity of any bulking agent or amendment. The description must include the annual input and any seasonal variations in the waste type and quantity, and the appropriate quality data, as determined by the department.

(2) A design and operation plan that includes:

(i) a description of how the facility will comply with the operating requirements in section 360.19 of this Title and the requirements of subdivision 361-3.2(e);

(ii) a description and the capacity of the storage facilities used for waste, bulking agent or amendment, and product;

(iii) a description of all equipment used, including preprocessing and post-processing methods and equipment used to identify and remove nonprocessible materials, and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;

(iv) a description of the storage and receiving facility for recyclables (if applicable) and nonprocessable materials;

(v) a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

(vi) an outline of the processing duration, including the time period from acceptance of waste to completion of composting, through distribution of the product;

(vii) windrow dimensions including width, length, and height, if used;

(viii) a description of the air emission collection and control equipment, if used;

(ix) a description of the method used to control surface water run-on, run-off and to manage leachate, including the method for treatment or disposal of leachate generated. For uncovered facilities, calculations of the run-off and leachate that must be handled by the facility, based on a rainfall intensity of one-hour duration and a 10-year return period; and

(x) for facilities that will use a low-permeability soil to minimize leachate release, a construction quality assurance/construction

quality control plan as outlined in Part 363 of this Title.

(3) An odor control and response plan. The plan must describe how odors will be controlled, monitored and how any odor problems will be addressed.

(4) A compost maturity and distribution plan that includes:

(i) an outline of the method that will be used to determine product maturity, including proposed standards for maturity and the monitoring methods or other means that will be used to measure maturity;

(ii) a description of the ultimate use for the finished compost, including the approximate quantity of product each type of user (such as residents or landscapers) is expected to take, the frequency of distribution, the expected use of the product, and the source of this information (such as contract or phone survey);

(iii) the method(s) for removing compost from the facility;

(iv) a description of the proposed use or disposal of product that cannot be used in the expected manner due to poor quality or change in market conditions; and

(v) a copy of the label or other information source for the product, if required.

(5) Analyses of the bulking agent or amendment for the parameters listed in Table 1 of section 361-3.9 of this Subpart, if deemed necessary by the department based on the type of material used.

(6) Yard trimmings composting. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this Subpart, an application for a permit for a composting facility for yard trimmings must include the following information:

(i) A description and identification of the surface soil characteristics for the proposed facility and depths to the seasonal high groundwater table and bedrock;

(ii) A description of the source and composition of the yard trimmings, including the anticipated quantity of each type of material (*e.g.*, grass clippings, leaves, branches) and how each will be handled at the facility; and

(iii) A description of all activities at the facility including those portions of the facility that would otherwise qualify as an exempt facility or a registered facility under this Part.

(7) SSO composting. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this subdivision, an application for a permit for a composting facility for SSO must include the following information:

(i) For residential SSO, a description of the service area. For commercial and institutional SSO, the description must include a list of all types of generating facilities and the type and approximate quantity of waste that

will be collected from each type of generator.

(ii) A detailed description of the source-separation program at the point of generation, including how unacceptable wastes are separated from the SSO stream. For residential SSO, this must include a copy of all educational literature or other information provided to residents, and a description of the container(s) that will be used. For commercial and institutional SSO, this must include a copy of any agreements or information concerning what can be accepted from the generator and the collection containers that will be used. If compostable products will be accepted, a description of the criteria that will be used to determine which products will be allowed for acceptance.

(iii) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction (see section 361-3.7 of this Subpart), if required, including:

(a) the methods that will be used for pathogen reduction and vector attraction reduction; and

(b) the monitoring and data gathering that will be used to demonstrate compliance including type, location, and frequency.

(8) Biosolids, septage, and other sludges. Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before composting are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for composting are subject to this paragraph. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this subdivision, an application that includes biosolids, septage, or other sludges must include the following information.

(i) A description of each proposed source including the name of the generator, the annual quantity of waste produced, the amount to be composted, and any seasonal variations in the quantity or quality during the year. Also, a description of the federal or state pretreatment program, if required; and

(ii) A description of the quality of the waste, including analytical results, as outlined below:

(a) the required parameters for analysis are in Table 1 of section 361-3.9 of this Subpart;

(b) the minimum number of analyses for each source that must be submitted with the application is dependent upon the amount of waste that will be composted annually, as outlined in Table 2 in section 361-3.9 of this Subpart;

(c) for each analysis, the sampling date, location, and protocol used to obtain

representative samples must be indicated;

(d) a minimum of six months of waste production must be represented by the analytical results submitted. With the exception of pH and total solids, all results must be reported on a dry weight basis;

(e) analyses for other pollutants can be required by the department, based on the characteristics of the waste and information from the pretreatment program and other sources;

(f) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

(g) the analysis requirement can be satisfied in part or in whole by recent samples analyzed for and reported to the department;

(h) analyses performed more than one year before the date the permit application is submitted are not acceptable;

(i) all samples must be representative of the waste to be processed; and

(j) a table summarizing the analytical results must be provided, including the mean and range of results found.

(iii) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction, (see section 361-3.7 of this Subpart), if required, including:

(a) the methods that will be used for pathogen reduction and vector attraction reduction; and

(b) the monitoring and data gathering that will be used to demonstrate compliance including type, location, and frequency.

(9) Municipal solid waste. In addition to the requirements outlined in paragraphs 361-3.2(d)(1)-(5) of this subdivision, the application must include:

(i) a description of the recyclables separation and reuse program, the management of household hazardous waste (HHW), and the radioactive waste detection program, including:

(a) the methods used for removing recyclables, at the point of generation and at the facility;

(b) the method and length of storage for recyclables;

(c) the markets for recyclables;

(d) the method used to remove HHW from the waste stream, at

the point of generation and at the facility;

(e) the ultimate management method for HHW collected; and

(f) a radioactive waste detection plan that includes procedures for detecting prohibited radioactive material; operation and maintenance documents for radiation detectors including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected.

(e) Design and operating requirements for permitted facilities. A composting facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

(1) Site criteria.

(i) Unlined yard trimmings compost areas located on soils with a coefficient of permeability greater than six inches per hour may require installation of groundwater monitoring wells or other monitoring devices and perform groundwater monitoring, as determined by the department.

(ii) For yard trimmings composting facilities without a low-permeability pad, composting must not occur in areas where the seasonal high groundwater table is less than 24 inches from the ground surface or where bedrock lies less than 24 inches below the ground surface.

(iii) The bottom of any surface impoundment at a yard trimmings composting facility with a capacity of 10,000 gallons or more must be a minimum of five feet above both the seasonal high groundwater table and the top of bedrock. Impoundments with a capacity less than 10,000 gallons must be a minimum of two feet above both the seasonal high groundwater table and the top of bedrock.

(iv) Stormwater must be diverted away from the composting area.

(v) Precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant compost is not considered leachate but must be managed in a manner acceptable to the department. Drainage must be controlled to prevent run-off from the facility and organic matter from entering surface water or groundwater. For uncovered facilities, the design of the facility must be adequate to handle the quantity of liquid generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

(vi) All leachate must be collected and disposed in a manner approved by the department. For uncovered composting facilities, the leachate collection and treatment system must be adequate to manage the quantity of leachate generated at the facility

based on a rainfall intensity of one-hour duration and a 10-year return period. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

(vii) For composting facilities other than those for yard trimmings alone, the waste storage area, composting area, leachate storage and product storage area at the facility must be located on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate surface impoundments, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or NRCS code NY313 standards, as incorporated by reference in section 360.3 of this Title. The following criteria also apply:

(a) If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in Part 363 of this Title must be met.

(b) If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363 of this Title.

(c) If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

(d) Compost storage beyond the 50-day detention time requirement is not required to occur on a low-permeability surface.

(viii) In addition to the other requirements outlined in this subdivision, permitted composting facilities located in Nassau and Suffolk Counties must comply with the criteria outlined in section 361-4.6 of this Part.

(ix) All unloading, storage and composting areas, except those handling yard trimmings alone, at facilities that have an average capacity of 100 wet tons per day or greater must be enclosed. For SSO composting facilities, the incoming SSO must be under cover or otherwise enclosed, regardless of quantity accepted.

(x) If used, windrow construction, composition, and operational procedures must be sufficient to maintain aerobic conditions and to produce a compost product in the time-frame desired.

(xi) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

(xii) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet for yard trimmings and 500 feet for other wastes. The following criteria also apply:

(a) yard trimmings composting facilities without a pad and leachate collection system must maintain a minimum separation of 200 feet to a potable water well or surface water body and 25 feet to a drainage swale;

(b) the separation distance requirement from a public contact area may be reduced for totally enclosed facilities or other mitigating landscape features, as determined by the department;

(c) the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas after the permit application is submitted to the department; and

(d) the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(2) Waste acceptance and operations.

(i) The operation of the facility must follow acceptable methods of composting that results in the decomposition of the organic material received. For yard trimmings composting, leaves in bags must be debagged or otherwise incorporated into the process within 60 days of receipt, unless stored in a manner that does not produce odors. Bags containing primarily grass clippings must be debagged and mixed with a bulking agent within 24 hours of receipt.

(ii) The facility can only accept SSO from a generator that has a collection program designed to collect organic waste separate from other recyclables and waste materials. This does not prohibit the facility from accepting packaged products that will be processed prior to composting. The composting facility must also have provisions for inspection and removal of nonprocessible materials received.

(iii) The facility is prohibited from accepting wastes that do not positively contribute to the composting process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, construction and demolition debris, and ash from the combustion of municipal solid waste. Any compostable products accepted must meet a standard acceptable to the department.

(iv) Compost cannot be stored at the facility for more than 24 months unless it is being held for a designated market.

(v) Noncompostable waste and unacceptable product must be disposed at least weekly unless the waste generated in a week is less than 15 cubic yards. Biweekly disposal is allowed if the weekly waste generated is less than 15 cubic yards.

(vi) For facilities accepting municipal solid waste:

(a) a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility;

(b) recyclables must be removed from the waste stream before active composting;

(c) a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. The following criteria also apply:

(1) the investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times background radiation levels;

(2) the concentration of radium-226 in any waste composted at the facility cannot exceed 25 pCi/g;

(3) background radiation readings at the facility must be measured and recorded at least daily;

(4) field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

(5) the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

(6) each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received,

transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition;

(d) all waste storage and composting areas must be enclosed.

(e) Facilities that accept municipal solid waste, sanitary waste (biosolids, septage, etc.) and other wastes with potential pathogen concern, as determined by the department, are required to comply with the pathogen and vector attraction reduction criteria outlined in section 361-3.7 of this Subpart.

(3) Product quality and use.

(i) A compost product that does not meet the criteria in this subdivision is considered a waste and must be disposed or reprocessed (if feasible).

(ii) Any type of vegetation or crops may be grown with the compost.

(iii) The product must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of sawdust, soil, or other materials to the process or product for dilution purposes is not allowed. As outlined in subparagraph 361-3.2(e)(4)(i), routine analyses of yard trimmings compost are not required.

(iv) The product must not contain more than 0.5 percent total physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

(v) The product must be able to pass through a one-inch screen, except for wood particles derived from the use of wood chips as a bulking agent or amendment.

(vi) The compost product must be mature and must be used in a legitimate manner as a soil amendment, for erosion control, etc. The process must have a minimum detention time (including active composting and curing) of 50 days, unless an alternate means for achieving sufficient maturity is approved by the department.

(vii) Except for products derived solely from yard trimmings, an information label must be affixed to the product packaging or, for bulk, an information sheet, sign, brochure, or website page must be used, containing:

(a) the name and address of the generator of the product;

(b) the type of waste from which the product was derived; and

(c) recommended safe uses, application rates and storage practices.

(viii) For facilities that accept biosolids, septage, or other sludges, each waste source must not exceed

the pollutant concentrations found in Table 6 of section 361-3.9 of this Subpart, unless the waste source is a minor (less than 10 percent of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to products used outside New York State.

(a) If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.9, the waste cannot be accepted at the facility until the generator has implemented a pollutant identification and abatement program and compliance has been demonstrated for waste representing a period of at least six continuous months. At least six analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

(b) Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before composting are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for composting are subject to this paragraph.

(ix) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.9 of this Subpart.

(4) Monitoring requirements.

(i) Analysis of the product, other than yard trimmings compost, is required for the parameters in Table 1 of section 361-3.9 of this Subpart. The frequency of sampling is specified in Tables 4 and 5 of section 360-3.9 of this Subpart. All samples must be representative of the product that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis.

(a) Each sample must be a composite of at least five grab samples.

(b) After the product has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the product quality consistently meets the product quality standards in Table 6 of section 361-3.9 of this Subpart.

(ii) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The

frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, will be determined by the department. At a minimum, if temperature monitoring is required, it must occur daily in the coldest part of the waste mass.

(iii) The department can require, on a case-specific basis, testing of the compost for maturity before distribution. This can include, but is not limited to, potential for reheating, organic matter reduction, plant growth impact, or oxygen consumption.

(iv) Each biosolids, septage, and sludge source must be analyzed each year in accordance with the following:

(a) The required parameters for analysis are found in Table 1 of section 361-3.9 of this Subpart.

(b) The minimum number of analyses required depends on the quantity of waste composted, as outlined in Table 3 of section 361-3.9 of this Subpart.

(c) With the exception of pH and total solids, all results must be reported on a dry weight basis. All analyses must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department.

After the waste has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the waste quality consistently meets the quality standards

(d) Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated are subject to this paragraph.

(v) For wastes other than sanitary waste, annual analyses of the input waste may also be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling will be determined by the department.

(5) Reporting requirements.

(i) The annual report required by section 360.19(k)(3) of this Title, must include:

(a) all analyses, including copies of the original laboratory sheets, required by this Subpart;

(b) the type and quantity of the waste, and other materials such as bulking agents, being

composted, including the source of the material;

(c) process operational information including monitoring data and significant facility operational problems and any actions taken to correct problems;

(d) the quantity, by weight and volume, of product generated at the facility and the quantity of product and other waste, including unacceptable product, removed from the facility; and

(e) a description of the end-product distribution and disposal methods.

Section 361-3.3 Anaerobic digestion facilities.

(a) Exempt facilities.

The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department.

(1) An anaerobic digestion facility located at a site controlled by the waste generator, in accordance with section 360.14(b)(1) of this Title. The digestate must be stored and used in a manner acceptable to the department.

(2) An anaerobic digestion facility that accepts only animal manure and bedding. Additionally, the storage and use of the digestate is exempt.

(3) An anaerobic digestion facility that accepts no more than 1,000 pounds or one cubic yard, whichever is greater, of SSO per week on a monthly average. No more than 2,000 pounds can be accepted in any week. The digestate must be stored and used in a manner acceptable to the department.

(4) An anaerobic digestion facility located on a farm covered by a CAFO permit and operated by the farm, provided that the waste accepted is limited to manure, food processing waste, FOG (fats, oil, grease from food sources), and other similar non-industrial source separated organics, without sanitary content. The resultant digestate contains no more than 0.5 percent physical contaminants greater than 4 millimeters by weight (dry weight basis) with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass, metal, and plastic. Analyses may be required by the department to confirm compliance. The non-manure waste received must not exceed 50 percent, by volume, of waste placed in the anaerobic digestion facility on an annual basis. If multiple digestion units are located on a farm, the 50 percent restriction applies to the total entering the farm, not entering each digestion unit. Digestate managed in one of the following methods is exempt:

(i) land application or storage of the digestate on a farm covered by a CAFO permit. Otherwise, registration under paragraph 361-3.3(b)(2) of this Part is required;

(ii) use of dewatered solids for animal bedding;

(iii) use of blended dewatered solids as a topsoil (no more than 50 percent

digestate in the mix), provided the material does not cause odors when stored or used;

(iv) a composting facility for the dewatered solids located on a farm. Otherwise, registration is required and the criteria of section 361-3.2(c) must be followed; and

(v) other methods approved by the department.

(b) Registered facilities.

Facilities of the following types are subject to the registration provisions of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title.

(1) An anaerobic digestion facility that accepts less than 50 tons of waste per day or is located on a CAFO farm. The waste must not contain sanitary content. Incoming waste must be stored in a vessel or other enclosed device and odors must be controlled. The facility must comply with subdivision 361-3.3(c) of this Part. Digestate must be managed as follows:

(i) land application or storage of the digestate on a farm covered by a CAFO permit is exempt. Otherwise, registration under paragraph 361-3.3(b)(2) of this Part is required;

(ii) use of the dewatered solids for animal bedding is exempt;

(iii) use of the blended dewatered solids as a topsoil (no more than 50 percent digestate in the mix) is exempt, provided the material does not cause odors when stored or used;

(iv) for a composting facility for the dewatered solids on a farm covered by a CAFO permit is exempt. Otherwise, registration is required and the criteria in section 361-3.2(c) must be followed; and

(v) other methods approved by the department.

(2) A storage or land application facility for digestate that is not located on a CAFO, provided the facility complies with the following conditions:

(i) the operating requirements of section 361-2.5(b) of this Part are met for land application;

(ii) for land application, a minimum of three representative analyses of the waste for total Kjeldahl nitrogen, ammonia, nitrate, total phosphorus, total potassium, total solids, total volatile solids, and pH must be submitted with the registration application and one analysis must be submitted annually during operation. In addition, waste with salt content must be analyzed for chlorides. Additional analyses may be required, as determined by the department;

(iii) the volume of waste land-applied does not cause ponding, except for temporary conditions within 12 hours of application;

(iv) the application rate of waste does not exceed the agronomic rate;

(v) land application in the New York City water supply watershed or in Nassau or Suffolk County must be addressed in a CNMP; and

(vi) the storage facility is built and operated in compliance with NRCS code NY313 standards.

(c) Operating criteria for registered anaerobic digestion facilities.

A registered facility must be operated in compliance with section 360.19 of this Title. An anaerobic digestion facility registered under paragraph 361-3.3(b)(1) of this Subpart must comply with the following conditions:

(1) Material accepted cannot remain at the facility for more than 24 months.

(2) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.

(3) Waste accepted must be stored in a vessel or in an enclosed area.

(4) All wastes accepted must not contain pollutants at a level of concern, as determined by the department. Department approval is required prior to acceptance for wastes other than manure, food processing waste, FOG, or other similar non-industrial SSO.

(5) The facility must be at least 200 feet from the nearest surface water body, potable water well and State-regulated wetland, unless other means to protect water resources are approved by the department.

(6) The facility must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the waste generating business or any residence or place of business built after the facility began operation.

(7) The facility must keep written records of all materials entering and leaving the facility and the corresponding dates.

(8) All waste received must be source-separated. Food and beverages received in their original packaging (for example, off-spec drinks) that will be depackaged at the digestion facility prior to digestion are allowed. If biodegradable products are to be digested, they must comply with a standard acceptable to the department.

(9) Digestate must be used in a manner that does not cause negative animal health or environmental impacts. If used as a soil amendment, agronomic rates must be followed.

(10) The facility must not produce odors that unreasonably impact sensitive receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

(11) The product must meet criteria outlined in subparagraphs 361-3.2(e)(3)(ii) - (v). If required by the department, the product must be analyzed for physical contaminants.

(d) Permit application requirements.

An anaerobic digestion facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the

requirements identified in this subdivision and section 360.16 of this Title. The application must include the following:

(1) A detailed description of the source, quality, and quantity of all waste to be digested, including the source, quality, and expected quantity of any seed material. The description must include the annual input and any seasonal variations in the waste type and quantity, and the appropriate quality data, as determined by the department. If SSO is accepted:

(i) A detailed description of the source-separation program at the point of generation, including how unacceptable wastes are separated from the SSO stream. For residential SSO, this must include a copy of all educational literature or other information provided to residents, and a description of the container(s) that will be used. For commercial and institutional SSO, this must include a copy of any agreements or information concerning what can be accepted from the generator and the collection containers that will be used.

(2) An operation plan that includes:

(i) a description of how the facility will comply with the operating requirements in section 360.19 of this Title and subdivision (e) of this section;

(ii) a description and the capacity of the storage structures and the digesters;

(iii) a description of all preprocessing and post-processing methods and equipment used to identify and remove all nonprocessible materials and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;

(iv) a description of the storage and disposal location for nonprocessible materials;

(v) a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

(vi) an outline of the processing duration, including the time period from acceptance of waste to completion of digestion and to distribution of the product;

(vii) a description of the air emission collection and control equipment, if used; and

(viii) a description of the method used to control surface water run-off and to manage leachate, including the method for treatment or disposal of leachate generated.

(3) An odor control and response plan. The plan must describe how odors will be controlled, monitored, and how any odor problems will be addressed.

(4) A digestate use plan that includes:

(i) a description of the use(s) for the digestate (liquid, solids, or

combined), including any storage prior to use, the approximate quantity of each type of user, the frequency of distribution, the expected use of the material, and the source of this information (such as contract or phone survey);

(ii) for agricultural use, a description of how nutrient loading, odor, and run-off will be controlled;

(iii) the method for removing digestate from the facility and any off-site storage;

(iv) a description of the proposed management of digestate that cannot be used in the expected manner due to poor quality or change in market conditions; and

(v) a copy of the label or other information source for the digestate.

(5) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction including:

(i) the methods that will be used for pathogen reduction and vector attraction reduction; and

(ii) the monitoring and data gathering that will be used to demonstrate compliance including type, location, and frequency.

(6) Biosolids, septage, and other sludges. In addition to the requirements outlined in paragraphs (1)-(5) of this subdivision, the application must include the following information. Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before digestion are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for digestion are subject to this paragraph.

(i) A description of each proposed source of waste including the name of the generator, the annual quantity of waste produced, the amount of waste to be digested, and any seasonal variations in the quantity or quality during the year. Also, a description of the federal or state pretreatment program, if required; and

(ii) A description of the quality of the waste, including analytical results, as outlined below:

(a) the required parameters for analysis are in Table 1 of section 361-3.9 of this Subpart;

(b) the minimum number of analyses for each waste source that must be submitted with the application is dependent upon the amount of waste that will be digested annually, outlined in Table 2 in section 361-3.9 of this Subpart;

(c) for each analysis, the sampling date, location, and protocol used to obtain representative samples must be indicated;

(d) a minimum of six months of waste production must be represented by the analytical results submitted. With the exception of pH and total solids, all results must be reported on a dry weight basis;

(e) analyses for other pollutants can be required by the department, on a case-specific basis, based on the characteristics of the waste and information from the pretreatment program and other sources;

(f) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

(g) the analysis requirement can be satisfied in part or in whole by recent samples analyzed for and reported to the department;

(h) analyses performed more than one year before the date the permit application is submitted are not acceptable;

(i) all samples must be representative of the waste to be processed; and

(j) a table summarizing the analytical results must be provided, including the mean and range of results found.

(7) Municipal solid waste. In addition to the requirements outlined in paragraphs 361-3.3(d)(1)-(5) of this subdivision, the application must include:

(i) a description of the recyclables separation and reuse program, the management of household hazardous waste (HHW), and the radioactive waste detection program, including:

(a) the methods used for removing recyclables, at the point of generation and at the facility;

(b) the method and length of storage for recyclables;

(c) the markets for recyclables;

(d) the method used to remove HHW from the waste stream, at the point of generation and at the facility;

(e) the ultimate management method for HHW collected;

(ii) a radioactive waste detection plan that includes procedures for detecting prohibited radioactive material; operation and maintenance documents for radiation detectors including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected.

(e) Design and operating requirements for permitted anaerobic digestion facilities.

An anaerobic digestion facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

(1) Site criteria.

(i) Stormwater must be diverted away from the operating area.

(ii) All leachate must be collected and disposed in a manner approved by the department. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

(iii) The waste storage area, processing area, leachate storage and liquid digestate storage area must be in tanks or on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate or liquid digestate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate or liquid digestate storage structures, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or NRCS code NY313 standards. The following criteria also apply:

(a) If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in Part 363 of this Title must be met.

(b) If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363 of this Title.

(c) If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

(d) Dewatered digestate solids must be stored in a manner that will minimize run-off. All run-off generated must be contained on-site.

(iv) All incoming waste must be stored in a tank or in an enclosed storage area.

(v) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

(vi) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant

nurseries) is 200 feet for SSO, and 500 feet for other wastes. The following criteria also apply:

(a) the separation distance requirement from a public contact area can be reduced for totally enclosed facilities or other mitigating landscape features, as determined by the department;

(b) the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas after the permit application is submitted to the department; and

(c) the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(2) Waste acceptance and operations.

(i) The operation of the facility must follow acceptable methods of anaerobic digestion that results in the biochemical decomposition of the organic material received.

(ii) If the facility accepts SSO, the generator must have active collection programs designed to collect organic waste separate from other recyclables and waste materials. The facility must also have provisions for inspection and removal of nonprocessible materials received.

(iii) The facility is prohibited from accepting wastes that do not positively contribute to the digestion process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, C&D debris, and ash from the combustion of municipal solid waste.

(iv) Storage of digestate at the facility must not exceed 12 months.

(v) Nonprocessible waste and unacceptable product must be disposed at least weekly.

(vi) For facilities accepting municipal solid waste:

(a) a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility;

(b) recyclables must be removed from the waste stream before digestion;

(c) a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. The following criteria also apply:

(1) the investigation alarm setpoint of the radiation

detector must be set at least two times but no greater than five times background radiation levels;

(2) the concentration of radium-226 in any waste digested at the facility cannot exceed 25 pCi/g;

(3) background radiation readings at the facility must be measured and recorded at least daily;

(4) field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

(5) the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

(6) each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(vii) The anaerobic digestion facility must comply with the pathogen and vector attraction reduction criteria outlined in section 361-3.7 of this Subpart unless the potential for pathogen content is very low compared to biosolids, as determined by the department, or a facility that accepts sanitary waste operates as Class B pathogen reduction in conjunction with a permit for land application under Subpart 361-2 of this Part.

(3) Product quality and use.

(i) Digestate that does not meet the criteria in this section is considered a waste and must be disposed or reprocessed, if feasible.

(ii) Digestate can be distributed for use for food crops, feed crops, and fiber crops.

(iii) Digestate must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of materials to the process or digestate for dilution purposes is not allowed.

(iv) The digestate must not contain more than 0.5 percent physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

(v) The digestate must be able to pass through a one-inch screen.

(vi) If distributed to the public, the material product must be mature and must be used in a legitimate manner as a soil amendment.

(vii) Digestate derived from sanitary waste or other waste with pathogen content that has not met Class A pathogen reduction and vector attraction reduction standards can only be land applied in accordance with a permit under Subpart 361-2 of this Part or composted under a permit according to section 361-3.2 of this Subpart.

(viii) Use of the digestate, other than the scenario outlined in subparagraph 361-3.3(e)(3)(vi) of this Part must be handled as follows:

(a) land application or storage of the digestate on a farm covered by a CAFO permit is exempt. Otherwise, registration under paragraph 361-3.3(b) of this Part is required;

(b) use of the dewatered solids for animal bedding is exempt;

(c) use of the blended dewatered solids as a topsoil (no more than 50 percent digestate in the mix) is exempt, provided it does not cause odors when stored or used;

(d) a composting facility for the dewatered solids on a farm covered by a CAFO permit is exempt. Otherwise, registration under section 361-3.2(b)(4) of this Subpart is required; and

(e) other methods approved by the department.

(ix) An information label must be affixed to the packaging or, for bulk, an information sheet, sign, brochure or website page must be used, containing:

(a) the name and address of the generator of the material;

(b) the type of waste from which the material was derived; and

(c) recommended safe uses, application rates and storage practices.

(4) Monitoring requirements.

(i) For anaerobic digestion facilities that accept biosolids, septage, or other sludges, each waste source must not exceed the pollutant concentrations found in Table 6 of section 361-3.9 of this Subpart, unless the waste source is a minor (less than 10 percent of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to digestate that will be used outside New York State.

(a) If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.9 of this Subpart, the waste cannot be accepted at the facility until the generator has

implemented a pollutant identification and abatement program and compliance with the requirements of this paragraph has been demonstrated for waste representing a period of at least six continuous months. At least six analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

(b) Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before digestion are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for digestion are subject to this paragraph.

(ii) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.9 of this Subpart.

(iii) Analysis of the digestate is required for the parameters in Table 1 of section 361-3.9 of this Subpart. The frequency of sampling is specified in Tables 4 and 5 of section 360-3.9 of this Subpart. All samples must be representative of the material that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis.

(a) Each sample must be a composite of at least five grab samples.

(b) After the digestate has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the material quality consistently meets the standards in Table 6 of section 361-3.9 of this Subpart.

(c) For digestate derived from non-sanitary waste, the required analyses can be reduced depending on the use of the material, as determined by the department.

(iv) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, will be determined by the department.

(v) The department can require analyses of the material for maturity before distribution. This can include, but is not limited to, organic matter reduction, plant growth impact, or oxygen consumption.

(vi) Each biosolids, septage, and sludge source must be analyzed in accordance with the following:

(a) The required parameters for analysis are found in Table 1 of section 361-3.9 of this Subpart.

(b) The minimum number of analyses required depends on the quantity of waste digested, as outlined in Table 3 of section 361-3.9 of this Subpart.

(c) With the exception of pH and total solids, all results must be reported on a dry weight basis. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the waste quality consistently meets the quality standards.

(d) Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for beneficial use are subject to this paragraph.

(vii) For other wastes, analyses of the input waste can be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling and acceptable concentrations will be determined by the department.

(5) Reporting requirements.

(i) The annual report required by section 360.19(k)(3) of this Title, must include:

(a) all information and analyses, including copies of the original laboratory sheets, required by this Subpart;

(b) the type and quantity of the waste digested, including the source of the material;

(c) process operational information including monitoring data and significant facility operational problems and any actions taken to correct problems;

(d) the quantity, by weight and volume, of digestate generated at the facility and the quantity of material removed from the facility; and

(e) a description of the use of the digestate.

Section 361-3.4 Fermentation facilities for source-separated organics.

(a) Exempt facilities.

The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. The byproducts of fermentation must be

used in a manner acceptable to the department.

(1) A fermentation facility located at a site controlled by the waste generator, in accordance with section 360.14(b)(1) of this Title.

(2) A fermentation facility that accepts no more than 1,000 pounds or one cubic yard of SSO per week, whichever is greater, based on a monthly average.

(b) Registered facilities.

Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title and the operational criteria in subdivision (c) of this section.

(1) A fermentation facility that accept less than 10 tons of SSO per day. The waste must not contain sanitary content. Incoming waste must be stored in a container or other enclosed device and odors must be controlled.

(c) Operating criteria for registered fermentation facilities.

A registered facility must be operated in compliance with section 360.19 of this Title and the following conditions:

(1) Material accepted cannot remain at the facility for more than 24 months.

(2) The byproducts of fermentation can be used as a soil amendment, for animal feed, or in another manner acceptable to the department. Use of the byproduct as animal feed also requires a beneficial use determination under Part 360 of this Title.

(3) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.

(4) The facility must be at least 200 feet from the nearest surface water body, potable water well and State-regulated wetland.

(5) The facility must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the waste generating business or operator’s residence, or any residence or place of business built after the facility began operation. The buffer area can be reduced by the department if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.

(6) The facility must keep written records of all materials entering and leaving the facility and the corresponding dates.

(7) All waste received must be source-separated. Material received in its original packaging (for example, off-spec drinks) that will be depackaged prior to treatment is allowed.

(8) The facility must not produce odors that unreasonably impact sensitive receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

(d) Permit application requirements.

A fermentation facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this subdivision and section 360.16 of this Title. The application must include the following:

(1) A detailed description of the source, quality, and quantity of all SSO to be processed. The description must include the annual input and any seasonal variations in the waste type and quantity, and the appropriate quality data, as determined by the department.

(2) An operation plan that includes:

(i) a description of how the facility will comply with the operating requirements in Part 360 of this Title and subdivision (e) of this section;

(ii) a description and the capacity of the storage structures and fermenter;

(iii) a description of all pre-processing and post-processing methods and equipment used to identify and remove all nonprocessible materials and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;

(iv) a description of the separation, processing, storage, and ultimate disposal location for nonprocessible materials;

(v) a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

(vi) an outline of the processing duration, including the time period from acceptance of waste to completion of treatment and to distribution of the product and byproduct;

(vii) a description of the air emission collection and control equipment, if used; and

(viii) a description of the method used to control surface water run-off and to manage leachate, including the method for treatment or disposal of leachate generated. For uncovered facilities, calculations of the run-off and leachate that must be handled at the facility, based on a rainfall intensity of one-hour duration and a 10-year return period.

(3) For facilities that will use a low-permeability soil to minimize leachate release, a construction quality assurance/construction quality control plan as outlined in Part 363 of this Title.

(4) A description of the ultimate use for the byproduct, including the approximate quantity of byproduct each type of user (such as residents, landscapers, and animal feed markets) are expected to use, the frequency of distribution, the expected use of the product, and the source of this information (such as contract or phone survey).

(5) A description of the method for removing byproduct from the facility.

(6) A description of the proposed use or disposal of byproduct that cannot be used in the expected manner due to poor quality or change in market conditions.

(e) Design and operating requirements for permitted fermentation facilities.

A fermentation facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

(1) Site criteria

(i) Stormwater must be diverted away from the operating area.

(ii) All leachate must be collected and disposed in a manner approved by the department. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

(iii) The waste storage area, processing area, leachate storage and liquid byproduct storage area at the facility must be in tanks or on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate or liquid digestate storage structures, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or NRCS code NY313 standards. The following criteria also apply:

(a) If a surface impoundment is used for leachate or liquid byproduct storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

(b) Byproduct must be stored in a manner that will minimize run-off. All run-off generated must be contained on-site.

(iv) For uncovered processing facilities, the facility must be able to manage the quantity of leachate generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

(2) Waste acceptance and operations.

(i) All incoming waste must be stored in a tank or under cover.

(ii) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

(iii) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet. The following criteria also apply:

(a) the separation distance requirement from a public contact area can be reduced for totally enclosed facilities or other mitigating landscape features, if approved by the department;

(b) the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas after the permit application is submitted to the department; and

(c) the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(iv) The facility can only accept food scraps from a generator that has a collection program designed to collect organic waste separate from other recyclables and waste materials and to remove inorganic and nonprocessible materials from the food scraps generated. This does not prohibit the facility from accepting packaged products if depackaging will occur at the facility. The facility must also have provisions for inspection and removal of nonprocessible materials received.

(v) Storage of the byproduct at the facility must not exceed 24 months.

(3) Product quality and use.

(i) Nonprocessible waste and unacceptable product must be disposed at least weekly, unless less than five cubic yards are generated per week. For amounts less than five cubic yards per week, the material can be stored for up to one month, provided offensive odors are not present.

(ii) A byproduct that does not meet the criteria in this section is considered a waste and must be disposed.

(iii) The byproduct can be distributed for uses approved by the department.

(iv) The byproduct must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart.

(v) The byproduct must not contain more than 0.5 percent physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

(v) The byproduct must be able to pass through a one-inch screen, except for wood particles derived from the use of wood chips as a bulking agent or amendment.

(vi) If distributed to the public, the byproduct must be mature and must be used in a legitimate manner as a soil amendment.

(vii) Use of the byproduct as a soil amendment or animal feed is acceptable.

(viii) Use of the primary product (alcohol, etc.) requires an approved beneficial use determination under section 360.12 of this Title.

(4) Monitoring requirements.

(i) The department can require annual analyses of the byproduct for maturity before distribution. This can include, but is not limited to, potential for reheating, organic matter reduction, plant growth impact, or oxygen consumption.

(5) Reporting requirements.

(i) The annual report required by section 360.19(k)(3) of this Title, must include:

(a) all information and analyses, including copies of the laboratory sheets, required by this Subpart;

(b) the type and quantity of the food scraps being processed, including the source of the material;

(c) process operational information including monitoring data and significant facility operational problems and any actions taken to correct any problems; and

(d) the quantity, by weight and volume, of byproduct generated at the facility and the quantity of byproduct removed from the facility;

(e) a description of the byproduct distribution and disposal methods.

Section 361-3.5 Animal feed production facilities.

(a) Exempt facilities.

The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. All incoming food scraps must be stored in an enclosed area. Use of the product requires a beneficial use determination, in accordance with section 360.12 of this Title.

(1) An animal feed production facility located at a site controlled by the waste generator, in accordance with section 360.14(b)(1) of this Title.

(2) An animal feed production facility that only accepts bread, other similar grain products (spent brewery grains, etc.) as outlined in section 360.12 of this Title.

(3) An animal feed production facility that accepts no more than 1,000 pounds or one cubic yard of food scraps per week based on a monthly average, whichever is greater.

(b) Registered facilities.

Facilities of the following types are subject to the registration provisions of section

360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title.

(1) Animal feed production facilities, provided the following criteria are satisfied:

(i) all incoming food scraps are stored in an enclosed area;

(ii) all incoming food scraps are processed within seven calendar days of acceptance;

(iii) leachate is managed in a manner acceptable to the department; and

(iv) odors are controlled.

Section 361-3.6 Other organics recycling facilities.

(a) Exempt facilities.

The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department. A product generated must be used in a beneficial manner that is protective of human health and the environment.

(1) A facility located at a site controlled by the waste generator, in accordance with section 360.14(b)(1) of this Title.

(2) A facility that accepts only animal manure and bedding.

(3) A facility that accepts no more than 1,000 pounds or one cubic yard, whichever is greater, of SSO per week based on a monthly average.

(4) A facility covered by a CAFO permit provided that the waste accepted is limited to manure, food processing waste, FOG, and non-industrial organic wastes without sanitary content. The non-manure waste received must not exceed 50 percent, by volume, of waste managed on an annual basis. Facilities that are not owned by the farm must be covered by the farm's CAFO approvals.

(b) Registered facilities.

Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.19 of this Title and the operational criteria in subdivision (c) of this section.

(1) A facility that accepts less than ten tons of SSO per day. The waste must not contain sanitary content. Incoming waste must be stored in a vessel or other enclosed device and odors must be controlled. Incoming industrial waste must be acceptable to the department.

(c) Operating criteria for registered facilities.

A registered facility must be operated in compliance with section 360.19 of this Title and the following conditions:

(1) Material accepted cannot remain at the facility for more than 24 months.

(2) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.

(3) The facility must be at least 200 feet from the nearest surface water body,

potable water well and state-regulated wetland.

(4) SSO accepted must be stored in a vessel or in an enclosed area.

(5) The facility must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the waste generating business or the operator's residence, or any residence or place of business built after the facility began operation. The buffer area can be reduced by the department if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.

(6) The facility must keep written records of all materials entering and leaving the facility and the corresponding dates.

(7) All waste received must be source-separated. Material received in its original packaging (for example, off-spec drinks) that will be depackaged prior to processing are allowed.

(8) The product must be used in a manner that does not cause negative animal health or environmental impacts. If used as a soil conditioner, agronomic rates must be followed.

(9) The facility must not produce odors that unreasonably impact sensitive receptors, as determined by the department. The department can require a reduction in the amount of waste accepted, or other actions, to address odor issues.

(d) Permit application requirements.

A facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this subdivision and section 360.16 of this Title. The application must include the following:

(1) A detailed description of the source, quality, and quantity of all waste to be processed, including the source and quality. The description must include the annual input and any seasonal variations in the waste type and quantity, and the appropriate quality data, as determined by the department. If SSO is accepted:

(i) A detailed description of the source-separation program at the point of generation, including how unacceptable wastes are separated from the SSO stream. For residential SSO, this must include a copy of all educational literature or other information provided to residents, and a description of the container(s) that will be used. For commercial and institutional SSO, this must include a copy of any agreements or information concerning what can be accepted from the generator and the collection containers that will be used.

(2) An operation plan that includes:

(i) a description of how the facility will comply with the operating requirements in Part 360 of this Title and subdivision (e) of this section;

(ii) a description and the capacity of the storage structures and processing equipment;

(iii) a description of all preprocessing and post-processing methods and equipment used to identify and remove all nonprocessible materials and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;

(iv) a description of the storage and disposal location for nonprocessible materials;

(v) a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

(vi) an outline of the processing duration, including the time period from acceptance of waste to completion;

(vii) a description of the air emission collection and control equipment, if used; and

(viii) a description of the method used to control surface water run-off and to manage leachate, including the method for treatment or disposal of leachate generated. For uncovered facilities, calculations of the run-off and leachate that must be handled at the facility, based on a rainfall intensity of one-hour duration and a 10-year return period.

(3) An odor control and response plan. The plan must describe how odors will be controlled, monitored and how any odor problems will be addressed.

(4) A product use plan that includes:

(i) a description of the use(s) for the product, including the approximate quantity of each type of use, the frequency of distribution, the expected use of the material, and the source of this information (such as contract or phone survey);

(ii) the method for removing product from the facility;

(iii) a description of the proposed management of product that cannot be used in the expected manner due to poor quality or change in market conditions; and

(iv) a copy of the label or other information source for the product, if applicable.

(5) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction, if required, including:

(i) the methods that will be used for pathogen reduction and vector attraction reduction; and

(ii) the monitoring and data gathering that will be used to demonstrate compliance including type, location, and frequency.

(6) Biosolids, septage, and other sludges. In addition to the requirements outlined in paragraphs 361-3.6(d)(1)-(5) of this Subpart, the application must include the following information. Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another

wastewater treatment facility before processing are not considered separate waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for processing are subject to this paragraph.

(i) A description of each proposed source of waste including the name of the generator, the annual quantity of waste produced, the amount of waste to be processed, and any seasonal variations in the quantity or quality during the year. Also, a description of the federal or state pretreatment program, if required; and

(ii) A description of the quality of the waste, including analytical results, as outlined below:

(a) the required parameters for analysis are in Table 1 of section 361-3.9 of this Subpart;

(b) the minimum number of analyses for each waste source that must be submitted with the application is dependent upon the amount of waste that will be processed annually, outlined in Table 2 in section 361-3.9 of this Subpart;

(c) for each analysis, the sampling date, location, and protocol used to obtain representative samples must be indicated;

(d) a minimum of six months of waste production must be represented by the analytical results submitted. With the exception of pH and total solids, all results must be reported on a dry weight basis;

(e) analyses for other pollutants can be required by the department, on a case-specific basis, based on the characteristics of the waste and information from the pretreatment program and other sources;

(f) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

(g) the analysis requirement can be satisfied in part or in whole by recent samples analyzed for and reported to the department;

(h) analyses performed more than one year before the date the permit application is submitted are not acceptable;

(i) all samples must be representative of the waste to be processed; and

(j) a table summarizing the analytical results must be provided, including the mean and range of results found.

(7) Municipal solid waste. In addition to the requirements outlined in paragraphs 361-3.6(d)(1)-(5) of this subdivision, the application must include:

(i) a description of the recyclables separation and reuse program, the management of household hazardous waste (HHW), and the radioactive waste detection program, including:

(a) the methods used for removing recyclables, at the point of generation and at the facility;

(b) the method and length of storage for recyclables;

(c) the markets for recyclables;

(d) the method used to remove HHW from the waste stream, at the point of generation and at the facility;

(e) the ultimate management method for HHW collected; and

(ii) a radioactive waste detection plan that includes procedures for detecting prohibited radioactive material; operation and maintenance documents for radiation detectors including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected.

(e) Design and operating requirements for permitted facilities.

A facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(1) Site criteria.

(i) Stormwater must be diverted away from the operating area.

(ii) All leachate must be collected and disposed in a manner approved by the department. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

(iii) The waste storage area, processing area, leachate storage and liquid product storage area at the facility must be in tanks or on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate storage structures, other than tanks, must be designed in accordance with Subpart 361-2 of this Part or NRCS code NY313 standards. The following criteria also apply:

(a) If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of 1×10^{-7} centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in Part 363 of this Title must be met.

(b) If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363 of this Title.

(c) If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

(iv) Product must be stored in a manner that will minimize run-off. All run-off generated must be contained on-site.

(v) For uncovered processing facilities, the facility must be able to manage the quantity of leachate generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

(vi) All incoming waste must be stored in a tank or under cover.

(vii) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department.

(viii) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet for SSO, and 500 feet for other wastes. In addition:

(a) the separation distance requirement from a public contact area can be reduced for totally enclosed facilities or other mitigating landscape features, as determined by the department;

(b) the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation requirement with respect to construction of nearby residences, places of business or public contact areas after the permit application is submitted to the department; and

(c) the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(2) Waste acceptance and operations.

(i) If the facility accepts SSO, the generator must have active collection programs designed to collect organic waste separate from other recyclables and waste materials and to remove inorganic and nonprocessible materials from the SSO generated. The facility must also have provisions for inspection

and removal of nonprocessible materials received.

(ii) The facility is prohibited from accepting wastes that do not positively contribute to the process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, C&D debris and ash from the combustion of municipal solid waste.

(iii) Storage of product at the facility must not exceed 12 months.

(iv) Nonprocessible waste and unacceptable product must be disposed at least weekly, unless less than five cubic yards are generated per week. For amounts less than five cubic yards per week, the material can be stored up to one month, provided offensive odors are not present.

(v) For facilities accepting municipal solid waste:

(a) a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility;

(b) recyclables must be removed from the waste stream before processing;

(c) a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. The following criteria also apply:

(1) the investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times background radiation levels;

(2) the concentration of radium-226 in any waste recycled at the facility cannot exceed 25 pCi/g;

(3) background radiation readings at the facility must be measured and recorded at least daily;

(4) field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

(5) the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

(6) each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition

of the waste, and date of disposition.

(d) The facility must comply with the pathogen and vector attraction reduction criteria outlined in section 361-3.7 of this Subpart unless the potential for pathogen content is very low, compared to biosolids, as determined by the department.

(3) Product quality and use.

(i) Product that does not meet the criteria in this section is considered a waste and must be disposed.

(ii) Product can be distributed for use for food crops, feed crops, and fiber crops.

(iii) Product must not contain pollutant levels greater than those found in Table 6 of section 361-3.9 of this Subpart. The addition of materials to the process or product for dilution purposes is not allowed.

(iv) The product must not contain more than 0.5 percent physical contaminants greater than 4 millimeters by weight (dry weight basis), with no more than 20% consisting of film plastic. Physical contaminants include human-made inert products including, but not limited to, glass metal, and plastic.

(v) The product must be able to pass through a one-inch screen.

(vi) If distributed to the public, the product must be mature and must be used in a legitimate manner as a soil amendment.

(vii) Use of the product must be acceptable to the department and will be dependent on the maturity and other characteristics of the product.

(viii) An information label must be affixed to the packaging or, for bulk, an information sheet, sign, brochure, or website page must be used, containing:

(a) the name and address of the generator of the material;

(b) the type of waste from which the material was derived; and

(c) recommended safe uses, application rates and storage practices.

(4) Monitoring requirements.

(i) For facilities that accept biosolids, septage, or other sludges, each waste source must not exceed the pollutant concentrations found in Table 6 of section 361-3.9 of this Subpart, unless the waste source is a minor (less than 10 percent of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to product that will be used outside New York State.

(a) If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.9 of this Subpart, the waste cannot be accepted at the facility

until the generator has implemented a pollutant identification and abatement program and compliance with the requirements of this paragraph has been demonstrated for waste representing a period of at least six continuous months. At least six analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

(b) Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before digestion are not considered waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for digestion are subject to this paragraph.

(ii) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.9 of this Subpart.

(iii) Analysis of the product is required for the parameters in Table 1 of section 361-3.9 of this Subpart. The frequency of sampling is specified in Tables 4 and 5 of section 360-3.9 of this Subpart. All samples must be representative of the product that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis. Copies of the original laboratory results must be included.

(a) Each sample must be a composite of at least five grab samples.

(b) After the product has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the product quality consistently meets the product quality standards in Table 6 of section 361-3.9 of this Subpart.

(c) For product derived from non-sanitary waste, the required analyses can be reduced depending on the use of the material, as determined by the department.

(iv) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, must be approved by the department. At a minimum, temperature monitoring must occur daily in the coldest part of the waste mass.

(v) The department can require analysis of the product for maturity before distribution. This can include, but is not limited to, organic matter

reduction, plant growth impact, or oxygen consumption.

(vi) Each biosolids, septage, and sludge source must be analyzed in accordance with the following:

(a) The required parameters for analysis are found in Table 1 of section 361-3.9 of this Subpart.

(b) The minimum number of analyses required depends on the quantity of waste digested, as outlined in Table 3 of section 361-3.9 of this Subpart.

(c) With the exception of pH and total solids, all results must be reported on a dry weight basis. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department can reduce the annual number of analyses required if the waste quality consistently meets the quality standards.

(d) Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for beneficial use are subject to this paragraph.

(vii) For other wastes, analyses of the input waste can be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling will be determined by the department on a case-specific basis.

(5) Reporting requirements

(i) The annual report required by section 360.19(k)(3) of this Title must include:

(a) all information and analyses, including copies of the laboratory sheets, required by this Subpart;

(b) the type and quantity of the waste processed, including the source of the material;

(c) process operational information including monitoring data and significant facility operational problems and any actions taken to correct problems;

(d) the quantity, by weight and volume, of product generated at the facility and the quantity of material removed from the facility; and

(e) a description of the use of the product.

Section 361-3.7 Pathogen and vector attraction reduction criteria.

(a) Pathogen reduction.

(1) One of the following Class A alternatives must be used to reduce pathogen content before the material leaves the facility. Alternative 2 is not applicable for composting and

alternative 4 can only be used if the process cannot produce operational data that could be used to meet another pathogen reduction (PR) alternative.

(i) Class A - alternative 1. At the time of product use or disposal, either the density of fecal coliform in the product is less than 1,000 most probable number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product is less than 3 most probable number per 4 grams of total solids (dry weight basis). In addition, the waste must be treated by one of the following processes:

(a) Composting. Using the windrow composting method, the waste is maintained under aerobic conditions during the compost process. A minimum of 5 turnings is required during a period of 15 consecutive days when the temperature of the waste is not less than 55° C. Using the aerated static pile composting method or the within-vessel composting method, the temperature of the waste is maintained at 55° C or higher for at least three consecutive days.

(b) Heat drying. Waste is dried by direct or indirect contact with hot gases to reduce the moisture content of the waste to 10 percent or lower. One of the following must be achieved:

(1) either the temperature of the waste particles must exceed 80° C; or

(2) the wet bulb temperature of the gas in contact with the waste as it leaves the dryer must exceed 80° C.

(c) Heat treatment. Liquid waste is heated to a temperature of 180° C or higher for at least 30 minutes.

(d) Thermophilic aerobic digestion. Liquid waste is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the waste is at least 10 days at 55° C or greater.

(e) Beta ray irradiation. Waste is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20° C).

(f) Gamma ray irradiation. Waste is irradiated with gamma rays from certain isotopes, such as cobalt 60 and cesium 137, at dosages of at least 1.0 megarad at room temperature (approximately 20° C).

(g) Pasteurization. The temperature of the waste is maintained at 70° C or higher for 30 minutes or longer.

(h) Other methods. Other methods or operating conditions can be approved by the department if the department

determines that pathogens are reduced to an extent equivalent to the reduction achieved by the above methods.

(ii) Class A - alternative 2. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 most probable number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product must be less than three most probable number per four grams of total solids (dry weight basis). In addition, the temperature of the waste must be maintained at a specific value for a period of time, as follows:

(a) When the percent solids of the waste is seven percent or higher, the temperature of the waste must be 50° C or higher, the time period must be 20 minutes or longer, and the temperature and time period must be determined using the following equation, except when small particles of waste are heated by either warmed gases or an immiscible liquid.

$D = 131{,}700{,}000/10^{0.1400\ t}$

Where,

D = time in days.

t = temperature in degrees Celsius.

(b) When the percent solids of the waste is seven percent or higher and small particles of waste are heated by either warmed gases or an immiscible liquid, the temperature and time period must be determined using the equation in clause (*a*) of this subparagraph. The temperature of the waste must be 50° C or greater and the time period must be 15 seconds or longer.

(c) When the percent solids of the waste is less than seven percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period must be determined using the equation in clause (*a*) of this subparagraph.

(d) When the percent solids of the waste is less than seven percent, the temperature of the waste is 50° C or higher, and the time period is 30 minutes or longer, the temperature and time period must be determined using the following equation:

$D = 50{,}070{,}000/10^{0.1400\ t}$

Where,

D = time in days.

t = temperature in degrees Celsius.

(iii) Class A - alternative 3. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 most probable number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product must be less than three

most probable number per four grams of total solids (dry weight basis). In addition, the following conditions must be satisfied:

(a) The pH of the waste must be raised to above 12 and remain above 12 for at least 72 hours.

(b) The temperature of the waste must remain above 52° C for 12 hours or longer during the period that the pH of the waste is above 12.

(c) At the end of the 72-hour period during which the pH of the waste is above 12, the waste must be air dried to achieve a percent solids in the waste greater than 50 percent.

(iv) Class A - alternative 4. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 most probable number per gram of total solids (dry weight basis) or the density of salmonella sp. bacteria in the product must be less than three most probable number per four grams of total solids (dry weight basis). In addition, the following conditions must be satisfied:

(a) The density of enteric viruses in the product must be less than one plaque-forming unit per four grams of total solids (dry weight basis).

(b) The density of viable helminth ova in the product must be less than one per four grams of total solids (dry weight basis).

(b) Vector attraction reduction.

(1) One of the following vector attraction reduction methods must be achieved before the material leaves the facility. Vector attraction reduction methods, except the methods found in section 361-3.7(b)(2)(vi)-(viii) of this Subpart, must be met either after meeting the pathogen reduction requirements or at the same time the pathogen reduction requirements are met.

(i) The mass of volatile solids in the waste must be reduced by a minimum of 38 percent.

(ii) If the volatile solids reduction requirement in subparagraph (i) cannot be met for an anaerobically digested waste, vector attraction reduction can be demonstrated by anaerobically digesting a portion of the previously digested waste in a laboratory bench-scale unit for 40 additional days at a temperature between 30° and 37° C. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 17 percent reduction in volatile solids content.

(iii) If the volatile solids reduction requirement in subparagraph (i) cannot be met for an aerobically digested waste, vector attraction reduction can be demonstrated by aerobically digesting a portion of the previously digested waste that has a percent solids of two percent or less

in a laboratory bench-scale unit for an additional 30 days at 20° C. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 15 percent reduction in volatile solids content.

(iv) The specific oxygen uptake rate (SOUR) for waste treated in an aerobic process must be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.

(v) Waste must be treated by an aerobic process for a minimum of 14 days. Throughout that treatment time, the temperature of the waste must remain higher than 40° C and the average temperature of the waste must be higher than 45° C.

(vi) The pH of the waste must be raised to 12 standard units or higher by alkali addition and, without the addition of more alkali, must remain at 12 or higher for two hours, and then must remain at 11.5 or higher for an additional 22 hours.

(vii) For waste that does not contain untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 75 percent, before mixing with other materials, until use.

(viii) For waste that contains untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 90 percent, before mixing with other materials, until use.

Section 361-3.8 Biosolids and other similar products generated outside New York State.

A product derived from biosolids, septage, or municipal solid waste, which is generated outside New York State, and which is offered for sale, sold, or given away within New York State, is not a waste for purposes of section 360.12 of this Title if the following conditions are satisfied:

(a) Request for product distribution.

Before distribution of the product in New York State, the distributor must submit a written request to the department and must obtain approval of the request from the department. The request must contain, at a minimum, the following:

(1) a description of the processing facility and all waste sources;

(2) a copy of the permits or other approvals for the processing facility and the appropriate excerpts from applicable rules and regulations from the applicable authority where the product is generated;

(3) a minimum of three analyses of the product for the parameters listed in Table 1 of section 361-3.9 of this Subpart;

(4) a description of the methods to reduce pathogens and vector attraction, with appropriate monitoring data, as determined by the department;

(5) a description of how and where the product will be distributed and used in New York State and the quantity of product that will be distributed or used in New York State;

(6) a description of any storage facilities for product that are located in New York State, including location, quantity stored, storage facility construction and duration of storage; and

(7) a copy of the label or printed literature for the product.

(b) Pathogen and vector attraction reduction.

The waste must be treated by one of the pathogen and vector attraction reduction options outlined in section 361-3.7 of this Subpart.

(c) Contaminant limits and product use.

(1) The product quality and product use must comply with the criteria found in section 361-3.2(e)(20)-(26) and (30) of this Subpart.

(2) The duration, location, or quantity of stored product may be limited by the department to address potential odor or runoff concerns.

(d) Monitoring, recordkeeping, and reporting.

(1) A minimum of one analysis of the product is required for each 1,000 cubic yards of product distributed in New York State. The parameters of the analysis are found in Table 1 of section 361-3.9 of this Subpart.

(2) An annual report must be submitted to the department by March 1st of each year. The report must include:

(i) all information and analytical results, including copies of the laboratory sheets, required by this section;

(ii) the quantity of product distributed in New York State;

(iii) a description of the product storage and product use; and

(iv) an outline of any problems encountered, complaints received, actions taken to mitigate any problems, and the outcomes.

Section 361-3.9 Tables.

Table 1

	Parameters for Analysis	
Total Kjeldahl Nitrogen	Arsenic (As)	Products must also analyze for:
Ammonia	Cadmium (Cd)	Fecal coliform or Salmonella sp. Bacteria
Nitrate	Chromium (total) (Cr)	
Total Phosphorous	Copper (Cu)	Physical contaminants
Total Potassium	Lead (Pb)	
pH	Mercury (Hg)	
Total Solids	Molybdenum (Mo)	
Total Volatile Solids	Nickel (Ni)	
	Selenium (Se)	
	Zinc (Zn)	

Table 2

Analyses Required with Permit Application	
Biosolids/Sludge Used (dry tons/year)	Minimum Number of Analyses
>15,000	12
>2,500 to 15,000	6
200 to 2,500	3
25 to 199	2
<25	1

Table 3

Analyses Required During Operation – Biosolids		
Biosolids Used (dry tons/year)	Minimum Number of Analyses	Reduced Frequency for Low Pollutants*
>15,000	24	12
>2,500 to 15,000	12	6
200 to 2,500	6	4
25 to 199	4	2
<25	2	1

*Applies to facilities where two consecutive years of biosolids pollutant levels are all at or below one-half of the limits found in Table 6 if approved by the department.

Table 4

Annual Product Testing Frequency - Biosolids/Sludge/MSW	
Average Product Generated (cubic yards per day)	Number of Analyses
>50	52
5-50	12
<5	6

Table 5

Annual Product Testing Frequency – SSO	
Average Product Generated (cubic yards per day)	Number of Analyses
>50	12
5-50	4
<5	2

Table 6

Pollutant Limits	
Parameter	Maximum Concentration mg/kg, dry weight
Arsenic (As)	41
Cadmium (Cd)	10
Chromium (Cr-total)	1,000
Copper (Cu)	1,500
Lead (Pb)	300
Mercury (Hg)	10
Molybdenum (Mo)	40
Nickel (Ni)	200
Selenium (Se)	100
Zinc (Zn)	2,500

SUBPART 361-4

MULCH PROCESSING FACILITIES

Section 361-4.1 Applicability
361-4.2 Exempt facilities
361-4.3 Registered facilities
361-4.4 Permit application requirements
361-4.5 Design and operating requirements for permitted mulch processing facilities
361-4.6 Groundwater Protection Requirements for Facilities Located in Nassau and Suffolk Counties
361-4.7 Recordkeeping and reporting requirements for registered and permitted mulch processing facilities

Section 361-4.1 Applicability.

(a) This Subpart applies to any facility that processes yard trimmings (other than grass clippings), tree debris, or wood debris into mulch. This Subpart also applies to any facility that processes any combination of these materials. In addition, in Nassau and Suffolk Counties, this Subpart applies to the storage of mulch even if no processing is occurring.

(b) This Subpart does not apply to the following facilities:

(1) a facility that composts yard trimmings. That type of facility, or portion thereof, is regulated under Subpart 361-3 of this Part;

(2) a facility for combustion or thermal treatment. That type of facility, or portion of one, is regulated under Subpart 362-1 of this Title; and

(3) a facility that processes wood that is C&D debris. That type of facility, or portion thereof, is regulated under Subpart 361-5 of this Part.

Section 361-4.2 Exempt facilities.

In addition to the exemptions provided in section 360.14 of this Title, the following facilities are exempt from this Subpart:

(a) A tree debris disposal facility as specified in section 363-2.1(g) of this Title.

(b) A facility with a maximum of 10,000 cubic yards total of material onsite, including storage of incoming material and processed material, provided the piles adhere to the size and spacing restrictions found in section 361-4.3(b)(4) and (6) of this Subpart.

(c) A facility used for the storage and processing of yard trimmings or tree debris that is considered storm debris from an area designated as a disaster area by the Governor of New York State, provided criteria specified by the department are followed.

Section 361-4.3 Registered facilities.

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply

with the operating requirements specified in this section.

(1) A facility with more than 10,000 cubic yards but less than 25,000 cubic yards of material onsite, including storage of incoming material and processed material, provided the following design and operating criteria are followed.

(b) For registered facilities, the following design and operating criteria apply.

(1) For wood debris, the facility has a program to preclude the acceptance of contaminated wood for mulch production and to inspect and remove any contaminated wood that arrives at the site. If the facility accepts pallets, the facility must have equipment to remove nails or other metal fasteners and must operate the equipment whenever pallets are being processed.

(2) The facility does not accept C&D debris, unless managed on a separate part of the property, in accordance with department criteria.

(3) Material does not remain on-site unprocessed for more than 12 months.

(4) All piles of material do not exceed 25 feet high and 30 feet wide at the base, except in Nassau and Suffolk Counties. In Nassau and Suffolk Counties, the piles of material do not exceed 15 feet high and 30 feet wide at the base.

(5) The mulch product is not stored for more than 180 days.

(6) For all piles of double or finely ground mulch, the temperature in the piles must be monitored at least twice per week. For all other piles, the temperature in the piles must be monitored twice per month. Multiple points in the piles are monitored with emphasis placed on areas that appear to be the hottest, such as vents and areas of fungal growth. Probing must be done cautiously to avoid introducing air into a hot spot and causing a flash fire. If the temperature is above 140° F or a portion of the pile shows an increasing trend in temperature, the affected material must be immediately broken down and cooled.

(7) All piles of material, both unprocessed and processed, are separated by at least 10 feet.

(8) Restacking of piles must occur when winds are blowing away from sensitive receptors.

(9) Piles of processed material must be restacked as necessary to avoid temperatures above 140° F.

(10) Piles of processed material are piled loosely and not compacted in any manner.

(11) If a fire occurs, the affected portion of the pile must be dismantled and watered to douse the fire or managed in a manner recommended by a local fire department.

(12) Standing water on the storage area is minimized.

(13) For the purposes of Part 360 and this Part, precipitation, surface water, and groundwater that has come in contact with wood debris, tree debris, and yard trimmings, both incoming and processed, is not considered leachate, but must be managed in a manner

acceptable to the department. The facility must have a written run-on and run-off plan, submitted with the registration request, that is acceptable to the department that outlines the methods that will be used to prevent run-on from entering and run-off from leaving the site and to minimize the movement of organic matter into the soil at the site.

(14) The following buffer areas from processing and storage are followed:

Feature	Minimum horizontal separation distance (in feet)
Property line	25
Residence*	200
Potable water well	200
Surface water and State regulated wetland	200

*Excludes owner's or operator's residence or a facility that existed prior to November 4, 2017. The facility is required to comply with this requirement at the time the facility applies for a registration or permit. The facility is not required to comply with this requirement with respect to construction of nearby residences after the registration or permit application is submitted to the department.

(15) Facilities located in Nassau and Suffolk counties must comply with section 361-4.6 of this Subpart.

Section 361-4.4 Permit application requirements.

A mulch processing facility with 25,000 cubic yards or more of material onsite, including storage of incoming material and processed material, must obtain a permit, and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title and sections 361-4.5 and 4.6 of this Subpart.

Section 361-4.5 Design and operating requirements for permitted mulch processing facilities.

A mulch processing facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design and operate the facility in compliance with the design and operating requirements specified in section 361-4.3(b) and section 361-4.6 of this Subpart and the recordkeeping and reporting requirements of section 361-4.7 of this Subpart.

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

In addition to the other requirements outlined in this Subpart, the following criteria apply to registered and permitted mulch processing facilities located in Nassau and Suffolk Counties.

(a) Groundwater monitoring.

(1) A minimum of one upgradient and two downgradient monitoring wells must be installed and maintained at the facility. The department may require installation and operation of additional groundwater monitoring wells based on site specific conditions. Siting and installation of wells must be consistent with acceptable criteria, as outlined in section 363-4.4(k) of this Title.

(2) Groundwater monitoring wells must be sampled quarterly. Results of the analyses must be submitted to the department within 60 days after the sampling event. The parameters for analysis are: groundwater elevation; total dissolved solids (TDS); conductance, turbidity; pH, oxidation reduction potential (ORP); dissolved oxygen; chemical oxygen demand (COD); Total Kjeldahl nitrogen (TKN); nitrate nitrogen; sodium; chloride; ammonia; iron; and manganese. After the first year of monitoring, the facility owner or operator may request a reduced sampling frequency, if the water quality consistently meets the applicable groundwater standards.

(b) Site water management.

Compliance with the following criteria is required if groundwater monitoring indicates that significant degradation of groundwater quality has occurred, as determined by the department. Construction must be completed within one year after notification from the department.

(1) Run-off management criteria.

(i) The areas used for the receiving, processing, and storing of incoming materials and product must be designed, constructed, operated, and maintained to:

(*a*) direct site water drainage and minimize ponding by sloping or crowning pads;

(*b*) transmit run-off generated during the storage and processing of materials to a treatment and/or containment structure to minimize the potential for waste constituents to enter groundwater or surface water;

(*c*) control and manage all run-off and precipitation that falls onto and within the boundaries of those areas from a 25-year, 24-hour peak storm event at a minimum; and

(*d*) prevent stormwater, which has come in contact with waste, from impacting surface waters or groundwater, or causing conditions that reduce the ability to use neighboring properties.

(ii) Working surfaces must be sized appropriately and constructed to allow year-round equipment access to the piles without damage to the working surfaces, and treatment and containment structures.

(iii) Working surfaces must be constructed with a hydraulic conductivity of 1.0×10^{-5} cm/sec or less, and must consist of one of the following:

(*a*) compacted soils, at least one foot thick;

(*b*) asphalt concrete or Portland cement; or

(*c*) an equivalent engineered material approved by the department.

(iv) Run-off must be treated by one of the following methods, unless other engineering controls are approved by the department.

(*a*) Vegetative filters in combination with ponds or alone (for limited flow situations). The vegetative filter must consist of a mix of grasses and forbs, etc. and be designed to promote sheet flow. They need to be monitored periodically to:

(*1*) remove accumulated sediment and organic matter that affects flow;

(*2*) identify rill erosion and regrade; and

(*3*) identify vegetative species with low survival rates and replace them with more successful native species to maintain dense vegetative coverage.

(*b*) Detention and infiltration ponds. Run-off must be directed to a treatment pond system consisting of a minimum of three cells. Two cells must be detention ponds designed and operated in accordance with paragraph 361-4.6(b)(6) of this Subpart to allow for maintenance. The bottom of any infiltration pond used must be at least five feet above the seasonal high groundwater table.

(v) Use of run-off and treated run-off. Run-off and treated run-off (emanating from vegetative strips or a pond system) can be used for site dust suppression, to add moisture to the piles, or for other means approved by the department. Run-off should be applied in a manner that does not result in erosion. Treated run-off can also be managed through infiltration ponds. Any run-off that cannot be effectively managed on-site must be handled in a manner approved by the department.

(2) Storage and containment criteria.

(i) Detention ponds, if used, must:

(*a*) have a liner having a hydraulic conductivity of 1.0 x 10^{-6} cm/sec or less, and must consist of one of the following:

(*1*) a liner system consisting of a minimum of a 60-mil high density polyethylene liner, underlain by either one foot of compacted clay or a geosynthetic clay liner installed over a prepared base;

(*2*) a liner system that includes Portland cement concrete, designed to minimize cracking and infiltration, underlain by a minimum of a 60-mil high-density polyethylene liner; or

(*3*) an equivalent engineered material approved by the department;

(*b*) have a leak detection system acceptable to the department;

(*c*) at a minimum, be designed, constructed, and maintained to prevent overflowing or overtopping, based on the containment of all diverted site run-off in addition to precipitation that falls into the detention pond from a 25-year, 24-hour peak storm event;

(*d*) be at least two feet above the seasonal high groundwater table;

(*e*) be managed to maintain a dissolved oxygen concentration in the upper zone (one foot) of at least 1.0 milligram per liter (mg/l). Sediment-free water meeting this dissolved oxygen level can be discharged to an infiltration pond or equivalent;

(*f*) be monitored quarterly, if sufficient water is available, for pH, dissolved oxygen, total dissolved solids, fixed dissolved solids, total nitrogen, and specific conductance using methods acceptable to the department; and

(*g*) be cleaned at least once every year.

(ii) Tanks, if used, must be designed, constructed, and operated in compliance with the criteria in section 361-2.7.

(iii) Drainage ditches, if used to convey site water to storage or treatment, must:

(*a*) be able to effectively convey the run-off from a 25-year, 24-hour peak storm event, at a minimum;

(*b*) have a liner having a hydraulic conductivity of 1.0 x 10^{-5} cm/sec or less, and must consist of one of the following:

(*1*) compacted soils, at least one foot thick;

(*2*) asphalt concrete or Portland cement; or

(*3*) an equivalent engineered material approved by the department;

(*c*) be properly sloped to minimize ponding, kept free and clear of debris to allow continuous flow of liquid, be adequately protected from erosion; and

(*d*) be cleaned at least once every year.

(3) Run-on management criteria.

(i) Surface water run-on must be controlled by diversion swales that are constructed on the site perimeter to collect potential run-on and direct it to an engineered outlet structure (riprap aprons, etc.) that minimizes erosion; or berms that are constructed on the site perimeter to divert potential run-on to an engineered outlet structure (riprap aprons, etc.) that minimizes erosion. Berms must be built from fine grained material that can be compacted sufficiently and vegetated with a mix of grasses and forbs to prevent erosion and washout. Vegetation must be mowed no less than once per year.

(ii) Diversion swales and berms must be designed, constructed, and maintained to prevent run-on from a 25-year, 24-hour peak storm event, at a minimum.

(4) Inspection and reporting.

(i) All wells, working surfaces, berms, ditches, and any other run-on and run-off control or treatment devices must be inspected at least quarterly. Results of the quarterly inspections must be included in the annual report required by section 360.19(k)(3) of this Title, and must include:

(*a*) date and time of inspection and name of inspector;

(*b*) evidence of deficiencies such as cracking, subsidence, erosion, etc.;

(*c*) evidence of ponding on the working surface and within the ditches;

(*d*) effectiveness of erosion control procedures;

(*e*) maintenance that has occurred to control run-off and run-on;

(*f*) evidence of any liquid leaving or entering the site, including location, size, and quantity;

(*g*) integrity of all drainage and treatment systems;

(*h*) descriptions of all deficiencies and corrections implemented; and

(*i*) any other analyses required by this Subpart.

(ii) All site water management and treatment devices must be inspected within seven days of all major storm events, and any necessary repairs must be made within 30 days. This information must be included in the annual report required by section 360.19(k)(3) of this Title.

(5) General site criteria.

(i) Piles of material must not be placed in topographic depressions that act as either run-off conveyance channels or where run-off accumulates. Piles or windrows must be placed in locations where the ground surface is crowned or otherwise sloped sufficiently to avoid ponding of water at the bases of the piles. Windrows should be oriented parallel to the slope, so that precipitation landing between the windrows can flow freely off the processing area.

Section 361-4.7 Recordkeeping and reporting requirements for registered and permitted mulch processing facilities.

The following criteria apply to both registered and permitted facilities:

(a) The facility must keep records as required by section 360.19(k) of this Title.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title.

SUBPART 361-5

CONSTRUCTION AND DEMOLITION DEBRIS HANDLING AND RECOVERY FACILITIES

Section 361-5.1 Applicability
361-5.2 Exempt facilities
361-5.3 Registered facilities
361-5.4 Permit application requirements
361-5.5 Design and operating requirements for registered and permitted facilities
361-5.6 Recordkeeping and reporting requirements

Section 361-5.1 Applicability.

This Subpart applies to any facility that processes or stores construction and demolition (C&D) debris in order to extract recyclable or reusable materials. This Subpart also applies to any combination of these activities. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 361-5.2 Exempt facilities.

In addition to the exemptions provided for in section 360.14 of this Title, the following facilities are exempt from this Subpart:

(a) The storage of the materials listed in paragraphs 361-5.2(a)(1)-(3) of this subdivision located within the New York City Metropolitan Area Waste Impact Zone and under the control of the generator or the person designated by the generator to be responsible for the generation of the material which is anticipated to be reused under a beneficial use determination. The material listed in paragraphs 361-5.2(a)(1)-(4) of this subdivision must be stored separately and no more than 500 cubic yards in total of the materials on-site at any one time. Material that is no longer considered a solid waste under a beneficial use determination can be stored in any quantity.

(1) Fill Type 1;

(2) Fill Type 2;

(3) Fill Type 3; and

(4) recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings or mixtures of only the materials in this paragraph.

(b) The storage of the materials listed in paragraphs 361-5.2(b)(1)-(2) of this subdivision located outside of the New York City Metropolitan Area Waste Impact Zone and under the control of the generator or the person designated by the generator to be responsible for the generation of the material and which is anticipated to be reused under a beneficial use determination. The materials listed in paragraphs 361-5.2(b)(1)-(2) of this subdivision must be stored separately and no more than 10,000 cubic yards in total of the material on-site at any one time. Storage of greater than 2,500 cubic yards requires notification to the department on an annual basis. Material that is no longer considered a solid waste under a beneficial use determination can be stored in any quantity.

(1) Fill Type 3; and

(2) recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings or mixtures of only the materials in this paragraph.

(c) a site authorized by the City of New York to temporarily stage C&D debris.

Section 361-5.3 Registered facilities.

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with the applicable requirements of sections 361-5.5 and 361-5.6 of this Subpart.

(1) Facilities that receive a combination of the following recognizable, uncontaminated wastes: concrete and other masonry materials (including reinforcing embedded in concrete), brick, rock, and asphalt pavement or millings.

(2) Facilities that receive a combination of uncontaminated asphalt roofing shingles and roofing paper that do not contain friable asbestos-containing materials.

(3) Facilities that receive uncontaminated, unadulterated gypsum wallboard.

(4) Facilities that receive unadulterated, uncontaminated wood.

(5) Facilities that receive a combination of soil, sand, gravel, or rock directly from the site of excavation. The soil must have no visual or other indicators (odors, etc.) of chemical or physical contamination such as impacts from spill events, and must not originate from any location within the five boroughs of New York unless the facility is owned or controlled by the City of New York.

(7) Facilities that receive a combination of other uncontaminated, source-separated recyclables generated from C&D debris for use under an approved case-specific beneficial use determination in accordance with section 360.12 of this Title.

(b) Facilities of the following types are subject to the registration provision of section 360.15 and section 360.19(b), (g), (j), and (k)(3) of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with sections 361-5.5 and 361-5.6 of this Subpart.

(1) A facility that stores only the following uncontaminated material: concrete and other masonry materials (including reinforcing embedded in concrete); brick, rock; asphalt pavement; or mixtures of these materials. Processing at this facility is prohibited.

Section 361-5.4 Permit application requirements.

A C&D debris handling and recovery facility that is not exempt or subject to the registration provisions of section 361-5.3 of this Subpart must obtain a permit and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in section 360.19 of this Title and the design and operating requirements in section 361-5.5 of this Subpart.

Section 361-5.5 Design and operating requirements for registered and permitted facilities.

A C&D debris handling and recovery facility required to obtain a registration or permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

(a) All receiving, processing, and sorting activities must be conducted in an enclosed building unless otherwise specified in this Subpart or in the transition provisions of section 360.4(b)(4) of this Title. An enclosed building is not required for concrete and other masonry material (including reinforcing embedded in concrete), asphalt pavement, asphalt millings, brick, rock, excavated material, roofing shingles or unadulterated wood.

(b) All waste and recovered material delivered to and leaving the facility must be weighed or otherwise measured and recorded in cubic yards and tons.

(c) Friable asbestos-containing waste must not be accepted at the facility. Non-friable asbestos-containing waste, if received at the facility, must not be handled or processed in any way that would cause the material to become crumbled, pulverized, or reduced to powder.

(d) The facility must not accept C&D debris, excavated material, or similar material from a site being remediated pursuant to a program administered by the department or EPA unless accompanied by written approval from the department or EPA.

(e) Any Fill Type 4, Fill Type 5 or its residue leaving the facility for reuse must be analyzed in accordance with the sampling and analysis requirements in section 360.13(e) of this Title, except a minimum of one analysis is required for every 1,000 cubic yards of material produced. Any Fill Type 1, Fill Type 2 or Fill Type 3 leaving the facility for reuse must be analyzed at least four times per year in accordance with the sampling and analysis requirements in section 360.13(e) of this Title. The department may direct that this sampling be performed at any time during the calendar year.

(f) Storage requirements.

(1) Storage of processed and unprocessed C&D debris is limited as follows:

(i) Unprocessed asphalt pavement, asphalt millings, concrete and other masonry materials (including reinforcing embedded in concrete), brick, excavated material, rock, or wood can be stored uncovered, but in all cases storage is limited to 365 calendar days unless the following criteria are satisfied to justify a longer storage period.

(a) There is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 365-day intervals or volumes that may take longer than 365 days to acquire.

(b) The facility has sufficient storage area to prevent a negative impact to public health or the environment.

(c) The facility implements an inventory control system, including daily logs, to ensure

that the processed recyclables do not remain at the facility for longer than the period approved.

(d) Prior to storing unprocessed and processed recyclables for longer than 365 calendar days, the facility must notify the department of its intent and include justification based on the requirements of this subdivision.

(ii) Storage of any other unprocessed C&D debris must be in an enclosed or covered storage area for a period not to exceed 30 calendar days unless written approval from the department is obtained.

(iii) Storage of material at the site must not exceed the declared volume identified in the application or registration documents.

(iv) Source-separated or processed and separated material that meets a beneficial use determination as specified in section 360.12 or 360.13 of this Title can be stored without time restriction so long as the storage volume conforms with the declared storage volume identified in the application or registration documents.

(2) Processed and unprocessed C&D debris must not be stored in excavations or below normal grade level of the facility.

(3) With the exception of concrete, asphalt pavement or cuttings, brick, or rock, a minimum separation distance of 10 feet must be maintained between adjacent storage piles unless the piles are stored in bins or other structures which separate piles. Storage piles must not extend over property boundaries.

(4) Storage area floors must be constructed of concrete or asphalt paving material and must be equipped with adequate drainage and retention structures. However, concrete or asphalt storage area floors are not required for the separate storage of processed or unprocessed uncontaminated concrete, other masonry waste, asphalt pavement, asphalt millings, unadulterated wood, brick, excavated material or rock.

(g) A permitted facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

(h) All C&D debris leaving the facility must meet the appropriate waste tracking document requirements of section 364-5.1 of this Title. Waste tracking documents are considered records pursuant to section 361-5.6 of this Subpart.

Section 361-5.6 Recordkeeping and reporting requirements.

The following criteria apply to both registered and permitted facilities:

(a) The facility must keep records in accordance with section 360.19(k) of this Title. In addition to the requirements of section 360.19 of this Title, all C&D debris handling and recovery facilities must maintain daily records of the quantity of recyclables sent from the facility by material type, including the quantity and destination of material used as alternative operating cover as described in section 363-6.21 of this Title. The facility must keep generator copies of waste tracking documents received

from transporters pursuant to paragraph 364-5.1(b)(6) of this Title.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title.

SUBPART 361-6

WASTE TIRE HANDLING AND RECOVERY FACILITIES

Section 361-6.1 Applicability
361-6.2 Exempt facilities
361-6.3 Registered facilities
361-6.4 Permit application requirements
361-6.5 Design and operating requirements for permitted facilities
361-6.6 Recordkeeping and reporting requirements

Section 361-6.1 Applicability.

This Subpart applies to any facility that stores, handles or processes waste tires. This Subpart also applies to any combination of these activities. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to a facility, or a portion of a facility, that is used for combustion or thermal treatment of waste tires, which is regulated under Subpart 362-1 of this Part.

Section 361-6.2 Exempt facilities.

The following facilities and activities are exempt from this Subpart:

(a) Storage and transfer of waste tires under section 360.14(b)(9) of this Title.

(b) Facilities that are registered under Subpart 361-7 of this Part and that transfer tires with storage of less than 1,000 waste tires at any time. Tires that are mounted on vehicles or that are used to support vehicles (no more than six tires per vehicle) are not included in the total.

(c) The processing of waste tires at a farm by the owner of the farm for the purpose of producing a product which meets the beneficial use provisions of section 360.12(c)(2)(iv) of this Title.

(d) A waste tire stockpile site undergoing abatement pursuant to the New York State Waste Tire Stockpile Abatement Plan which processes tires for the purpose of producing a product meeting any requirement of Parts 360, 362, or 363 of this Title.

Section 361-6.3 Registered facilities.

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In lieu of the full requirements described in Part 360 of this Title, each facility must comply with the reporting and recordkeeping requirements of section 360.19(k) of this Title, the closure requirements of section 360.21 of this Title, and the associated operating requirements identified in paragraphs (1), (2), and (3) of this subdivision.

(1) A facility collecting and storing waste tires, where:

(i) all waste tires are stored in enclosed trailers or other enclosed portable containers;

(ii) each enclosed trailer or other enclosed portable container is removed from the facility within seven days of being filled to capacity;

(iii) the facility has a contractual agreement for the removal and use or proper management of the waste tires;

(iv) each enclosed trailer or other portable enclosed container is locked when the facility is closed;

(v) there are no more than six enclosed trailers or other enclosed portable containers at the facility at any one time whether filled or partially filled;

(vi) if storage is in two or more enclosed trailers, the facility or storage area is secured to prevent unauthorized access by use of fencing, gates, signs, natural barriers, or other suitable means as determined by the department;

(vii) documentation is available at the facility that demonstrates that the storage of the enclosed trailers or other enclosed portable containers is in accordance with State and local building and fire codes;

(viii) waste tires are transported to and from the facility only in accordance with Part 364 of this Title; and

(ix) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

(2) A facility selling waste tires, where:

(i) waste tires are received, sorted by tire size and type, and stored on shelves or racks in an enclosed building or enclosed trailer;

(ii) stored tires are suitable for resale;

(iii) an inventory is maintained by tire size and type that identifies each waste tire;

(iv) documentation is available at the facility that demonstrates that the storage configuration and fire prevention and protection systems are in accordance with State and local building and fire codes;

(v) if storage is in two or more enclosed trailers, the facility or storage area is secured to prevent unauthorized access by use of fencing, gates, signs, natural barriers, or other suitable means as determined by the department; and

(vi) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

(3) A facility with a valid registration with the U.S. Department of Transportation as a tire retreader where:

(i) waste tires are received, sorted, and stored in an enclosed building or enclosed trailer;

(ii) all tire-related waste generated as a result of facility operation is removed from the facility for appropriate management within seven days after generation;

(iii) the storage of whole waste tires is no greater than the 30-day production capacity of the facility;

(iv) an inventory is maintained by tire size and type that identifies each waste tire;

(v) documentation is available at the facility demonstrating that the storage configuration and fire prevention and protection systems are in accordance with State and local building and fire codes; and

(vi) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

Section 361-6.4 Permit application requirements.

A waste tire handling and recovery facility that is not an exempt facility or subject to the registration provisions of section 361-6.3 of this Subpart must obtain a permit and must submit an application which includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title and section 361-6.5 of this Subpart.

Section 361-6.5 Design and operating requirements for permitted facilities.

A waste tire handling and recovery facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

(a) for facilities that process tires, the storage of waste tires received must be no greater than the 30-day production capacity of the facility,

(b) for facilities that are only receiving waste tires for storage, the waste control plan must include a market analysis which identifies available and potential markets for waste tires.

(c) all tire-related waste generated as a result of facility operation is removed from the facility to an authorized solid waste management facility within seven days after generation;

(d) the maximum individual waste tire storage pile size at the facility does not exceed 20 feet in height. Horizontal dimensions of individual waste tire piles must have a surface area no greater than 5,000 square feet, with the width not to exceed 40 feet;

(e) a minimum separation distance of 10 feet must be maintained between adjacent piles unless the piles are stored in bins or other structures which separate piles. Storage piles must not extend over property boundaries;

(f) no waste tire piles can be located in excavations or below grade;

(g) documentation is available at the facility that the storage configuration and fire prevention and protection systems are in accordance with State and local building and fire codes;

(h) facilities having a planned or actual storage capacity of 2,500 or more waste tires have either an active hydrant or a viable fire pond on the facility, and fully charged carbon dioxide or dry chemical fire

extinguishers located in strategically placed enclosures throughout the entire facility or other fire protection and prevention equipment approved by the local fire marshal;

(i) facilities having a planned or actual storage capacity of 2,500 or more waste tires must be enclosed by a woven wire, chain-link or other fence material, at least six feet in height, with access controlled by locking gates.

(j) potential ignition sources are prohibited in the facility storage area; and

(k) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

Section 361-6.6 Recordkeeping and reporting requirements.

(a) The facility must keep records as required by this Subpart and section 360.19(k) of this Title.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title.

SUBPART 361-7

SCRAP METAL PROCESSING AND VEHICLE DISMANTLING FACILITIES

Section 361-7.1 Applicability
361-7.2 Exempt facilities
361-7.3 Registered facilities
361-7.4 Design and operating requirements for vehicle dismantling facilities
361-7.5 Operating requirements for scrap metal processors
361-7.6 Recordkeeping and reporting requirements

Section 361-7.1 Applicability.

(a) This Subpart applies to any facility that receives, decommissions, processes, dismantles, stores, or recycles any metal, discarded metal-containing products (*e.g.*, appliances) or end-of-life vehicles. This Subpart also applies to any combination of these activities or materials. The requirements contained in Part 360 of this Title also apply to this Subpart.

(b) This Subpart does not apply to a facility, or a portion of a facility:

(1) that receives metals which are source-separated from MSW that is regulated under Subpart 361-1 of this Part;

(2) that receives metal as a part of construction and demolition debris that is regulated under Subpart 361-5 of this Part;

(3) that receives waste tires separated from vehicles that is regulated under Subpart 361-6 of this Part;

(4) that receives electronic waste for the purpose of recovery and recycling; and

(5) that receives municipal solid waste for post-collection separation of recyclables that is regulated under Subpart 362-2 of this Title.

Section 361-7.2 Exempt facilities.

The following facilities are exempt from this Subpart:

(a) Motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store no more than 50 end-of-life vehicles on-site at any one time.

(b) Scrap metal processors that store no more than 1,000 cubic yards of metal on-site at any one time.

(c) Vehicle dismantling facilities that receive no more than 25 end-of-life vehicles per year and store no more than 50 end-of-life vehicles on-site at any one time.

Section 361-7.3 Registered facilities.

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless they are otherwise exempt facilities. In lieu of the requirements of section 360.19 of this Title each facility must comply with the operating requirements of section 361-7.5 of this Subpart and the recordkeeping and reporting requirements in section 361-7.6 of this Subpart.

(1) Scrap metal processors that store more than 1,000 cubic yards of metal on-site at any one time.

(b) The following vehicle dismantling facilities are subject to the registration provisions of section 360.15 of this Title. In addition to the criteria outlined in Part 360 of this Title, each facility must comply with the operating requirements specified in section 361-7.4 of this Subpart and the recordkeeping and reporting requirements in section 361-7.6 of this Subpart.

(1) Motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store more than 50 end-of-life vehicles on-site at any one time.

(2) Vehicle dismantling facilities that receive more than 25 end-of-life vehicles per year or store more than 50 end-of-life vehicles on-site at any one time.

(3) Mobile vehicle crushers.

Section 361-7.4 Design and operating requirements for vehicle dismantling facilities.

A vehicle dismantling facility required to obtain a registration under this Subpart must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) End-of-life vehicles arriving at the facility must be inspected upon arrival for leaking fluids and unauthorized waste. Leaks must be remedied or contained to avoid releases of fluids to the environment.

(b) All fluids must be drained, removed, collected, and stored for appropriate use, treatment, or disposal to the maximum extent possible, utilizing best management practices. If hazardous wastes are present, they must be disposed in compliance with Part 370 of this Title.

(c) All fluid draining, removal and collection activities as well as all crushing activities must be conducted on a bermed, sealed asphalt or concrete surface or other permanent surface that provides equivalent protections to surface and groundwater. Surfaces must be cleaned daily when in use, and immediately using absorbent materials when a spill has occurred.

(d) End-of-life vehicles must be decommissioned by a facility registered under this Subpart prior to crushing or shredding by removal or deployment of the following materials in accordance with best management practices:

(1) fluids, including but not limited to engine oil, transmission fluid, brake fluid, power steering fluid, coolant, and fuel;

(2) lead acid batteries;

(3) small PCB capacitors, mercury switches and other mercury-containing devices;

(4) refrigerants; and

(5) airbags.

(e) Except for lead acid batteries, any fluids or components identified in subdivision (d) of this section removed from end-of-life vehicles must be stored in closed, labeled containers. Containers that store fluids

removed from end-of-life vehicles must be compatible with their contents and must be placed in an area with either a bermed, sealed asphalt or concrete surface or other permanent surface that provides equivalent protections to surface and groundwater. The area must provide containment equal to the volume stored.

(f) Lead acid batteries must be stored off the ground and must be covered to prevent water from contacting the batteries. Leaking or broken lead acid batteries must be stored separately from intact batteries.

(g) The owner or operator must notify the appropriate regional office of the department in which the facility is located at least five business days prior to any crushing activities that are to be performed by a mobile vehicle crusher.

(h) If more than 1,000 tires are stored at the site, excluding those tires mounted onto vehicles, the facility must meet the requirements of Subpart 361-6 of this Part.

(i) Vegetation must be controlled to prevent encroachment into fire access lanes or driveways at the facility and to decrease the potential for fire.

(j) Vehicles must not be stacked in an unsafe manner.

Section 361-7.5 Operating requirements for scrap metal processors.

A scrap metal processor required to obtain a registration under this Subpart must, in addition to the requirements identified in Part 360 of this Title, maintain and operate the facility in compliance with the following criteria:

(a) All metal shavings and cuttings must be collected inside a building or within a secondary containment area with an impermeable surface and be properly disposed. The secondary containment area must be cleaned at a minimum on a weekly basis or at the end of a shift the day before a precipitation event. As part of the cleaning, all oily liquid must be drained and properly disposed or otherwise managed for reuse.

(b) All fluids must be drained, removed, collected and stored for appropriate use, treatment, or disposal to the maximum extent possible, utilizing best management practices. Small PCB capacitors, mercury switches, other mercury-containing devices, and refrigerants must be removed prior to crushing or shredding. If hazardous wastes are present, they must be disposed in compliance with Part 370 of this Title.

Section 361-7.6 Recordkeeping and reporting requirements.

(a) In lieu of the full recordkeeping requirements identified in section 360.19(k) of this Title, the facility must maintain the following records:

(1) The date of receipt and disposal of all end-of-life vehicles must be recorded and maintained on-site.

(2) Routine inspection logs in accordance with section 360.19(k)(2)(ii) of this Title.

(b) The facility must submit an annual report as required in section 360.19(k)(3) of this Title.

SUBPART 361-8

USED COOKING OIL AND YELLOW GREASE PROCESSING FACILITIES

Section 361-8.1 Applicability
361-8.2 Exempt facilities
361-8.3 Registered facilities
361-8.4 Permit application requirements
361-8.5 Design and operating requirements
361-8.6 Recordkeeping and reporting requirements

Section 361-8.1 Applicability.

This Subpart applies to any facility that accepts used cooking oil or yellow grease for processing to produce ingredients for manufactured products (such as animal feed, etc.) or biofuels, including biodiesel. This Subpart also applies to any combination of these activities or materials. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to a facility solely used for combustion of used cooking oil and/or yellow grease or portion of a facility which is regulated under Subpart 362-1 of this Part.

Section 361-8.2 Exempt facilities.

Facilities receiving no more than a total of 1,000 gallons per year of source-separated used cooking oil and/or yellow grease for processing, when the resultant fuel, feedstock, or ingredient is used only on-site or in facility-owned vehicles and not offered for distribution or sale to other entities, are exempt from this Subpart.

Section 361-8.3 Registered facilities.

Facilities receiving no more than a total of 500,000 gallons per year of used cooking oil and/or yellow grease for processing are subject to the registration provision of section 360.15 of this Title unless they are otherwise exempt facilities. In addition to the criteria in Part 360 of this Title, each facility must comply with the following criteria:

(a) A secondary containment system must be in place for all storage of unprocessed and processed used cooking oil and yellow grease. The secondary containment system must be at least 110 percent of the volume of the largest tank or the total volume of all interconnected tanks, whichever is greater.

(b) All storage devices must have an overfill prevention system.

(c) Documentation is available at the facility that demonstrates fire prevention and protection systems are in accordance with State and local building and fire codes.

(d) The facility must maintain and follow an operation and maintenance plan that includes at a minimum:

(1) procedures to ensure that no unauthorized waste, including brown grease, is received at the facility or, if received, is removed for appropriate treatment and disposal within five days of receipt, unless otherwise authorized by the department in writing;

(2) inventory procedures to ensure that no unprocessed oil or grease is stored at the facility for more than 30 days, no processed oil or grease is stored for more than 12 months, and no residue is stored for more than seven days;

(3) periodic vector inspection and mitigation;

(4) procedures for spill prevention and appropriately managing spills that can occur; and

(5) procedures for the appropriate disposition of wastewater and any waste generated by processing.

Section 361-8.4 Permit application requirements.

A processing facility that is not an exempt facility or a facility subject to the registration provisions of section 361-8.3 of this Title must obtain a permit and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title , the operating requirements in section 361-8.5 of this Subpart, and the recordkeeping and reporting requirements in section 361-8.6 of this Subpart.

Section 361-8.5 Design and operating requirements.

A processing facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design and operate the facility in compliance with the design and operating requirements in section 361-8.3 of this Subpart.

Section 361-8.6 Recordkeeping and reporting requirements.

(a) The facility must keep records as required by section 360.19(k) of this Title. In addition, the facility must maintain daily records of the quantity of unprocessed used cooking oil and yellow grease received at the facility, material stored on-site by type, and processed oil, grease, and biofuel removed from the facility.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title, which must include:

(1) a summary of the sources and quantities of unprocessed used cooking oil and yellow grease;

(2) quantities of processed oil and grease and/or biofuel distributed during the previous calendar year; and

(3) quantities of all other waste currently on-site.

SUBPART 361-9

NAVIGATIONAL DREDGED MATERIAL HANDLING AND RECOVERY FACILITIES

Section 361-9.1 Applicability
361-9.2 Registered facilities
361-9.3 Permit application requirements
361-9.4 Design and operating requirements for registered and permitted facilities
361-9.5 Recordkeeping and reporting requirements

Section 361-9.1 Applicability.

This Subpart applies to any facility that handles, stores or processes navigational dredged material (NDM). This Subpart also applies to any combination of these activities. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 361-9.2 Registered facilities.

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with the applicable requirements of this Subpart. Facilities located at active mined land reclamation sites or C&D debris handling and recovery facilities are ineligible for registrations.

(1) Facilities that receive NDM for the purpose of amending the NDM with portland cement or for the purpose of dewatering on pads or in enclosed geotextile tubes.

Section 361-9.3 Permit application requirements.

(a) Unless otherwise exempt, a NDM handling and recovery facility that is not subject to the registration provisions of section 361-9.2 of this Subpart must obtain a permit, and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360.19 of this Title and this Subpart.

Section 361-9.4 Design and operating requirements for registered and permitted facilities.

An NDM handling and recovery facility required to obtain a registration or permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

(a) All waste and recovered material delivered to and leaving the facility must be weighed or otherwise measured and recorded in cubic yards or tons.

(b) Storage requirements.

(1) Storage of unprocessed NDM must not exceed 365 days. If the NDM is unprocessible or has no beneficial use, it must be disposed within 30 days.

(2) Storage of NDM at the site must not exceed the declared volume indicated in

the permit application or registration documents.

(3) Processed and unprocessed NDM must not be stored in excavations or below normal grade level of the facility.

(4) A minimum separation distance of 10 feet must be maintained between adjacent storage piles unless the piles are stored in bins or other structures to separate piles. Storage piles must not extend over property boundaries.

(5) Wind and water dispersion of NDM from storage piles must be prevented.

(c) The facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

(d) Processed and unprocessed NDM from a facility authorized pursuant to this Subpart may be used pursuant to a case-specific BUD approved pursuant to section 360.12(e) of this Title, or as alternative daily cover pursuant to section 363-6.21(c) of this Title.

Section 361-9.5 Recordkeeping and reporting requirements.

The following criteria apply to both registered and permitted facilities:

(a) The facility must keep records in accordance with section 360.19(k) of this Title. In addition to the requirements of section 360.19 of this Title, all NDM handling and recovery facilities must maintain daily records of the quantity and destination of NDM received at and sent from the facility by material classification, including the quantity and destination of material used as alternative operating cover as described in section 363-6.21 of this Title.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title.

PART 362

COMBUSTION, TREATMENT, TRANSFER AND COLLECTION FACILITIES

PART 362

COMBUSTION, TREATMENT, TRANSFER AND COLLECTION FACILITIES

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SUBPART 362-1
COMBUSTION AND THERMAL TREATMENT FACILITIES

Section 362-1.1 Applicability
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Section 362-1.1 Applicability.

(a) This Subpart applies to any facility that uses combustion, chemical treatment, or thermal treatment to treat solid waste. Facilities regulated by this Subpart include, but are not limited to: mass burn, modular, and fluidized bed combustors; thermal treatment facilities that utilize plasma arc, pyrolysis and gasification; low-temperature thermal desorption units such as thermal strippers and soil roasters; and facilities that combust refuse-derived fuel. The requirements contained in Part 360 of this Title also apply to this Subpart.

(b) This Subpart does not apply to a facility, or a portion of a facility, that receives organic wastes for anaerobic digestion. That type of facility, or portion of one, is regulated under Subpart 361-3 of this Title.

Section 362-1.2 Exempt facilities.

The following facilities are exempt from this Subpart:

(a) A combustion facility located at and operated by staff of a hospital, residential health care facility, diagnostic treatment center, or clinical laboratory regulated under 10 NYCRR Part 70 that treats regulated medical waste generated on-site. The facility can also accept regulated medical waste from a small quantity generator as defined in Public Health Law, if:

(1) the small quantity generator self-transports to the facility in accordance with Parts 364 and 365 of this Title; and

(2) the combustion facility and the small quantity generator enter into a written agreement prior to receipt of waste, copies of which are submitted to the department.

(b) Animal crematories, except those that accept regulated medical waste, regulated pursuant to Part 219 of this Title.

(c) A facility that combusts a traditional fuel or an alternative fuel , unless the fuel is stored at the facility prior to combustion.

(d) A facility or activity that combust solid wastes that are authorized under 6 NYCRR Section 215.3.

Section 362-1.3 Registered facilities.

Unless otherwise exempt, facilities of the following types are subject to the registration provision of section 360.15 of this Title. Each facility identified in this section must obtain a registration from the department and comply with Part 360 of this Title and the following operational requirements:

(a) a facility that combusts or thermally treats waste tires, where:

(1) the process feedrate does not exceed 10 tons per day;

(2) the amount of waste tires stored at the facility does not exceed 100 tons at any time;

(3) waste tires are stored in an enclosed building, enclosed trailers, or other enclosed portable containers;

(4) sufficient water is available on-site to provide moisture to the piles or douse fires;

(5) documentation is available at the facility that demonstrates that storage configuration and fire prevention and protection systems comply with State and local building and fire codes; and

(6) the facility maintains financial assurance in an amount sufficient to cover the costs of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

(b) a facility that combusts or thermally treats used cooking oil or yellow grease, where:

(1) the process feedrate does not exceed 1,000 gallons per day;

(2) on-site storage of used cooking oil and yellow grease does not exceed 500,000 gallons;

(3) a secondary containment system is in place for all storage of unprocessed and processed used cooking oil and yellow grease. The secondary containment system must be at least 110 percent of the volume of the largest tank or the total volume of all interconnected tanks, whichever is greater. All storage tanks must have an overfill prevention system;

(4) documentation is available at the facility that fire prevention and protection systems comply with State and local building and fire codes; and

(5) the facility maintains and follows an operation and maintenance plan that includes at a minimum:

(i) procedures to ensure that no unauthorized waste, including brown grease, is received at the facility or, if received, is removed for appropriate treatment and disposal within five days of receipt, unless otherwise authorized by the department in writing;

(ii) inventory procedures to ensure that no unprocessed oil or grease is stored at the facility for more than 30 days, no processed oil or grease is stored longer than 12 months, and no residue is stored longer than seven days;

(iii) monthly vector inspection and appropriate mitigation;

(iv) procedures for spill prevention and for appropriate management of spills that may occur; and

(v) procedures for the appropriate disposition of wastewater and any waste generated by processing;

(c) a facility that stores, prior to combustion, a traditional fuel or an alternative fuel , where the traditional or alternative fuel is stored in an enclosed building, enclosed trailers, or other enclosed portable containers.

Section 362-1.4 Permit application requirements.

A combustion or other thermal treatment facility that is not an exempt facility or subject to the registration provisions of section 362-1.3 of this Subpart must obtain a permit and must submit an application that includes the requirements identified in section 360.16 of this Title, a description of how the facility will comply with the operating requirements in Part 360 of this Title, sections 362-1.5 and 362-1.6 of this Subpart, and the following:

(a) An engineering report that includes the total electric power to be consumed and generated at the facility in kilowatt-hours.

(b) A waste control plan that must include, in addition to the requirements of section 360.16(c)(4)(i) of this Title, the following:

(1) a program for detecting and preventing the receipt of hazardous wastes at the facility. This program must include, but not be limited to:

(i) random inspections of incoming loads;

(ii) inspections of suspicious loads;

(iii) records of inspections;

(iv) procedures for notifying the proper authorities if a regulated hazardous waste is discovered in a load; and

(v) procedures for proper management of discovered regulated hazardous waste; and

(2) identification of each receiving facility to be used for the disposal of bypass waste.

(c) A residue management plan that includes:

(1) a description of the generation, handling, storage, transportation, treatment, and disposal or use of residue as described in section 362-1.5(d) of this Subpart;

(2) a description of the methods, equipment, and structures necessary to prevent the uncontrolled dispersion of residue, considering potential pathways of human or environmental exposure including, but not limited to, inhalation, direct contact, and potential for groundwater and surface water contamination;

(3) an estimate of the quantity of residues including, but not limited to, bottom ash, fly ash, and slag, generated from the facility on a daily basis. This estimate must identify and quantify the potential of each residue stream to be segregated for beneficial use in accordance with section 360.12 of this Title. Market arrangements for beneficial use of residues must also be included, if any;

(4) a residue sampling and analysis plan. This plan must identify both the sample collection protocol that will be used to obtain a representative sample of the residue and the analytical protocols to be used. The sampling and analysis plan must include procedures and techniques for:

(i) sample collection;

(ii) sample preservation and shipment;

(iii) determining if the residue exhibits a toxic characteristic for arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver upon exposure to acid liquids;

(iv) analysis of the total content of arsenic, barium, beryllium, cadmium, chromium (total and hexavalent), copper, lead, mercury, nickel, silver, zinc, calcium, iron, aluminum, chloride, sulfate, and any other parameters determined by the department to be necessary;

(v) chain of custody control; and

(vi) assuring consistency and quality in laboratory procedures and results.

(d) A radioactive waste detection plan.

The plan must include procedures for detecting radioactive material; operation and maintenance plans for radiation detectors including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected as required by section 362-1.5(b)(7) of this Subpart.

Section 362-1.5 Design and operating requirements.

A facility required to obtain a permit under this Subpart must, in addition to the requirements identified in section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

(a) Combustors that treat municipal solid waste must include power generation equipment, such as steam turbines, or other energy recovery equipment which must be installed and must be operated while the facility is in operation, except during routine maintenance and unexpected downtime events.

(b) Waste receipt and storage.

(1) The facility must only receive and treat waste in accordance with the facility's approved waste control plan submitted in accordance with section 360.16(c)(4)(i) of this Title. The metal that is extracted subsequent to combustion is not considered to be a part of the facility's approved design capacity.

(2) A minimum of one random inspection of a waste delivery vehicle per operating day for unauthorized waste must be performed. A daily log of these inspections must be maintained.

(3) All waste delivered to the facility must be processed and contained within a completely enclosed structure. All waste stored must be contained within a completely enclosed structure or building that provides a minimum of three days storage capacity. In no case can the waste stored at the facility exceed the capacity of the waste storage bunker or the department-approved storage area of the tipping floor.

(4) External storage of putrescible waste is prohibited. Nonputrescible recyclables or oversized, bulky, or excluded waste can be temporarily stored outside the facility in covered containers for a period not to exceed 10 calendar days.

(5) Except for facilities that process only nonputrescible waste, the waste storage area and tipping area must maintain a negative air pressure, compared to atmospheric conditions, when the facility is in operation.

(6) All rejected, oversized, bulky, excluded, untreatable, or bypass waste that is not recyclable must be disposed of at an authorized facility.

(7) Radioactive waste detection procedures and requirements. A facility that accepts wastes other than source-separated recyclables must meet the following requirements:

(i) A fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste.

(ii) The concentration of radium-226 in any waste treated at the facility cannot exceed 25 pCi/g however waste which triggers the radiation detector can be accepted and evaluated according to the facility's waste control plan in order to determine whether or not the waste may be accepted at the facility.

(iii) The investigation alarm setpoint of the radiation detector must be set at least two times, but no greater than five times, site background radiation levels.

(iv) Background radiation readings at the facility must be measured and recorded at least daily.

(v) Field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly.

(vi) The radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility.

(vii) Each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(8) Source-separated recyclables, source-separated household hazardous waste, source-separated electronic wastes, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs in New York State must not be accepted for treatment, except at facilities that are approved by the department to accept only source-separated recyclables as feedstocks. Facilities must not accept source-separated recyclables as feedstock unless, at the time of permitting, that feedstock has no recycling market as determined by the department. Viability of recycling markets will be evaluated at the time of each permit renewal.

(9) Regulated medical waste or source-separated pharmaceutical waste can only be accepted if it is:

(i) handled separately from other waste when received;

(ii) unloaded directly into the waste receiving pit;

(iii) managed in a manner that ensures controlled substances are placed directly into the combustor and not placed in the waste receiving pit with other waste;

(iv) handled in a manner that ensures the integrity of the containers until combustion;

(v) combusted within a 24 hour-period; and

(vi) identified in the facility's waste control plan.

(c) Residue sampling and analysis.

(1) The owner or operator of the facility must separately test individual residue streams unless the residue streams are combined for disposal.

(2) Toxicity characteristic testing requirements.

(i) Residue must be tested for toxicity characteristic using the toxic characteristic leaching procedure found in *EPA Method 1311 of Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, as incorporated by reference in section 360.3 of this Title. Testing must be performed by a laboratory that has an Environmental Laboratory Approval Program (ELAP) certification from the New York State Department of Health. All residue analyses used to comply with the requirements of this Subpart must be done in accordance with *EPA Method 1311 of Test Methods for Evaluating Solid Waste, Physical/Chemical Methods* and must be performed without site specific changes to these procedures. The details of the sample collection and analytical parameters must be described in a site-specific sampling and analysis plan as described in section 362-1.4(c)(4) of this Subpart.

(ii) Testing must begin within one month following the commencement of operation and must be conducted biannually. Tests must be conducted at least four, but no more than eight, months apart.

(iii) After a minimum of four sampling rounds, a facility can submit a request for approval to the department to reduce the parameters and/or frequency of testing required under this paragraph. Frequency of testing will not be reduced to less than one sampling round every five years.

(3) Total metals testing requirements.

(i) Residue must be tested for the total content of arsenic, barium, beryllium, cadmium, chromium (total and hexavalent), copper, lead, mercury, nickel, silver, zinc, calcium, iron, aluminum, chloride, sulfate, and any other parameters determined by the department to be necessary. Testing must be performed by a laboratory that has an Environmental Laboratory Approval Program (ELAP) certification from the New York State Department of Health. All residue analyses used to comply with the requirements of this

Subpart must be done in accordance with the approved EPA Method identified in the residue sampling and analysis plan and must be performed without site specific changes to these procedures. The details of the sample collection, and analytical parameters must be described in a site-specific sampling and analysis plan as described in section 362-1.4(c)(4) of this Subpart.

(ii) Testing must begin within one month following the commencement of operation, and must be conducted at least four, but no more than eight, months apart .

(iii) After a minimum of four sampling rounds, a facility can submit a request for approval to the department to reduce the parameters and/or frequency of testing required under this paragraph. Frequency of testing will not be reduced to less than one sampling round every five years.

(4) Residue analytical results must be submitted to the department as required by subdivision 362-1.6(c) of this Subpart. The results of all ash residue analyses performed to demonstrate compliance with this subdivision must be submitted, including any results that lead to the ash being reanalyzed. In the event that the ash residue is reanalyzed, an explanation must be included in the submittal.

(d) Residue management.

(1) Sufficient residue storage capacity must be provided at the facility to ensure facility operations continue during short-term interruptions of residue transportation and/or disposal.

(2) Residue stored at the facility must not exceed the equivalent of seven times the daily design output.

(3) Residue stored in a pile must be placed within an enclosed building on an impermeable base. A run off management system must be provided to collect and control the free liquid that drains from the residue.

(4) Containers storing residue can only be stored outside of a building or enclosed structure if the container is covered.

(5) Residue must be drained of free liquid prior to transport.

(6) Residues must not cause dust to be generated during storage, loading, transport, and unloading.

(7) Transport vehicles must be enclosed or covered when leaving the facility.

(8) Any use of residues in landfill applications such as alternative operating cover, temporary or permanent roads, final cover, final grading, or for use as a building or construction material must comply with section 363-6.21 of this Title.

(9) Petitions for the proposed beneficial use of residue must be submitted in accordance with section 360.12 of this Title.

(e) Training and operator certification.

(1) The operation of a combustor subject to the requirements of this Subpart,

which treats municipal solid waste, must be directed by a person certified through a certification program acceptable to the department.

(2) Staff training related to radiation detection system operating procedures and radiation investigation alarm response procedures must be conducted at least annually.

(f) The facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

(g) Food scraps.

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

Section 362-1.6 Recordkeeping and reporting requirements.

(a) In addition to the recordkeeping requirements of section 360.19(k) of this Title, combustors and thermal treatment facility records must include records of its radioactive waste detection procedures required by section 362-1.5(b)(7) of this Subpart.

(b) The facility must submit an annual report as required by section 360.19(k)(3) of this Title.

(c) Residue analytical results must be submitted to the department within 30 days of receipt of the result. The results of all ash residue analyses performed to demonstrate compliance with section 362-1.5(c) and the facility's residue sampling and analysis plan required under 362-1.4(c)(4) must be submitted, including any results that lead to the ash being reanalyzed. In the event that the ash residue is reanalyzed, an explanation must be included in the submittal.

SUBPART 362-2

MUNICIPAL SOLID WASTE PROCESSING FACILITIES

Section 362-2.1 Applicability
362-2.2 Permit application requirements
362-2.3 Design and operating requirements
362-2.4 Recordkeeping and reporting requirements

Section 362-2.1 Applicability.

This Subpart applies to any facility that performs post-collection separation or processing of municipal solid waste to recover recyclables or to produce a refuse-derived fuel. This Subpart also applies to any combination of these activities. Post-collection separation does not satisfy the source-separation requirements of General Municipal Law section 120-aa or local recycling laws or ordinances.

Section 362-2.2 Permit application requirements.

Any facility that performs post-collection separation and/or processing of municipal solid waste (MSW) to recover recyclables or to produce a refuse-derived fuel must obtain a permit from the department and must submit an application that includes the requirements identified in section 360.16 of this Title, a description of how the facility will comply with the operating requirements of section 360.19 of this Title, sections 362-2.3 and 362-2.4 of this Subpart, and the following:

(a) A waste control plan that includes:

(1) a program for detecting and preventing the receipt of hazardous wastes at the facility. This program must include, but not be limited to:

(i) random inspections of incoming loads;

(ii) inspections of suspicious loads;

(iii) records of inspections;

(iv) procedures for notifying department staff if a hazardous waste is discovered in a load; and

(v) procedures for proper management of discovered hazardous waste.

(b) A radioactive waste detection plan.

The plan must include procedures for detecting radioactive material; operation and maintenance documents for radiation detectors, including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected as required by section 362-2.3(d) of this Subpart.

(c) A description of market arrangements for the final disposition of materials generated from the facility, including refuse-derived fuel or other products.

Section 362-2.3 Design and operating requirements.

A facility required to obtain a permit under this Subpart must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) The facility must accept and process only MSW.

(b) Source-separated recyclables, source-separated household hazardous waste, source-separated electronic waste, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted stewardship programs in the State must not be accepted for treatment, except at facilities that are approved by the department to accept only source-separated recyclables as feedstocks. Facilities must not accept source-separated recyclables as feedstock unless, at the time of permitting, that feedstock has no recycling market as determined by the department. Viability of recycling markets will be evaluated at the time of each permit renewal.

(c) Friable asbestos-containing waste must not be accepted at the facility.

(d) Radioactive waste detection procedures and requirements.

(1) A fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste.

(2) The concentration of radium-226 in any waste treated at the facility must not exceed 25 pCi/g however waste which triggers the radiation detector can be accepted and evaluated according to the facility's waste control plan in order to determine whether or not the waste may be accepted at the facility.

(3) The investigation alarm setpoint of the radiation detector must be set at least two times, but no greater than five times, site background radiation levels.

(4) Background radiation readings at the facility must be measured and recorded at least daily.

(5) Field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly.

(6) The radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility.

(7) Each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(8) Staff training related to radiation detection system operating procedures and radiation investigation alarm response procedures must be conducted at least annually.

(e) All tipping, sorting, processing, compaction, storage, and related activities must be conducted in an enclosed building with adequate odor controls, provided, however, that nonputrescible waste or processed recyclables can be stored in outdoor areas in closed containers or covered trailers in accordance with subdivisions (h)-(j) of this section.

(f) The processing, storage, loading, and unloading areas must be constructed of concrete or asphalt paving material and equipped with adequate drainage structures that are directed to enclosed tanks that meet the requirements of section 360.19(n) of this Title or a sanitary sewer system.

(g) The area designated for unloading of all incoming loads (tipping floor) must be cleaned at the end of each operating day unless otherwise approved by the department.

(h) Refuse-derived fuels and processed recyclables must be stored separately and maintained in a manner that ensures marketability is not adversely affected.

(i) No waste can be stored unprocessed for more than three calendar days. All residue or refuse-derived fuel must be removed from the facility whenever storage capacity is reached or within three calendar days of processing, whichever comes first.

(j) Processed recyclables can be stored for a maximum of 60 calendar days unless the following criteria are satisfied to justify a longer storage period, though in no case can the storage period exceed 180 calendar days:

(1) there is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 60-day intervals or volumes that can take longer than 60 days to acquire;

(2) the facility has sufficient storage area to accommodate the amount of waste that will accumulate during the extended storage period;

(3) the facility implements an inventory control system, including daily logs, to ensure that the processed recyclables do not remain at the facility for longer than the period approved; and

(4) the facility notifies the department of their proposal to store processed recyclables for greater than 60 days and includes justification based on the requirements of this subdivision and obtains approval from the department.

(k) The facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

Section 362-2.4 Recordkeeping and reporting requirements.

(a) In addition to the recordkeeping requirements of section 360.19(k) of this Title, municipal solid waste processing facilities must maintain records of its radioactive waste detection procedures required by section 362-2.3(d) of this Subpart.

(b) Facilities regulated under this Subpart must submit an annual report in conformance with section 360.19(k)(3) of this Title.

SUBPART 362-3

TRANSFER FACILITIES

Section 362-3.1 Applicability
362-3.2 Exempt facilities
362-3.3 Registered facilities
362-3.4 Permit application requirements
362-3.5 Design and operating requirements
362-3.6 Recordkeeping and reporting requirements

Section 362-3.1 Applicability.

(a) This Subpart applies to any facility that receives solid waste, including source-separated recyclables, for the purpose of transfer to another facility for processing, treatment, disposal or further transfer. This Subpart also applies to any combination of these activities and materials. The requirements contained in Part 360 of this Title also apply to facilities subject to this Subpart. In addition to Part 360 of this Title, and this Subpart, facilities that process and separate construction and demolition debris are also regulated by Subpart 361-5 of this Title.

(b) This Subpart does not apply to:

(1) a facility that receives regulated medical waste, which is regulated under Part 365 of this Title; and

(2) a facility, or a portion of a facility that receives used oil. This type of facility, or portion of one, is regulated under Subpart 374-2 of this Title.

Section 362-3.2 Exempt facilities.

The following facilities are exempt from this Subpart. Nothing in this section exempts facilities that are subject to permit or registration requirements under another Subpart of this Title.

(a) A facility where waste is transferred from vehicle to vehicle, including truck to train and truck to barge, for shipment to another authorized facility, provided the following criteria are met:

(1) the transfer facility only accepts waste from transporters that are under its ownership or control;

(2) the waste is in rigid, leak-proof, closed containers;

(3) the containers are not placed on the ground at any time during transfer; and

(4) the contents of each container remain in the closed container during all operations.

(b) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality that accepts no more than 20 cubic yards of waste per day and no more than 20 cubic yards of source-separated recyclables per day, for the purpose of shipment to another authorized facility, provided the following criteria are met:

(1) only residential waste is accepted at the facility;

(2) the transfer location and all vehicles are owned or leased by the municipality or a contractor working on behalf of the municipality;

(3) the waste is not placed on the ground at any time during the transfer;

(4) all putrescible waste is removed from the facility once a container is full or at least once every seven days, whichever occurs first;

(5) the waste is stored in rigid leak-proof containers and covered at the end of the operating day;

(6) the municipality provides for the collection of source-separated recyclables at the facility;

(7) waste received separately for recycling must be stored separately by waste type. Nonputrescible recyclables can be stored for up to 90 calendar days;

(8) all waste is transferred manually from incoming vehicles to the waste containers; and

(9) the facility accepts waste only when an attendant is on duty.

(c) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality, that accepts no more than 3,000 tons per year of yard trimmings for the purpose of shipment to another authorized facility, provided the following criteria are met:

(1) only yard trimmings are accepted at the facility;

(2) the transfer location and all vehicles are owned or leased by the municipality or a contractor working on behalf of the municipality;

(3) the waste is not stored at the facility for more than five calendar days;

(4) no more than 500 cubic yards of yard trimmings are on site at any time;

(5) measures are taken to minimize the blowing of bags, grass, and leaves;

(6) dust and odors are effectively controlled so that they do not constitute a nuisance, as determined by the department;

(7) precipitation, surface water, and groundwater that has come in contact with yard trimmings must be managed within the site and must not enter a surface waterbody or a conveyance to a surface waterbody, or cause a violation of water quality standards promulgated in Part 750 of this Title; and

(8) other activities regulated under Parts 360 through 365 of this Title are not conducted at the facility

(d) A transfer facility that accepts no more than five cubic yards of source-separated organic waste per day for shipment to an authorized transfer or treatment facility, provided the following criteria are met:

(1) the organic waste is not placed on the ground at any time during the transfer;

(2) all organic waste is removed from the facility within five business days; and

(3) the organic waste is stored in rigid, leak-proof containers and covered at the end of the operating day.

(e) Take back sites, which for purposes of this Subpart, means sites at retail or wholesale locations that are used for collection of materials similar in nature to those sold or distributed by the retailer or wholesaler.

(f) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality that accepts waste no more than five days per year, for the purpose of shipment to another authorized facility, provided the following criteria are met:

(1) only residential waste is accepted at the facility;

(2) the transfer location is owned or leased by the municipality or a contractor working on behalf of the municipality;

(3) the waste is not placed on the ground at any time during the transfer;

(4) all putrescible waste is removed from the facility once a container is full or at least once every seven days, whichever occurs first;

(5) the waste is stored in rigid leak-proof containers and covered at the end of the operating day;

(6) the municipality provides for the collection of source-separated recyclables at the facility;

(7) waste received separately for recycling must be stored separately by waste type. Nonputrescible recyclables can be stored for up to 90 calendar days;

(8) all waste is transferred manually from incoming vehicles to the waste containers; and

(9) the facility accepts waste only when an attendant is on duty.

Section 362-3.3 Registered facilities.

The following facilities that are not otherwise exempt from this Subpart, are subject to the registration provisions of section 360.15 of this Title. Each facility must comply with the operational criteria provided in Part 360 of this Title, section 362-3.5(a) of this Subpart and the operational requirements identified below.

(a) A transfer facility that is owned or operated by a municipality, or contracted by or on behalf of a municipality, and receives less than 50 tons of waste per day, provided the following conditions are satisfied:

(1) a maximum of 250 tons or 1,000 cubic yards of waste is located at the facility at any given time;

(2) all putrescible waste is removed from the facility by the end of the next business day after the transfer container becomes full or within seven calendar days of receipt, whichever comes first, and all nonputrescible waste is removed within 30 calendar days of receipt;

(3) the facility accepts waste only when an attendant is on duty; and

(4) the municipality provides for the collection of source-separated recyclables at the facility unless alternative recyclables collection

methods are available and the department agrees in writing that the alternative methods meet the requirements of this paragraph.

(b) A facility used for the transfer of septage from only one transporter, who uses no more than two of the transporter's vehicles to collect residuals from a composting toilet (liquids and solids), provided the conditions of section362-3.5(h) of this Subpart are met.

(c) A facility that receives source-separated recyclables for transfer to another facility or point of reuse, provided the following conditions are satisfied:

(1) The facility accepts putrescible recyclables only when an attendant is on duty;

(2) Recyclables must be stored separately from any other waste that is being accepted at the facility;

(3) Putrescible source-separated recyclables must be removed from the facility by the end of the next business day after the on-site storage container becomes full or within seven calendar days of receipt, whichever occurs first;

(4) Nonputrescible recyclables can be stored for up to 180 calendar days, unless the following criteria are satisfied to justify a longer storage period:

(i) There is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 180-day intervals or volumes that may take longer than 180 days to acquire;

(ii) The facility has sufficient storage area to prevent a negative impact to public health or the environment;

(iii) The facility implements an inventory control system, including daily logs, to ensure that the recyclables do not remain at the facility for longer than the period approved; and

(iv) Prior to storing recyclables for longer than 180 days, the facility must notify the department of its intent and provide justification based on the requirements of this paragraph.

(5) Recyclables are stored in a manner to ensure marketability is not adversely affected;

(6) All recyclables delivered to or leaving a facility that receives more than 5 tons/day must be weighed and recorded; and

(7) Transfer facilities that receive food scraps from a designated food scraps generator after January 1, 2022 must ensure that the food scraps are transferred to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department. All reasonable precautions must be taken to not commingle the food scraps with any other solid waste unless such commingled waste can be processed by the facility regulated by Subpart 361-2 or 361-3 of this Title to which the commingled waste is transferred.

Section 362-3.4 Permit application requirements.

A transfer facility that is not an exempt facility or subject to the registration provisions of section 362-3.3 of this Subpart must obtain a permit, and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements of section 360.19 of this Title, sections 362-3.5 and 362-3.6 of this Subpart, and the following:

(a) A radioactive waste detection plan.

If a radiation detection unit is required at the facility pursuant to section 362-3.5(e) of this Subpart, a radioactive waste detection plan must be provided that describes the procedures and equipment that will be used to demonstrate compliance with requirements for detecting radioactive material; operation and maintenance documents for radiation detectors including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected as required by section 362-3.5(e) of this Subpart.

(b) A program for detecting and preventing the receipt of hazardous wastes at the facility.

This program must include, but not be limited to:

(1) random inspections of incoming loads;

(2) inspections of suspicious loads;

(3) records of inspections;

(4) procedures for notifying the proper authorities if a hazardous waste is discovered in a load; and

(5) procedures for proper management of discovered hazardous waste.

Section 362-3.5 Design and operating requirements.

A facility required to obtain a permit under this Subpart must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) Source-separated household hazardous waste, source-separated electronic wastes, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs in New York State must not be accepted by the facility.

(b) All tipping, sorting, processing, compaction, storage, loading, and related activities, which the exception of those at residential drop-off locations for non-commercial customers, must be conducted in an enclosed building unless otherwise specified in the transition provisions of section360.4(g) of this Title and with adequate odor controls to effectively control off-site nuisances. Nonputrescible waste may be stored in outdoor areas if it is stored in closed containers or covered trailers.

(c) The processing, storage, loading, and unloading areas must be constructed of concrete or asphalt paving material and must be equipped with adequate drainage structures that are directed to enclosed tanks that meet the requirements of section

360.19(n) of this Title or a sanitary sewer system.

(d) The tipping floor must be cleaned at the end of each operating day unless otherwise determined by the department.

(e) Radioactive waste detection procedures and requirements. Permitted transfer facilities from which MSW or drilling and production waste is transported out-of-state must meet the following requirements:

(1) A fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste.

(2) The investigation alarm set point of the radiation detector must be set at least two times, but no greater than five times, facility background radiation levels.

(3) Background radiation readings at the facility must be measured and recorded at least daily.

(4) Field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly.

(5) The radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility.

(6) Each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(7) Training related to radiation detection system operating procedures and radiation investigation alarm response procedures must be conducted at least annually.

(f) All putrescible waste must be removed from the transfer facility by the end of the next business day after the transfer container becomes full or within seven calendar days of receipt, whichever comes first.

(g) Any friable asbestos-containing waste accepted at the facility must be managed in accordance with the facility's waste control plan. At a minimum, the following procedures must be satisfied:

(1) friable asbestos-containing waste accepted at the facility must be labeled in accordance with 40 CFR part 61, subparts A and M, as incorporated by reference in section 360.3 of this Title;

(2) all transfer of friable asbestos-containing waste must be conducted in an enclosed structure equipped with systems to minimize the discharge of asbestos to the environment using the best available control technology (BACT) as defined in section 200.1(j) of this Title; and

(3) no compaction of friable asbestos-containing waste at a facility is allowed.

(h) Any septage waste accepted at the facility must be managed in accordance with the facility's waste control plan. At a minimum, the following requirements must be met:

(1) the storage, loading, and unloading areas must be constructed of concrete or asphalt paving material and must be equipped with adequate drainage structures that are directed to enclosed tanks that meet the requirements of section 360.19(n) of this Title or a sanitary sewer system.

(2) the minimum horizontal separation distances from the perimeter of the tank(s) must meet the requirements found in section 361-2.5(b)(1) of Part 361 of this Title;

(3) the tank(s) must be completely emptied, cleaned, and inspected or a leak detection test approved by the department must be performed, at least once every 12 months. The department must be notified at least one week before the inspection or leak detection test begins. Any damage or deterioration revealed must be repaired before the facility again receives waste;

(4) the tank must be constructed of concrete, steel, or other material approved by the department that prevents leakage. A minimum of two feet of freeboard must be maintained at all times; and

(5) all waste must be removed from the transfer facility by the end of the fifth business day after the tank becomes full.

(i) All waste delivered to and leaving the facility, with the exception of wastes delivered by non-commercial vehicles to residential drop-off areas, must be weighed and recorded in tons.

(j) A permitted facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by section 360.22 of this Title.

(k) Food scraps requirements. After January 1, 2022, transfer facilities that receive food scraps from a designated food scraps generator must meet the following requirements:

(1) ensure that the food scraps are taken to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department.

(2) take all reasonable precautions to not commingle the food scraps with any other solid waste unless such commingled waste can be processed by the facility regulated by Subpart 361-2 or 361-3 of this Title to which the commingled waste is transferred.

Section 362-3.6 Recordkeeping and reporting requirements.

(a) In addition to the recordkeeping requirements of section 360.19(k) of this Title, transfer facility records must include records associated with the radioactive waste detection procedures required by section 362-3.5(e) of this Subpart, if applicable.

(b) Transfer facilities registered or permitted pursuant to this Subpart must submit an annual report in conformance with section 360.19(k)(3) of this Title.

SUBPART 362-4

HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITIES AND EVENTS

Section 362-4.1 Applicability
362-4.2 Registered HHW events
362-4.3 Permit application requirements
362-4.4 Design and operating requirements
362-4.5 Recordkeeping and reporting requirements

Section 362-4.1 Applicability.

This Subpart applies to the collection, storage or disposal of household hazardous waste (HHW) or hazardous wastes from conditionally exempt small quantity generators (CESQGs) as defined in Part 371 of this Title, managed at HHW collection facilities or HHW collection events. This Subpart also applies to any combination of these activities and materials. The requirements contained in Part 360 of this Title also apply to this Subpart.

Section 362-4.2 Registered HHW events.

The following events are subject to the registration provisions of section 360.15 of this Title. For purposes of this section, the site plan required in section 360.15(c)(4) of this Title must be available on-site while the collection event takes place and does not need to be submitted with the registration submission. Each collection event must comply with the criteria outlined in this section and section 362-4.5 of this Subpart. For purposes of this Subpart, registrations are valid for no more than one year.

(a) HHW collection events.

All HHW collection events must obtain a registration pursuant to section 360.15 of this Title and must comply with section 362-4.5 of this Subpart and the following criteria:

(1) events must be held for no more than 24 days within a calendar year and for no more than 2 consecutive days;

(2) the program sponsor must notify the regional office in the region in which the collection event will take place at least 30 days before collection is initiated;

(3) the program sponsor must complete a collection event plan, which must be available while the collection event takes place. The collection event plan must include:

(i) the procedures that will be used to ensure that all collected waste comes from households or CESQGs only;

(ii) waste determination, handling, and packaging procedures, including segregation of wastes based on their chemical and physical properties, proper packaging, labeling, manifesting, and preparation of the waste for shipment;

(iii) identification of the individuals who will be present during collection hours to implement the procedures

identified in subparagraph (ii) of this paragraph and their qualifications;

(iv) a spill prevention and control plan;

(v) a collection event-specific emergency response plan;

(vi) a security plan; and

(vii) the identification of the waste transporter and the facility or facilities that will receive the waste;

(4) for HHW and CESQG waste:

(i) all waste must be removed from the collection site within three calendar days of collection, and the collection event location must be returned to its original condition at the end of the collection event;

(ii) all waste must be transported from the collection site by a transporter permitted to transport hazardous waste under Part 364 of this Title;

(iii) all wastes must be properly packaged to prevent reactions, spills or leaks and must be labeled as "Household Hazardous Waste" or "CESQG Waste", as applicable;

(iv) the transportation of collection event waste must be accompanied by shipping documents. The identity of the program sponsor, the date(s) of collection, the intended receiving facility, the volume, the waste type, and the hazard class of the waste must be listed on the shipping document; and

(v) all HHW and CESQG waste from the collection event must either be reused or be managed as hazardous waste at a facility properly permitted or authorized to accept hazardous waste.

(b) Registrations issued pursuant to this Subpart are valid for one year from the date of issuance.

Section 362-4.3 Permit application requirements.

A HHW collection facility, which does not qualify for a registration under section 362-4.2 of this Subpart, must obtain a permit, and must submit an application that includes the application requirements identified in section 360.16 of this Title, and a description of how the facility will comply with the operating requirements in section 360.19 of this Title and sections 362-4.4 and 362-4.5 of this Subpart, and must include the following:

(a) A description of the HHW collection facility's operation and, if applicable, satellite collection events, including:

(1) the days and hours of operation;

(2) a projection of the volume, by waste type, expected at the facility;

(3) the location of all satellite collection events associated with the facility; and

(4) a description of the waste containment system.

(b) A site plan that provides:

(1) the proposed traffic flow into and exiting the facility and the location of all satellite collection events;

(2) the location of waste handling and storage areas, identifying the specific waste types to be managed in each area; and

(3) the location of all emergency and spill cleanup equipment.

(c) A waste control plan that identifies the measures used to restrict receipt of the waste from ineligible generators and unacceptable waste types, as well as actions taken if these generators or materials are identified.

(d) A security plan that identifies all entrances and exits and the means to control access to the portions of the facility where HHW is managed and the location of all satellite collection events.

(e) An emergency response plan as described in section 360.16(c)(4)(iv) of this Title that is designed to minimize the risk from spills, fires, explosions, or any unplanned release of waste or hazardous materials to the air, soil or surface water.

Section 362-4.4 Design and operating requirements.

A facility required to obtain a permit under this Subpart must, in addition to the requirements identified in section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria for HHW and CESQG waste. HHW collected that does not qualify as either type of waste must be disposed as solid waste.

(a) The facility must be equipped with the following:

(1) an internal communication or alarm system;

(2) a communication device capable of summoning emergency assistance or emergency response;

(3) decontamination equipment; and

(4) fire suppression equipment.

(b) The following container criteria must be complied with:

(1) only containers of suitable structural integrity can be used to store waste;

(2) only containers constructed of compatible material can be used to store waste;

(3) all containers must be:

(i) closed during storage;

(ii) handled, opened, and stored in a manner that prevents rupture of the container and prevents leaking;

(iii) marked with words identifying its contents, and the date waste is first placed in the container; and

(iv) stored in areas that have secondary containment systems adequate to contain the quantity of all containers stored in that storage area. Leaked waste and spills must be removed immediately upon detection, and accumulated precipitation must be removed in a timely manner.

(c) Waste storage of more than two days must occur in an enclosed structure. Waste stored in an enclosed structure at the facility must be kept on-site for a period not to exceed 180 days, provided the storage capacity of the structure and facility are not exceeded.

(d) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. Incompatible waste must be stored separately. Incompatible, ignitable, and reactive wastes must be stored at least 50 feet from the property boundary.

(e) Inspections, including evaluation of leaks, container integrity, and condition of secondary containment systems, must be conducted at least weekly.

(f) Aisle space must be maintained to allow the unobstructed movement of personnel, fire protection equipment, and decontamination equipment to any area of facility operation.

(g) All HHW or CESQG wastes must be transported from the collection facility by a transporter permitted to transport hazardous waste under Part 364 of this Title. HHW collected at satellite collection events can be transported by the program sponsor to the permitted facility without need for a waste transporter permit issued under Part 364 of this Title.

(h) The transportation of HHW or CESQG waste, or both, must be accompanied by shipping documents. The identity of the program sponsor and date(s) of collection, the intended receiving facility, the volume, the waste type, and the hazard class of the waste must be listed on the shipping document.

(i) All HHW and CESQG waste must either be reused or managed as hazardous waste at a facility properly permitted or authorized to accept hazardous waste.

(j) A copy of the emergency response plan required by section 362-4.3(e) of this Subpart must be kept at the facility.

(k) Any satellite collection event held in association with a permit issued under this Subpart must meet the following criteria:

(1) the program sponsor must complete a collection event plan that must be available while the collection event takes place. The collection event plan must include:

(i) the procedures that will be used to ensure that all collected waste comes from households or CESQGs;

(ii) waste determination, handling, and packaging procedures, including segregation of wastes based on their chemical and physical properties and proper packaging, labeling, manifesting, and preparation of the waste for shipment;

(iii) identification of the individuals who will be present during collection hours to implement the procedures identified in subparagraph (ii) of this paragraph and their qualifications;

(iv) a spill prevention and control plan;

(v) a collection event-specific emergency response plan; and

(vi) a security plan;

(2) all wastes must be removed from the satellite collection event site within three days of collection, and the site must be returned to its original condition after the collection event is complete;

(3) all wastes must be properly packaged to prevent reactions, spills or leaks and labeled as "Household Hazardous Waste" or "CESQG Waste", as applicable;

(4) the transportation of HHW and CESQG waste from a satellite collection event must be accompanied by shipping documents. The identity of the program sponsor, the date(s) of collection, the intended receiving facility, the volume, the waste type and the hazard class of the waste must be listed on the shipping document;

(5) all HHW and CESQG waste must either be reused or be managed as hazardous waste at a facility properly permitted or authorized to accept hazardous waste.

Section 362-4.5 Recordkeeping and reporting requirements.

The following criteria apply to both registered events and permitted facilities:

(a) The facility or collection event must keep records as required by section 360.19(k) of this Title. In addition, the following records must be kept:

(1) for each container into which other containers of HHW or CESQG waste are placed, a log must be kept that notes the beginning date of accumulation and the date the container became full;

(2) for each container into which consolidated HHW or CESQG waste is placed, a log must be kept that notes the beginning date of accumulation and the date the container became full;

(3) a log that lists each container stored at the facility or collection event, and includes waste type, hazard class, beginning and ending accumulation dates, and location; and

(4) copies of shipping documents.

(b) A facility or collection event regulated under this Subpart must submit an annual report in conformance with section 360.19(k)(3) of this Title.

SUBPART 362-5

PAINT COLLECTION SITES COLLECTING POSTCONSUMER ARCHITECTURAL PAINT UNDER A DEPARTMENT-APPROVED POSTCONSUMER PAINT COLLECTION PROGRAM

Section 362-5.1 Applicability
362-5.2 Definitions
362-5.3 Exempt sites
362-5.4 Registered sites
362-5.5 Operating requirements

Section 362-5.1 Applicability.

(a) This Subpart applies to the collection and storage of postconsumer architectural paint from households or conditionally exempt small quantity generators (CESQGs) pursuant to a department-approved postconsumer paint collection program (PPCP) pursuant to Title 20 of Article 27 of the ECL.

(b) Any paint collection site that accepts household hazardous waste (HHW) or hazardous wastes from CESQGs as defined in Part 371 of this Title, other than that generated from postconsumer architectural paint, must be authorized as required by Subpart 362-4 of this Part.

Section 362-5.2 Definitions.

The following definitions apply to this Subpart:

(a) *architectural paint* means interior and exterior architectural coatings sold in containers of five gallons or less; provided, however, that "architectural paint" shall not include industrial, original equipment or specialty coatings.

(b) *postconsumer paint* means architectural paint not used and no longer wanted by a consumer.

(c) *producer* means a manufacturer of architectural paint who sells, offers for sale or distributes the architectural paint in the state.

(d) *post-consumer paint collection program (PPCP)* means the postconsumer paint collection program established pursuant to section 27-2003 of the ECL.

(e) *representative organization* means a not-for-profit organization established by producers to implement the postconsumer paint collection program.

Section 362-5.3 Exempt sites.

The following sites are exempt from this Subpart. Nothing in this section exempts sites that are subject to permit or registration requirements under another Subpart of this Title.

(a) A paint collection site that is registered with the department to collect postconsumer paint under a department-approved PPCP plan, which collects and manages only latex paint wastes and other architectural paint

wastes that do not meet the definition of HHW as defined in Section 360.2 or CESQG waste.

Section 362-5.4 Registered sites.

(a) A paint collection site that collects and manages architectural paint household hazardous wastes or wastes from CESQGs as part of a department-approved PPCP plan pursuant to Title 20 of Article 27 of the ECL is a registered facility under this Subpart and Part 360 of this Title. Such a facility is not subject to the requirements of section 360.15 of this Title. The registration is effective for so long as the PPCP plan remains effective and the site is operated in compliance with the PPCP plan and its registration.

Section 362-5.5 Operating requirements.

(a) A paint collection site registered under this Subpart is not subject to the requirements of section 360.19 of this Title. A paint collection site registered under this Subpart is authorized to accept HHW or CESWG waste generated from architectural paint pursuant to a department-approved PPCP plan provided the following requirements are met:

(1) the authorized representative of the site completes and signs a Certification for Postconsumer Paint Collection Site, as prescribed by the department, and the Certification is submitted to the department either directly or via a paint producer or representative organization; and

(2) the site is operated in compliance with the department-approved PPCP plan.

(b) A paint collection site must not accept HHW or CESQG waste generated from architectural paint under any of the following circumstances:

(1) the site is not authorized to accept architectural paint under a department-approved PPCP plan.

(2) the site is not operating in compliance with the PPCP plan under which it is registered;

(3) the site is not operating in compliance with its registration; and

(4) the site has been removed from participation in a department-approved PPCP plan.

PART 363

LANDFILLS

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SUBPART 363-1

APPLICABILITY

Section 363-1.1 Applicability

Section 363-1.1 Applicability.

(a) In addition to the requirements contained in Part 360 of this Title, this Part applies to new landfills, existing landfills both active and inactive, lateral or vertical expansions of existing landfills, and landfills undergoing subsequent development. This Part also applies to any combination of these activities. This Part also applies to inactive disposal facilities subject to Subpart 363-3 of this Part .

SUBPART 363-2

EXEMPT FACILITIES

Section 363-2.1 Exempt facilities

Section 363-2.1 Exempt facilities.

The following activities or facilities are exempt from this Part:

(a) The storage, processing, and disposal of solid waste generated by an owner-occupied single-family residence provided all activities occur on the property where the waste was generated, with the exception of the following wastes:

(1) manufactured homes being disposed of that are not the owner's primary residence;

(2) friable asbestos-containing waste;

(3) waste tires;

(4) septage;

(5) raw sewage;

(6) syringes;

(7) pesticides and pesticide containers;

(8) electronic waste;

(9) mercury-added consumer products, including mercury thermostats;

(10) household hazardous wastes (HHW);

(11) rechargeable or lead-acid batteries;

(12) used oil; and

(13) antifreeze.

(b) The storage, processing, and disposal of solid waste generated from farm-related activities provided all storage, processing and disposal occurs on a farm, though not necessarily the generating farm, excluding construction and demolition (C&D) debris and wastes identified in subdivision (a) of this section. For animal mortalities:

(1) the animal carcass must be buried within 72 hours of death, unless a longer period is approved by the department;

(2) the burial pit must not be located in a special flood hazard area, and must be 200 feet from the property line, a residence (excluding the farmer's residence), a potable water well, a surface water body, and a state or federally-regulated wetland;

(3) the base of the burial pit must be at least two feet above seasonal high groundwater, four feet above bedrock or other confining layer, and the underlying soil must not exceed a permeability of one inch per hour;

(4) a maximum of three large animal carcasses (bovine, equine, etc.) are allowed in one pit. For small animals, a maximum depth of three foot of small animal carcasses in a 10 foot by 10 foot area burial pit is allowed;

(5) a minimum of 10 feet of undisturbed soil is required between burial pits and

no more than 50 large animal carcasses (or equivalent) are allowed per acre;

(6) for mass mortalities caused by barn fires or other similar incidents, trenches may be allowed in lieu of the pits described in paragraphs 363-2.1(b)(4) and (5) of this Part, as determined by the department;

(7) a minimum of one foot depth of absorbent natural material (sawdust, straw, bedding (other than sand), etc.) must be placed under the carcass and extend at least six inches around the carcass, unless the soils present are sufficiently impermeable, as determined by the department;

(8) at least three feet of soil must be placed above the carcass. A finished grade that is slightly above natural ground elevation, to accommodate settling and reduce ponding from precipitation, is required. The surface must also be vegetated to minimize run-off;

(9) run-off must be directed away from the pit(s);

(10) a pit cannot be reused unless the prior mortality has undergone complete tissue degradation; and

(11) the animals do not emanate from research or are otherwise subject to regulation under Part 365 of this Title.

(c) An individual grave, excluding one regulated under subdivision 363-2.1(b) of this Part, for the burial of one animal carcass. Animal cremains may be buried or spread on the soil surface provided the ash amount does not represent more carcasses in a given area than would be allowed if the animals were buried in individual graves.

(d) The disposal in the right-of-way of a State or municipal highway of up to ten road-killed animals provided the right-of-way is at least 200 feet from drinking water wells and 50 feet from any residence, surface water, or any other disposal area for road killed animals. The animal caracasses must be placed at least two feet above groundwater and must be covered with at least three feet of soil.

(e) The disposal of drill cuttings generated by air- or water-based drilling methods, overburden, tailings, and other similar mining and drilling waste when generation and disposal occur at the same mine or well location subject to regulation under Parts 420-425 and 550-559 of this Title.

(f) The burial of no more than ten cubic yards of religious items limited to paper, parchment, leather, and fabric in accordance with applicable religious practices and covered by at least two feet of soil from the same excavation.

(g) A tree debris disposal facility, except those located in Nassau or Suffolk counties, used for the disposal of tree debris provided the facility complies with the following conditions:

(1) no fee or other form of consideration is obtained for using the facility or for acceptance or placement of tree debris;

(2) the tree debris is only accepted during daylight hours between sunrise and sunset;

(3) no more than one acre of the facility is utilized for tree debris disposal during the lifetime of the facility; and

(4) tree debris is placed above the seasonal high groundwater table and no waste is placed in a surface water body.

(h) The disposal of waste, except in areas located in Nassau or Suffolk counties, where waste generated by state or municipal highway projects and managed on highway rights-of-way or municipally owned properties is accepted, consisting only of recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcing material), asphalt pavement, asphalt millings, brick, rock or excavated material that complies with the physical criteria in Table 2 of section 360.13 of this Title for Fill Type 1, Fill Type 2, or Fill Type 3 from construction and demolition activities, and which complies with the following conditions:

(1) the waste does not include residues from C&D debris handling and recovery facilities;

(2) waste is placed above the seasonal high groundwater table; and

(3) no waste is placed in a surface water body.

(i) disposal within a state, municipal, or utility right-of-way of tree debris generated by the clearing of the right-of-way.

SUBPART 363-3

INACTIVE DISPOSAL FACILITIES

Section 363-3.1 Notifications for inactive disposal facilities
363-3.2 End use

Section 363-3.1 Notifications for inactive disposal facilities.

The owner or operator of a disposal facility at which waste acceptance ceased prior to October 9, 1993 must notify the department in writing, of:

(a) any intent or plan to disturb the disposal area. Notification to the department must be made prior to disturbance of the disposal area or, if applicable, any landfill cap; or

(b) the discovery of any exposed waste, a surface discharge of leachate not permitted pursuant to a State Pollutant Discharge Elimination System permit, a contravention of groundwater quality standards promulgated by the department pursuant to Environment Conservation Law section 17-0301, migration of disposal facility gases beyond the perimeter of the disposal facility, vectors, subsidence or subsidence-induced ponding, slope failures, or any other significant adverse environmental impacts from the disposal facility.

Section 363-3.2 End use

The owner or operator of a disposal facility where an end use is proposed must meet the requirements of section 363-9.7.

SUBPART 363-4

PERMIT APPLICATION REQUIREMENTS

Section 363-4.1 Landfill permit application requirements
363-4.2 Engineering drawings
363-4.3 Engineering report
363-4.4 Hydrogeologic investigation report
363-4.5 Construction quality assurance (CQA) and construction quality control (CQC) plan
363-4.6 Facility manual

Section 363-4.1 Landfill permit application requirements.

Unless otherwise exempt, the owner or operator of a landfill must obtain a permit from the department. In addition to the criteria found in section 360.16 of this Title, a permit application for a landfill must contain the information enumerated in this Subpart.

Section 363-4.2 Engineering drawings.

(a) Maps and drawings.

Maps and drawings using the following format and containing the following information must be submitted:

(1) a regional map that provides the location of the facility and the location of and distance to any airports located within six miles of the facility;

(2) a vicinity map that delineates zoning and land use, communities of disproportionate impact, residences, principal aquifers, primary aquifers, surface waters, access roads, and other existing and proposed features on the facility and within one mile of the facility; and a wind rose identifying the prevailing wind direction based on the nearest local source of meteorological data; and

(3) a site plan and drawings of the facility that show:

(i) property boundaries;

(ii) off-site and on-site utilities, including electric, gas, stormwater and sanitary systems;

(iii) right-of-way easements including noise easements;

(iv) the names and addresses of contiguous property owners;

(v) the location of soil borings, excavations, test pits, gas venting structures, wells, piezometers, environmental and facility monitoring points and devices, benchmarks and permanent survey markers. With the exception of benchmarks and permanent survey markers, each location must be identified in accordance with a numbering system acceptable to the department. All horizontal locations must be accurate to the nearest 10th of a foot and all vertical locations must be accurate to the nearest 100th of a foot as measured from the

ground surface and top of well casing;

(vi) a delineation of the total facility area, including planned staged development of the landfill's construction and operation, and the lateral and vertical limits of previously filled areas (if applicable);

(vii) the location and identification of on-site sources of cover materials;

(viii) the location and identification of special waste (such as, alternative operating cover materials or select fills) handling areas;

(ix) on-site buildings, leachate storage and conveyance systems, landfill gas management system components, roads, and parking areas; and

(x) site topography with five-foot minimum contour intervals.

(b) Engineering drawings of the landfill in both plan and cross-sectional views, depicting: how the facility will be constructed, operated and closed; areas of potential environmental impact; and the ability of the design, construction, operation, and closure of the facility to comply with the applicable requirements of this Part. If the landfill is to be constructed in stages, the initial permit application must contain the conceptual design for the entire landfill and the detailed construction drawings for the initial stage to be constructed. The engineering drawings must include, at a minimum:

(1) the original undeveloped site topography before excavation or placement of waste, if available;

(2) the existing site topography (if different from the original undeveloped site topography) including the location and approximate thickness and nature of any existing waste;

(3) the elevations of the known or interpolated seasonal high groundwater table, and the wells from which data were taken to establish the seasonal high groundwater table, using a 100-foot square grid, including surface elevation, bedrock elevation, depth to bedrock, and groundwater flow direction at each well;

(4) the known and interpolated bedrock elevations, the upper and lower limits of any confining overburden deposits, and all boreholes, test pits, wells, and other points used to supply this information using a 100-foot square grid;

(5) the proposed limits of excavation delineating the base elevations of the liner and leachate collection and removal system and pore pressure relief system if present, using a 100-foot square grid;

(6) the details for all components of the final cover and the final cover elevations for each 100-foot square grid intersection;

(7) the details for all components of the liner system, anchor trenches and leachate collection and removal system, including all critical grades and elevations of collection pipe inverts and drainage envelopes, manholes, cleanouts, valves, sumps, leachate flow control and metering devices, and drainage blanket thicknesses;

(8) the berms, dikes, ditches, drainage swales, culverts, sedimentation ponds, recharge basins and other devices used to divert, collect or control surface water run-on or run-off;

(9) the groundwater dewatering systems;

(10) the landfill gas management system used for collecting, treating, venting and monitoring the decomposition gases generated within the landfill, including any active landfill gas collection system components, including the condensate conveyance lines and storage facilities. Detailed plans of any active gas collection system must adequately delineate, in plan and in cross-sectional views, the location and grades of all landfill gas collection lines and landfill gas control lines, locating and showing all critical elevations of the collection pipe inverts, cleanouts, condensate knockout sumps, and valves. Layout of the system structure must be included, showing equipment locations; sampling locations; on-site drainage structures; and extraction well location, depth of placement, and construction materials;

(11) the location of groundwater monitoring wells;

(12) the location of geophysical and geochemical monitoring devices or structures, if needed;

(13) the location of leachate storage, treatment and disposal system including the leachate conveyance network and secondary containment system required in section 363-6.20 of this Part; and

(14) the plans detailing the construction staging area if proposed, and facility entrance area including gates, fences and signs.

(c) Operational drawings for the facility depicted in plan and cross-sectional views, showing:

(1) generalized fill progression drawings depicting fill progression for the life of the facility, identifying the depth, location and sequence of fill progression, and including the elevation of the liners, leachate collection and removal system, landfill gas management system and projected final waste mass;

(2) detailed fill progression drawings depicting fill progression for the first operational phase, identifying the placement of waste including special waste areas, lift thickness, and compacted thickness of operating and final cover; landfill gas management system; and on-site roadways and traffic patterns; and

(3) a survey control drawing depicting a method of survey baseline and elevation control and identifying the location and description of a permanent surveying benchmark and other critical facility monitoring locations and appurtenances for each 25 acres of the developed facility.

Section 363-4.3 Engineering report.

The engineering report must contain, at a minimum:

(a) a site description and analysis of the proposed facility including the following:

(1) a brief description of the type and amount of waste, in tons, accepted by the facility, specifying the anticipated

maximum amount of wastes to be accepted on a daily and annual basis, including those wastes anticipated to be accepted for use as alternative operating cover, the anticipated maximum in-place density of waste to be placed in the landfill, and the proposed maximum amount of waste and alternative operating cover that will be placed in the landfill;

(2) a description of the number, types and specifications of all machinery and equipment needed to effectively operate the facility at the proposed rate of waste acceptance, and all proposed structures and areas designated for unloading, processing, sorting, storage, and loading;

(3) a description of the materials and construction methods that demonstrate compliance with the requirements in Subpart 363-6 of this Part and are used for the placement of:

(i) each monitoring well pursuant to the requirements of section 363-4.4(k) of this Part;

(ii) the landfill gas management system;

(iii) the leachate conveyance, storage, treatment and disposal system;

(iv) the cover system; and

(v) the liner and leachate collection and removal system. The description must also include the precautions that will be taken to prevent frost action upon the composite liner system in areas where waste will not be placed within one year of department approval of construction certification;

(4) a description of post construction care measures to be taken to ensure that the construction materials noted in paragraph (3) of this subdivision meet the specifications and comply with the requirements of Subpart 363-6 of this Part from the time of construction completion to the beginning of landfill operation;

(5) a comprehensive and detailed description of each of the following features of the operation of the landfill gas management system:

(i) a year-by-year estimate of the quantities of landfill gas that will be generated during the active life and post-closure care period, including a year-by-year estimate of greenhouse gas emissions;

(ii) how landfill gas will be managed;

(iii) how any landfill gas condensate generation will be minimized, disposed, and/or recirculated into the landfill waste mass;

(iv) all machinery, equipment, and construction materials to be used at the facility, including the equipment design capacity;

(v) how the landfill gas management system will be designed, constructed and maintained so as not to interfere with the integrity of the proposed or existing landfill final cover system; and

(vi) a description of how the landfill gas management system will effectively control landfill decomposition gas-related odors;

(b) a landfill liner subbase settlement analysis that:

(1) predicts the total and differential settlement of the landfill subbase, liner, leachate collection and removal system, and other critical containment structure components of the landfill demonstrating that the liner system and leachate collection and removal system will maintain their integrity and performance at the maximum predicted settlements. The calculated settlement should account for secondary consolidation for a period of 30 years after the estimated closure date of the facility;

(2) includes plan and cross-sectional views depicting the predicted maximum critical landfill subbase settlement elevations and the landfill liner and leachate collection and removal system elevations when the subbase settlement analysis predicts settlement exceeding one foot. In all cases, the slope must not be less than one percent for pipe valley areas and two percent for liner subbase areas; and

(3) includes a landfill settlement monitoring plan when the landfill subbase settlements are predicted to exceed one foot. The landfill settlement monitoring plan must be designed to demonstrate that the leachate collection and removal system is functioning as designed and to verify acceptable integrity of key leachate collection and removal system and conveyance appurtenances within the system;

(c) a structural integrity and overall slope stability analysis.

The analysis must demonstrate the structural integrity and overall stability of the landfill site, the subgrade, each component of the liner, leachate collection and removal system, and final cover system, and must include:

(1) an evaluation of the following failure modes:

(i) overall global stability of the waste mass and foundation soils;

(ii) local and deep stability along critical interfaces of the liner and final cover system, including veneer stability of the leachate drainage and protective cover soil layers above liners and along drainage soil layers and geosynthetic interfaces within the landfill final cover system for anticipated field conditions. The analysis must identify the shear strength properties necessary to meet the requirements of paragraph (3) of this subdivision; and

(iii) local and global stability of access routes, leachate storage tanks, landfill access ramps, retaining walls, and other applicable facility components critical to operation, closure and monitoring of the facility;

(2) an evaluation of site geometries, impacts of pore pressures and loading conditions:

(i) during construction of the liner and final cover system;

(ii) during filling or excavating of waste in the landfill, including the typical stockpiling of materials, overfilling and other interim conditions;

(iii) at full load conditions represented by attaining the landfill's maximum design capacity; and

(iv) associated with leachate recirculation, if proposed;

(3) 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. The potential pore pressure regimes caused by liquid buildup, seepage forces, and landfill gas pressures should also be considered and the system should achieve the following factors of safety under static stability conditions:

(i) a minimum factor of safety of 2.00 for the subgrade soil-bearing capacity of any loaded structures or appurtenances (*e.g.*, tanks, manholes, retaining walls, etc.) associated with the landfill at full load conditions;

(a) if the factor of safety for the soil-bearing capacity is less than 3.00, it must be demonstrated that the structures or appurtenances can accommodate the anticipated settlements over the life of the facility:

(ii) a minimum factor of safety of 1.25 for the design of the facility liner and leachate collection and removal system components for short-term conditions considering the maximum anticipated construction and early landfill operational transient loads;

(iii) a minimum factor of safety of 1.50 for interim and final elevation of waste slopes that occur during operation and upon closure of a landfill cell; and

(iv) a minimum factor of safety of 1.50 for the final cover system considering seepage patterns that will typically develop assuming the saturated hydraulic conductivity of the barrier protection and topsoil layers during the wettest months of the year;

(d) a seismic stability analysis.

Any facility located in a seismic impact zone, as defined in section 360.2, must include a seismic stability analysis. The seismic stability analysis must address the serviceable life of the landfill, its internal components and its related appurtenances and must demonstrate that:

(1) all long-term containment structures, including liners, the leachate collection and removal system, and the surface water control system but excluding the cover system, are stable by utilizing either:

(i) a pseudo-dynamic analysis, requiring both the static and pseudo-static analyses to be based on large-displacement shear strengths (3 inch) along the critical surface, that demonstrates all long-term containment structures are designed to retain a minimum factor of safety of 1.0 using a seismic coefficient (expressed as a fraction of the

acceleration of gravity) equal to 0.75 of the free field peak ground acceleration at the site for the design earthquake (*i.e.*, the earthquake that has a 10 percent or greater probability in 250 years or two percent or greater probability in 50 years in the lithified earth from the latest USGS seismic hazard map or site specific seismic hazard study); or

(ii) a displacement analysis that limits the calculated permanent seismic deformations to less than six inches using a decoupled seismic response/deformation analysis, to resist the maximum horizontal acceleration for the site. If the computed displacement is greater than 0.4 inch then large-displacement shear strengths (3 inch) must be used for both the static and the dynamic analysis;

(2) the landfill's long-term containment structures and any related appurtenances are not susceptible to damage from liquefaction when subjected to the maximum horizontal acceleration in lithified earth;

(e) a description and analysis of the leachate collection and removal system that includes:

(1) an evaluation of leachate generation data, including:

(i) an estimate of the leachate generation quantities for the landfill, based on the maximum hydraulic infiltration rate using a 24-hour 25-year storm, assuming little or no waste in place in the landfill;

(ii) an evaluation of impacts on the portion of the landfill's leachate collection and removal system, that does not have intermediate or final cover material placed, which would result from a 500-year storm and provide discussion of mitigating procedures to any impacts; and

(iii) for landfill expansions or landfills undergoing subsequent development, an analysis of the anticipated increase above the existing landfill's actual leachate generation as a result of the expansion and/or subsequent development;

(2) a description of how the components of the landfill liner and leachate collection and removal system will:

(i) withstand dynamic and static loading stresses anticipated during the construction, operation, closure, post-closure period of the facility, including subsequent permit modifications that involve changes in waste types and vertical expansion designs;

(ii) allow for effective monitoring of leachate flow and liner system performance in accordance with paragraph (3) of this subdivision; and

(iii) allow for effective access for routine maintenance;

(3) an estimate of the maximum daily volume of leachate generated, and a demonstration that the leachate head on the primary liner system will not exceed 12 inches per the provisions of section 363-6.6(a)(3) of this Part, and that the

maximum daily volume of leachate that may infiltrate through the primary liner will not exceed the allowable primary liner leakage rate of 20 gallons per acre per day in accordance with provisions of section 363-7.1(f)(7) of this Part;

(f) design information for a stormwater/run-off conveyance system.

This information must demonstrate that the stormwater detention/retention basin system is designed to manage a 100-year, 24-hour design storm from the landfill site without sustaining damage. This must include an evaluation of impacts on the stormwater/run-off conveyance system which would be anticipated as from a 500-year storm to inform a contingency plan for such an event;

(g) a mined land use plan.

(1) If the facility plans to use material excavated on-site as operating cover for the landfill, and construction of that landfill will not take place in the area from which the operating cover material is to be removed, the facility must submit a mined land use plan with information that demonstrates compliance with the applicable requirements of Part 422 of this Title.

(2) A mined land use plan is not required if the facility plans to perform on-site excavation of material to be used as operating cover for the landfill and the landfill footprint will be situated upon the area from which the operating cover material is to be removed.

(3) Material excavated on-site may not be used off-site unless the applicant has first obtained a mining permit pursuant to Part 421 of this Title;

(h) facility closure and post-closure design plan.

The facility's closure and post-closure design plan must include at a minimum:

(1) closure design;

(2) post-closure water quality monitoring program;

(3) an operation and closure plan for the leachate collection, treatment, and storage facilities;

(4) an operation and closure plan for the landfill gas management system; and

(5) any proposed and alternative end uses for the site.

Section 363-4.4 Hydrogeologic investigation report.

(a) A hydrogeologic investigation report is required and must contain the following:

(1) a description of the geology and hydrology of the existing or the facility in sufficient detail to determine the suitability of the site for the disposal of waste. The report must be submitted under the stamp and signature of a professional geologist or professional engineer licensed and currently registered to practice in the State of New York. The scope and extent of the hydrogeologic investigation must be based on the hydrogeologic complexity of the site and the ability of the site to restrict contaminant migration, and include:

(i) an understanding of groundwater and surface water flow and how it relates to local and regional patterns,

including a groundwater table elevation map with groundwater flow direction calculated from hydraulic head measurements;

(ii) a definition of the critical stratigraphic section;

(iii) the establishment of an environmental monitoring system capable of readily detecting a contaminant release from the facility; and

(iv) a description of the engineering properties of the site, which provide the basis for the design and construction of the facility including contingency plans relating to groundwater or surface water contamination or gas migration;

(2) raw field data, analytical calculations, maps, flow nets, cross sections, interpretations (with alternative interpretations where applicable), and conclusions. All maps, drawings and diagrams must have a minimum scale of 1:24,000, unless otherwise approved by the department. The description must include:

(i) regional geology. A discussion of the regional geology demonstrating how the regional geology relates to the facility's geology and the location of nearby sensitive environments must include:

(a) bedrock stratigraphy and structural geology, including formation and member names, geologic ages, rock types, thicknesses, the units' mineralogical and geochemical compositions and variabilities, rock fabrics, porosities, bulk permeabilities, and other distinctive features;

(b) glacial geology, including a discussion of the formation, timing, stages, and distribution of glacial deposits, advances and retreats, and hydrologic characteristics of the surficial deposits, such as kames, eskers, outwash moraines, etc.;

(c) major topographic features, their origin and their influence upon drainage basin characteristics; and

(d) surface water and groundwater hydrologic features, including surface drainage patterns, recharge and discharge areas, wetlands and other sensitive environments, inferred regional groundwater flow directions, aquifers, aquitards and aquicludes, primary water supply and principal aquifers, public water supply wells, and private water supply wells identified in the water supply well survey; any known peculiarities in surface water and groundwater geochemistry; and any other relevant features;

(ii) facility geology. Hydrogeologic conditions at the facility in three dimensions and their relationship to the proposed facility. The report must:

(a) define site geology, surface water and groundwater flow, and must relate site specific

conditions to the regional geology;

(b) describe the potential impact the facility may have on surface and groundwater resources and other receptors, including changes in hydrogeologic conditions that may occur with site development, and the potential for and effects of off-site contaminant migration;

(c) describe hydrogeologic conditions in sufficient detail to establish a comprehensive understanding of groundwater flow that can be quantified and verified through hydrologic, geochemical, and geophysical measurements;

(d) provide sufficient data to specify the location and sampling frequency for environmental monitoring points, form the basis for contingency plans regarding groundwater and surface water contamination and explosive gas migration, and support the design of the facility;

(e) specifically discuss all units in the critical stratigraphic section. This evaluation must include maps, cross sections, other graphical representations, and a detailed written analysis of the following:

(1) all hydrogeologic units (*e.g.*, aquifers, aquitards and aquicludes), and how they relate to surface water and groundwater flow. This must include all hydrogeologic data collected during the site investigation and explain and evaluate the hydrologic and engineering properties of the site and each specific unit; and

(2) local groundwater recharge and discharge areas, high and low groundwater tables and potentiometric surfaces for each hydrogeologic unit, vertical and horizontal hydraulic gradients, groundwater flow directions and velocities, groundwater boundary conditions, surface water and groundwater interactions, and an evaluation of existing water quality.

(b) Any aspect of the site investigation that deviates from these requirements of this section must be identified and justified in the site investigation report and must be approved by the department.

(c) The applicant must employ current, standard, and generally accepted methods and procedures in obtaining the required hydrogeologic information.

(1) The department may approve of alternative or innovative methods; however, the department may initially require redundant technologies to prove the reliability of a new method.

(2) A professional geologist licensed and currently registered to practice in the State of New York State, having experience in similar hydrogeologic investigations, must supervise all procedures in a manner that ensures the

accuracy of the data and precludes environmental degradation.

(3) The location of all installations, geophysical and geochemical surveys, and seismic lines for the proposed investigation must be shown on a map with the same scale and coordinate grid system used in the application.

(d) Literature search.

A comprehensive search for pertinent and reliable information concerning regional and site-specific hydrogeologic conditions is required. The literature search must include, as available, records and reports of the Department of Health, the Department of Transportation, the U.S. Soil Conservation Service, and the New York State Geological Survey; basin planning reports, groundwater bulletins, water supply papers, professional papers and other open file reports of the U.S. Geological Survey; bulletins, circulars, map and chart series, memoirs and other publications of the New York State Geologic Survey; publications and bulletins of the Geological Society of America and other professional organizations; publications of the EPA and the department; college and university reports; and aerial photography and remotely sensed imagery.

(e) Surficial geologic mapping.

The facility must be mapped to determine the distribution of surficial deposits on and surrounding the site based on information from the hydrogeologic investigation, field evaluations, and field confirmation of all interpretations made on the site itself. The surficial geological map must be submitted under the stamp and signature of a professional geologist or professional engineer licensed and currently registered to practice in the State of New York.

(f) Test pits.

Test pits may be used to determine shallow stratigraphy. The test pits must be logged by a professional geologist or engineer licensed to practice in the State of New York, and with experience in similar hydrogeologic investigations. Logs must be kept and include: elevations; surface features before excavation; depth of the test pit and of all relevant horizons or features; moisture content of units; standard soil classifications, stratigraphy, soil structure, bedrock lithology, and brittle or secondary structures in soil and bedrock; active seepage; and a sketch showing these features for each test pit. Test pits must be promptly backfilled and compacted with the excavated materials. The department may require that undisturbed soil samples be taken and tested in accordance with paragraph 363-4.4(l)(2) of this section.

(g) Water well surveys.

A survey of public and private water wells within one mile downgradient and one quarter mile upgradient of the facility must be conducted. Surveys must obtain, where available, the location of wells, which must be shown on a map with their approximate elevation and depth, name of owner, age and usage of the well; stratigraphic unit screened; well construction; static water levels; well yield; perceived water quality; and any other relevant data that can be obtained.

(h) Geophysical and geochemical surveys.

The department may require the use of geophysical and geochemical methods, such as electromagnetic, resistivity, seismic surveys, remote sensing surveys, downhole geophysics, isotope geochemistry, and soil gas analysis to justify the interpretations and

conclusions of the site investigation report, to provide information between boreholes, and to aid in the siting of wells. The geophysical and geochemical surveys must be submitted under the stamp and signature of a professional geologist or professional engineer licensed and currently registered to practice in the State of New York.

(i) Tracer studies.

The department may require the use of tracer studies to aid in understanding groundwater flow, including:

(1) where a site overlies limestone or dolostone bedrock or karst environments. Tracer studies must identify areas of groundwater flow from the facility attributed to secondary permeability, any recharge or discharge areas on and surrounding the site, groundwater storage, and seasonal variations of water levels; and

(2) to monitor sites with existing contamination, in accordance with section 363-5.1(g)(2) of this Part.

(j) Site investigation work plan.

The site investigation work plan must clearly define the scope of the intended investigation, all methods used in investigating the hydrogeologic conditions of the site and any specific hydrogeologic questions to be addressed.

(k) Monitoring wells and piezometers.

(1) General requirements.

(i) Monitoring wells and piezometers must define the three-dimensional flow system within the critical stratigraphic section.

(ii) Construction techniques must ensure that groundwater samples and water level measurements characterize discrete stratigraphic intervals, and prevent leakage of groundwater or contaminants along the well annulus. If leakage is detected, it must be corrected or the well properly sealed.

(iii) Monitoring wells and piezometers may be placed individually or as well clusters. Well clusters consist of individual wells at varying depths in close proximity, each installed in its own boring. Multiple wells placed into one large borehole are prohibited unless prior department approval in writing is obtained.

(iv) Soil borings, soil samples, and rock cores must characterize each stratigraphic unit within the critical stratigraphic section.

(v) Precautions must be taken during drilling and construction of monitoring wells to avoid introducing contaminants into a borehole. Only potable water of known chemistry may be used in drilling monitoring wells or piezometers unless otherwise approved by the department in writing.

(vi) All equipment placed into the boring must be properly decontaminated before use and between boreholes. The initial cleaning at the site must ensure that no contaminants from the last site drilled will be introduced into the borings. All equipment must be

properly decontaminated between holes.

(vii) Where possible, upgradient wells should be drilled first.

(viii) The use of drilling mud must be avoided unless prior department approval is granted in writing. If drilling mud is used, the material used must avoid the introduction of contaminants. Drilling mud must not be used within 10 feet of the screened interval.

(ix) Air systems and drilling lubricants must not introduce contaminants into the borehole.

(x) Well borings must have a minimum diameter that is two inches larger than the outside diameter of the well screen and riser to ensure that a tremie pipe may be properly used.

(xi) Wells and well borings must not be placed through or into waste unless prior department approval has been granted in writing and sufficient safety precautions are employed. If waste is unexpectedly encountered during drilling, then drilling of that boring must cease, the hole must be properly sealed, cuttings properly disposed of and the department notified.

(2) Construction of monitoring wells and piezometers.

(i) Well screens and risers must be constructed of materials selected to last for the required monitoring period of the facility without contributing contaminants to, or removing contaminants from, the groundwater. All materials used are subject to department approval. Joints, caps, and end plugs are to be secured by either welds, threads with thread seal tape, or force fittings. Solvents and glues or other adhesives are prohibited. Caps must be vented to allow for proper pressure equalization. The inside diameter of each well screen or riser pipe must be nominally two inches in diameter and must allow for proper development and for surveying and sampling equipment to be used within the screen and casing. A permanent mark should be made at the top of the riser pipe to provide a datum for subsequent water level measurements.

(ii) Well screens are required for all wells and piezometers, unless otherwise approved by the department. All screens used must be factory-constructed, nonsolvent welded/bonded, continuous-slot, wire-wrap screens of a material appropriate for long-term monitoring. The slot size of the screen must be compatible with the sand pack. Water table variations, site stratigraphy, expected contaminant behavior, and groundwater flow must be considered in determining the screen length, materials, and position. Where existing contamination is suspected or known, downhole geophysical techniques may be required by the department to aid in selecting well screen elevations.

(iii) The sand pack surrounding the well screen must consist of clean inert siliceous material. Grain size

must be based on a representative sieve analysis of the zone to be screened. The sand pack must minimize the amount of fine materials entering the well and must not inhibit water inflow to the well. The sand pack must be placed in the annular space around the well screen and extend above the top of the screen by two feet or 20 percent of the screen length (whichever is greater). In addition, the sand pack must extend six inches below the bottom of the screen. The sand pack material must be placed using an appropriate method and must avoid bridging. Alternative methods of placing the sand pack must be approved by the department in writing. The sand pack must be checked for proper placement. A finer-grained sand pack material (100 percent passing the No. 30 sieve and less than two percent passing the No. 200 sieve) six inches thick must be placed at the top of the sand pack between the sand and the bentonite seal.

(iv) Bentonite must be placed above the sand pack using a tremie or other method approved by the department to form a seal at least three feet thick. A 6- to 12-inch fine-grained sand pack must be placed above the bentonite seal to minimize grout infiltration. If bentonite pellets or chips are used, full hydration of the bentonite is required prior to emplacement of overlying materials.

(v) Grout of cement/bentonite, bentonite, or other suitable, low-permeability material must completely fill the remaining annular space to the surface seal. The grout mixture must set-up without being diluted by formation water, and must displace water in the annular space to ensure a continuous seal. The grout mixture must be placed under pressure using a tremie or other method approved by the department. Auger flights or casing must be left in the hole before grouting to prevent caving. The cement used must be appropriate for the groundwater chemistry of the site.

(vi) A protective steel casing, nominally at least two inches larger in diameter than the well casing, must be placed over the well casing or riser pipe and secured in a surface well seal to adequately protect the well casing. A distinctive, readily visible marker must be permanently attached to or near the protective casing to identify the well and ensure visibility. A drain hole must be drilled at the base of the protective casing. A vent hole must be located near the top of the protective casing to prevent explosive gas build up and to allow water levels to respond naturally to barometric pressure changes. The annulus of the protective casing should be filled with gravel. A locking cap must be installed with a minimum of a one-inch clearance between the top of the well cap and the bottom of the locking cap when in the locked position. A weather-resistant padlock must be placed on the protective casing. Padlock keys must be maintained at the facility and provided to department staff upon request.

(vii) A concrete surface seal designed to last throughout the

planned life of the monitoring well must be constructed. The surface seal must extend below the frost depth to prevent potential well damage. The seal must be designed to prevent surface run-off from entering the well casing. In areas where traffic may cause damage to the well, bollards or other suitable protection for the well are required. Any damaged or deteriorated surface seals must be reported to the department and repaired or replaced in an appropriate manner. The department may allow alternate designs when documentation is presented that demonstrates the intent of the regulations are met or exceeded.

(viii) Alternative construction methods for piezometers and wells that are not to be part of the environmental monitoring plan may be approved in writing by the department if those methods meet the requirements set forth in subparagraph (1)(ii) of this subdivision.

(3) Well and piezometer development. All wells and piezometers must be developed as soon as possible after installation, but not before the well seal and grout have set. Water must not be introduced into the well for development, except with written approval of the department. Any contaminated water withdrawn during development must be properly managed. Development must not disturb the sand pack or the strata above the water bearing zone or damage the well. The entire saturated screened interval must be developed. The department may require multiple attempts at well development to increase the likelihood of obtaining sediment free water. Development methods must be appropriate for formation conditions. The selected method must minimize to the greatest extent possible the amount of turbidity in the well.

(4) Survey. The locations and elevations of all existing and abandoned test pits, soil borings, monitoring wells, and piezometers must be surveyed to obtain their precise location and plotted on a map in the site investigation report. The vertical location of the ground surface and the mark made on the top of the monitoring well and piezometer risers must be accurately measured to the nearest 100th foot.

(5) Well replacement. All wells must be properly protected to ensure their integrity throughout the active life, post-closure period, and custodial care period of the facility. If, in the opinion of the department, water quality or other data show that the integrity of a well is lost, the well must be replaced and sampled within a time period acceptable to the department (but not to exceed 120 days) after written notification by the department. The initial sample for the replacement well must be analyzed for baseline parameters in the Water Quality Analysis Tables in this Subpart.

(6) Well abandonment. All soil borings, rock cores or other abandoned wells that are not completed as monitoring wells or piezometers must be fully sealed in a manner appropriate for the geologic conditions to prevent contaminant migration through the borehole. Generally, sealing must include:

(i) overboring or removal of the casing to the greatest extent possible, followed by perforation of any casing left in place. All casing and well installations in the upper five feet of the boring, or within five feet of the proposed level of excavation, must be removed;

(ii) sealing by pressure injection with cement bentonite grout, using a tremie or other method acceptable to the department. The cement must extend the entire length of the boring to no less than five feet below the ground surface or the proposed excavation level. The screened interval of the borehole must be sealed separately and tested to ensure its adequacy before sealing the remainder of the borehole. Where the surrounding geologic deposits are highly permeable, alternate methods of sealing may be required to prevent the migration of the grout into the surrounding geologic formation. The well must be backfilled to at least five feet below ground surface with appropriate native materials compacted to avoid settlement; and

(iii) the sealed site must be restored to a safe condition. The site must be inspected periodically after sealing for settlement or other conditions that may require remediation.

(7) Well extension. All well extensions must be constructed to ensure the future use of the well. Well extensions shall be designed to maintain the future integrity of the well casing and to prevent surface water intrusion into the well casing. Failure of a well extension will require well replacement.

(l) Geologic sampling.

(1) All borings and rock cores must be sampled continuously to the base of the critical stratigraphic section. For well clusters, continuous samples must be collected from the surface to the base of the deepest well. Other wells in the cluster must be sampled at all stratigraphic changes, and at the screened interval. At sites where the geology is not of a complex nature the department may allow a reduction in the number of wells requiring continuous sampling. Soil borings must be sampled using the split spoon method, or other approved methods such as continuous sonic core sampling, and bedrock or boulders must be sampled by coring with standard size NX or larger diameter core bits. Samples must be retained in labeled glass jars or wooden core boxes. All samples must be securely stored and accessible throughout the life of the facility. The location of the storage area must be designated in the facility manual.

(2) A representative number of undisturbed samples must be collected from test pits and borings using appropriate methods to identify the characteristics of all cohesive soil units. These samples must be analyzed in the laboratory for: Atterberg limits; gradation curves by sieve or hydrometer analysis or both; undisturbed permeabilities; and visual descriptions of undisturbed soil structures and lithologies. Laboratory analysis of non-cohesive soil units may also be required.

(m) Logs.

(1) Complete drilling logs must be provided to the department for all soil

borings. These logs must provide detailed soil classification according to the Unified Soil Classification System (USCS). The USCS visual method must be used on all samples supplemented by the USCS laboratory tests on a representative number of samples from each stratigraphic unit and each screened interval. Logs also must contain a description of the matrix, clasts, mineralogy, roundness, color, appearance, odor, and behavior of materials using an appropriate descriptive system. A clear description of the system used must be included with the logs. All well logs must contain drilling information observed in the field including: moisture content, location of the water table during drilling, water loss during drilling, depth to significant changes in lithology, depth to bedrock, sample recovery (measured in tenths of a foot), hammer blow counts, the method of drilling, any anomalous features (*e.g.*, gas in the well), and the use and description of drilling fluids or additives, including the source, and calculated and actual amounts of materials used.

(2) Rock core logs must describe the lithology, mineralogy, degree of cementation, color, grain size, and any other physical characteristics of the rock; percent recovery and the rock quality designation (RQD); other primary and secondary features, and contain all drilling observations and appropriate details required for soil boring logs. A clear photograph of all labeled cores must also be taken and submitted with the logs.

(3) Well completion logs must contain a diagram of the installed well, all pertinent details on well construction, a description of the materials used, and elevations of all well features.

(4) Copies of original field logs must be submitted to the department upon request.

(n) In situ hydraulic conductivity testing.

In situ hydraulic conductivity testing must be done in all monitoring wells and piezometers, unless otherwise approved by the department. The testing method used must not introduce contaminants into the well. If contamination is known or suspected to exist, all water removed must be properly managed. Hydraulic conductivities may be determined using pump tests, slug tests, packer tests, tracer studies, isotopic geochemistry, thermal detection, or other suitable methods.

Section 363-4.5 Construction quality assurance (CQA) and construction quality control (CQC) plan.

The CQA and CQC plan must address the observations and tests that will be used before, during, and upon completion of construction to ensure that the construction materials and activities meet the requirements of Subpart 363-6 of this Part. For each specified phase of construction, this plan must include:

(a) Delineation of responsibilities.

A delineation of the responsibilities of all personnel involved in implementing the CQA and CQC plan. A specific chain of command for both the CQA and CQC inspectors and the project engineer must be identified. The minimum number of CQA and CQC officers and supporting personnel to be provided must be described for each major phase of construction.

(b) Personnel qualifications.

A description of the required level of experience, training, and certification for the contractor, installation crew, and CQA and CQC officers and inspectors. In addition, a description of any professional, financial, or other relationships between the project engineer, the facility owner or operator, and the construction contractor(s), and a demonstration that they are capable of operating independently and without influence must be included.

(c) Inspection activities.

A description of all field observations, tests, equipment, and calibration procedures for field testing equipment that will be used.

(d) Sampling strategies.

A description of all construction material sampling protocols, including sample size, methods for determining sample locations and frequency of sampling.

(e) Documentation.

A description of the recordkeeping requirements for CQA and CQC activities. This must include daily summary reports, inspection data sheets, problem identification and corrective measures reports, acceptance reports, and final documentation.

(f) A certification that the CQA and CQC plan is referenced in appropriate construction contract documents.

Section 363-4.6 Facility manual.

The facility manual must: refer to engineering drawings and reports prepared in accordance with this Subpart as appropriate; describe the anticipated day-to-day facility operations throughout the active life of the landfill; address appropriate sequencing of all major landfilling activities; demonstrate how the landfill will meet the operating and reporting requirements enumerated in Subparts 363-7 and 363-8 of this Part; and include the following information:

(a) Sustainability plan.

The sustainability plan must describe how the landfill will be designed and operated in a manner that will conserve and sustain natural resources. The sustainability plan must describe how natural resources and airspace will be conserved through use of concepts such as front-end diversion of recyclables, reduced disposal of organic wastes, reduction in greenhouse gas emissions, utilization of alternative operating cover materials, alternative energy or materials resource production, promote rapid waste mass stabilization, utilize landfill reclamation, or other sustainable landfill management techniques. The sustainability plan must be updated and submitted to the department no less than every five years and at the time of permit renewal.

(b) Post-construction care plan.

The post-construction care plan must describe procedures to ensure that the post construction care requirements will be maintained prior to initial operation.

(c) Fill progression and placement plan.

The fill progression and placement plan must include:

(1) a description of the procedures and precautions to be taken during the

placement of the first five-foot lift of select waste above the liner and leachate collection system describing the select waste, its placement, and operation of collection vehicles and compaction equipment to prevent damage to the liner system;

(2) a description of the landfill's fill progression, addressing and detailing typical daily cell progression and lift height, fill sequence, and provisions for subsequent development of the landfill, referring to engineering drawings and reports prepared in accordance with this Subpart;

(3) a description of a monitoring program that will ensure that the maximum in-place waste density as established in the application will not be exceeded;

(4) a daily log of wastes received at the landfill that includes the location of each day's operation in accordance with the fill progression plan;

(5) a depiction of the final grades as described in the approved closure plan; and

(6) the location of vertical and horizontal gas collection lines.

(d) Waste control plan.

The waste control plan must include:

(1) a description of the landfill's receiving and monitoring process for waste;

(2) identification and handling procedures for wastes requiring special handling or treatment (*e.g.*, friable asbestos-containing waste, sludges, drill cuttings, etc.);

(3) procedures to identify wastes that have low-permeability or low shear-strength and a description of methods to be used to blend these wastes with other wastes to minimize waste mass instability and maximize leachate movement through the waste mass; and

(4) a program for detecting and preventing the disposal of unauthorized wastes at the facility. This program must include, but not be limited to:

(i) random inspections of incoming loads;

(ii) inspections of suspicious loads or drums;

(iii) records of inspections;

(iv) procedures for notifying the department if unauthorized waste is discovered in a load; and

(v) procedures for providing outreach to customers and transporters indicating that the facility is prohibited from accepting for disposal source-separated recyclables, source-separated electronic wastes, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs, including procedures for monitoring and detecting incoming waste for these source separated recyclables.

(e) Cover material management plan.

The cover material management plan must include:

(1) material specifications for operating, intermediate, and final cover;

(2) identification of the quantities required for each type of cover material, and its on-site storage location; and

(3) the method of cover material placement, compaction, anticipated permeability and density.

(f) Environmental monitoring plan.

The environmental monitoring plan must include:

(1) a description of the critical stratigraphic section;

(2) a description of all proposed monitoring points, including leachate, condensate, underdrains, groundwater, surface water, and sediment;

(3) the analyses to be performed;

(4) a description of the statistical methods to be used;

(5) reporting requirements;

(6) a site plan with topographic contours which depicts the location of all proposed monitoring points in relation to facility boundaries, surface water bodies, and property boundaries; and

(7) an implementation plan that contains a sampling schedule, the sequence of landfill construction, a schedule for the construction of the groundwater monitoring wells, and a schedule for initiation of the existing water quality and operational water quality monitoring programs, and a contingency water quality monitoring plan which specifies trigger mechanisms for its initiation;

(8) sampling design requirements. The environmental monitoring plan must comply with the following:

(i) Groundwater sampling. Groundwater monitoring wells must be capable of detecting facility derived groundwater contamination within the critical stratigraphic section.

(a) Horizontal well spacing.

(1) Horizontal spacing of wells must be based upon-site specific conditions. These conditions may include groundwater flow rates, estimated longitudinal and transverse dispersivity rates, proximity to or presence of sensitive environments and groundwater users, the nature of contaminants disposed of at the site, and the proposed design and size of the facility.

(2) In the first water bearing unit of the critical stratigraphic section:

(i) monitoring well spacing along the downgradient perimeter of the facility must not exceed 500 feet. The department may require closer well spacing in sensitive or geologically complex environments;

(ii) monitoring well spacing along the upgradient or crossgradient perimeter of the facility must not exceed 1,500 feet. The department may require closer well spacing in sensitive environments or where upgradient sources of contamination are known to exist; and

(iii) in areas of poorly defined flow conditions, the number of monitoring wells and well spacing must be decided based on-site-specific hydrogeology, subject to approval by the department.

(3) The department may require the monitoring of water bearing units below the first water-bearing unit based on the potential for contaminant migration to those units. Well spacing in any subsequent water-bearing units must be decided based on-site-specific hydrogeology, subject to approval by the department.

(4) Sensitive environments or areas where public health concerns exist may be subject to more intensive groundwater monitoring requirements. In addition, the department may require the applicant to develop an acceptable computer model of contaminant plume behavior from hypothetical leaks in the liner system to assist in determining monitoring well placement.

(5) All downgradient monitoring wells must be located within 50 feet of or as close as possible to the waste boundary to ensure early detection of any contaminant plume, unless precluded by site conditions. All monitoring wells should avoid construction within structural berms wherever possible.

(6) All upgradient monitoring wells must be placed far enough from the waste boundary to avoid any facility-derived impacts.

(b) Well screen placement.

(1) Well screens must be located to readily detect groundwater contamination throughout the saturated thickness of the first water bearing unit, and must be installed at a representative number of points at each subsequent permeable unit throughout the critical stratigraphic section. Well screens must not act as conduits through impermeable layers. Wells monitoring the uppermost water bearing unit must be screened to ensure that the water table surface is within the screened interval at all times.

(2) Upgradient and crossgradient monitoring wells must monitor the same hydrologic units as the downgradient monitoring wells, whenever possible.

(3) Screen length. Well screens must not exceed 20 feet in length, unless otherwise approved by the department. The applicant must provide technical justification for the actual screen length chosen.

(c) Geophysical and geochemical techniques. The department may require the use of geophysical and geochemical techniques where existing contamination is suspected, to locate contaminated zones before selecting well locations and screen depths for environmental monitoring points.

(d) The department may require the monitoring of any groundwater suppression system built at a facility. Existing water quality monitoring at these points may not be required.

(ii) Surface water and sediment sampling. The environmental monitoring plan must include monitoring points for all surface water bodies that may be significantly affected by a contaminant release from the facility. Sampling activities at these monitoring points must include surface water, and may include sediment if determined necessary by the department.

(a) In bodies of standing water, these points must be located at the closest point to the facility and must be included in existing water quality monitoring.

(b) In streams, these points must include sufficient upgradient and downgradient locations to allow the facility's impact to be measured.

(c) Monitoring of any on-site spring, seep or groundwater discharge zone may be required if the flow rate is sufficient to permit collection of an adequate sample volume.

(d) Any iron floc deposits which form in springs, seeps or groundwater discharge zones downgradient of the facility must be described and sampled as part of the Site Investigation Report. These deposits may, at the discretion of the department, be included in the monitoring program.

(iii) Leachate sampling. The location of all leachate sampling points at the facility must be described.

(a) All sampling points should be located to minimize pumping of leachate before sampling. Sampling points in the primary and secondary leachate collection system should be adequate to sample liquids beneath each discrete leachate collection area or facility cell.

(b) Leachate in the primary leachate collection system of new

cells must be analyzed semi-annually for expanded parameters for a minimum of five years after cell operation begins. After five years of cell operation, the department may consider a reduction to annual sampling if the owner or operator demonstrates that the concentrations of constituents have not changed significantly as supported by statistical analysis.

(c) Leachate in the secondary leachate collection system must be monitored semi-annually for baseline parameters. Sampling and analysis requirements may be increased if the allowable leakage rate, as defined in section 363-7.1(f)(7) of this Part, is exceeded. After five years of cell operation, the department may consider a reduction to annual sampling if the owner or operator demonstrates that the concentrations of constituents have not changed significantly as supported by statistical analysis.

(iv) Water supply well sampling. If sampling and analysis of water supply wells is to be performed, then the sampling frequency and analysis for water supply wells should be determined on a case-by-case basis in conjunction with the Department of Health and/or the local health department.

(v) Condensate sampling. The location of all condensate sampling points at the facility must be described. Condensate sampling in new cells must be done semi-annually for expanded parameters for a minimum of five years. After five years, the department may consider reductions in the frequency of testing, number of parameters analyzed, and number of locations sampled if the owner or operator demonstrates constituent concentrations are stable as supported by statistical analysis and that the proposed remaining sampling locations will be representative of the locations previously sampled.

(9) Water Quality Monitoring Programs. A water quality monitoring program must be implemented for all environmental monitoring points specified in the environmental monitoring plan. As described in this subdivision, the water quality monitoring program must be tailored to the site to establish existing water quality prior to disposal of waste, operational water quality during operation of the site, the post-closure period, and the custodial care period, and, if contamination is detected at the site, contingency water quality.

(i) Existing water quality. The facility must establish an existing water quality database to characterize the site geochemistry.

(a) The permit application must include a preliminary evaluation of water quality consisting of two rounds of sampling and analyses for a representative number of monitoring points. The representative number of monitoring points must include upgradient and downgradient locations (if practical) in each

water-bearing unit within the critical stratigraphic section.

(1) The first round of sampling must be analyzed for expanded parameters. The second round must be analyzed for baseline parameters plus any additional parameters which were detected in the initial expanded parameters analysis. These samples should be taken at the approximate periods of high and low groundwater flow.

(2) The department may require sampling and analysis of additional monitoring points to further define site geochemistry in support of the interpretations and conclusions of the site investigation report.

(b) The following must be completed before the facility becomes operational.

(1) All of the environmental monitoring points must be sampled and analyzed for four rounds. The first round must be analyzed for expanded parameters, followed by a minimum of three rounds of sampling and analysis for baseline parameters, plus any additional parameters which were detected in the initial expanded parameters analysis. Each of the four rounds must occur during a different quarter of the year. The department may approve phased sampling as facility cells are constructed. The sampling of these phased monitoring points should begin at least one year prior to waste deposition and must conform with the analytical requirements of this clause.

(2) A database of existing water quality must be established for each hydrogeologic flow regime being monitored at the site. The department may require collection of data subsequent to initial facility operation from upgradient monitoring points, or other monitoring points that have not been altered by landfill activities, in order to augment and refine the existing water quality database.

(3) The existing water quality at a facility may be determined using:

(i) an interwell analysis (*i.e.*, the pooling of all of the environmental monitoring points within a given hydrogeologic flow regime);

(ii) subsets of interwell analyses (*i.e.*, the pooling of environmental monitoring points into two or more subsets of environmental monitoring points within a given hydrogeologic flow regime); or

(iii) an intrawell analysis, where each individual monitoring point is monitored independently of all other wells within a given hydrogeologic flow regime. A minimum of eight quarters must be completed for each well that is to be evaluated on an intrawell basis.

(4) The existing water quality database must comply with the following requirements:

(i) the existing water quality database must include a separate data set for each parameter. Each data set must include one or more sampling events and one or more sampling points. Decisions regarding how to group data into data sets must be made in a manner that maximizes the extent to which variability within the data sets approximates a normal distribution;

(ii) for each data set, the mean (existing water quality value), standard deviation and coefficient of variation must be calculated. For the purpose of these regulations, data sets which have a coefficient of variation of 0.5 or less with less than 15 percent of the data being non-detects will be considered suitable for use in setting "Type A" statistical trigger values. The “Type A” statistical trigger value for each data set is calculated by adding three standard deviations to the mean. In cases where the percentage of non-detects exceeds 15 percent, the coefficient of variation is greater than 0.5, or there are other indications that the data set is not normally distributed, the existing water quality value is defined as the median of the data set and a "Type B" statistical trigger value corresponding to the 90th percentile of the data set must be used;

(iii) the following practices must be followed to minimize variability within data sets which are included in the existing water quality database:

(A) the size of data sets should be maximized by pooling data from different wells which are screened within the same hydrostratigraphic unit and show similar pre-operational water quality;

(B) monitoring points which exhibit

significant differences in pre-operational water quality for a particular parameter should not be pooled within the same data set for that parameter. In cases where it is necessary to split data sets due to heterogeneity of data, it may be necessary to compensate for the reduced size of the data set by collecting additional rounds of pre-operational water quality data or by augmenting pre-operational data with upgradient operational data;

(C) non-detects with associated detection limits higher than applicable standards or higher than detected values within the same data set, must not be used as a basis for establishing existing water quality;

(D) for statistical calculations, except as allowed in subitem (*c*) of this item, non-detects will be assigned a value of one-half the detection limit; and

(E) steps must be taken to ensure that detection limits associated with non-detected values in existing water quality data sets do not exceed the applicable groundwater quality standards or any of the detected values for other sampling points and/or rounds of sampling within the same data set. Non-detects associated with elevated detection limits must be discarded and additional samples must be collected from the affected monitoring point in order to provide the minimum number of data points required for characterization of existing water quality;

(iv) if the department determines that the sampling results are not representative of existing water quality, or do not constitute a normal, uniform distribution, the department may specify additional sampling and/or analyses it considers necessary to establish existing water quality at the site;

(5) if elevated contaminant levels are detected and additional detailed information is needed to establish a complete existing

water quality database, the department may require one or more rounds of routine, baseline or expanded parameter sampling and analysis in any sampling point;

(6) additional sampling and analysis beyond the site boundaries may be required to determine the nature and extent of contamination, as well as the source if possible. This evaluation may require the construction, sampling, and analysis of additional monitoring wells and/or surface water sampling points. Based upon the results of this additional data, the department may require analysis for any and all expanded parameters, to be included in quarterly or annual operational water quality sampling.

(ii) Operational water quality. The operational water quality monitoring is conducted during the operation, closure, and post-closure periods of the facility must be described. The operational water quality monitoring must be designed to distinguish facility derived contamination from the existing water quality at the site using the trigger values established pursuant to item (f)(9)(i)(*b*)(*4*)(*ii*) of this section. The minimum requirements for operational water quality monitoring are:

(a) sampling and analysis must be performed at least quarterly, once a year for baseline parameters and three times for routine parameters. The baseline sampling event must occur at the same time each year;

(b) the department may approve phased sampling as facility cells are constructed. The sampling of the phased monitoring points must begin at least one year prior to waste deposition in the newly constructed cells or as approved by the department;

(c) the department may allow a facility to reduce its monitoring from quarterly to semi-annually if the facility can meet the following conditions:

(1) the secondary leachate collection and removal system demonstrates conformance with the allowable leakage rate requirements of section 363-7.1(f)(7) of this Part;

(2) the facility has compiled at least five years of operational water quality data;

(3) the department is satisfied that the facility has not contaminated groundwater;

(4) the groundwater flow velocity is not excessive, flow direction has not changed significantly, and hydrogeologic conditions at the site support the operator’s position that it can be adequately monitored; and

(5) the facility must monitor semi-annually for baseline parameters;

(d) the department may allow the omission of the winter sampling round once a complete understanding of water chemistry has been obtained and the facility demonstrates an acceptable liner performance to the department;

(e) operational water quality analysis must include at least those parameters specified in the Water Quality Analysis Tables in subdivision (h) of this section for routine and baseline parameters. The department may modify these tables before granting a permit for the facility, or during the duration of the permit, based on the leachate composition. If subsequent leachate compositions vary or if the waste disposed of at the facility changes, the department may adjust analytical requirements accordingly;

(f) within 90 days of completing the quarterly field sampling activities, the owner or operator must determine if a significant increase has occurred for any parameter at any monitoring well. A significant increase has occurred if the water quality result for a parameter exceeds the trigger value for that parameter established pursuant to item (f)(9)(i)(*b*)(*4*)(*ii*) of this section. For parameters which do not have a statistical trigger value because pre-operational and upgradient data are limited to non-detects, detection of the parameter for the first time in a monitoring point is considered a significant increase;

(g) if the owner or operator determines, pursuant to clause (*e*) of this subparagraph, at any monitoring well that there is a significant increase for one or more of the parameters during field sampling for the routine or baseline parameters, excluding the field parameters, the owner/operator:

(1) must, within 14 days of this finding, notify the department indicating which parameters have shown significant increases; and

(2) must sample and analyze all monitoring points, or an approved subset, for the baseline parameters during the next quarterly sampling event. Subsequent sampling and analysis for baseline parameters must be conducted at least semiannually until the significant increase is determined not to be facility derived or the department determines monitoring is not needed to protect public health and the environment; or

(3) may attempt to demonstrate to the department that a source other than the facility caused the contamination or that the significant increase resulted

from error in sampling or analysis, or from natural variation in groundwater quality. This demonstration may include one or more verification samples, collected from the affected monitoring point and analyzed for the parameter in question. A narrative documenting this demonstration must be included with the quarterly monitoring report, or separately submitted to the department for review and approval. If a successful demonstration is made, documented and approved by the department, the owner or operator may continue operational water quality monitoring as specified in this clause;

(h) if the owner or operator determines, pursuant to clause (*f*) of this subparagraph, that there is a significant increase for one or more of the parameters during two successive monitoring events at any monitoring well, the owner or operator:

(1) must, within 14 days of this finding, notify the department indicating which parameters have shown significant increases; and

(2) must implement a contingency monitoring program meeting the requirements of subparagraph (iii) of this paragraph within 90 days.

(iii) Contingency water quality. A contingency water quality monitoring, as described in this paragraph, which must be conducted when a significant increase over the existing water quality value has been detected pursuant to clause (f)(9)(ii)(*f*) of this paragraph for one or more of the routine or baseline parameters listed in the Water Quality Analysis Tables in subdivision (h) of this section. All contingency water quality monitoring plans are subject to department approval, and must include the following:

(a) within 90 days of triggering a contingency water quality monitoring program, the owner or operator must sample and analyze the groundwater for the expanded parameters listed in the Water Quality Analysis Tables in subdivision (h) of this section. A minimum of one sample from each monitoring well (upgradient and downgradient), or a selected subset, must be collected and analyzed during this sampling. If any constituents are detected in the downgradient wells at concentrations exceeding the applicable trigger values as a result of the expanded parameter analysis, a minimum of two independent samples from each of the sample wells must be collected within 30 days of obtaining the results of the expanded parameter analysis and analyzed for the detected constituents. These samples must be collected within two weeks of each other and then compared to the existing water quality

database established pursuant to subparagraph (f)(9)(i) of this section. If an increase in the existing water quality values in the upgradient wells is indicated by this comparison, the existing water quality values for these parameters must be revised to reflect the newly acquired upgradient contingency monitoring data within each hydrogeologic flow regime. The department may delete any of the expanded parameters if it can be shown that the removed parameters are not reasonably expected to be in, or derived from, the waste contained in the landfill based on the leachate sampling being performed pursuant to subparagraph (f)(8)(iii) of this section; and

(b) after obtaining the results from the initial or subsequent sampling required in subparagraph (i) of this paragraph, the owner or operator must:

(1) within 14 days, notify the department to identify the expanded parameters that have exhibited a significant increase from the existing water quality value;

(2) within 90 days, and on a quarterly basis thereafter, resample all wells, conduct analyses for all baseline parameters, and for those additional expanded parameters that exhibit significant increases. In addition, the owner or operator must sample and conduct analyses annually on all wells for the expanded parameters. At least one sample from each upgradient and downgradient well must be collected and analyzed during these sampling events. The department may reduce the requirements of this clause based on-site-specific conditions; and

(3) establish groundwater protection standards for all parameters that exceed trigger values calculated in accordance with item (f)(9)(i)(*b*)(*4*)(*i*) of this paragraph. The groundwater protection standards must be established in accordance with clause (*c*) of this subparagraph.

(4) if the concentrations of any of the expanded parameters are shown to be at or below the applicable trigger values for two consecutive sampling events, the owner or operator must notify the department of this finding and, if approved by the department, may remove that parameter from the contingency water quality monitoring program. If the concentrations of all the parameters are shown to be below the applicable trigger values for two consecutive sampling events, then the owner or operator must notify the department and, if approved by the department,

may return to operational water quality monitoring.

(5) if the concentrations of any expanded parameters are above the applicable trigger values, but all concentrations are below the groundwater protection standard established under clause (c) of this subparagraph, the owner/operator must continue contingency monitoring.

(6) if one or more parameters are detected at levels above the groundwater protection standard established under clause (*c*) of this subparagraph in any sampling event, the owner or operator must notify the department within 24 hours to identify the expanded parameters that have exceeded the groundwater protection standard, and notify appropriate local government officials within seven days of detection. The owner or operator must also:

(i) demonstrate that a source other than the facility caused the contamination, or that the significant increase resulted from error in sampling or analysis, or from natural variation in groundwater quality. This report must be submitted for approval by the department. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the contingency water quality monitoring program pursuant to subparagraph (f)(9)(iii) of this section, and may return to operational monitoring if the expanded parameters are at or below the applicable trigger values established pursuant to item (f)(9)(i)(*b*)(*4*)(*ii*) of this section. Unless and until a successful demonstration is made, the owner or operator must comply with subclause (*6*) of this clause, including initiating an assessment of corrective measures; or

(ii) comply with the following:

(a) characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(b) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and establish the existing water quality for this well;

(c) notify all persons who own land or reside on land that is directly over or within 500 feet downgradient of any part of the plume of contamination if contaminants have migrated off-site as indicated by sampling of wells in accordance with subclause (*1*) of this clause; and

(d) initiate an assessment of corrective measures pursuant to the provisions of Subpart 363-10 of this Part;

(c) the owner or operator must establish a groundwater protection standard for each parameter detected above its statistical trigger value in the groundwater. The groundwater protection standards are:

(1) for parameters for which a maximum contaminant level (MCL) has been established in 40 CFR Part 141, as incorporated by reference in section 360.3 of this Title, or for which a standard has been established pursuant to Part 701, 702, or 703 of this Title, the MCL or the standard established under this Title for that constituent, whichever is more stringent;

(2) for parameters for which MCLs or standards have not been established, the trigger value for the parameter established from wells in accordance with item (f)(9)(i)(*b*)(*4*)(*ii*) of this paragraph; or

(3) for parameters for which the trigger value established pursuant to item (f)(9)(i)(*b*)(*4*)(*ii*) of this section is higher than the MCL or standard, the trigger value.

(10) Reporting requirements. Unless more rapid reporting is required to address an imminent environmental or public health concern, the owner or operator of the facility must report all water quality monitoring results to the department within 90 days of the conclusion of the sample collection. The report must include:

(i) a table showing the sample collection date, the analytical results (including all peaks even if below method detection limits [MDLs]), designation of upgradient wells and location number for each environmental monitoring point sampled, potentiometric data, applicable water quality standards, and groundwater protection standards if established, MDLs, and Chemical Abstracts Service (CAS) numbers for all parameters;

(ii) tables or graphical representations comparing current water quality with existing water quality and with upgradient water quality. These comparisons may

include piper diagrams, stiff diagrams, tables, or other analyses;

(iii) a summary of the contraventions of State water quality standards, significant increases in concentrations above existing water quality, any exceedances of groundwater protection standards, discussion of results, and any proposed modifications to the sampling and analysis schedule necessary to meet the requirements of paragraph (3) of this subdivision;

(iv) all AQA/AQC documentation required pursuant to subdivision (g) of this section must be submitted to the department in a form acceptable to the department;

(v) the annual report must contain a summary of the water quality information presented in subparagraphs (ii) and (iii) of this paragraph with special note of any changes in water quality which have occurred throughout the year;

(vi) the data quality assessment report required pursuant to paragraph (g)(5) of this section;

(vii) an updated historical water quality monitoring table for each parameter that has been detected at least once at one or more monitoring points. Each table must include a column for each monitoring point, a row for each sampling date, detected concentrations, data qualifiers, detection limits associated with each non-detect, and summary statistics including, but not limited to means, standard deviations, medians, 10th and 90th percentiles. Submission of this table may be limited to the annual monitoring report;

(viii) a graph showing time versus concentration for each parameter that has exceeded a groundwater quality standard or a trigger value at each affected monitoring point. Submission of these graphs may be limited to the annual monitoring report; and

(ix) updated groundwater contour maps and an evaluation of landfill operation impacts on groundwater elevations and flow patterns. Submission of these maps may be limited to the annual monitoring report, unless otherwise required by the department

(g) Site analytical plan.

The site analytical plan must describe the method of sample collection and preservation, chain of custody documentation, analyses to be performed, analytical methods, data quality objectives, procedures for corrective actions, and procedures for data reduction, validation and reporting. The site analytical plan will pertain to existing water quality monitoring programs, operational water quality monitoring programs, and a contingency water quality monitoring program that specifies trigger mechanisms for its initiation. The site analytical plan must comply with the following:

(1) Data quality objectives.

(i) The data quality objectives for the data generation activity must be established prior to the initiation of any sampling.

(ii) The data quality objectives must define the goals of each phase of the water quality monitoring program, including, but not limited to, the following:

(a) reasons for the analytical program;

(b) identification of any regulatory programs and standards applicable to the analytical program; and

(c) minimum detection limits for each of the parameters listed in the Water Quality Analysis Tables.

(iii) The data quality objectives must be the basis for the development of all other portions of the site analytical plan.

(2) Analytic quality assurance (AQA)/analytic quality control (AQC). The site analytical plan must include a discussion of the AQA/AQC for the sampling program associated with the facility and must be sufficient to ensure that the data generated by the sampling and analysis activities are of a quality commensurate with their intended use and the requirements of the department. The discussion must detail the AQA/AQC goals and protocols for each type of environmental monitoring to be performed at the facility. Elements must include a discussion of the quality objectives of the project, enumeration of AQC procedures to be followed, and reference to the specific standard operating procedures that will be followed for all aspects of the environmental monitoring program.

(3) Field sampling procedures.

(i) All field sampling procedures must be described in detail in the site analytical plan. All field quality control procedures must be described including types and frequency of field quality control samples to be collected (*e.g.*, field blanks, trip blanks, field duplicates, reference materials and material blanks).

(ii) All samples must be collected and stored in the order of the parameter's volatilization sensitivity using methods, consistently applied, which ensure sample integrity.

(iii) All sampling equipment must be constructed of inert components designed to obtain samples with minimal agitation and contact with the atmosphere; be cleaned and protected during transport to avoid contamination; and checked before use. Dedicated equipment must be constructed of appropriate inert components and must be appropriate for the types of sampling to be performed.

(iv) Samples must be properly preserved and delivered to the laboratory with proper chain of custody within all appropriate holding times for the parameters to be analyzed.

(v) The sampling procedures and frequencies must be protective of public health and the environment.

(vi) Monitoring well sampling techniques must be consistently performed each time a well is

sampled, and must comply with the following:

(a) In areas where the presence of explosive or organic vapors is suspected, ambient air in the well must be checked for their presence before the well is evacuated.

(b) For wells with documented contamination, where contamination by non-aqueous phase liquids may be present, standing water in the well must be checked for immiscible layers or other contaminants that are lighter or heavier than water (floaters or sinkers). If present, floaters or sinkers must be sampled and analyzed separately by a method described in the site analytical plan.

(c) Evacuation of the well must replace stagnant water in the well and the sand pack with fresh water representative of the formation. Evacuation methods, including pumping rate, depth of pump intake, and method of determining sufficiency of evacuation must be consistently applied each time the well is sampled. Evacuation methods must create the least possible turbidity in the well. Where the static water level in the well is above the top of the sand pack, the water level should not be lowered below the top of the sand pack during purging whenever feasible. Evacuated water must be properly managed.

(d) The proposed evacuation methods to be used at the facility must be described in the environmental monitoring plan. All alternative evacuation techniques proposed for the facility wells must be identified for each well.

(e) After evacuation of the well, volatile organic samples must be collected.

(f) Field analysis must be performed after volatile organic samples have been collected, either within the borehole using a probe or from the next sample collected. All field test equipment must be calibrated at the beginning of each sampling day and checked and recalibratedaccording to the manufacturer's specifications. Calibration data must be reported with the analytical results.

(g) Groundwater samples must not be filtered, except when due to site specific conditions, sample turbidity cannot be reduced to 50 nephelometric turbidity units (NTUs) or less by good sampling technique or well redevelopment, the department may approve collection of both filtered and unfiltered samples for analyses of the inorganic parameters. All other required analyses will be on the unfiltered samples.

(vii) Surface water and sediment sampling techniques must be consistently applied to all samples, and must comply with the following:

(a) Surface water samples collected from shallow water should not include bottom sediment. In shallow moving water, downstream samples must be collected first to avoid disturbances from the bottom sediments.

(b) Each water body over three feet deep that is sampled must be checked for stratification, and each stratum must be checked for contamination using field parameters. Each stratum showing evidence of contamination must be separately analyzed. If no stratum shows evidence of contamination, a composite sample having equal parts of water from each stratum must be analyzed.

(c) Sediment samples may be taken at each location from which surface water samples are taken, and should consist of the upper five centimeters of sediment.

(viii) Water supply well sampling methods must be consistently applied each time a well is sampled and must comply with the following:

(a) If possible, samples should be collected directly from the well so as to yield water representative of the formations supplying the well. If this is not possible, samples must be collected as near to the well as possible and before the water is softened, filtered, or heated.

(b) If possible, samples should be collected before the water enters the pressure tank; otherwise the water must run long enough to flush water stored in the tank and pipes.

(c) Before sampling, water must be evacuated from the well to ensure a fresh sample of aquifer water.

(d) If samples are collected from a tap, aerators, filters, or other devices must be removed before sampling.

(ix) Corrective action. Standard operating procedures must be established describing the procedures used to identify and correctdeficiencies in the sample collection process. The standard operating procedure must specify that each corrective action be documented in the sampling report submitted to the department, with a description of the deficiency, the corrective action taken, and the persons responsible for implementing the corrective action. Any alterations to the field sampling procedures must be included as an amendment to the site analytical plan.

(4) Laboratory procedures.

(i) Laboratory analyses must be performed by a laboratory currently certified under the appropriate approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).

(ii) The site analytical plan must contain the standard operating procedures of all laboratory activities related to the environmental monitoring plan. Any revisions to these standard operating procedures must be documented. Standard operating procedures must be available for the following, at a minimum:

(a) receipt, storage and handling of samples;

(b) sample scheduling to ensure that holding time requirements are met;

(c) reagent/standard preparation;

(d) general laboratory techniques (*e.g.*, glassware cleaning procedures, operation of analytical balances, pipetting techniques and use of volumetric glassware);

(e) description of how analytical methods are actually to be performed including precise reference to the analytical method used, and not a simple reference to standard methods;

(f) standard operating procedures for equipment calibration and maintenance to ensure that laboratory equipment and instrumentation are in working order, including, but not limited to procedures and schedules for calibration and maintenance in accordance with manufacturer's specifications; and

(g) for a corrective action, standard operating procedures must be established for identifying and correcting deficiencies in the laboratory procedures. The standard operating procedure must specify that each corrective action be documented in the sampling event report submitted to the department with a description of the deficiency, the corrective action taken, and the person responsible for implementing the corrective action. Any alterations to the laboratory procedures must be included as an amendment to the site analytical plan.

(5) Data quality assessment. At the conclusion of each sampling event and analysis of the samples collected, data quality assessment must occur. A data quality assessment report must be submitted with the results from each sampling event. Data quality assessment must occur in two phases – data validation and data usability analysis.

(i) Data validation.

(a) For those sampling events for which only routine parameters are analyzed, the required data validation may be performed by the laboratory that performed the sample analyses.

(b) For those sampling events in which groundwater samples are analyzed for baseline or expanded parameters, the data validation must be performed by a person with experience with similar validation projects and who is not affiliated with the

laboratory that performed the analyses and who is acceptable to the department.

(c) The data validation must be performed on all analytical data for the facility at a rate acceptable to the department, but not less than five percent of the data generated, and must consist, at a minimum, of the following:

(1) field records and analytical data are reviewed to determine whether the data are accurate and defensible. All AQA/AQC information must be reviewed along with any corrective actions taken during that sampling event; and

(2) all data summaries must be clearly marked to identify any data that are not representative of environmental conditions at the site, or that were not generated in accordance with the site analytical plan.

(ii) Data usability analysis.

(a) The data usability analysis must be performed on all analytical data generated by the requirements for this Part for the facility and must consist of the following:

(1) an assessment to determine if the data quality objectives were met;

(2) for consistency, comparison of the analytical data with the results from previous sampling events;

(3) evaluation of field duplicate results to indicate the samples are representative;

(4) comparison of the results of all field blanks, trip blanks, equipment rinstate blanks, and method blanks with full data sets to provide information concerning contaminants that may have been introduced during sampling, shipping, or analysis;

(5) evaluation of matrix effects to assess the performance of the analyticalmethod with respect to the sample matrix, and determine whether the data have been biased high or low due to matrix effects;

(6) integration of the field and laboratory data with geological, hydrogeological, and meteorological data to provide information about the extent of contamination, if it occurs; and

(7) comparison of precision, accuracy, representativeness, comparability, completeness, and defensibility of the data generated with that required to meet the data quality objectives established in the site analytical plan.

(h) Water quality analysis tables.

The water quality analysis tables in this section list the routine, baseline, and expanded parameters for analysis of all monitoring samples. The department may modify the parameters for analysis based on the location of the landfill or site-specific characteristics of waste disposed at the landfill.

TABLE 1: ROUTINE PARAMETERS[1]

Common Name (and CAS number, as appropriate)[2]		
Field Parameters:	Leachate Indicators:	Inorganic Parameters (total):
Static water level (in wells and sumps)[3]	Total Kjeldahl Nitrogen	Arsenic
Specific Conductance	Ammonia (7664-41-7)	Cadmium
Temperature	Nitrate	Calcium
Floaters or Sinkers[4]	Chemical Oxygen Demand	Iron
Temperature	Biochemical Oxygen Demand (BOD_5)	Lead
pH	Total Organic Carbon	Magnesium
Eh	Total Dissolved Solids	Manganese
Dissolved Oxygen[5]	Sulfate	Potassium
Field Observations[6]	Alkalinity	Sodium
Turbidity	Phenols (108-95-2)	
	Chloride	
	Bromide (24959-67-9)	
	Total hardness as $CaCO_3$	

[1] This list contains parameters for which possible analytical procedures are provided in: *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. *Methods for Chemical Analysis of Water and Wastes*, USEPA-600/4-79-020, March 1983, incorporated by reference in section 360.3 of this Title.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals. “Total” indicates all species in the groundwater that contain this element.

[3] Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

[4] Any floaters or sinkers found must be analyzed separately for baseline parameters.

[5] Surface water only.

[6] Any unusual conditions (colors, odors, surface sheens, etc.) noticed during well development, purging, or sampling must be reported.

PERMIT APPLICATION REQUIREMENTS
363-4.6(h) TABLE 2A: BASELINE PARAMETERS

TABLE 2A: BASELINE PARAMETERS: Field Parameters, Leachate Indicators, and Inorganic Parameters[1]

Common Name (and CAS number, as appropriate)[2]		
Field Parameters:	Leachate Indicators:	Inorganic Parameters (total unless otherwise noted):
Static water level (in wells and sumps)[3]	Total Kjeldahl Nitrogen	Aluminum
Specific Conductance	Ammonia (7664-41-7)	Antimony
Temperature	Nitrate	Arsenic
Floaters or Sinkers[4]	Chemical Oxygen Demand	Barium
Temperature	Biochemical Oxygen Demand (BOD_5)	Beryllium
pH	Total Organic Carbon	Cadmium
Eh	Total Dissolved Solids	Calcium
Dissolved Oxygen[5]	Sulfate	Chromium
Field Observations[6]	Alkalinity	Chromium (Hexavalent)[7]
Turbidity	Phenols (108-95-2)	Cobalt
	Chloride	Copper
	Bromide (24959-67-9)	Cyanide
	Total hardness as $CaCO_3$	Iron
	Color	Lead
	Boron (7440-42-8)	Magnesium
		Manganese
		Mercury
		Nickel
		Potassium
		Selenium
		Silver
		Sodium
		Thallium
		Vanadium
		Zinc

Footnotes

[1] This list contains parameters for which possible analytical procedures are provided in: *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. *Methods for Chemical Analysis of Water and Wastes*, USEPA-600/4-79-020, March 1983, incorporated by reference in section 360.3 of this Title.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals. “Total” indicates all species in the groundwater that contain this element.

[3] Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

[4] Any floaters or sinkers found must be analyzed separately for baseline parameters.

[5] Surface water only.

[6] Any unusual conditions (colors, odors, surface sheens, etc.) noticed during well development, purging, or sampling must be reported.

[7] The department may waive the requirement to analyze hexavalent chromium provided that total and hexavalent and trivalent chromium values do not exceed 0.05 mg/l.

TABLE 2B: BASELINE PARAMETERS: Organic Parameters[1]

Common Name (and CAS number, as appropriate)[2]		
Organic Parameters:		
Acetone (67-64-1)	1,1-Dichloroethane; Ethylidene chloride (75-34-3)	Styrene (100-42-5)
Acrylonitrile (107-13-1)	1,2-Dichloroethane; Ethylene dichloride (107-06-02)	1,1,1,2-Tetrachloroethane (630-20-6)
Benzene (71-43-2)	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride (75-35-4)	1,1,2,2-Tetrachloroethane (79-34-5)
Bromochloromethane (74-97-5)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene (156-59-2)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene (127-18-4)
Bromodichloromethane (75-27-4)	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene (156-60-2)	Toluene (108-88-3)
Bromoform; Tribromomethane (75-25-2)	1,2-Dichloropropane; Propylene dichloride (78-87-5)	1,1,1-Trichloroethane; Methylchloroform (71-55-6)
Carbon disulfide (75-15-0)	cis-1,3-Dichloropropene (10061-01-5)	1,1,2-Trichloroethane (79-00-5)
Carbon tetrachloride (56-23-5)	trans-1,3-Dichloropropene (10061-02-6)	Trichloroethylene; Trichloroethene (79-01-6)
Chlorobenzene (108-90-7)	Ethylbenzene (100-41-4)	Trichlorofluoromethane; CFC-11 (75-69-4)
Chloroethane; Ethyl chloride (75-00-3)	2-Hexanone; Methyl butyl ketone (591-78-6)	1,2,3-Trichloropropane (96-18-4)
Chloroform; Trichloromethane (67-66-3)	Methyl bromide; Bromomethane (74-83-9)	Vinyl acetate (108-05-4)
Dibromochloromethane; Chlorodibromomethane (124-48-1)	Methyl chloride; Chloromethane (74-87-3)	Vinyl chloride; Chloroethene (75-01-4)
1,2-Dibromo-3-chloropropane; DBCP (96-12-8)	Methylene bromide; Dibro-momethane (74-95-3)	Xylenes (1330-20-7)
1,2-Dibromoethane; Ethylene dibromide; EDB (106-93-4)	Methylene chloride; Dichloromethane (75-09-2)	
o-Dichlorobenzene; 1,2-Dichlorobenzene (95-50-1)	Methyl ethyl ketone; MEK; 2-Butanone (78-93-3)	
p-Dichlorobenzene; 1,4-Dichlorobenzene (106-46-7)	Methyl Iodide; Iodomethane (74-88-4)	
trans-1,4-Dichloro-2-butene (110-57-6)	4-Methyl-2-pentanone; Methyl isobutyl ketone (108-10-1)	

Footnotes

[1] This list contains parameters for which possible analytical procedures are provided in: *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998) document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. *Methods for Chemical Analysis of Water and Wastes*, USEPA-600/4-79-020, March[,] 1983, incorporated by reference in 360.3 of this Title.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

TABLE 3A: EXPANDED PARAMETERS: Field Parameters, Leachate Indicators, Radionuclides, and Inorganic Parameters[1]

Common Name (and CAS number, as appropriate)[2]			
Field Parameters:	Leachate Indicators:	Inorganic Parameters: (total unless otherwise noted):	Radionuclides[3]
Static water level (in wells and sumps)[4]	Total Kjeldahl Nitrogen	Aluminum	Radium-226 per EPA 903.1
Specific Conductance	Ammonia (7664-41-7)	Antimony	Radium-228 per EPA 904.0
Temperature	Nitrate	Arsenic	Total Uranium per EPA 908.0
Floaters or Sinkers[5]	Chemical Oxygen Demand	Barium	
Temperature	Biochemical Oxygen Demand (BOD_5)	Beryllium	
pH	Total Organic Carbon	Cadmium	
Eh	Total Dissolved Solids	Calcium	
Dissolved Oxygen[6]	Sulfate	Chromium	
Field Observations[7]	Alkalinity	Chromium (Hexavalent)[8]	
Turbidity	Phenols (108-95-2)	Cobalt	
	Chloride	Copper	
	Bromide (24959-67-9)	Cyanide	
	Total hardness as $CaCO_3$	Iron	
	Color	Lead	
	Boron (7440-42-8)	Magnesium	
		Manganese	
		Mercury	
		Nickel	
		Potassium	
		Selenium	
		Silver	
		Sodium	
		Thallium	
		Tin	
		Vanadium	
		Zinc	

Footnotes

[1] This list contains parameters for which possible analytical procedures are provided in: *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998) document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. *Methods for Chemical Analysis of Water and Wastes*, USEPA-600/4-79-020, March 1983, incorporated by reference in 360.3 of this Title. *Prescribed Procedures for Measurement of Radioactivity in Drinking Water*, USEPA-600/4-80-032, August 1980, incorporated by reference in section 360.3 of this Title.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals. “Total” indicates all species in the groundwater that contain this element.

[3] Two sets of samples must be collected: one filtered and one unfiltered. Filtered samples must be filtered using a 0.45 micron filter via standard techniques.

[4] Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

[5] Any floaters or sinkers found must be analyzed separately for baseline parameters.

[6] Surface water only.

[7] Any unusual conditions (colors, odors, surface sheens, etc.) noticed during well development, purging, or sampling must be reported.

[8] The department may waive the requirement to analyze hexavalent chromium provided that total and hexavalent and trivalent chromium values do not exceed 0.05 mg/l.

TABLE 3B: EXPANDED PARAMETERS: Organic Parameters[1]

Common Name (and CAS number, as appropriate)[2]		
Organic Parameters:		
Acenaphthene (83-32-9)	2,4-Dichlorophenol (120-83-2)	Naphthalene (91-20-3)
Acenaphthylene (208-96-8)	2,6-Dichlorophenol (87-65-0)	1,4-Naphthoquinone (130-15-4)
Acetone (67-64-1)	1,2-Dichloropropane; Propylene dichloride (78-87-5)	1-Naphthylamine (134-32-7)
Acetonitrile; Methyl cyanide (75-05-8)	1,3-Dichloropropane; Trimethylene dichloride (142-28-9)	2-Naphthylamine (91-59-8)
Acetophenone (98-86-2)	2,2-Dichloropropane; Isopropylidene chloride (594-20-7)	o-Nitroaniline; 2-Nitroaniline (88-74-4)
2-Acetylaminofluorene; 2-AAF (53-96-3)	1,1-Dichloropropene (563-58-6)	m-Nitroaniline; 3-Nitroaniline (99-09-2)
Acrolein (107-02-8)	cis-1,3-Dichloropropene (10061-01-5)	p-Nitroaniline; 4-Nitroaniline (100-01-6)
Acrylonitrile (107-13-1)	trans-1,3-Dichloropropene (10061-02-6)	Nitrobenzene (98-95-3)
Aldrin (309-00-2)	Dieldrin (60-57-1)	o-Nitrophenol 2-Nitrophenol (88-75-5)
Allyl chloride (107-05-1)	Diethyl phthalate (84-66-2)	p-Nitrophenol; 4-Nitrophenol (100-02-7)
4- aminobiphenyl (92-67-1)	0,0-Diethyl 0-2-pyrazinyl	N-Nitrosodi-n-butylamine (924-16-3)
Anthracene (120-12-7)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene (156-59-2)	
N-Nitrosodiethylamine (55-18-5)		
Benzene (71-43-2)	trans-1,2-Dichloroethylene (156-60-2)	N-Nitrosodimethylamine (62-75-9)
Benzo[a]anthracene; Benzanthracene (56-55-3)	Phosphorothioate; Thionazin (297-97-2)	N-Nitrosodiphenylamine (86-30-6)
Benzo[b]fluoranthene (205-99-2)	Dimethoate (60-51-5)	N-Nitrosodipropylamine; N-Nitroso-N-dipropyl-amine; Di-n-propylni-trosamine (621-64-7)
Benzo[k]fluoranthene (207-08-9)	p-(Dimethylamino)azobenzene (60-11-7)	N-Nitrosomethylethalamine (10595-95-6)
Benzo[ghi]perylene (191-24-2)	7,12-Dimethylbenz[a]anthracene (57-97-6)	N-Nitrosopiperidine (100-75-4)

Benzo[a]pyrene (50-32-8)	3,3'-Dimethylbenzidine (119-93-7)	N-Nitrosopyrrolidine (930-55-2)
Benzyl alcohol (100-51-6)	2,4-Dimethylphenol; m-Xylenol (105-67-9)	5-Nitro-o-toluidine (99-55-8)
alpha-BHC (319-84-6)	Dimethyl phthalate (131-11-3)	Parathion (56-38-2)
beta-BHC (319-85-7)	m-Dinitrobenzene (99-65-0)	Pentachlorobenzene (608-93-5)
delta-BHC (319-86-8)	4,6-Dinitro-o-cresol 4,6- Dinitro-2-methylphenol (534-52-1)	Pentachloronitrobenzene (82-68-8)
gamma-BHC; Lindane (58-89-9)	2,4-Dinitrophenol (51-28-5)	Pentachlorophenol (87-86-5)
Bis(2-chloroethoxy)methane (111-91-1)	2,4-Dinitrotoluene (121-14-2)	Phenacetin (62-44-2)
Bis(2-chloroethyl) ether; Dichloroethyl ether (111-44-4)	2,6-Dinitrotoluene (606-20-2)	Phenanthrene (85-01-8)
Bis-(2-chloro-1-methyl-ethyl)ether; 2,2'-Dichlorodiisopropyl ether; DCIP[3]	Dinoseb; DNBP; 2-sec- Butyl-4,6-dinitrophenol (88-85-7)	Phenol (108-95-2)
Bis(2-ethylhexyl)phthalate (117-81-7)	Di-n-octyl phthalate (117-84-0)	p-Phenylenediamine (106-50-9)
Bromochloromethane (74-97-5)	Diphenylamine (122-39-4)	Phorate (298-02-2)
Bromodichloromethane (75-27-4)	Disulfoton (298-04-4)	Polychlorinated biphenyls; PCBs; Aroclors[4]
Bromoform (75-25-2)	Endosulfan I (959-98-8)	Polychlorinated dibenzo-p-dioxins; PCDDs[5]
4-Bromophenyl phenyl ether (101-55-3)	Endosulfan II (33213-65-9)	Polychlorinated dibenzo- furans; PCDFs[6]
Butyl benzyl phthalate; Benzyl butyl phthalate (117-81-7)	Endosulfan sulfate (1031-07-8)	Pronamide (23950-58-5)
Carbon disulfide (75-15-0)	Endrin (72-20-8)	Propionitrile; Ethyl cyanide (107-12-0)
Carbon tetrachloride (56-23-5)	Endrin aldehyde (7421-93-4)	Pyrene (129-00-0)
Chlordane[7]	Ethylbenzene (100-41-4)	Safrole (94-59-7)
p-Chloroaniline (106-47-8)	Ethyl methacrylate (97-63-2)	Silvex; 2,4,5-TP (93-72-1)
Chlorobenzene (108-90-7)	Ethyl methanesulfonate (62-50-0)	Styrene (100-42-5)

Chlorobenzilate (510-15-6)	Famphur (52-85-7)	2,4,5-T; 2,4,5-trichloro-phenoxyacetic acid (93-76-5)
p-Chloro-m-cresol; 4-Chloro-3- methylphenol (59-50-7)	Fluoranthene (206-44-0)	1,2,4,5-Tetrachlorobenzene (95-94-3)
Chloroethane; Ethyl chloride (75-00-3)	Fluorene (86-73-7)	2,3,7,8-Tetrachlorodi- benzo-p-dioxin; 2,3,7,8-TCDD (1746-01-6)
Chloroform; Trichloromethane (67-66-3)	Heptachlor (76-44-8)	1,1,1,2-Tetrachloroethane (630-20-6)
2-Chloronaphthalene (91-58-7)	Heptachlor epoxide (1024-57-3)	1,1,2,2-Tetrachloroethane (79-34-5)
2-Chlorophenol (95-57-8)	Hexachlorobenzene (118-74-1)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene (127-18-4)
4-Chlorophenyl phenyl ether (7005-72-3)	Hexachlorobutadiene (87-68-3)	2,3,4,6-Tetrachlorophenol (58-90-2)
Chloroprene (126-99-8)	Hexachlorocyclopentadiene (77-47-4)	Toluene (108-88-3)
Chrysene (218-01-9)	Hexachloroethane (67-72-1)	o-Toluidine (95-53-4)
m-Cresol; 3-methylphenol (108-39-4)	Hexachloropropene (1888-71-7)	Toxaphene[8]
o-Cresol; 2-methylphenol (95-48-7)	2-Hexanone; Methyl butyl ketone (591-78-6)	1,2,4-Trichlorobenzene (120-82-1)
p-Cresol; 4-methylphenol (106-44-5)	Indeno(1,2,3-cd)pyrene (193-39-5)	1,1,1-Trichloroethane; Methylchloroform (71-55-6)
2,4-D; 2,4-Dichlorophen-oxyacetic acid (94-75-7)	Isobutyl alcohol (78-83-1)	1,1,2-Trichloroethane (79-00-5)
4,4'-DDD (72-54-8)	Isodrin (465-73-6)	Trichloroethylene; Trichloroethene (79-01-6)
4,4'-DDE (72-55-9)	Isophorone (78-59-1)	Trichlorofluoromethane; R-11 (75-69-4)
4,4'-DDT (50-29-3)	Isosafrole (120-58-1)	2,4,5-Trichlorophenol (95-95-4)
Diallate (2303-16-4)	Kepone (143-50-0)	2,4,6-Trichlorophenol (88-06-2)
Dibenz[a,h]anthracene (53-70-3)	Methacrylonitrile (126-98-7)	1,2,3-Trichloropropane (96-18-4)
Dibenzofuran (132-64-9)	Methapyrilene (91-80-5)	0,0,0-Triethyl phosphorothioate (126-68-1)
Dibromochloromethane; Chlorodibromomethane (124-48-1)	Methoxychlor (72-43-5)	sym-Trinitrobenzene (99-35-4)

1,2-Dibromo-3-chloro-propane; DBCP (96-12-8)	Methyl bromide; Bromomethane (74-83-9)	Vinyl acetate (108-05-4)
1,2-Dibromoethane; Ethylene dibromide; EDB (106-93-4)	Methyl chloride; Chloromethane (74-87-3)	Vinyl chloride; Chloroethene (75-01-4)
Di-n-butyl phthalate (84-74-2)	3-Methylcholanthrene (56-49-5)	Xylene (total)
o-Dichlorobenzene; 1,2-Dichlorobenzene (95-50-1)	Methyl ethyl ketone; MEK; 2-Butanone (78-93-3)	Per- and polyfluoroalkyl substances[9]
m-Dichlorobenzene; 1,3-Dichlorobenzene (541-73-1)	Methyl iodide; Iodomethane (74-88-4)	1,4-Dioxane (123-91-1)
p-Dichlorobenzene; 1,4-dichlorobenzene (106-46-7)	Methyl methacrylate (80-62-6)	
3,3'-Dichlorobenzidine (91-94-1)	Methyl methanesulfonate (66-27-3)	
trans-1,4-Dichloro- 2-butene (110-57-6)	2-Methylnaphthalene (91-57-6)	
Dichlorodifluoromethane; CFC 12 (75-71-8)	Methyl parathion; Parathion methyl (298-00-0)	
1,1-Dichloroethane; Ethyldidene chloride (75-34-3)	4-Methyl-2-pentanone; Methyl isobutyl ketone (108-10-1)	
1,2-Dichloroethane; Ethylene dichloride (107-06-2)	Methylene bromide; Dibromomethane (74-95-3)	
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride (75-35-4)	Methylene chloride; Dichloromethane (75-09-2)	

Footnotes

[1] This list contains parameters for which possible analytical procedures are provided in: *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*, EPA Publication SW-846 (Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), and IIIA (April 1998) document number 955-001-00000-1), incorporated by reference in section 360.3 of this Title. *Methods for Chemical Analysis of Water and Wastes*, USEPA-600/4-79-020, March 1983, incorporated by reference in section 360.3 of this Title.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3] This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2"-oxybis[2]-chloro- (CAS RN 39638-32-9).

[4] Polychlorinated biphenyls (1336-36-3): This category contains congener chemicals, including constituents of Aroclor 1016 (12674-11-2), Aroclor 1221 (11104-28-2), Aroclor 1232 (11097-69-1), and Aroclor 1260 (11096-82-5).

[5] Polychlorinated dibenzo-p-dioxins: This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins, pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins.

[6] Polychlorinated dibenzofurans: This category includes congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans.

[7] Chlordane: This entry includes alpha-chlordane (5103-71-9), beta-chlordane (5103-74-2), gamma-chlordane (5566-34-7), and constituents of chlordane (57-74-9; 12789-03-6).

[8] Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), *i.e.*, chlorinated camphene.

[9] Per- and polyfluoroalkyl substances (PFAS): This category contains congener chemicals, including but not limited to perfluorooctanoic acid, perfluorooctanesulfonic acid, perfluorononanoic acid, perfluorohexanesulfonic acid, perfluoroheptanoic acid, perfluorobutanesulfonic acid.

(i) Leachate management plan.

The leachate management plan must include:

(1) a description of how the landfill will be constructed, operated, and closed in a manner that minimizes the generation of leachate, except in those cases where the department has approved the recirculation of leachate for waste mass stabilization enhancement, and how the migration of leachate into surface water or groundwater will be prevented;

(2) a description of operational methods to minimize the occurrence of perched leachate trapped above the leachate collection and removal system and surface seeps of leachate from above-grade landfill operations;

(3) a schedule for biennial video inspection and annual maintenance of the primary and secondary leachate collection and removal system;

(4) a schedule for the monitoring and recording of the secondary leachate collection and removal system flow data to determine the presence, quantity, nature and significance of any liquid detected;

(5) a discussion of the specific design and operational features related to the system, including leachate monitoring and sampling, locations of all leachate sampling points, alarm systems and maintenance, and any required back up equipment; and

(6) if leachate recirculation is proposed, the leachate management plan must include:

(i) a supporting geotechnical analysis evaluating the effect of leachate recirculation on the structural integrity and stability of the landfill's liner system, leachate collection and removal system, and waste mass;

(ii) a description of how increased landfill gas emissions and associated odors will be controlled;

(iii) a description of the methods and rate of leachate recirculation and addition;

(iv) procedures for recording the date and volume of recirculated leachate;

(v) a description of the operation, which addresses:

(a) the use of permeable operating cover or alternative operating cover to facilitate leachate distribution throughout the waste mass; and

(b) operational controls such as monitoring of surface seeps, liner system performance and excessive leachate head buildup, prevention of subsurface fires, odor control, and instruction for cessation of leachate recirculation and remediation of these conditions.

(j) Odor control plan.

The odor control plan must include:

(1) identification of all potential sources for odors and a description of the operational procedures and strategies to be followed to effectively control odors at the facility;

(2) procedures to be taken in the event of proposed waste volume increases or changes in waste characterization that may increase landfill gas emissions or odors;

(3) identification of the landfill personnel who would be responsible for implementation of the odor control plan; and

(4) operational and design-related recommendations that can be implemented upon detection of odor control problems, including impervious membranes and interim covers in conjunction with other landfill gas control methods. The odor control plan may include but not be limited to, gas control systems that are appropriately connected to the landfill liner system's primary leachate collection and removal system (including the drainage area on the landfill's side slopes), use of horizontal gas collection lines, or the rejection or mitigation of odiferous wastes that are determined to be contributing to off-site odors.

(k) Gas monitoring and emission control plan.

The gas monitoring and emission control plan must include:

(1) a description of the day-to-day operation of the landfill gas management system with respect to operation of odor and emission controls;

(2) a description of any air quality monitoring, including monitoring for fugitive landfill odor and air emissions;

(3) for a landfill with an appurtenant landfill gas-to-energy facility or other landfill gas recovery facility, a discussion of how the landfill's odor and air emission controls are integrated with a recovery facility; and

(4) a description of any applicable requirements pursuant to Part 208 of this Title as approved by EPA in the State Plan.

(l) Winter and inclement weather operation plan.

A description of how winter and inclement weather operations will be conducted, including identification of the specific actions to be taken to prevent frost action on the liner system in places where waste will not be placed within one year of construction certification approval.

(m) Residential drop-off operation plan.

A description of the operation of a residential drop-off area, if applicable, for non-commercial vehicles to unload waste and recyclables at an area other than the landfill working face.

(n) A radioactive waste detection plan.

The radioactive waste detection plan must include procedures for detecting radioactive material; operation and maintenance documents for radiation detectors which address proper equipment placement for effective operation and include setting of investigation alarm setpoint settings and calibration methods; and response procedures to be implemented if radioactive waste is detected.

(o) Emergency response plan.

An emergency response plan must include a description of, at a minimum, the actions to be taken in response to:

(1) uncontrolled explosive landfill gases detected on-site or beyond the property boundary;

(2) unexpected events during the construction and operation of the landfill gas management system, including the equipment to be utilized to maintain proper landfill gas venting and control when normal operations cease; and

(3) unexpected events during the subsequent construction and/or daily operation of the landfill's leachate collection and removal system.

(p) Conceptual closure, post-closure care, custodial care, and end use plan.

The conceptual closure, post-closure care, custodial care, and end use plan must include:

(1) a site plan that shows proposed final contours, property lines, storm water drainage system, streams and water courses, roads, structures and, if applicable, the groundwater and leachate treatment system, air pollution control system and any active landfill gas collection system;

(2) typical details of final cover system components and facility structures;

(3) a description of how the sequential closure of areas of the landfill is expected to progress in concert with the fill progression schedule, including effects of landfill reclamation activities if proposed;

(4) an estimate of the greatest number of landfill cells which, at any given point during the lifetime of the facility, will have received waste but not undergone final closure;

(5) an estimate of the maximum volume of waste and alternative operating cover that will be contained within the landfill;

(6) sufficient information upon which to estimate closure costs and post-closure and custodial care monitoring and maintenance costs. This information must be based upon the requirements of Subpart 363-9 of this Part, including a rolling 30-year post-closure care period, and must include estimates of:

(i) quantities and costs for each component of the final cover system, including related construction costs;

(ii) the anticipated length of the post-closure care period based on the types of wastes disposed and the criteria provided in section 363-9.6(a) of this Part;

(iii) post-closure operational, monitoring and maintenance costs including costs to replace system components based on predicted service life; and

(iv) custodial care monitoring and maintenance costs including costs to replace system components based on predicted service life; and

(7) a conceptual end use for the site, if proposed.

SUBPART 363-5

SITING REQUIREMENTS

Section 363-5.1 Siting requirements

Section 363-5.1 Siting requirements.

In addition to the requirements of section 360.8 of this Title, the following siting requirements apply to all new landfills and expansions of existing landfills regulated under this Part:

(a) Bedrock and unconsolidated deposits.

(1) Bedrock underlying the site must not be subject to rapid or unpredictable groundwater flow, unless it can be demonstrated to the department that a containment failure of the landfill would not result in contamination entering the bedrock system.

(2) Unconsolidated deposits: a minimum of 10 feet of unconsolidated deposits must exist beneath the proposed landfill site to minimize the migration of contaminants from the facility.

(i) At new landfill sites, these deposits must consist of low permeability soils with silty and clayey characteristics and with the ability to attenuate and absorb contaminants. Large-scale, permeable deposits, which could result in migration of contaminants off-site prior to detection and/or remediation, must not be present.

(ii) At existing landfill sites active on or after November 4, 1992 operating under and in compliance with a current permit or order on consent, there are no soil type restrictions provided the applicant demonstrates that the expansion-site will have no significant adverse impact on groundwater.

(b) The site must not be in proximity to any existing mines, caves or other anomalous features that may alter groundwater flow, unless it can be demonstrated to the department that a containment failure of the landfill would not result in contamination entering the features.

(c) Agricultural land.

(1) A new landfill or a lateral expansion of an existing landfill may not be located on property which:

(i) is taken through the exercise of eminent domain;

(ii) consists of more than 50 percent of agricultural soil group 1 or 2 (Land Classification System as certified by the New York State Commissioner of Agriculture and Markets); and

(iii) is within an agricultural district formed pursuant to the Agriculture and Markets Law, article 25-AA, sections 303 and 304.

(2) A new landfill or a lateral expansion of an existing landfill within an agricultural district may not be sited within an agricultural district unless compliance with the requirements of article 25-AA, section 305 of the

Agriculture and Markets Law has been demonstrated.

(d) Primary water supply aquifers, principal aquifers, and public water supplies.

(1) No new landfill or lateral or vertical expansion of an existing landfill may be constructed over primary water supply aquifers, principal aquifers, within a public water supply stabilized cone of depression area, or within a minimum distance of 500 feet to surface waters that are actively used as sources of municipal drinking water supply. In Nassau and Suffolk county, no person may construct or operate a new landfill or an expansion of an existing landfill, unless the department has made an affirmative determination that it will not pose a threat to groundwater quality.

(2) The required horizontal separation between deposited waste and primary water supply aquifers, principal aquifers, capture zones of public water supply stabilized cone of depression areas or surface waters that are actively used as sources of municipal drinking water supply must be sufficient to preclude contravention of groundwater standards in the aquifer and surface water standards in waters that are currently used as a source of municipal drinking water supply. In Nassau or Suffolk county, no person may construct or operate a new landfill or an expansion of an existing landfill, unless the department has made an affirmative determination that it will not pose a threat to groundwater quality.

(e) Aircraft safety.

(1) A landfill into which putrescible waste is to be disposed must not be sited closer than 10,000 feet from any area of an airport used or intended to be used for landing, taking off, or surface maneuvering of turbine-powered fixed-wing aircraft or 5,000 feet from any area of an airport used or intended to be used for landing, taking off, or surface maneuvering of piston-powered fixed-wing aircraft.

(2) A landfill into which putrescible waste is to be disposed which is located within five miles of any area of an airport used or intended to be used for landing, taking off, or surface maneuvering of aircraft must not, as determined by the Federal Aviation Administration, pose a potential bird or obstruction hazard to aircraft.

(3) The owner or operator of an existing landfill that is authorized to dispose of putrescible waste and that is located less than 10,000 feet from any area of an airport used or intended to be used for landing, taking off, or surface maneuvering of turbine powered fixed-wing aircraft or less than 5,000 feet from any area of an airport used or intended to be used for landing, taking off, or surface maneuvering of only piston powered fixed wing aircraft must provide in its permit renewal application documentation that the Federal Aviation Administration has determined that the facility does not pose a bird hazard to aircraft.

(4) A landfill containing only nonputrescible waste may be located less than 10,000 feet from any area of an airport used or intended to be used for landing, taking off, or surface maneuvering of turbine-powered fixed-wing aircraft or less than 5,000 feet from any area of an airport used or intended to

be used for landing, taking off, or surface maneuvering of only piston-powered fixed-wing aircraft, if the Federal Aviation Administration has determined that the landfill will not present a safety hazard to air traffic.

(5) The final elevation of a new landfill or expansion of an existing landfill must not extend more than 200 feet above the highest elevation of the land surface that existed prior to landfill development, unless the Federal Aviation Administration determines that the proposed fill height in excess of 200 feet will not present a safety hazard to air traffic.

(f) Unstable areas.

New landfills or expansions of existing landfills must not be located in unstable areas that are susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components designed to prevent releases from the landfill. These may include:

(1) areas having an active or substantial probability of mass movement where the movement of earth material at, beneath, or adjacent to the landfill may result in downslope transport of soil or rock by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides or flows, soil fluctuations, block sliding and rockfall; and

(2) areas where karst topography, with its characteristic surface and subterranean features, has developed as a result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrain include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(g) Unmonitorable or unremediable areas.

New landfills must be located at sites that will allow environmental monitoring and site remediation to be conducted before off-site impacts occur.

(1) Identification of these sites must be based upon the ability to:

(i) sufficiently characterize groundwater and surface water flow to determine upgradient and downgradient directions;

(ii) install environmental monitoring points that will detect releases from the entire landfill;

(iii) characterize and define a release from the landfill; and

(iv) determine what corrective actions may be necessary to respond to a contaminant release, and carry out those corrective actions.

(2) Lateral expansions of existing landfills that are already contaminating groundwater may be allowed by the department if the proposed area can be constructed in compliance with the regulations. This may be demonstrated using remedial actions at the existing site resulting in a demonstrated improvement in groundwater quality, and any additional monitoring requirements needed to demonstrate the integrity of the expansion area such as leak detection lysimeters installed beneath the liner, statistical triggers of groundwater

monitoring, tracers, additional monitoring wells surrounding the site, and any other monitoring methods required by the department.

(h) Fault areas.

New landfills and lateral expansions of existing landfills must not be located within 200 feet of a fault that has had displacement in holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet will not result in damage to the structural integrity of the landfill and will be protective of public health and the environment.

(i) Seismic impact zones.

New landfills and lateral expansions of existing landfills must not be located in seismic impact zones, unless the owner or operator demonstrates to the department that long-term containment structures, including liners, leachate collection and removal system, leachate storage system, and surface water control system, are designed pursuant to the requirements of section 363-4.3(d) of this Part.

(j) Wetlands

New landfills and lateral expansions of existing landfills must not be located within the boundary of either state or federally-regulated wetlands, unless the required permits are obtained from the U.S. Army Corps of Engineers and/or the department, and unless the owner or operator can demonstrate the following to the satisfaction of the department:

(1) No practicable alternative to the proposed landfill is available which does not involve state or federally-regulated wetlands.

(2) The construction and operation of the landfill will not:

(i) cause or contribute to violations of any applicable water quality standard;

(ii) violate any applicable toxic effluent standard or prohibition;

(iii) jeopardize the continued existence of endangered or threatened species;

(iv) result in the destruction or adverse modification of a critical habitat of any endangered or threatened species; and

(v) violate any requirement for the protection of a marine sanctuary under the Marine Protection, Research, and Sanctuaries Act of 1972, as incorporated by reference in section 360.3 of this Title.

(3) The landfill will not cause or contribute to significant degradation of federally-regulated wetlands. The owner or operator must demonstrate the integrity of the landfill and its ability to protect ecological resources by addressing the following factors:

(i) erosion, stability and migration potential of native wetland soils, muds, and deposits used to support the landfill;

(ii) erosion, stability and migration potential of dredged and fill materials used to support the landfill;

(iii) the volume and chemical nature of the waste managed in the landfill;

(iv) potential impacts from the release of the solid waste on fish,

wildlife, and other aquatic resources and their habitat;

(v) potential effects of a catastrophic release of waste to the federally-regulated wetland and the resulting potential impacts on the environment; and

(vi) any additional factors, as necessary, to demonstrate that ecological resources in the federally-regulated wetland are sufficiently protected.

(4) Steps have been taken to attempt to achieve no net loss of federally-regulated wetlands to the extent required under federal or state law (as defined by acreage and function) by:

(i) first avoiding impacts to federally-regulated wetlands to the maximum extent practicable; then

(ii) minimizing unavoidable impacts to the maximum extent practicable; and then

(iii) by offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (*e.g.*, restoration of existing degraded wetlands or creation of new wetlands).

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(k) School and residence.

Excluded from the below requirements are residences or schools that are owned by or which have entered into legal agreement with the landfill owner or operator. In terms of residences, the 1,000 feet distance in the below requirements is measured from the closest location on the landfill property where waste will be placed to the residence building and managed landscape. In terms of schools, the 1,000 feet distance in the below requirements is measured from the closest location on the landfill property where waste will be placed to the school building and associated outdoor recreation areas.

(1) A new landfill, which submits an initial permit application after the effective date of this rulemaking, cannot be located within 1,000 feet of a school or residence. Schools or residences constructed after an initial Part 360 permit for a landfill has been deemed complete by the department are excluded from this requirement.

(2) A lateral or vertical expansion of a landfill is prohibited within 1,000 feet of a school or residence. Schools or residences constructed within 1,000 feet of a proposed expanded footprint of a landfill after a Part 360 permit modification application has been submitted are excluded from this requirement.

(3) A Part 360 permit modification application for a landfill expansion that has been deemed complete by the department prior to the effective date of this rulemaking is not subject to this requirement.

SUBPART 363-6

DESIGN, CONSTRUCTION AND CERTIFICATION REQUIREMENTS

Section 363-6.1 General requirements
363-6.2 Horizontal separation requirements
363-6.3 Groundwater separation
363-6.4 Bedrock separation
363-6.5 Landfill subgrade
363-6.6 Liner system and final cover requirements
363-6.7 Components of double composite liner system
363-6.8 Geomembrane liners
363-6.9 Geocushion material
363-6.10 Soil drainage layers
363-6.11 Leachate collection and gas condensate pipes
363-6.12 Geosynthetic drainage layers
363-6.13 Filter layer criteria
363-6.14 Intermediate cover
363-6.15 Gas venting
363-6.16 Final cover — composite barrier layer
363-6.17 Final cover — barrier protection and drainage layer
363-6.18 Final cover — topsoil
363-6.19 Construction certification
363-6.20 Aboveground and on-ground leachate storage tank requirements
363-6.21 Equivalent design standards and use of waste as construction and operational material
363-6.22 Survey control and location coordinates

Section 363-6.1 General requirements.

(a) Applicability.

Except as described by the transition requirements of section 360.4 of this Title, all new landfills, lateral and vertical expansions of existing landfills, and subsequent development at existing landfills must conform to the requirements set forth in this Subpart.

(b) The owner or operator must submit engineering reports, design drawings, and specifications for all new construction of landfill components described in this Subpart prior to construction. Construction must not commence before written approval is received from the department.

(c) The landfill liner and leachate collection and removal system must be designed and constructed to effectively protect surface and groundwater resources from uncontrolled releases of landfill leachate. The components of the liner system must be placed to achieve a minimum slope of no less than two percent, except along leachate collection pipes, which must have a minimum slope of one percent.

(d) Any geomembrane, geosynthetic clay liner (GCL), geosynthetic drainage layer, geocushion or other geosynthetic material installed on landfill side slopes must be

designed to minimize shear stresses and to withstand the calculated tensile forces acting upon the geosynthetic materials by the transfer of anticipated destabilizing forces to the landfill subgrade. At a minimum, the design must consider the maximum friction angle of any soil-geosynthetic or geosynthetic-geosynthetic interface, along with seepage forces expected in the side slope soil drainage layer in the primary leachate collection and removal system, to ensure that overall slope stability is maintained and to meet the factor-of-safety requirements specified in section 363-4.3(c)(3) of this Part.

(e) For lateral expansions adjacent to existing landfills that do not meet the liner system requirements of this Part (*i.e.*, the existing liner system is single composite and the expansion requires double composite), any encroachment on the existing landfill's side slope must be designed and constructed to meet the liner system requirements of this Part.

(f) Landfills must be designed to minimize the need to decommission existing monitoring wells and to install new monitoring wells as a result of progressive cell construction into areas where monitoring wells are located.

(g) A pre-construction meeting must be held prior to commencement of construction. This meeting must include, at a minimum:

(1) distribution to each involved entity of relevant CQA and CQC documents and supporting information;

(2) review the role of specific CQA and CQC requirements in demonstrating conformance with design criteria;

(3) review of responsibilities, authorities and lines of communication for each involved entity;

(4) review of established acceptance and rejection criteria as specified in CQA and CQC plan;

(5) review of methods for documenting and reporting all data;

(6) review of procedures for storage and protection of landfill construction materials on-site; and

(7) a site walk-around to identify project site layout and material and equipment storage locations.

(h) The owner or operator must notify the department at least seven days prior to each of the following activities:

(1) the pre-construction meeting;

(2) commencement of construction of the soil component of the secondary composite liner;

(3) commencement of placement of the primary and secondary geomembrane liner; and

(4) commencement of geomembrane liner integrity testing.

Section 363-6.2 Horizontal separation requirements.

The minimum horizontal separation between the edge of placed waste and the property line must be 100 feet for any landfill, except for landfills in Nassau and Suffolk counties where the minimum separation must be 50 feet.

Section 363-6.3 Groundwater separation.

In cases where the base of the constructed liner system is less than five feet above the seasonal high groundwater elevation, the department will require additional groundwater suppression systems to ensure that groundwater does not come in contact with the lowest portion of the landfill liner. At sites where perched water is encountered, the department will determine with respect to groundwater separation distances whether separation distances will be measured from the perched zone or the non-perched water table. The nature of the materials making up this separation, whether natural or backfilled, is subject to department approval. This minimum five feet separation requirement may be reduced or waived upon demonstration of selection of a suitable landfill site, as defined under section 363-5.1(a) of this Part and, that the proposed activity will have no significant adverse impact on the overall stability of the landfill, the environment, or natural resources and that the landfill's performance will be consistent with that which is expected from the application of this Part. In these cases, the department will require additional groundwater suppression systems to ensure that the seasonal high groundwater table does not come in contact with the lowermost portion of the landfill liner during construction, and until the hydrostatic pressures are equalized by weight of the liner system and/or waste.

Section 363-6.4 Bedrock separation.

A minimum of ten feet of vertical separation is required between bedrock and the base of the constructed liner at all points along the liner system, except as provided in section 363-6.11(a)(4) of this Part. The material between the base of the constructed liner and bedrock, whether natural or backfilled, is subject to department approval. The materialmust consist of low permeability soils with silty and clayey characteristics and with the ability to attenuate and absorb contaminants.

Section 363-6.5 Landfill subgrade.

(a) The liner and leachate collection and removal system must be placed on a landfill subgrade that consists of an in-situ soil layer or select fill that is graded and prepared for landfill construction. A foundation-bearing capacity, stability and settlement analysis must be performed in accordance with section 363-4.3(b)-(d) of this Part.

(b) Materials required.

The landfill subgrade material must be free of visible organic material and consist of on-site soils, or select fill approved by the department. There must be a minimum thickness approved, pursuant to section 363-6.4 of this Part, below the landfill liner system consisting of low permeability soils with silty and clayey characteristics and which exhibit no large-scale, permeable deposits which could result in migration of contaminants off-site prior to detection and remediation.

(c) Construction requirements.

The subgrade must be sufficiently dry to allow for construction activities and structurally sound to ensure that the first lift and all succeeding lifts of soil placed over it can be adequately compacted to the design requirements and to ensure stability of the landfill.

(d) Certification requirements.

Before any material is placed over the landfill subgrade:

(1) the project engineer must inspect the exposed surface to evaluate the suitability of the subgradeto ensure that the surface is properly compacted, smooth, and uniform and that elevations are consistent with the department-approved drawings; and

(2) the subgrade must be tested for density and moisture content at a minimum frequency of nine tests per acre.

Section 363-6.6 Liner system and final cover requirements.

(a) Double composite liner system.

Except as otherwise described in this Part, all landfills regulated under this Part must have a double composite liner system that consists of a primary leachate collection and removal system, a geocushion, a primary composite liner constructed of a geomembrane liner and a GCL, a secondary leachate collection and removal system, a geocushion, and a secondary composite liner system constructed of a geomembrane liner and two feet of low permeability soil. The landfill must be designed and constructed to meet or exceed the following liner system requirements:

(1) On slopes less than or equal to 10 percent, the liner system must consist of a double composite liner system which meets the following requirements:

(i) the primary composite liner must be comprised of a nominal 80 mil or thicker high density polyethylene (HDPE) geomembrane placed above and in direct and uniform contact with an appropriately specified GCL; and

(ii) the secondary composite liner must be comprised of a nominal 60 mil or thicker HDPE geomembrane placed above and in direct and uniform contact with a minimum two-foot-thick low-permeability soil layer that has a remolded hydraulic conductivity of $1x10^{-7}$ centimeter per second or less.

(2) On slopes greater than ten percent, the liner system must consist of a double liner system which meets the following requirements:

(i) from the toe of the slope to five vertical feet up the side slope, the primary liner must meet the double composite liner requirements of subparagraph (1)(i) of this subdivision. Above five vertical feet up the side slope, the primary liner may be constructed of a nominal 80 mil HDPE or thicker geomembrane; and

(ii) the secondary composite liner must meet the requirements of subparagraph (1)(ii) of this subdivision.

(3) The liner system must include a primary leachate collection and removal system that is designed to maintain no more than 12 inches of leachate depth (head) above the primary liner, except during 24-hour, 25-year storm events and except in sump areas. The leachate collection and removal system must be designed to function with proper maintenance throughout the active life, post-closure period, and custodial care period of the landfill.

(i) The primary leachate collection and removal system must be a minimum of two feet thick.

(ii) On slopes less than or equal to ten percent, the 24 inches of primary leachate collection and removal system must have a hydraulic conductivity of 1.0 centimeter per second or greater. Alternatively, the upper 12 inches of primary leachate collection and removal system may have a hydraulic conductivity of 0.1 centimeter per second or greater if the lower 12 inches has a hydraulic conductivity of one centimeter per second or greater.

(iii) On slopes greater than ten percent, the entire 24-inch thickness of the primary leachate collection and removal system must have a hydraulic conductivity of 0.1 centimeter per second or greater.

(4) The liner system must include a secondary leachate collection and removal system placed between the primary and secondary liners with a design capacity of at least 1,000 gallons per acre per day and a maximum detection time of 24 hours using steady state flow calculations in a saturated medium.

(i) On slopes less than or equal to ten percent, the secondary leachate collection and removal system must include a geosynthetic drainage layer and a minimum of one foot of soil drainage media with a hydraulic conductivity of 0.1 centimeter per second or greater and designed to have a maximum leachate depth (head) of one inch.

(ii) On all slopes greater than ten percent, the secondary leachate collection system may be constructed of a geosynthetic drainage layer system designed to meet the hydraulic and mechanical needs of the landfill with a head that does not exceed the thickness of the confined drainage layer.

(b) C&D debris landfills, papermill sludge monofills, municipal waste combustor ash monofills, and other industrial waste monofills.

Landfills used solely for the disposal of C&D debris, papermill sludge, municipal waste combustor ash, or solid waste resulting from industrial operations other than those described above are subject to the double composite liner requirements described in subdivision (a) of this section and section 363-6.7 of this Subpart, unless the applicant demonstrates that an alternative liner system is justified and will not adversely impact groundwater quality. The department may impose additional or less stringent requirements on these types of landfills based on the pollution potential of the waste. An alternative liner system with less stringent requirements cannot be used in landfills located in Nassau or Suffolk Counties. For those landfills where the applicant demonstrates that an alternative liner system is justified, the need for a formal variance is waived.

(1) Liner system designs for C&D debris landfills, papermill sludge monofills, municipal waste combustor ash monofills, and industrial waste monofills that do not meet the requirements of this section and section 363-6.7 of this Subpart must demonstrate that they will not adversely impact groundwater

quality. The demonstration must, at a minimum, address the following factors:

(i) climatological conditions in the vicinity of the proposed site;

(ii) hydrogeologic characteristics of the proposed site;

(iii) anticipated liner system leakage to the subsurface;

(iv) development of an accurate profile of leachate quality and production rates sufficient to be used in evaluating the fate and transport of leachate from the point of release to the first point of environmental monitoring in order to determine whether leachate constituents can be expected to exceed the State's groundwater quality standards;

(v) justification that the C&D debris, papermill sludge, municipal waste combustor ash or industrial wastes' chemical characterization was accurately defined and that there are no reasons to anticipate significant changes in the concentrations of compounds that could increase the wastes' pollution potential in the future;

(vi) presentation of data from chemical compatibility tests performed on the proposed liner and/or leachate collection and removal system materials with representative waste leachate, using an appropriate permeameter test to determine potential changes in the permeability of the proposed liner; and

(vii) modeling of contaminant transport to evaluate the impacts of the characterized leachate on groundwater quality at the closest environmental monitoring point based upon the liner system's calculated leakage rate and the site's hydrogeologic conditions.

(2) A new demonstration must be performed in accordance with paragraph (1) of this subdivision whenever the characteristics of the received waste change.

(c) Final cover system.

Except as otherwise described in this Part, all landfills must have at a minimum a final cover system that consists of a composite barrier layer, barrier protection and drainage layer, and topsoil layer meeting the requirements of sections 363-6.15 through 363-6.18 of this Subpart and Subpart 363-9 of this Part. The final cover system must be designed to preclude precipitation from entering the landfill and be capable of preventing landfill gas migration to the atmosphere.

Section 363-6.7 Components of double composite liner system.

(a) Primary and secondary composite liners.

(1) Primary composite liner. The primary composite liner must be constructed using a GCL with a hydraulic conductivity of $1x10^{-8}$ centimeters per second or less and which is constructed with bentonite demonstrating chemical and physical stability. The GCL must be placed below and in direct and uniform contact with the primary geomembrane liner. The carrier geotextile of the GCL must be a

material that will inhibit the migration of bentonite into the secondary leachate collection and removal system.

(2) Secondary composite liner. The secondary composite liner must be constructed using a minimum two-foot-thick soil liner placed below and in direct and uniform contact with the secondary geomembrane liner. The soil component of the secondary composite liner must:

(i) be free from stones greater than one inch in diameter and stones having an angular surface;

(ii) be a total of at least 24 inches in compacted thickness;

(iii) have a remolded hydraulic conductivity of $1x10^{-7}$ centimeters per second or less throughout its thickness;

(iv) be constructed and maintained to minimize the presence of cracks and granular material as long as it is exposed, as specified in a department-approved CQA/CQC plan; and

(v) be overlain by and in direct and uniform contact with a geomembrane.

(b) Construction requirements.

The project engineer must ensure that the installation of the soil and/or GCL components of the liner system conforms to the following minimum requirements:

(1) GCL components.

(i) All GCLs must be placed in accordance with requirements specified in section 363-6.8(b)(2)-(4) of this Subpart and without damaging any component of the secondary leachate collection and removal system. The GCL must be placed at a slope of no less than two percent except for along the leachate collection pipes which must have slopes of no less than one percent. The GCL must be placed at a slope of no greater than 33 percent in any direction.

(ii) GCL field seams must be primarily oriented parallel to the line of maximum slope (*i.e.*, oriented along, not across the slope).

(iii) All GCL field seams must be made using bentonite and a minimum 12-inch overlap, and must be made in accordance with the manufacturer's specifications as approved by the design engineer.

(iv) The GCL must not be installed during a precipitation event. Installed GCLs must be covered by the approved geomembrane by the end of the day they are installed and must be loaded with at least one foot of soil within 60 days of installation. Any GCL that becomes hydrated after it is installed and before it is covered with an approved geomembrane must be removed, unless the project engineer determines, and certifies in construction certification report, that the degree of hydration will allow the overlying geomembrane and soil material to be placed without affecting the performance of the installed GCL and that its properties

are compliant with the approved specifications.

(v) All rolls of GCL materials received and stored at the landfill must be enclosed in protective wrapping such as the original, unopened packaging or an opaque, waterproof tarpaulin to ensure protection from direct sunlight, ultraviolet radiation, precipitation, flames or welding sparks, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. All rolls must be stored off of the ground on a surface that is free of sharp objects. The storage location must be stable, dry, and well-drained. Rolls of GCL materials must not be stored in stacks more than three tiers high. Extended outdoor storage of rolls must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, GCL rolls must be placed in a well ventilated, enclosed structure. The temperature of the enclosed structure must not exceed 95° F.

(2) Soil liner components.

(i) The soil component of the liner system must be placed at a slope of no less than two percent in directions perpendicular to leachate collection pipes, and no less than one percent in directions parallel to the leachate collection pipes. The soil component of the liner system must be placed at a slope of no greater than 33 percent in any direction.

(ii) During compaction, proper control of the moisture content, lift thickness, compactive energy/kneading action, placement operations and other details necessary to effectively destroy soil clods, eliminate lift interfaces and avoid mixing with subgrade soils must be maintained. The final compacted thickness of each lift must not exceed eight inches. Placement of the first lift of the soil component of the liner system must prevent mixing of the soil liner system materials and subgrade.

(iii) The moisture content and compacted density of the soil component of the liner system must be maintained at all times within the range identified in the moisture-density-permeability relation developed in accordance with subparagraph (c)(2)(v) of this section to ensure that the remolded lift hydraulic conductivity is less than or equal to $1x10^{-7}$ centimeters per second.

(c) Certification requirements.

(1) For GCLs, the project engineer must certify that:

(i) all GCL sheets used in liner system construction have been inspected by the manufacturer and at the job site for needles and sheet defects; and

(ii) all construction meets the requirements of paragraph (b)(1) of this section.

(2) For soil barrier components, the project engineer must certify the quality control testing of any soil liner materials, document that the specified material meets the approved engineering drawings, engineering report, CQA and CQC plan, and project specifications. The hydraulic conductivity requirement for the soil liner material must be less than or equal to $1x10^{-7}$ centimeters per second. Before and during construction of the soil component of the liner system, the results of the following testing at a minimum must be reviewed and accepted by the project engineer prior to placement:

(i) one analysis of soil particle size for every 2,500 cubic yards of material placed;

(ii) one Atterberg limits analysis of plastic and liquid limits and plasticity index for every 1,000 cubic yards of material placed;

(iii) one laboratory permeability test using a triaxial cell with back pressure for every 5,000 cubic yards of material placed;

(iv) one moisture content test for every 1,000 cubic yards of material placed; and

(v) a minimum of one comparison of the moisture-density-permeability relation for every 5,000 cubic yards of material placed.

(3) Quality assurance testing of soil components required under this paragraph must be compared to and evaluated against the quality control testing of paragraph (2) of this subdivision where applicable.

(i) Quality assurance testing locations must be evenly distributed across the side slopes and bottom area of the landfill and must include density and moisture content tests to be performed at a minimum of nine locations per acre per lift of soil material placed.

(ii) For each location, the density and moisture content must be compared to the appropriate moisture-density-permeability relation to determine the permeability at that location.

(iii) One shelby tube sample for laboratory permeability testing must be taken per acre per lift.

(iv) Any tests resulting in penetration of the soil liner must be repaired using bentonite or other means or material acceptable to the department.

(4) The certification report must address all measures taken to remedy GCL or soil liner damage that occurred during and after construction and any measures taken to prevent damage.

Section 363-6.8 Geomembrane liners.

(a) Materials required.

The geomembrane base liner material must be constructed of HDPE polymer that is acceptable to the department.

(b) Construction requirements.

(1) The geomembrane in both the primary and secondary composite liner systems must be installed in direct and uniform contact with the underlying low-permeability soil layer or GCL in a

manner that minimizes waves and avoids creases and must be field seamed to control fluid migration from the landfill. Any waves must be less than two inches in height.

(2) Geomembranes must be installed at a minimum slope of two percent, except slopes parallel to the leachate collection pipe must have a minimum slope of one percent.

(3) The surface of the supporting soil upon which the geomembrane will be installed must be free of stones, organic matter, cracks, irregularities, protrusions, loose soil, and any abrupt changes in grade.

(4) The anchoring system must be constructed as shown on the approved engineering drawings to eliminate potential liquid leakage into the secondary leachate collection and removal system by, at a minimum:

(i) diverting surface water run-off away from the anchoring system; and

(ii) seaming the primary and secondary geomembranes together.

(5) Field seams must be constructed in accordance with the following:

(i) field seams must be oriented parallel to the line of maximum slope (*i.e.*, oriented along, not across the slope). In corners and irregularly shaped locations, the number of field seams must be minimized. The number of horizontal seams must be minimized. Horizontal seams must be more than five feet from the toe of slope in either direction;

(ii) field seams must be primarily made by using a dual-track thermal fusion seaming method. Extrusion welding of field seams must be minimized to the extent practical;

(iii) the seam area must be free of moisture, dust, dirt, debris, and foreign material before seaming;

(iv) field seaming is prohibited when either the ambient air temperature measured one meter above the geomembrane or the temperature of the surface of the geomembrane is below 32° F, when the temperature of the surface of the geomembrane exceeds 158° F, when the ambient air temperature measured one meter above the geomembrane is above 120° F, during periods of sustained winds in excess of 20 miles per hour, or during periods of precipitation; and

(v) the field crew foreman of the liner installer must have a documented minimum qualification of installing at least 50 acres of previous landfill or comparable geosynthetic systems, on a minimum of five different projects. Each welding machine must be operated by a welding technician who has been certified to operate the welder by a certification program acceptable to the department.

(6) All rolls of geomembrane materials stored at the landfill must be enclosed in protective wrapping, such as the original, unopened packaging or covered with an opaque tarpaulin, to ensure protection from direct sunlight, ultraviolet radiation, flames or welding sparks, temperatures in excess of 160° F,

mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of smooth geomembrane must not be stored in stacks more than four tiers high and rolls of textured geomembrane must not be stored in stacks more than three tiers high. Extended outdoor storage of geomembrane materials must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, geomembrane rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

(c) Certification requirements.

(1) The project engineer must certify that the results of the quality control testing for all geomembranes meet the requirements of the approved engineering drawings, reports, and specifications before the installation of any geomembrane, including the following information:

(i) origin and identification of the raw materials used to manufacture the geosynthetic material;

(ii) copies of quality control certificates issued by the producer of the raw materials used to manufacture the geomembrane, which at a minimum must include the results of tests conducted to verify material quality, specific gravity, melt flow index, percent carbon black, and carbon black dispersion using test methods acceptable to the department;

(iii) results of tests conducted at the factory to verify the quality of the geomembrane, including thickness, density, single-point stress crack resistance, tensile strength, tear and puncture resistance, elongation, carbon black content, carbon black dispersion, oxidation induction time, oven aging and UV resistance using test methods acceptable to the department; and

(iv) documentation that the geomembrane was fully inspected for uniformity, damage, imperfections, holes, cracks, thin spots, foreign materials, tears, punctures, and blisters and that any imperfections were immediately repaired and reinspected.

(2) The project engineer must review the appropriate documentation to certify that the quality control testing of any fabricated factory seams of geomembrane sheets took place at the factory in accordance with the following requirements:

(i) the geomembrane was fully inspected for uniformity, damage, imperfections, holes, cracks, thin spots, foreign materials, tears, punctures, and blisters. Any imperfections must be immediately repaired and reinspected;

(ii) nondestructive seam testing was performed on all fabricated seams over their full length using a test

method acceptable to the department; and

(iii) destructive seam testing was performed on a minimum of two samples per factory fabricated geomembrane sheet. The samples must be taken from extra material at the beginning or end of sheet seams, so that the geomembrane sheet is not damaged and the sheet geometry is not altered. A laboratory acceptable to the department must have performed the required testing on the samples taken. If a sample fails a destructive test, the entire seam length must be reconstructed or repaired using a method acceptable to the department, and retested in accordance with subparagraph (ii) of this paragraph.

(3) The project engineer must certify that quality assurance testing was performed in the field during liner installation demonstrating that the liner conforms to the approved engineering drawings, reports, and specifications and the following requirements:

(i) For each lot number of geomembrane material that arrives at the site, a sample must be collected and archived.

(ii) All geomembrane must be visually inspected for uniformity, damage, imperfections, holes, cracks, thin spots, foreign materials, tears, punctures, and blisters. Any imperfections must be immediately repaired and reinspected.

(iii) The project engineer must ensure that trial seams are constructed and destructive seam tests are performed:

(a) at the start of each shift for every piece of seaming equipment and for each seaming crew;

(b) after every four hours of continuous seaming;

(c) every time seaming equipment is changed;

(d) whenever the project engineer requires; and

(e) as additionally required in the approved specifications.

(iv) The entire length of all field seams must be nondestructively tested in accordance with the procedures listed in this subparagraph using a test method acceptable to the department. The project engineer or designated representative must:

(a) monitor all nondestructive testing;

(b) record the location, date, name of tester, and results of all testing;

(c) inform the installer of any required repairs; and

(d) overlay all seams which cannot be nondestructively tested with the same geomembrane. The seaming and patching operation must be inspected by

the project engineer for uniformity and quality.

(v) Destructive testing must be performed on the geomembrane liner seams in accordance with the following requirements using test methods acceptable to the department:

(a) Seam samples must be taken at a rate of one sample per 1,000 feet of seam length or one sample for each seaming machine operating on a given day, whichever is more frequent. All sample locations must be documented.

(b) The project engineer must approve the sample size, which must be large enough to perform the required testing.

(c) An independent laboratory acceptable to the department must perform the required testing, which must include testing for seam strength and adjacent geomembrane elongation, and peel adhesion (and separation in-plane for high density polyethylene) using testing procedures acceptable to the department.

(d) If a sample fails destructive testing, the seam must be reconstructed in each direction between the location of the sample that failed and the location of the next acceptable sample; alternatively, the welding path may be retraced to intermediate locations at least 10 feet in each direction from the location of the sample which failed the test, in which case a second sample must be taken for an additional field test at each of those locations. If these second samples pass, the seam must be patched or reconstructed between the locations of the second samples. If a second sample fails, this process must be repeated.

(e) All acceptable seams must lie between two locations where samples passed the test procedures found in clause (*d*) of this subparagraph.

(vi) Upon completion of geomembrane seaming, patching, or reconstruction, post-construction care of the installed geomembrane must commence and, at a minimum, include timely covering and temporary weighting using sandbags, as necessary, to prevent damage from wind uplift, construction, or other sources.

(vii) After placement of the soil drainage layer, an electrical resistivity leak location evaluation, and/or other geomembrane liner integrity evaluation approved by the department, must be conducted on areas of both the primary and secondary liners with slopes of ten percent or less by a person independent of the geomembrane installer. When conducting a leak location evaluation the soil drainage layer above the geomembrane being tested for defects must have adequate electrical isolatation from the surrounding ground or adjacent

material. The evaluation must not be performed during or after periods of heavy rains that result in run-off that could impact the isolation of the soil drainage layer. When the tie-in area connecting a new cell with an existing cell is unable to be evaluated by electrical leak location testing due to an inability to effectively isolate the tie-in area, the tie-in area may be evaluated for liner defects using an exposed geomembrane electrical testing method. All discovered liner defects must be repaired, and a written report of the findings, which includes, at a minimum, a GPS-based electrical map of the survey area documenting the spatial results of electrical testing throughout the survey area, a description of the number of defects andtheir cause, and verification of repairs must be submitted to the department with the construction certification report required in section 363-6.19 of this Subpart.

Section 363-6.9 Geocushion material.

An appropriately designed and specified geocushion of sufficient weight to prevent deformation and damage must be placed above any geomembrane.

(a) Materials requirements.

Needle-punched, nonwoven geocushion material must be used. Documentation must be provided by the manufacturer indicating that each roll has been inspected at the point of manufacturing for the presence of broken needles using an in-line metal detector. Every roll accepted at the site must be labeled with the manufacturer's name, including geotextile style and type, lot and roll numbers, and roll dimensions (length, width, and gross weight). The geocushion material must be demonstrated to be chemically compatible with waste and leachate with which it will come in contact.

(b) Construction requirements.

(1) During placement, stones, excessive dirt, or moisture must not be entrapped either within or beneath the geocushion materials.

(2) The geocushion materials must be placed with minimal wrinkles or folds.

(3) Geocushion materials must be connected or seamed together using methods approved by the department.

(4) All rolls of geocushion materials received and stored at the landfill must be enclosed in protective wrapping such as the original, unopened packaging oran opaque, waterproof tarpaulin to ensure protection from direct sunlight, ultraviolet radiation, precipitation, flames or welding sparks, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of geocushion materials must not be stored in stacks more than three tiers high. Extended outdoor storage of rolls must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, geocushion rolls must be stored off the

ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

(c) Certification requirements.

The project engineer must provide:

(1) certification that all geocushion materials placed on the site have been inspected by the manufacturer and at the job site for needles and sheet defects;

(2) verification that the physical and mechanical properties of the designed geocushion material were supplied and installed per the project specifications; and

(3) certification that applicable geosynthetic quality control testing was performed in accordance with the requirements of section 363-6.8(c)(1) of this Subpart for any geocushion materials

Section 363-6.10 Soil drainage layers.

In addition to the requirements of section 363-6.6(a) of this Subpart, all soil drainage material used in the primary and secondary leachate collection and removal systems of the landfill must conform to the following requirements.

(a) Materials required.

The soil drainage layer must be free of any organic material, have less than five percent by weight pass the No. 200 sieve after placement, and have no more than 15 percent calcium carbonate equivalent as determined by appropriate test methods using a solution with a pH representative of landfill leachate.

(b) Construction requirements.

(1) The soil drainage layer must be placed in a manner to minimize defects to the underlying geomembrane or other geosynthetic materials.

(2) The soil drainage layer must be placed in a manner to achieve a minimum slope of two percent.

(c) Certification requirements.

(1) The project engineer must approve the quality control testing results of any soil drainage materials and ensure that the materials meet the placement, hydraulic conductivity, and thickness requirements of section 363-6.6 of this Subpart and the requirements of subdivision (a) of this section.

(i) A particle size analysis of the soil drainage layer material must be submitted to the project engineer for approval for each borrow source prior to installation, and during installation at a frequency of at least one test for every 1,000 cubic yards of material placed.

(ii) A laboratory constant-head permeability test for a soil drainage layer sample must be submitted to the project engineer for approval for each borrow source prior to installation and at a frequency of at least one test for every 2,500 cubic yards of material delivered, and after placement at a frequency of at least

one test for every 2,500 cubic yards of material placed.

(iii) The project engineer must certify that the requirements of subdivision 363-6.10(a) and section 363-6.6(a)(3) and (4) of this Subpart are met.

(2) The project engineer must certify that post-construction care procedures are carried out which, at a minimum, protect the soil drainage layers from fines related to water and wind-borne sedimentation.

(3) Quality assurance testing must ensure that the material is placed in accordance with the requirements of the engineering drawings, reports, and specifications.

Section 363-6.11 Leachate collection and gas condensate pipes.

(a) The following requirements apply to leachate collection and gas condensate pipes:

(1) The primary and secondary leachate collection and removal system and the gas collection condensate piping system must be designed and built to allow for representative sampling of leachate and condensate and to operate with proper maintenance without clogging during the landfill's active life and post-closure care period. The primary collection pipe network must be sized for peak flow attributed to a 24-hour-25-year storm to be removed from the landfill cell within seven days or less.

(2) All leachate collection pipe networks located in the primary and secondary leachate collection and removal systems must be designed to allow for accessibility of equipment for effective video monitoring, routine cleaning and maintenance of key collection lines in each separately operating cell.

(3) All leachate conveyance lines, gas condensate lines and appurtenances, including manholes, sumps, and metering pits located outside the liner system of the landfill must be designed to have double containment and must be constructed to provide for effective leak detection and collection.

(4) Leachate conveyance lines, gas condensate lines and appurtenances including manholes, sumps, and metering pits located outside the landfill liner system are not required to maintain the minimum separation of five feet from the seasonal high groundwater table and are not required to maintain the minimum separation of 10 feet from bedrock.

(b) Materials required.

The leachate collection pipes must:

(1) be a minimum of eight inches in inside nominal diameter for primary pipes and six inches in inside nominal diameter for secondary pipes;

(2) have adequate structural strength to support the maximum static and dynamic loads and stresses that will be imposed by the overlying material, including the drainage layer, liners, waste material, and any equipment used in the construction and operation of the landfill; and

(3) be chemically compatible with leachate.

(c) Construction requirements.

Leachate collection pipes must be installed in accordance with the requirements of the approved engineering drawings, reports, and specifications and must be designed to have a minimum slope of one percent.

(d) Certification requirements.

The project engineer must certify that the requirements of paragraphs 363-6.6(a)(3) and (4) of this Subpart are met and that all leachate collection pipes are cleaned, debeaded and inspected upon completion of construction using video inspection equipment or other methods acceptable to the department to verify that the system is free of obstructions and construction-related debris.

Section 363-6.12 Geosynthetic drainage layers.

(a) Geosynthetic drainage layers must comply with the following:

(1) Any geosynthetic drainage layers designed for use in a groundwater suppression system or a leachate collection and removal system must meet the structural and hydraulic transmissivity design requirements using actual boundary conditions at the maximum adjusted design load for a minimum period of 100 hours, modified to take into consideration the long-term conditions for creep representative of site conditions, and other reduction factors.

(i) For hydraulic flow capacity calculations, the design engineer must use a factor of safety of at least three, and consider the reduction in transmissivity due to creep, biological clogging, and chemical clogging.

(ii) The chemical and physical resistance of the geosynthetic drainage material must be adequate so that its hydraulic transmissivity is not adversely affected by waste placement or leachate.

(2) Any geosynthetic drainage layers designed for use in a final cover system for either drainage or gas venting must meet the transmissivity design requirements using actual boundary conditions at the maximum adjusted design load for a minimum period of 100 hours, and appropriate reduction factors and must consider any proposed landfill end use structures.

(i) For hydraulic flow capacity calculations, the design engineer must use a factor safety of at least three.

(ii) The hydraulic design of the geosynthetic drainage layer should be performed using the saturated hydraulic conductivity of the barrier protection layer.

(b) Construction requirements.

(1) Geosynthetic drainage layers must not be seamed or fastened horizontally more than once per length of side slope. If horizontal seams are necessary, they must be staggered between adjacent rolls. The geosynthetic drainage layers

must be seamed or fastened together in accordance with industry standards.

(2) The geosynthetic drainage layer must be installed in accordance with the procedures set forth in section 363-6.8(b)(2)-(4) and (5)(iii) of this Subpart.

(3) If a geosynthetic drainage layer is specified in the primary leachate collection and removal system, a 24-inch soil drainage layer is required which meets the minimum requirements of section 363-6.10 of this Subpart.

(4) If a geosynthetic drainage layer is specified in the secondary leachate collection and removal system, a 12-inch soil drainage layer which meets the requirements of section 363-6.10 of this Subpart is required in all areas where the liner slope is less than 10 percent.

(5) All rolls of geosynthetic drainage materials received and stored at the landfill must be enclosed in protective wrapping, such as the original, unopened packaging or an opaque tarpaulin, to ensure protection from direct sunlight, ultraviolet radiation, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of geosynthetic drainage material must not be stored in stacks more than three tiers high. Extended outdoor storage of geosynthetic drainage materials must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

(c) Certification requirements.

The project engineer must certify the following information as part of certification:

(1) results of applicable geosynthetic quality control testing required in paragraph 363-6.8(c)(1) of this Subpart;

(2) results of hydraulic transmissivity testing performed in a laboratory in accordance with subdivision (a) of this section including confirmation that the head within the leachate collection and removal layer will remain less than the thickness of that layer for the design flow of 1,000 gallons per acre per day in the secondary leachate collection and removal system is met;

(3) that the construction quality assurance staff have performed visual inspections for any depressions or irregularities on all installed products;

(4) that post-construction care procedures were carried out to protect the geosynthetic drainage layer from the intrusion of fines related to water-borne and wind-borne sedimentation.

Section 363-6.13 Filter layer criteria.

(a) If a filter layer is included, it must be designed to prevent the migration of fine soil particles into a coarser grained material, and to allow water or gases to freely enter a

drainage structure (*e.g.*, pipe or drainage blanket) without clogging.

(b) Materials required.

(1) Graded cohesionless soil filters. Granular soil material used as a filter must have no more than five percent by weight passing the No. 200 sieve and no soil particles larger than three inches in any dimension.

(2) Geosynthetic filters. Geosynthetic filter material must demonstrate adequate permeability, soil particle retention, resistance to clogging, and chemical and physical resistance to adjacent materials so that it is not adversely affected by waste placement, overlying material or leachate generated at the landfill. Geosynthetic filter openings must be sized in accordance with the following criteria:

(i) permeability criteria: $k_f > 10k_s$ where:

(a) k_f is the geosynthetic filter permeability; and

(b) k_s is the overlying soil permeability;

(ii) retention criteria: O_{95} of the geosynthetic filter < $3d_{85}$, where:

(a) O_{95} is the apparent opening size of the geosynthetic filter at which 95 percent of the soil particles will be retained; and

(b) d_{85} is the soil particle size at which 85 percent of the particles are finer.

(3) Clogging potential of soil or geosynthetic filter system must be assessed using a long-term permeameter test method or other methods acceptable to the department.

(c) Construction requirements.

(1) Geosynthetic filters must not be damaged during installation and must be installed in a manner that does not reduce their ability to function as designed.

(2) All rolls of geosynthetic filters received and stored at the landfill must be stored enclosed in protective wrapping, such as the original, unopened packaging or an opaque tarpaulin, to ensure protection from direct sunlight, ultraviolet radiation, temperatures in excess of 160° F and below 32° F, mud, debris and other deleterious materials, and any other environmental condition that may damage the physical property values of the material. The storage location must be stable, dry, and well-drained. The surface on which the material is stored must be free of sharp objects. Rolls of geosynthetic filter materials must not be stored in stacks more than three tiers high. Extended outdoor storage of rolls must not exceed manufacturer's recommendations or nine months, whichever is less. For storage periods longer than manufacturer's recommendations or nine months, rolls must be stored off the ground under an additional cover or tarpaulin beyond the manufacturer's wrapping or placed in an enclosed structure.

(d) Certification requirements.

For geosynthetic filters, the project engineer must assess the polymer type and density, ultraviolet stability, mechanical properties, weight, tensile strength, permittivity, apparent opening size, and puncture strength. The project engineer must certify that post-construction care procedures were implemented to protect the soil or geosynthetic filter from the intrusion of fines related to water-borne and wind-borne sediments.

Section 363-6.14 Intermediate cover.

An intermediate cover must be constructed of a geomembrane or soil layer which will inhibit precipitation from entering the waste mass, contain leachate outbreaks, and inhibit migration of decomposition gases.

(a) Materials required.

(1) If a geomembrane is utilized as intermediate cover, the geomembrane material must be chemically and physically resistant to materials it contacts, and be able to accommodate the expected forces and stresses such as those caused by settlement of waste and wind uplift.

(2) Soil utilized as intermediate cover must be a minimum thickness of 12 inches.

(b) Construction requirements.

Intermediate cover geomembranes must be seamed in accordance with the manufacturer's recommendations, and must be installed on top of operating cover.

Section 363-6.15 Gas venting.

The project engineer must demonstrate that landfill gas will be adequately controlled and removed from the landfill in a manner to ensure the overall stability of the landfill and its final cover system, and to reduce the concentration and pressure gradient of explosive gases to control gas migration.

Section 363-6.16 Final cover — composite barrier layer.

(a) After a landfill ceases to accept waste as specified in section 363-9.3 of this Part, a final cover consisting of a composite barrier must be installed. The project engineer must consider the projected service life of the final cover system, settlement, erosion, and seepage forces in the overall stability of the final cover system.

(1) The composite barrier layer must consist of a GCL overlain by a separate geomembrane, unless the department approves an alternative geosynthetic barrier designed to serve as the uppermost layer of the final cover system.

(i) GCL. The GCL must be specified by the project engineer upon demonstrating both physical and chemical stability of the bentonite used in the GCL. The GCL component of the composite cover must meet the requirements of section 363-6.7(b)(1) and (c) of this Subpart.

(a) On slopes equal to or greater than 25 percent and for side slope terraces on those slopes, the GCL component of the composite barrier may be eliminated.

(ii) Geomembrane barrier layer of composite cover. The barrier layer must be constructed to limit precipitation migration into the landfill.

(a) The geomembrane material must be chemically and physically resistant to materials it contacts, and be able to accommodate the expected forces and stresses such as those caused by settlement of waste.

(b) A geomembrane comprised of linear low-density polyethylene polymer must have a nominal thickness of 40 mils or thicker. A geomembrane comprised of HDPE must have a nominal thickness of 60 mils or thicker.

(b) Construction requirements.

(1) GCL. GCLs must be constructed in accordance with section 363-6.7(b)(1) of this Subpart.

(2) Geomembrane barrier layer. Geomembrane barrier layers must be constructed in accordance with the requirements of section 363-6.8(b) of this Subpart with the following exceptions:

(i) the geomembrane must be placed between a four percent minimum slope and a 33 percent maximum slope; and

(ii) where GCL is used, the geomembrane must be placed in direct and uniform contact with the underlying GCL.

(c) Certification requirements.

Certification for the installation of a composite barrier layer must be conducted in accordance with the same conditions found in section 363-6.8(c) of this Subpart, except for the electrical resistivity testing provisions of section 363-6.8(c)(3)(vii) of this Subpart.

Section 363-6.17 Final cover — barrier protection and drainage layer.

A barrier protection layer must be constructed in accordance with the provisions of this section, unless the department approves a geosynthetic designed final cover system. The barrier protection layer must protect the geomembrane barrier layer from root penetration, be stable for the specified slopes and resist erosion.

(a) Construction requirements.

The barrier protection layer, including any drainage layer, must consist of a minimum of 12 inches of soil where cool season vegetation is specified or a minimum of 18 inches of soil where warm season vegetation is specified. The soil used to construct the lower six inches of this layer must pass a two-inch sieve.

(b) A drainage layer constructed of either a soil layer or geosynthetic drainage layer must be installed between the barrier layer and the barrier protection layer unless stability analysis meeting the requirements of section 363-4.3(c)(3)(iv) of this Part indicates that a drainage layer is not required. If a geosynthetic drainage layer is utilized, it must be designed and constructed in accordance with the requirements in section 363-6.12 of this Subpart.

Section 363-6.18 Final cover — topsoil.

A topsoil layer must be designed and installed over the landfill, unless the department approves a geosynthetic designed to serve as the uppermost layer of the final cover system.

(a) Materials required.

The topsoil or alternative material layer must be suitable to maintain vegetative growth.

(b) Construction requirements.

The topsoil or alternative material layer must be at least six inches thick. A thicker layer will be required, if either of the following conditions exist:

(1) sufficient moisture retention cannot be maintained to sustain vegetative growth; or

(2) the proposed end uses of the site warrant a thicker layer.

Section 363-6.19 Construction certification.

The certification required in section 360.16(j) of this Title must include a report prepared by the project engineer which demonstrates that the landfill was constructed in accordance with the department-approved engineering design and permit requirements, and the report must include the following:

(a) at a minimum, all CQA and CQC testing as required in this Subpart. It must include documentation of any failed test results and results of all retesting performed, descriptions of procedures used to correct improperly installed, damaged, or irregular material, and electrical resistivity leak location survey data and reports;

(b) record drawings noting any deviation from the approved engineering plans;

(c) a comprehensive narrative including, but not limited to, daily reports from the project engineer and a series of color photographs of major project features;

(d) a certification that the primary liner system leakage rate was below 20 gallons per acre per day using a rolling average for 30 consecutive days:

(1) during the primary liner leakage rate evaluation period, at least one inch of rain or equivalent must be introduced into the cell. Data verifying acceptable primary liner performance, including precipitation or the introduction of water to the cell must be provided in the construction certification report; and

(2) the liner performance evaluation period may not be conducted under frozen ground conditions;

(e) certification that an electrical resistivity leak location evaluation, and/or other geomembrane liner integrity evaluation as approved by the department was conducted on both the primary and secondary liners in accordance with the provisions of section 363-6.8(c)(3)(vii) of this Subpart.

Section 363-6.20 Aboveground and on-ground leachate storage tank requirements.

(a) Except as described in the transition requirements in section 360.4 of this Title, only a storage tank system may be used to

store leachate. The aboveground and on-ground leachate storage tank system must be capable of containing a minimum of three consecutive months combined primary and secondary leachate flow based on calculations required by section 363-4.3(e) of this Part unless an alternate storage and transport system is approved by the department and must have a secondary containment system capable of retaining leachate in the event of a leachate spill.

(1) The design volume for the secondary containment system must be at least 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater.

(2) The secondary containment system must be constructed of a one-foot layer of compacted soil with a hydraulic conductivity of $1x10^{-7}$ centimeters per second or less, a concrete pad of sufficient thickness to maintain integrity for the lifetime of the tank with a corrosion-resistant coating, or a geosynthetic liner of a minimum thickness equal to 60 mils. If a geomembrane is used, construction and certification must meet the requirements of section 363-6.8(b) and (c) of this Subpart, except for the electrical resistivity testing provisions of section 363-6.8(c)(3)(vii) of this Subpart.

(3) All aboveground and on-ground tanks must be equipped with an overfill prevention system.

(4) All uncovered tanks must maintain a minimum of two feet of freeboard.

(5) Appurtenances should be detailed illustrating the ability for filling and draining the containment system, including design details for draining uncontaminated precipitation from the secondary containment system.

Section 363-6.21 Equivalent design standards and use of waste as construction and operational material.

(a) An applicant may propose an equivalent design for any landfill component through the submission of documentation substantiating the alternative component's ability to perform in the same manner as the component specified in this Part. Equivalency determinations are not subject to the variance requirements of section 360.10 of this Title.

(b) When the equivalent design involves the substitution of waste for components of the facility's liner or final cover system, and where it can be demonstrated that these substitutions are below the uppermost barrier layer of the final cover and above the primary composite liner, equivalency determinations are not subject to the variance requirements of section 360.10 of this Title or beneficial use requirements of section 360.12 of this Title.

(1) Equivalent design applications for the use of waste tire-derived aggregate in a leachate collection and removal system or gas venting layer must:

(i) address procedures for receipt of waste tires or waste tire-derived aggregate and on-site processing or storage;

(ii) treat the waste tire-derived aggregate as conventional

construction material and comply with the landfill's design and the applicable soil drainage layer provisions of section 363-6.10 of this Subpart. This must include specifications for gradation analysis and permeability testing for both CQA and CQC;

(iii) specify that the waste tires or waste tire-derived aggregate are free of soil, petroleum products or other contaminants;

(iv) specify that waste tires must be processed in a manner to keep exposed wires to no more than three inches;

(v) specify that waste tires or waste tire-derived aggregate that were exposed to fire are not processed for use under this paragraph;

(vi) specify that the leachate collection and removal system or gas venting layer must incorporate an appropriately specified 12-inch layer of soil or stone between any geomembrane or GCL and a waste tire-derived aggregate layer; and

(vii) demonstrate that the final thickness of the combined soil and waste tire-derived aggregate layers after compression will be a minimum of 24 inches.

(c) Use of waste as an alternative to operating cover.

(1) The department may approve the use of waste as an alternative operating cover (AOC) if the material is capable of meeting the performance criteria for operating cover as specified in section 363-7.1(b) of this Part. Approval of the use of waste as an AOC is not subject to the variance requirements of section 360.10 of this Title.

(2) All wastes intended to be used as AOC must receive written department approval prior to their use. As a condition of approval, the department may require a sampling and analysis plan, including parameters to be tested, test methods, and frequency of testing to ensure compliance with paragraph (1) of this subdivision. Unless otherwise approved by the department, proposals to use AOC must meet the following requirements:

(i) All proposals to use automobile shredder residue as AOC must provide analytical data demonstrating that the automobile shredder residue does not contain total PCBs concentrations greater than 50 parts per million. The data must include quarterly analysis for PCB concentrations from each generator.

(ii) All proposals to use C&D debris as AOC must demonstrate that the concentration of sulfate does not exceed 0.5 percent by weight.

(d) Use of non-waste materials as an alternative to operating cover . The department may approve the use of materials as AOC upon demonstration that the materials meet the requirements of section 363-7.1(b) of this Part. Approval of the use of non-waste materials as an AOCis not subject to the variance requirements of section 360.10 of this Title.

Section 363-6.22 Survey control and location coordinates.

(a) One permanent survey benchmark of known elevation measured from a United States geological survey (USGS) benchmark must be established and maintained for each 25 acres of developed landfill, or part thereof, at the site. This benchmark must be the reference point for establishing vertical elevation control.

(b) The New York transverse mercator (NYTM) coordinates for the landfill must be established. Horizontal control must be established and one of its points must be a benchmark established under subdivision (a) of this section.

SUBPART 363-7

OPERATING REQUIREMENTS

Section 363-7.1 Operating requirements
363-7.2 Additional operating requirements for landfills in Nassau or Suffolk county

Section 363-7.1 Operating requirements.

In addition to the operating requirements set forth in section 360.19 of this Title, all landfills regulated under this Part must comply with this section.

(a) Waste control requirements.

(1) Final external slopes must not be greater than 33 percent, but interim external slopes may exceed 33 percent if the owner or operator demonstrates to the department's satisfaction that a proposed greater slope is stable and the slope will settle to 33 percent or less prior to closure of the landfill cell.

(2) The first layer of waste placed above the primary leachate collection and removal system must be a minimum of five feet in compacted thickness, be of a select nature containing no large rigid objects, and be placed in a manner to avoid damage to the liner system.

(3) Drilling and production waste may not be placed within six feet of the leachate collection and removal system or within 10 feet of any final cover.

(4) Low-permeability or low shear-strength waste must be blended with other wastes to minimize waste mass instability and maximize leachate movement through the waste mass.

(5) Radioactive waste detection procedures and requirements.

(i) Landfills which accept MSW or drilling and production wastes must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste.

(ii) The investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times site background radiation levels.

(iii) Background radiation readings at the facility must be measured and recorded at least daily.

(iv) Field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly.

(v) The radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility.

(vi) Each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department within 24 hours. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector

reading, disposition of the waste, and date of disposition.

(b) Operating cover.

Operating cover must be applied in accordance with the provisions of this subdivision and the cover material management plan.

(1) Operating cover or alternative operating cover must effectively control vectors, fires, odors, dust, and blowing litter.

(2) A minimum of six inches of compacted operating cover must be applied to all exposed waste at the close of each operating day, or at a more frequent interval if necessary, unless an alternative thickness or material is approved pursuant to section 363-6.21 of this Part.

(3) A minimum of 12 inches of compacted operating cover must be applied and maintained on all landfill surfaces where no additional waste has been or will be placed within 30 calendar days of the last placement of waste, unless an alternative thickness or material is approved pursuant to section 363-6.21 of this Part. If odor problems are not controlled, additional measures must be implemented.

(4) The total annual tonnage of alternative operating cover approved pursuant to section 363-6.21(c) of this Part must be identified separate from the total annual tonnage for disposal in the facility's permit to operate. The facility must not exceed the total annual tonnage of alternative operating cover. Any exceedance of the total annual tonnage of alternative operating cover must be reported to the department in accordance with the permit and with section 363-8.2 of this Part.

(5) Alternative operating cover material approved pursuant to section 363-6.21(c) of this Part must be stored over a lined area of the landfill and run-off from the material must be managed as leachate.

(c) Intermediate cover.

An intermediate cover must be applied and maintained on all external slopes for every 20 feet of vertical rise.

(d) Final cover.

The final cover system must be installed and maintained in accordance with the requirements of Subpart 363-9 of this Part.

(e) Decomposition gases.

Decomposition gases generated within a landfill must be controlled to prevent safety issues and off-site odors. Measures to control decomposition gases must be undertaken in accordance with the following requirements:

(1) in landfills which receive putrescible waste or construction and demolition debris, horizontal landfill gas lines must be installed in the waste mass at a horizontal spacing of not more than 100 feet and a vertical spacing of not more than 20 feet and must extend across the entire waste mass, except that they must terminate not more than 100 feet from the exterior slope of the waste mass. The department may approve site-specific spacing of landfill gas collection lines in landfills that receive only construction and demolition debris with the condition that if nuisance odor issues

occur the landfill will be required to meet the spacing requirements specified in this paragraph.

(2) the concentration of methane and other explosive gases must not exceed 25 percent of the lower explosive limit for gases:

(i) at or beyond the property boundary; or

(ii) within on-site structures excluding gas management or recovery system components;

(3) an ongoing gas monitoring program must be implemented throughout the active life, post-closure care period, and custodial care period to ensure that the requirements of paragraph (2) of this subdivision are met. The type and frequency of monitoring must be approved by the department and be based on the following factors: soil conditions; the hydrogeologic conditions surrounding the disposal area; the hydraulic conditions surrounding the disposal site; and the location of any man-made structures and property boundaries. Monitoring must be conducted at least quarterly;

(4) monitoring must be performed at 100-foot maximum intervals where temporary sampling locations are used, or at 400-foot maximum intervals where permanent gas monitoring wells are constructed. Initial monitoring must be performed when atmospheric pressure and wind velocity are low and when the ground surface has been wet or frozen for several days. Monitoring must be done below the wet or frozen zone if present;

(5) upon detection of methane or other explosive gas levels exceeding the limits specified in paragraph (2) of this subdivision, the landfill operator must immediately take action to avoid hazards to public health and the environment, and must:

(i) within 24 hours of detection, notify the department;

(ii) within seven days of detection, submit to the department the methane or other explosive gas levels detected and provide a description of the steps taken to protect health, safety, and property; and

(iii) within 30 days of detection, submit a plan and a schedule to remediate any continuing methane or other explosive gas releases. The plan must describe the nature and extent of the problem and the proposed remedy, and be implemented upon department approval.

(f) Leachate management.

(1) Leachate must be managed in accordance with the department-approved leachate management plan.

(2) Leachate depth (head) above the primary liner system may not exceed 12 inches, except during and within a seven-day period following storm events and in designed sump areas. Both the primary and secondary leachate collection and removal systems must be operated in a free-draining manner so as not to cause a leachate head buildup above the respective liner system.

(3) All run-off which either emanates from active portions of the landfill disposal areas covered only with alternative operating cover which was generated from waste or has come into contact with waste or leachate must be considered leachate and be appropriately managed by the landfill's leachate collection and removal system.

(4) Leachate must be monitored as required by section 363-4.6(f)(8)(iii) of this Part.

(5) Stormwater within the secondary containment area of the leachate storage tank system must be removed so as to maintain a minimum of 100 percent containment capacity for the largest storage tank within the secondary containment area.

(6) Stormwater that collects within the secondary containment system of the leachate storage tank system must be controlled by a manually operated pump or a gravity drain pipe with a manually controlled valve. If a gravity drain pipe is used, all valves must be in a closed position and locked except when the operator is in the process of draining uncontaminated stormwater.

(7) Allowable leakage rate. If flow within the secondary leachate collection and removal system exceeds 20 gallons per acre per day (based on a rolling 30-day average), the owner or operator must implement the following procedures, at a minimum:

(i) notify the department within 72 hours from the time of the exceedance;

(ii) sample and analyze secondary leachate for baseline parameters;

(iii) submit a preliminary written assessment to the department within 14 days of the exceedance, which must include any short-term actions that have either been taken or are planned, a description of the amount of liquid observed, and the suspected cause of the excessive leakage rate exhibited, considering precipitation events and the possible location, size and cause of potential leaks;

(iv) investigate and determine, to the extent practicable, the location, size and cause of the leaks;

(v) determine whether waste receipt should cease or be curtailed, whether any waste should be removed from the cell for inspection, repairs, or controls, and whether the cell should be closed;

(vi) determine any other short term or long-term actions to be taken to reduce the leakage rate;

(vii) within 30 days after the notification that the allowable leakage rate has been exceeded, submit to the department the results of the determinations specified in subparagraphs (ii), (iv), (v), and (vi) of this paragraph, the results of the actions taken, and actions planned. Monthly thereafter, so long as the flow rate in the secondary leachate collection and removal system exceeds the allowable leakage rate, a report must be submitted to the department summarizing the results of any remedial actions taken and actions planned in order to reduce

the leakage to an allowable level; and

(viii) take other measures as the department may require based on the significance of the leakage, including but not limited to cell or facility closure, if the leakage rate cannot be reduced to less than 20 gallons per acre per day within six months.

(g) Maintenance for primary and secondary leachate collection and removal systems.

(1) The primary leachate collection and removal system must be cleaned annually and maintained in good operating condition. The owner or operator may request that the department waive the cleaning requirement based on the results of the video inspection in paragraph (2) of this subdivision. The department will not grant waivers in consecutive years.

(2) Video inspection of any primary leachate collection and removal system and secondary leachate collection and removal system constructed in accordance with this Part must be performed at least biennially.

(3) Monitoring of secondary leachate collection and removal system flowrates must be conducted and recorded daily when the facility is operating.

(4) An operational log for recording monthly total leachate generation amounts and a maintenance log for documenting compliance with paragraphs (1)-(3) of this subdivision must be kept at the site and included in the landfill's annual report.

(h) Leachate recirculation.

(1) Leachate recirculation is only allowed in cells constructed with double composite liners and in which active gas collection and destruction is performed. If allowed, the following conditions must be met.

(i) A leachate recirculation system must terminate no closer than 100 feet from the exterior slope of the waste mass.

(ii) Leachate recirculation rates must be established and primary leachate flowrates must be monitored to ensure that the receiving waste mass does not become saturated.

(iii) The landfill must demonstrate that the allowable leakage rate measured in the secondary leachate collection and removal system has not been exceeded during the previous 12 months.

(2) During leachate recirculation, leachate must not be introduced directly onto operating cover.

(i) Moisture content of waste.

Wastes accepted for disposal must exhibit no free liquids and must contain a minimum of 20 percent solids. All dredged materials and sludges other than sewage sludge accepted for disposal must be dewatered to 20 percent or more solids and exhibit no free liquid as defined by SW-846 Method 9095 - Paint Filter Liquids Test, incorporated by reference in section 360.3 of this Title.

(j) Biosolids.

All biosolids accepted for disposal must be stabilized, dewatered to a minimum of 20 percent solids, and exhibit no free liquid as

defined by SW-846 Method 9095 - Paint Filter Liquids Test, incorporated by reference in section 360.3 of this Title. Biosolids that are disposed of must meet the following stabilization criteria, except if it can be demonstrated to the department's satisfaction that the equivalent level of odor reduction can be achieved through alternative methods:

(1) The biosolids must be either digested or lime stabilized. If lime is used, sufficient lime must be added to raise the pH of the sludge to 12 for at least 30 minutes. The level of treatment must be adequate to reasonably prevent nuisance conditions.

(2) Biosolids cannot be accepted for disposal from a sewage treatment plant that has a biosolids treatment process other than digestion or lime stabilization unless one of the following criteria is satisfied:

(i) the mass of volatile solids in the biosolids has been reduced by a minimum of 38 percent;

(ii) for biosolids treated in an aerobic process, the specific oxygen uptake rate (SOUR) is equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis), at a temperature of 20° C;

(iii) the biosolids are composted for a minimum of 14 days. Throughout that treatment time, the temperature of the biosolids must remain higher than 40° C, and the average temperature of the biosolids must be higher than 45° C;

(iv) the percent solids of the biosolids are equal to or greater than 75 percent.

(k) Friable asbestos-containing waste disposal.

Friable asbestos-containing waste or material contaminated with friable asbestos-containing waste may only be disposed of at a landfill if the following measures and precautions are taken:

(1) the landfill must have a protocol in place as part of their waste control plan describing procedures for receipt of friable asbestos-containing waste and placement in the landfill;

(2) the area designated for disposal of friable asbestos-containing waste must be recorded on an operations site plan so that precautions can be taken to properly handle the friable asbestos-containing waste in the event of future construction or regrading in this area;

(3) the friable asbestos-containing waste must either be placed into a pre-dug trench in the existing waste or at the bottom of the working face. The friable asbestos-containing waste must be backfilled or covered with at least three feet of waste or 18 inches of soil before compaction to isolate the friable asbestos-containing waste; and

(4) friable asbestos-containing waste must be prevented from becoming airborne or coming into contact with landfill equipment.

(l) Non-friable asbestos-containing waste disposal.

Non-friable asbestos-containing waste may be disposed of at a landfill, provided it is not reduced in size, crushed, or processed in any manner before being placed under operating cover or another lift of waste.

(m) Inspection for unauthorized waste.

At a minimum frequency of once per week, the owner or operator must select a waste collection vehicle at random and unload its waste for a detailed inspection for unauthorized wastes. A record of the results of this inspection must be kept on the premises and be available for department review.

(n) Weight scales.

Any landfill that accepts at least 20 tons of waste per day averaged over the operating days for a calendar year must install and utilize a scale. Landfills that accept less than 20 tons of waste per day must utilize a department-approved alternate means of quantifying the weight of waste received.

(o) Disposal prohibitions.

Disposal of the following is prohibited:

(1) waste tires, except solid rubber tires (non-pneumatic);

(2) lead acid batteries;

(3) source-separated recyclables, source-separated HHW, source-separated electronic waste, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs in New York State;

(4) mercury-added consumer products as defined in ECL section 27-2101 or mercury-added thermostats as defined in ECL section 27-2901;

(5) bulk liquids. Liquid containers that are generated from households and that contain five gallons or less of liquids are not considered bulk liquids;

(6) hazardous waste as defined in Part 371 of this Title;

(7) low-level radioactive waste, processed and concentrated naturally occurring radioactive material (NORM) waste, or nuclear accelerator-produced radioactive material (NARM) waste as defined in Parts 380, 382, and 383 of this Title that are required by Parts 380 and 383 of this Title to be disposed of at a Part 383 of this Title permitted facility;

(8) wastes, excluding firebrick, which exhibits a concentration greater than 25 pCi/g of radium-226;

(9) fluids produced from an oil or gas production well, including flowback water and production brine; and

(10) any other materials prohibited by law.

(p) Industrial waste or drilling and production wastes disposal. Industrial waste or drilling and production wastes, if accepted, must be included in the landfill's waste control plan, which must describe any special handling or disposal procedures associated with the waste.

(q) Training requirements.

(1) Landfill operations must be directed by a facility operator who has attended and successfully completed within 12 months of their date of employment, a landfill operations training course which is approved by the department. The operator must renew this training every five years. Proof of training must be kept on file at the facility.

(2) Training related to radiation detection system operating procedures and radiation investigation alarm response procedures must be conducted at least annually.

(r) Deed restriction. The landfill owner must place a deed restriction on the property. The deed restriction must run with the land in perpetuity as long as any waste disposed at the landfill remains.

(1) All landfill owners must submit to the department for approval a proposed deed restriction within one year of the effective date of the permit. The proposed deed restriction must include a discussion of the planned site life for the landfill operation with a general description of the types of waste received and description of the proposed landfill end use. The proposed deed restriction must include a survey and a map, that clearly indicates the existing and proposed limits of the disposal areas within the property boundary. The landfill owner shall record the deed restriction within 30 days of approval by the department, in the office of the recording officer for the county or counties where the property is situated in a manner prescribed by Article 9 of the Real Property Law. The landfill owner must submit to the department a certified copy of the filed deed restriction with the indexing information from the appropriate county clerk's office within 30 days of its recording.

(2) An updated property deed restriction must be submitted with the facility closure plan to the department for approval in accordance with section 363-9.3(e). This updated deed restriction must indicate the period of time during which the property has been used as a landfill, describe the wastes contained within the landfill, and must note that records for this facility have been filed with the department. The updated deed restriction must indicate that the closed landfill is subject to a post-closure care plan and a custodial care plan filed with the department and must include a survey and a map, that clearly indicates the limits of the disposal areas within the property boundary. The landfill owner shall record the deed restriction within 30 days of approval by the department, in the office of the recording officer for the county or counties where the property is situated in the manner prescribed by Article 9 of the Real Property Law. The landfill owner must submit to the department a certified copy of the filed deed restriction with the indexing information from the appropriate county clerk's office within 30 days of its recording .

(s) Financial assurance. The landfill must maintain financial assurance in an amount sufficient to cover the cost of closure, post-closure care, and corrective measures, if required, as specified by this Subpart and section 360.22 of this Title.

(t) Food scraps disposal. After January 1, 2022, landfills must take all reasonable precautions to not accept food scraps from

designated food scraps generators required to send their food scraps to a facility regulated by Subpart 361-2 or 361-3 of this Title, unless the designated food scraps generator has received a temporary waiver from the department.

Section 363-7.2 Additional operating requirements for landfills in Nassau or Suffolk county.

In addition to the requirements of section 360.19 of this Title and section 363-7.1 of this Subpart, landfills located in Nassau or Suffolk county must conform to the operating requirements of this section.

(a) Landfills located within the deep flow recharge area may only accept concrete, steel, wood, sand, dirt, soil, glass, C&D debris, and recognizable inert material designated by the department.

(b) In addition to wastes described in subdivision (a) of this section, landfills located outside the deep flow recharge area may accept bypass waste, untreatable waste, and waste that is the residue of processes that separate, extract, and recover useable materials, energy, or heat from waste.

(1) Bypass waste and untreatable waste may only be deposited in a special area that is located and constructed to physically segregate these wastes and minimize their effects on the environment.

(2) Not more than 10 percent of the annual rated capacity of a municipal waste combustor may be accepted for disposal as bypass waste per year. However, up to 10 percent of the annual rated capacity of more than one municipal waste combustor may be accepted for disposal at a single facility.

SUBPART 363-8

RECORDKEEPING AND REPORTING

Section 363-8.1 Recordkeeping
363-8.2 Reporting

Section 363-8.1 Recordkeeping.

(a) In addition to the recordkeeping requirements of section 360.19(k) of this Title, the owner or operator of a landfill must maintain:

(1) A daily log of wastes received at the landfill that identifies the location where the waste was placed;

(2) Water quality records required by section 363-4.6 of this Part must be kept throughout the active life and post-closure period of the facility;

(3) The operational log recording monthly total leachate generation amounts and the maintenance log documenting compliance with this schedule required by section 363-4.6(f)(8)(iii) of this Part must be kept at the facility;

(4) Records associated with the radioactive waste detection procedures required by section 363-7.1(a)(5) of this Part must be kept at the facility.

Section 363-8.2 Reporting.

The owner or operator of a facility regulated under this Part must submit an annual report on forms prescribed by the department as required in section 360.19(k)(3) of this Title, and must submit all water quality monitoring results as required by section 363-4.6(f)(10) of this Part.

SUBPART 363-9

CLOSURE, POST-CLOSURE, AND CUSTODIAL CARE

Section 363-9.1 Applicability
363-9.2 Closure site investigation
363-9.3 Closure
363-9.4 Closure construction certification
363-9.5 Gas control system
363-9.6 Post-closure care and custodial care
363-9.7 End use

Section 363-9.1 Applicability.

All landfills subject to regulation under this Part, except landfills that ceased accepting waste before November 4, 2017, must conform to the requirements for closure, post-closure care, and custodial care set forth in this Subpart. Closure, post-closure care and custodial care activities must be conducted under a permit issued in accordance with the permitting requirements of section 360.16 of this Title. All landfills, including landfills that closed prior to November 4, 2017 or were not subject to closure, post-closure care or custodial care requirements must conform to the end use requirements in section 363-9.7.

Section 363-9.2 Closure site investigation.

(a) The nature and extent of any past, current and potential releases or migration of contaminants from the site must be defined to ensure that an adequate final closure plan is developed. For existing sites where information is known through previous monitoring of the facility during its operating life, some or all of the requirements of this section may be waived upon approval of the department. The minimum elements of a closure site investigation are as follows:

(1) a hydrogeologic investigation performed in accordance with section 363-4.4 of this Part that, at a minimum, must:

(i) define the geologic and hydrogeologic conditions of the uppermost aquifer and, as required by the department, any other units in the critical stratigraphic section that may be impacted by the facility;

(ii) establish a long-term monitoring well network in the uppermost aquifer and other units determined necessary by the department, to monitor potential environmental impacts from the landfill and the effects of closure or remediation; and

(iii) analyze the initial round of samples or existing sampling data for each monitoring well point for baseline parameters. If contamination is detected, the department may require additional sampling and analysis as specified in section 363-4.6 of this Part;

(2) an explosive gas investigation performed to determine whether the site meets the requirements of section 363-7.1(e) of this Part, which must:

(i) include at least three rounds of subsurface explosive gas monitoring performed along the perimeter outside the waste mass but within the property boundary. Monitoring must be performed at 100-foot maximum intervals where temporary sampling locations are used, or at 400-foot maximum intervals where permanent gas monitoring wells are constructed. Initial monitoring must be performed when atmospheric pressure and wind velocity are low and when the ground surface has been wet or frozen for several days. Monitoring must be done below the wet or frozen zone if present;

(ii) identify the presence and concentration of explosive gases at or near the facility, including at the property line, in all on-site structures, and in potentially impacted off-site structures;

(iii) determine the extent of actual or potential gas migration off-site; and

(iv) describe the soil stratigraphy beneath and around the facility in terms of its potential to allow gas migration;

(3) a surface leachate investigation. This investigation must be performed when groundwater levels are at seasonal high elevations or at other times as specified by the department and must:

(i) identify the presence of leachate seeps or other uncontrolled leachate at, or emanating from, the facility;

(ii) document any instances where fugitive leachate from the facility is discharging into surface waters; and

(iii) characterize the chemical constituents of surface leachate for baseline parameters;

(4) a vector investigation to identify the presence of any vectors at the facility. If a vector problem is identified an appropriate remediation plan must be implemented prior to cessation of waste acceptance at the facility.

(b) Upon completion of the closure site investigation, the data must be compiled and presented in a closure site investigation report. The closure site investigation report must be completed and submitted to the department for approval.

Section 363-9.3 Closure.

(a) A final cover system must be installed on any landfill cell that has achieved final grades in accordance with Subpart 363-6 of this Part within five years of attaining final grades, except as required by subdivision (b) of this section.

(b) The owner or operator must complete final closure of the landfill by completing installation of the final cover system within 365 days of final receipt of waste unless an extension is approved in the landfill's closure plan.

(c) A facility closure plan must be submitted to the department at least 180 days before commencement of construction of final facility closure that:

(1) meets the requirements of this Subpart and section 363-4.6(p) of this Part;

(2) addresses unacceptable environmental impacts identified in the

closure site investigation report required in section 363-9.2 of this Subpart;

(3) provides an estimate of the facility area to be covered;

(4) provides an estimate of the inventory of waste in the facility;

(5) provides a closure construction schedule; and

(6) provides amended closure, post-closure care, and custodial care cost estimates.

(d) Financial assurance for closure, post-closure care, and custodial care must be amended in accordance with section 360.22 of this Title.

(e) An updated deed restriction that meets the requirements of section 363-7.1(r) must be submitted to the department with the facilty closure plan.

Section 363-9.4 Closure construction certification.

The construction certification required in section 360.16(j) of this Title must include a report that includes the following:

(a) the results of all CQA and CQC testing required in section 363-4.5 and Subpart 363-6 of this Part. The report must include documentation of any failed tests and all retesting performed and descriptions of procedures used to correct the improperly installed, damaged, or irregular material;

(b) record drawings noting any deviation from the approved closure plans; and

(c) a comprehensive narrative including, but not limited to, daily reports from the project engineer and a series of color photographs of major project features.

Section 363-9.5 Gas control system.

Landfill gas management systems are required for all facilities upon closure, and must be designed and constructed in accordance with the requirements of Subpart 363-6 of this Part, as appropriate.

Section 363-9.6 Post-closure care and custodial care.

(a) Post-closure care.

A facility's post-closure care period continues until the owner or operator can demonstrate to the department's satisfaction that the threat to public health and the environment has been reduced to a level where environmental monitoring and maintenance can be reduced.

(1) Operating requirements. In lieu of the operating requirements set forth in section 360.19 of this Title, all closed landfills regulated under this Part which are within their post-closure care period must conform to the operation requirements in this section, unless otherwise approved by the department based on unique circumstances associated with the landfill.

(i) Maintenance of all slopes, vegetation, drainage structures, gas venting structures, access roads, fencing and gates is required.

(ii) Maintenance of the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on

and run-off from eroding or otherwise damaging the final cover.

(iii) Vegetative cover must be established on all final cover areas within four months after placement. If this cannot be achieved due to seasonal constraints, measures must be taken to ensure the integrity of the final cover system until the establishment of vegetative cover. Throughout the post-closure care period, the vegetative cover must be maintained and must be mowed at least once a year, unless otherwise approved by the department.

(iv) Environmental and facility monitoring points, including gas monitoring points, must be maintained and sampled. This must include:

(a) post-closure explosive gas monitoring to determine if the facility meets the requirements of section 363-7.1(e) of this Part at least quarterly for a minimum period of five years. After this five-year period, the permittee may request that the department modify the sampling and analysis requirements. If post-closure explosive gas monitoring indicates explosive gas levels exceed the requirements of section 363-7.1(e) of this Part, appropriate actions must be taken and the department must be notified within 24 hours;

(b) annual baseline and quarterly routine monitoring as described in section 363-4.6 of this Part must be performed on groundwater, surface water, and leachate samples for the duration of the post-closure period. The owner or operator may petition the department for a reduction in monitoring frequency after five years of post-closure monitoring; and

(c) a description of type and location of sampling, sample preservation methodology, a well condition survey, and recordkeeping and reporting requirements for all environmental monitoring activities.

(v) The leachate collection system must be maintained and operated in accordance with section 363-7.1(f) and (g) of this Part. Leachate management activities include proper maintenance of all leachate controls, recording of the total volume of leachate stored at and removed from the facility, evaluation of liner performance, and leachate sampling and analysis.

(vi) Any installed active landfill gas collection system must be maintained and operated in accordance with section 363-7.1(e).

(vii) Quarterly inspections and inspections after seismic events of sufficient intensity which may adversely affect the integrity of the final cover system and major rainfall events (all 24-hour, five year storms) must be performed on all facility components during the post-closure care period.

(viii) Any end use of the property must not disturb the integrity of the

final cover, liners, any other components of the containment system, or the function of the monitoring or environmental control systems.

(ix) An annual report must be submitted as required by section 360.19 of this Title, and must include the results of maintenance, monitoring, quarterly inspections, and inspections after seismic events of sufficient intensity which may adversely affect the integrity of the final cover system and major rainfall events required in this subdivision.

(x) A report that includes all sampling and analysis results for all environmental and facility monitoring must be submitted at a frequency specified in subparagraph (iv) of this paragraph.

(xi) The landfill must maintain financial assurance in an amount sufficient to cover the cost of post-closure care, custodial care, and corrective measures, if required, as specified by this Subpart and section 360.22 of this Title.

(2) Post-closure care plan. The owner or operator must submit a final post-closure care plan to the department for approval prior to the last receipt of waste and at least every five years during the post-closure care period. The plan must provide:

(i) a description of the actions to be taken to implement paragraph (1) of this subdivision as appropriate;

(ii) a description of resource requirements including:

(a) minimum number of personnel and required qualifications; and

(b) minimum equipment needs;

(iii) the name, address and telephone number of the person or office to contact regarding post-closure care, and corrective measures concerns during the post-closure period;

(iv) a summary of financial assurance criteria that must be addressed to remain in compliance with the provisions of section 360.22 of this Title;

(v) a description of the planned uses of the property during and after the post-closure period; and

(vi) a list of any changes to the approved post-closure plan by topic, author, date of submittal, and date approved by the department from the time of original closure plan approval.

(b) Custodial care.

A facility's custodial care period begins when the owner or operator demonstrates to the department's satisfaction that the facility poses a significantly reduced threat to public health and the environment and that environmental monitoring and maintenance can be reduced.

(1) Operating requirements. In lieu of the operating requirements set forth in section 360.19 of this Title, all closed landfills regulated under this Part, which are within their custodial care period, must conform to the operation requirements in this section, unless

otherwise approved by the department based on unique circumstances associated with the landfill.

(i) Maintenance of all slopes, vegetation, drainage structures, gas venting structures, access roads, fencing and gates is required.

(ii) Maintenance of the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover.

(iii) Vegetative cover must be maintained and must be mowed at least once a year, unless otherwise approved by the department.

(iv) Environmental and facility monitoring points must be maintained and sampled. This must include:

(a) baseline monitoring, as described in section 363-4.6 of this Part, which must be performed on groundwater, surface water, and leachate samples once every five years; and

(b) a description of type and location of sampling, sample preservation methodology, a well condition survey, and recordkeeping and reporting requirements for all environmental monitoring activities.

(v) The gas venting system must be maintained and operated. If odors constitute a nuisance as determined by the department, an active gas collection system must be operated.

(vi) Annual inspections and inspections after seismic events of sufficient intensity which may adversely affect the integrity of the final cover system and major rainfall events (24-hour, five year storms) must be performed on all facility components.

(vii) An annual report must be submitted as required by section 360.19 of this Title, and must include the results of all maintenance, monitoring, and inspection activities as well as proposed changes to end use.

(viii) The landfill must maintain financial assurance in an amount sufficient to cover the cost of custodial care and corrective measures, if required, as specified by this Subpart and section 360.22 of this Title.

(2) Custodial care plan. The owner or operator must submit a final custodial care plan to the department upon determination that the landfill's post-closure period is complete. The custodial care plan at a minimum must provide:

(i) a description that documents actions to be taken to implement paragraph (1) of this subdivision assuring the effectiveness and reliability of the components of the landfill's waste containment system and appurtenances and associated

end use controls that have been determined necessary to protect public health and the environment;

(ii) a description of support requirements necessary to implement the custodial care plan, including:

(a) minimum number of personnel and required qualifications;

(b) minimum equipment needs;

(iii) the name, address and telephone number of the person or office to contact regarding custodial care, and corrective measures concerns during the custodial care period; and

(iv) a summary of financial assurance criteria that must be addressed to remain in compliance with the provisions of section 360.22 of this Title.

Section 363-9.7 End use.

(a) The owner or operator of a closed landfill where an end use is proposed, including landfills that were closed prior to November 4, 2017 or were not subject to closure, post-closure care, or custodial care requirements, must demonstrate that the proposed end use:

(1) will not adversely impact the final cover system and will not have a significant adverse impact on public health and the environment. The demonstration must consider migration of landfill gases and leachate, settlement or disturbance of waste, alteration of the final cover, soil, or other material that overlies the landfill or any other landfill components, and public access; and

(2) will not interfere with post-closure or custodial care monitoring and maintenance of the landfill, if applicable.

(b) No end use may be implemented without written department approval.

(c) Any buildings constructed on-site must be designed and constructed to prevent gas migration into the buildings and include:

(1) continuous methane gas sensors installed inside the building that will trigger an audible alarm and notification signal to emergency personnel when methane gas concentrations are detected;

(2) periodic methane gas and soil vapor monitoring inside all buildings and underground utilities; and

(3) a written certification by a professional engineer that engineering controls incorporated into the landfill closure design and/or the proposed structure are adequate to preclude any significant threat to public health and safety assuming normal occupation and use of the struct

SUBPART 363-10

CORRECTIVE MEASURES

Section 363-10.1 Corrective measures report

Section 363-10.1 Corrective measures report.

The owner or operator of a landfill must complete a corrective measures report and implement a corrective measures program consistent with this Subpart if trigger values are exceeded as specified in section 363-4.6(f)(9)(iii) of this Part. The requirements of this section do not apply to landfills that stopped accepting solid waste prior to October 9, 1993, or to facilities subject to Part 375 of this Title.

(a) Corrective measures assessment.

(1) If any expanded parameter is detected at a level which exceeds the groundwater protection standards specified in section 363-4.6(f)(9)(iii) of this Part, then the owner or operator must notify the department within 24 hours of detection, notify appropriate local government officials within seven days of detection, begin a corrective measures assessment within 30 days of detection, and complete the corrective measures assessment within a timeframe specified by the department. The facility owner or operator must continue to monitor the facility in accordance with section 363-4.6 of this Part.

(2) The corrective measures assessment must include a list of possible corrective measures including, but not limited to, closure in accordance with Subpart 363-9 of this Part and landfill reclamation in accordance with Subpart 363-11 of this Part, and an assessment of the effectiveness of each corrective measure. The assessment of each listed corrective measure must include, at a minimum:

(i) the corrective measure's performance, reliability and ease of implementation;

(ii) the corrective measure's potential impacts including safety effects, cross media effects and control of any probable residual contamination;

(iii) the time required to begin and complete each corrective measure;

(iv) the cost of each corrective measure; and

(v) an identification of any state and local permits or other public health or environmental requirements that may affect the corrective measure implementation.

(3) The facility owner or operator must discuss the corrective measures assessment in a public meeting and with the department before the selection of the corrective measure. A responsiveness summary, which addresses comments received at the public meeting, must be included with the corrective measures report submitted under subdivision (b) of this section. The public meeting must be noticed as follows:

(i) publication of the notice in a newspaper having general circulation

in the area within which the facility is located, direct mailing of the notice to property owners within 1,000 feet of the landfill footprint, and publishing of the notice in the environmental notice bulletin;

(ii) the notice must be published and mailed not less than two weeks nor more than six weeks before the meeting; and

(iii) the notice must indicate the date, time, place and purpose of the meeting, and the name and address of the owner or the owner's representative.

(b) Corrective measure selection.

(1) The facility owner or operator must select a corrective measure based on the results of the corrective measures assessment conducted under subdivision (a) of this section. A corrective measures report must be submitted to the department for approval within 14 days after completion of the proposed corrective measures assessment. The report must address the requirements of this subdivision and include the results of the corrective measures assessment, the proposed corrective measures, and a schedule for initiating and completing the corrective measures.

(2) The selected corrective measure must:

(i) protect public health and the environment;

(ii) attain the groundwater protection standard established pursuant to section 363-4.6 of this Part;

(iii) control the sources of releases to the maximum extent practical so as to reduce or eliminate further releases of the contaminants into the environment; and

(iv) comply with other applicable state and federal requirements.

(3) The facility owner or operator, in selecting a corrective measure, must consider the following factors:

(i) the probable success of the corrective measure, including:

(a) the reduction of existing risks;

(b) the potential of residual risks due to waste remaining after implementation of the corrective measure;

(c) the type and extent of long-term management required, including monitoring, operation and maintenance;

(d) short term risks that might be posed to public health and the environment while implementing the corrective measure. This includes any potential impacts to public health and the environment that may be associated with excavation, transportation, and redisposal of wastes;

(e) time until full protection is achieved;

(f) the potential adverse impacts on public health and the environment resulting from

exposure to remaining wastes compared to the potential of adverse impacts associated with further corrective measures;

(g) long-term reliability of the engineering and institutional controls;

(h) potential need to replace the corrective measure; and

(i) the compatibility of the corrective measure with department cleanup and pollution prevention initiatives for nonhazardous wastes;

(ii) the corrective measure's short-term and long-term effectiveness in preventing the release of additional contaminants. The probable effectiveness of the corrective measure should consider, at a minimum, the following:

(a) the extent to which containment practices will reduce further releases;

(b) the time period for reduction of any further releases; and

(c) the extent to which treatment technologies, including in situ treatment technologies, may be used;

(iii) the ease or difficulty of implementing a potential corrective measure, specifically considering the following:

(a) the difficulty of the construction;

(b) operational reliability of the technologies;

(c) the need to coordinate with and obtain necessary approvals and permits from other agencies;

(d) the availability of necessary equipment and specialists; and

(e) available capacity and location of needed treatment, storage, and disposal services;

(iv) the technical and economic resources available to the facility owner or operator;

(v) the degree to which community concerns are addressed by a potential corrective measure.

(4) Within 90 days after the selection of a department-approved corrective measure, the facility owner or operator must complete and submit to the department a corrective measures work plan that includes an implementation schedule. Any revisions to the work plan based on department comments must be submitted within 30 days. The owner or operator must consider the following factors in determining the schedule of corrective activities:

(i) the extent and nature of contamination and level of adverse impact to public health and the environment;

(ii) the objectives of the corrective measure and the practical capabilities of corrective technologies in remediating contamination and leading to compliance with the groundwater protection standards;

(iii) availability of treatment or disposal capacity for wastes managed during implementation of the corrective measure;

(iv) an evaluation of the use of experimental technologies that are not currently commercially available, which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve corrective objectives;

(v) potential risks to public health and the environment resulting from exposure to contamination prior to completion of the corrective measure;

(vi) resource value of the contaminated aquifer, including:

(a) whether the aquifer is a primary or principal aquifer or is within a public water supply stabilized cone of depression area or within a regulated wetland, special flood hazard area or other applicable prohibited or restricted siting area as defined in this Part;

(b) current and future uses;

(c) proximity and withdrawal rate of users;

(d) groundwater quantity and quality;

(e) potential damage to wildlife, crops, vegetation, and physical structures that may be caused by exposure to the waste constituent;

(f) hydrogeologic characteristics of the facility and surrounding land;

(g) groundwater removal and treatment costs; and

(h) cost and availability of alternative water supplies;

(vii) practical capability of the facility owner or operator;

(viii) an evaluation of any interim measures necessary to ensure the protection of public health and the environment. The interim measures must be consistent with the objectives of and contribute to the performance of any corrective measure that may be required under subdivision (b) of this section. The interim measures evaluation must be submitted to the department to determine if interim measures are needed. An interim measures evaluation must consider the following factors:

(a) time required to develop and implement a final corrective measure;

(b) actual or potential exposure of contaminants to nearby populations or environmental receptors;

(c) actual or potential contamination of drinking water supplies, primary or principal aquifers, or sensitive ecosystems or environments;

(d) further degradation of the groundwater that may occur if a corrective measure is not initiated expeditiously including, but not limited to, direction and rate of contaminant movement in the groundwater flow system;

(e) weather conditions that may cause contaminants to migrate or be released or otherwise aid in their transmission;

(f) risks of fire or explosion, or potential for exposure to contaminants as a result of an accident or failure of a container or handling system; and

(g) other situations that may pose threats to public health and the environment; and

(ix) other relevant factors.

(5) The department may determine that the proposed corrective measure for a contaminant parameter is not necessary if the facility owner or operator demonstrates to the satisfaction of the department that:

(i) the groundwater is additionally contaminated by substances that have originated from a source other than the landfill and that the concentrations of those substances are present at levels where implementation of the corrective measures would provide no significant reduction in risk to public health and the environment;

(ii) the remediation of the release is technically impractical; or

(iii) the remediation will result in unacceptable cross media impacts.

(6) A determination by the department under paragraph (5) of this subdivision does not affect the authority of the department to require the facility owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further contamination of groundwater or to mitigate the groundwater contamination to concentrations that are technically practical and significantly reduce threats to public health and the environment, nor does it diminish the department's authority to seek civil or criminal penalties or other damages or relief as part of an enforcement action under state or federal law.

(c) Corrective measure implementation.

(1) Once the corrective measure work plan is approved by the department, the facility owner or operator must:

(i) establish and implement a corrective measure groundwater monitoring program, that:

(a) meets the requirements of section 363-4.6 of this Part and any additional condition imposed by the department as part of a permit, administrative order, or court order;

(b) indicates the effectiveness of the corrective measure; and

(c) evaluates compliance with the groundwater protection standard specified in section 363-4.6 of this Part;

(ii) implement the corrective measure selected under subdivision (b) of this section in accordance with the terms, conditions and schedule set forth in an approved corrective measures work plan; and

(iii) take any interim measures necessary to protect public health and the environment.

(2) The department may determine that compliance with paragraph (b)(2) of this section is not being achieved through the selected corrective measure. In these cases, the department may require the facility owner or operator to implement other methods or techniques that could achieve compliance with paragraph (b)(2) of this section, unless the department makes a determination under paragraph (3) of this subdivision.

(3) If the facility owner or operator determines that they cannot achieve the requirements of paragraph (b)(2) of this section with any currently available methods, then the owner or operator must:

(i) submit a justification for the department's approval, which indicates that the requirements under paragraph (b)(2) of this section cannot be achieved with any currently available methods;

(ii) implement alternate measures acceptable to the department, to control exposure to humans, wildlife, the environment or other receptors to residual contamination;

(iii) implement measures acceptable to the department, for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are consistent with the overall objective of the corrective measure; and

(iv) notify the department that the report justifying the alternative measures has been placed in the operating record. The department must be notified within 14 days prior to implementing the alternative measures.

(4) All wastes that are managed according to a corrective measure required under this section must be managed in a manner that:

(i) protects public health and the environment; and

(ii) complies with applicable state and federal requirements.

(5) Corrective measures selected according to subdivision (b) of this section are considered complete when:

(i) the facility owner or operator complies, to the satisfaction of the department, with the groundwater protection standards specified in this section at all points within the plume of contamination. Compliance with the groundwater protection standards is demonstrated when concentrations of contaminants required to be measured have not exceeded the groundwater protection standard for three consecutive years using the procedures and performance standards in the environmental monitoring plan under section 363-4.6 of this Part. The department may specify an alternative length of time

during which the facility owner or operator must demonstrate that concentrations of baseline and expanded parameters have not exceeded groundwater protection standard(s) taking into consideration:

(a) extent and concentration of the release;

(b) behavior characteristics of the contaminants in the groundwater;

(c) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(d) characteristics of the groundwater; and

(ii) all actions required to complete the corrective measure have been satisfied.

(6) Within 14 days of the completion of the corrective measure, the facility owner or operator must certify to the department that the corrective measure has been completed according to the requirements of paragraph (5) of this subdivision. The certification must be signed by the facility owner or operator and submitted to the department for approval.

(7) When, upon review of the certification, the department determines that the corrective measure has been completed in accordance with the requirements under paragraph (5) of this subdivision, the department will approve the certification and may allow the facility owner or operator tobe released from the requirements for financial assurance for corrective measures.

SUBPART 363-11

LANDFILL RECLAMATION

Section 363-11.1 Applicability
363-11.2 Registered facilities
363-11.3 Feasibility study
363-11.4 Reclamation work plans
363-11.5 Landfill footprint reduction
363-11.6 Emergency response plans

Section 363-11.1 Applicability.

This Subpart applies to reclamation activities at landfills regulated pursuant to this Part. For purposes of this Subpart, *landfill reclamation* is defined as excavation of a portion or all of a landfill with the goal of reducing landfill volume through separation of materials into recyclable, reusable, and combustible components; reducing closure and post-closure costs by complete or partial removal of the landfill; creating capacity; or reducing environmental impacts.

Section 363-11.2 Registered facilities.

(a) An owner or operator of a landfill must not conduct a reclamation feasibility study or landfill reclamation without a registration issued pursuant to section 360.15 of this Title and this Subpart. Facilities registered pursuant to this Part must comply with section 360.15 of this Title if not otherwise permitted under this Part.

(b) In lieu of the operating requirements described in section 360.19 of this Title, each facility registered pursuant to this Part must comply with the requirements specified in this Subpart, except that reclamation by owners or operators involving only re-contouring or reduction without waste processing of the existing waste mass in a disposal facility may comply with only section 363-11.5 of this Subpart.

Section 363-11.3 Feasibility study.

(a) A feasibility study must be conducted prior to any reclamation activities and in accordance with a department-approved work plan. Landfill reclamation feasibility study work plans must include:

(1) a preliminary site investigation, including:

(i) a description of the vertical and areal extent of the landfill;

(ii) a delineation of discrete or partially separated areas of the landfill, or special waste (*e.g.*, ash, biosolids, friable asbestos-containing waste, C&D debris, etc.) disposal areas;

(iii) a description of the age, type of waste and cover material, landfill operation method, and estimate of volume for each area of the landfill identified in subparagraph (ii) of this paragraph;

(iv) an estimate of the water table depth throughout the area to be reclaimed;

(v) an assessment of available work space for equipment staging, material storage, and other work areas;

(vi) an evaluation of the landfill's existing groundwater monitoring system, procedures, and most recent analytical data;

(vii) an assessment of the landfill gas generated by the landfill; and

(viii) a description of the regulatory history of the landfill (*e.g.*, results of department inspections, compliance history, permit status, etc.);

(2) a feasibility study field investigation work plan that describes all of the field work and laboratory analysis that is part of the feasibility study, including:

(i) all proposed work areas;

(ii) the number and location of all borings, trenches, and test pits and their estimated depth and volume;

(iii) a description of all excavation and material handling operations;

(iv) a description of all material quantification methods and laboratory analyses that will be used to characterize and estimate the quantities of recyclables, combustibles, reusable fill material, and other components;

(v) a delineation of project management responsibilities and a proposed work schedule; and

(vi) an emergency response plan as described in section 363-11.6 of this Subpart.

(b) Upon completion of the feasibility study, the data must be compiled and presented in a feasibility study report submitted to the department. The report must include:

(1) a description of sampling, analysis, test pits and test borings;

(2) the thickness of waste fill and depth to the water table;

(3) a characterization of excavated materials (*e.g.*, recyclables, combustibles, reusable fill material, and other components);

(4) analysis of reusable fill material component, if applicable;

(5) an evaluation of the suitability of the excavated material for reuse or recycling, the need for further processing, and the expected final disposition;

(6) an assessment of potential costs;

(7) an assessment of the benefits and impacts associated with landfill reclamation; and

(8) a determination as to whether landfill reclamation is feasible.

Section 363-11.4 Reclamation work plans.

(a) Drawings and work plans for demonstration projects or landfill reclamation must be submitted to the department for approval prior to the commencement of reclamation activities and must include the following:

(1) A vicinity map that shows the area within one mile of the boundaries of the landfill to be reclaimed; the existing and proposed zoning and land use within that area; and residences, access roads, and other existing and proposed artificial or natural features relating to the reclamation of the landfill.

(2) A site plan showing the landfill's property boundaries; the utilities including electric, gas, water, storm, and sanitary sewer systems and right-of-way easements; the names and addresses of abutting property owners; the location of the proposed reclamation; the landfill liner system and leachate collection, storage, treatment and pumping systems; the landfill gas management system, if any; on-site buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; a wind rose; and the site topography.

(3) Detail of the proposed reclamation area adequately delineating in plan and cross-sectional view, the depth of excavation, proximity to the liner and leachate collection and disposal system, if any, other landfill structures and equipment, and direction of progression.

(4) A description of procedures to excavate, process, store, transfer, use, and dispose of excavated material. The off-site reuse of soil components or residues must be approved by the department in advance in accordance with section 360.12 of this Title.

(5) A stormwater and leachate management plan.

(6) The procedure for site clean-up and grading after reclamation described with detailed drawings showing original and final grades. Landfill footprint reduction must meet the requirements of section 363-11.5 of this Subpart.

Section 363-11.5 Landfill footprint reduction.

Footprint reduction areas must be cleaned by completely removing waste and contaminated subbase soil from below the reclaimed area. If landfill reclamation results in a reduction of the landfill footprint, the following requirements must be met.

(a) A petition for the exclusion of the reclaimed landfill area from the closure, post-closure and custodial care criteria described in Subpart 363-9 of this Part may be submitted for approval by the department. The footprint reduction petition must include the following:

(1) details of the footprint reduction area in plan and cross-sectional views; and

(2) an in-situ subbase soil sampling plan that describes the number of samples, the method of sampling, and the analytical parameters and methods, and an evaluation of the sampling and analysis results.

Section 363-11.6 Emergency response plans.

(a) Emergency response plans must be prepared in accordance with section 360.16(c)(4)(iv) of this Title.

(b) A site health and safety coordinator must be designated on a full-time basis during excavation. The site health and safety coordinator must be trained in hazardous waste operations and emergency response as referenced in 29 CFR section 1910.120, as

incorporated by reference in section 360.3 of this Title.

PART 364

WASTE TRANSPORTERS

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SUBPART 364-1

GENERAL

Section 364-1.1 Purpose
364-1.2 Applicability

Section 364-1.1 Purpose.

It is the purpose of this Part to protect the environment from mishandling and mismanagement of all regulated wastes transported from the site of generation to the site of ultimate treatment, storage or disposal and to prevent a discharge of wastes into the environment, whether accidental or intentional, except at a site approved for the treatment, storage or disposal of the wastes.

Section 364-1.2 Applicability.

This Part governs the transport of regulated waste originating or terminating at a location in New York State. Definitions applicable to this Part are found in Part 360 of this Title. For the purposes of this Part, *regulated waste* means any of the following types of waste:

(a) Raw sewage, which includes portable toilet waste.

(b) Septage.

(c) Materials contaminated by raw or partially-treated sewage or septage.

(d) Sludge from a wastewater or water supply treatment plant.

(e) Industrial-commercial waste that originates at, is generated by, or occurs as a result of any industrial or commercial activity. *Industrial-commercial waste* includes, but is not limited to:

(1) liquids such as acids, alkalis, caustics, leachate, petroleum (and its derivatives), and process or treatment wastewaters;

(2) sludges that are semi-solid substances resulting from process or treatment operations, or residues from storage or use of liquids;

(3) solidified chemicals, paints, or pigments;

(4) the end-products or by-products of incineration or other forms of combustion, including ash;

(5) foundry sand;

(6) drilling and production waste;

(7) navigational dredged material;

(8) contained gaseous materials;

(9) waste from commercial operations such as stores, offices, restaurants, etc.;

(10) construction and demolition (C&D) debris generated or transported by an industrial or commercial business, including excavated material;

(11) friable asbestos-containing waste.

(f) Waste tires.

(g) Waste oil.

(h) Regulated medical waste (RMW), and other infectious wastes regulated under Subpart 365-3 of this Title.

(i) Source-separated household hazardous waste (HHW) transported from a collection event or site or by a commercial business.

(j) Hazardous waste as defined in Part 371 of this Title.

SUBPART 364-2

EXEMPTIONS

Section 364-2.1 Exempt transport

Section 364-2.1 Exempt transport.

In addition to the exemptions provided in section 360.14 of this Title, the following are exempt from this Part:

(a) Transport of waste by rail, water and air carriers.

(b) Transport of the following wastes, provided no other regulated waste is intermixed, contained in or otherwise included with the waste:

(1) Residential and institutional waste except if raw sewage, septage, sludge from a sewage or water supply treatment plant, low-level radioactive waste, waste tires, or waste oil.

(2) Source-separated HHW self-transported from a household to a HHW collection event or permitted HHW collection facility. Source-separated HHW transported in any quantity by any other method is not exempt.

(3) Waste generated from agricultural operations provided any waste pesticides are transported by the farmer to a department-approved HHW or pesticide collection event site.

(4) Waste transported by farm vehicles for use on a farm.

(5) Tree debris.

(6) Regulated waste in quantities less than or equal to 2,000 pounds in any single shipment, except as follows:

(i) C&D debris in quantities less than or equal to 10 cubic yards in any single shipment.

(ii) Hazardous waste as defined in Part 371 of this Title in any quantity.

(iii) Universal waste as defined in Section370.2 of this Title in quantities less than 500 pounds in any single shipment, unless otherwise specified in this Part.

(iv) Waste generated and transported by a conditionally exempt small-quantity generator pursuant to section 371.1(f) of this Title, provided that no more than a total of 500 pounds of hazardous waste or no more than 2.2 pounds of acute hazardous waste are transported in any single shipment.

(v) RMW in quantities less than 50 pounds in a single vehicle by private parcel delivery systems or by the United States Postal Service, provided the transporting entities comply with the packaging, labeling, tracking document and other transport requirements of the USDOT for the waste.

(vi) RMW in quantities less than 50 pounds in a single vehicle, contaminated with a radioisotope and

transported by an employee or courier of a radiopharmacy registered in accordance with Part 365 of this Title, provided that the RMW is returned to the dispensing radiopharmacy.

(vii) Household sharps in quantities less than 50 pounds in a single vehicle, provided the vehicle is owned and operated by a participant in the NYSDOH 's New York State Safe Sharps Collection Program.

(viii) Waste tires in loads of 20 or fewer waste tires.

(ix) Waste oil in quantities of 55 gallons or less in a single shipment.

(7) C&D debris leaving a construction and demolition debris handling and recovery facility except for fill, residues, and material which does not meet the requirements of a beneficial use determination (BUD) specified in section 360.12 of this Title.

(8) Elemental mercury and dental amalgam waste regulated pursuant to Subpart 374-4 of this Title, generated at dental facilities and destined for mercury recovery.

(9) Electronic waste directed for scrap metal recycling under section 371.1(g)(1)(iii)(*b*) or (e)(1)(xiii) of this Title.

(10) Lead-acid batteries destined for recycling as authorized in Part 370 of this Title.

(11) Consumer products in transit that have been determined by an appropriate state or federal official or agency to be unsuitable for their intended use and for which the official or agency has directed the immediate transport of those products for management at an authorized facility.

(12) Material that has an approved BUD in accordance with sections 360.12 and 360.13 of this Title, at the point that the BUD approval indicates that the material is no longer a solid waste, except the following fill is excluded from this exemption:

(i) Transport of Fill Type 1, Fill Type 2, Fill Type 3, Fill Type 4, or Fill Type 5 within the New York City Metropolitan Area Waste Impact Zone; and

(ii) Transport of Fill Type 4 or Fill Type 5 outside of the New York City Metropolitan Area Waste Impact Zone.

(13) Concrete or concrete products (including those that have embedded reinforcement), asphalt pavement, asphalt millings, brick, and rock or mixtures of these materials, except that transport of the material within the New York City Metropolitan Area Waste Impact Zone is subject to the requirements of this Part.

(14) Oil, gas, solution mining, stratigraphic, brine disposal and geothermal well cuttings that are rock chips, fragments and/or fines generated during drilling which are uncontaminated by drilling and completion fluids including any additives.

(15) Non-hazardous bottom and fly ash from municipal solid waste combustors.

(16) RMW transported by emergency rescue vehicles, a blood service collection vehicle or a vehicle operated by a public health nurse or veterinarian in the conduct of routine business, where the transportation of the waste is incidental to the primary function of the vehicle. The RMW must be transported to a RMW management facility regulated by the department or the Department of Health.

(17) Medical devices intended to be reprocessed or remanufactured provided the transportation complies with USDOT regulations.

(18) Regulated waste transported by a law enforcement agency to an authorized facility.

(19) Regulated waste transported during an explosives or munitions emergency response as defined in section 370.2(b) of this Title conducted in accordance with section 373-1.1(d)(1)(xiii)(*a*)(*4*) of this Title.

(20) Regulated waste transported by a public utility, public railroad service, or public transportation agency when the transportation of the waste is incidental to the primary function of the transport vehicle. This exemption extends to entities contracted to conduct work for a public utility, public railroad service or public transportation agency when the work is conducted in accordance with that agency's contract documents and specifications.

(21) Waste transported wholly on-site at the point of origination, generation, or occurrence of the waste.

(22) Waste transported on or across privately or publicly owned parcels that does not result in travel on any highway, road, street, avenue, alley, public place, public driveway or any other public way.

SUBPART 364-3

REGISTRATIONS

Section 364-3.1 Applicability
364-3.2 Registration requirements and standards
364-3.3 Operating requirements for registered transporters

Section 364-3.1 Applicability.

This Subpart applies to the following persons, who are not otherwise exempt from this Part.

(a) A transporter of a single shipment of less than 50 pounds of RMW per month per location, provided:

(1) the transporter is the generator of the RMW;

(2) the waste is packaged and marked in accordance with Part 365 of this Title; and

(3) the waste is transported to a facility authorized to accept the waste.

(b) A transporter of source-separated HHW in single shipments of 50 pounds or less.

(c) A transporter of commercial waste, other than C&D debris, in quantities greater than 2,000 pounds in a single shipment.

(d) A transporter of C&D debris in quantities greater than 10 cubic yards in a single shipment, except that Fill Type 1, Fill Type 2 and Fill Type 3 only require transport by a transporter registered under this Part if they are transported in the New York City Metropolitan Area Waste Impact Zone.

(e) A transporter of sharps from a household medical waste sharps collection facility.

(f) A transporter of waste tires in quantities greater than 20 but less than 80 waste tires in a single shipment.

(g) A transporter of waste oil in quantities greater than 55 gallons but less than or equal to 275 gallons in a single shipment.

Section 364-3.2 Registration requirements and standards.

(a) Registrations are ministerial actions for the purposes of Part 617 of this Title and are not subject to Part 621 of this Title.

(b) Except as otherwise exempt by this Part and Part 360, any person identified in section 364-3.1 of this Subpart must not engage in the transportation of waste without a registration issued pursuant to this Part.

(c) Transporters subject to registration under this section must submit an application for registration on forms prescribed by the department.

(d) A transporter must furnish to the department any information requested by the department to determine compliance with the registration requirements.

(e) Registrations issued pursuant to this Subpart, except those registrations issued pursuant to section 364-4.1(b) of this Part, are valid for one year from the effective date of the registration. Registrations issued pursuant to section 364-4.1(b) of this Part

shall run concurrently with the term of the associated permit.

(f) Registrations are not transferable.

A registration issued pursuant to this Subpart is only valid for the registrant identified on the registration application submitted to the department. A change of ownership of the registrant invalidates the registration.

(g) A transporter subject to registration under this Subpart who also transports waste subject to permitting under Subpart 364-4 of this Part must still obtain a permit for the transport of those types of waste.

(h) Registered transporters are not subject to the payment of environmental regulatory fees, as defined by ECL article 72, for waste transported subject to a registration issued pursuant to this Subpart.

(i) A registration may be denied, revoked, or suspended based upon the unsuitability of the applicant as provided in section 360.15(b) of this Title.

(j) A registration may be denied, revoked, or suspended, or the processing of a registration application may be suspended, if the transporter has been determined to have violated any terms of the registration, the ECL, or any regulation or standard promulgated pursuant thereto.

Section 364-3.3 Operating requirements for registered transporters.

In lieu of the operating requirements identified in section 360.19 of this Title, a waste transporter required to obtain a registration must operate in compliance with the following criteria:

(a) The transporter must be in possession of a legible paper copy, or other format approved by the department, of the most recent registration issued pursuant to this Part. The transporter must present the registration, any required waste tracking documentation relating to the waste being transported, or justification that the waste being transported does not require a Part 364registration or permit to authorized representatives of the department or to any law enforcement officer upon request.

(b) Each transport vehicle used by a registered transporter for activities regulated under this Part must display the name of the registered transporter on both sides of the transport vehicle and the registration number of the transporter on both sides and the rear of the transport vehicle in numbers and letters at least three inches high and in a color that contrasts with the vehicle's background color.

(c) The department may require or conduct inspections of transport vehicles as a condition of application approval or during the life of the registration.

(d) All wastes must be properly contained during transport to prevent any type of discharge to the environment.

(e) Each receiving facility located within New York State must be authorized to accept the waste pursuant to the requirements of the ECL and applicable regulations.

(f) Each receiving facility located outside the jurisdiction of New York State must be authorized to operate within the state or jurisdiction where the facility is located or otherwise be exempt within that state or jurisdiction.

(g) A registered transporter may return regulated waste to the generator when an authorized receiving facility cannot be located or a receiving facility refuses to accept the regulated waste.

(h) A certificate of treatment form must accompany treated RMW. Treated RMW is considered commercial waste for the purposes of this Part.

(i) The transporter must comply with the recordkeeping and reporting requirements in Subpart 364-5 of this Part.

SUBPART 364-4

PERMITS

Section 364-4.1 General
364-4.2 Application procedures for new permits
364-4.3 Application procedures for permit renewals
364-4.4 Application procedures for permit modifications
364-4.5 Emergency waste transporter permits
364-4.6 Permitting requirements and standards
364-4.7 Insurance requirements for permitted transporters
364-4.8 Operating requirements for permitted transporters
364-4.9 Additional operating requirements for transporters of RMW

Section 364-4.1 General.

(a) In lieu of the permit provisions provided in section 360.16 of this Title, with the exception of section 360.16(e)(5) of this Title which remains applicable to this section, all persons who transport regulated waste originating or terminating at a location in New York State, except those otherwise exempt or subject to the registration provisions of this Part, must obtain a permit before transporting regulated waste under the provisions of this Subpart.

(b) A transporter required to obtain a permit under this Part who also conducts transport activities subject to registration under Subpart 364-3 of this Part must also obtain a registration for those transport activities eligible for registration. Registrations obtained simultaneously with new permits or in addition to existing permits will be a rider to the associated permit. A registration rider obtained in conjunction with a permit will expire on the same date as the expiration date of the permit.

(c) All applications for permits must be submitted on forms prescribed by the department and in either an electronic format acceptable to the department or print.

(d) Applications for new permits must be signed as required in subdivision 364-4.2(a) of this Subpart.

(e) Applications for permit renewal or permit modification must be signed by a person duly authorized by the permittee.

(f) Permit applications must contain sufficient detail for the department to determine:

(1) eligibility of the applicant for permitting; and

(2) suitability of the receiving facilities for the waste types requested.

(g) An environmental regulatory fee is required for permit applications, pursuant to ECL article 72, title 5.

Section 364-4.2 Application procedures for new permits.

(a) Permit applications must be signed by the applicant as follows:

(1) corporations: by a duly authorized principal executive officer of at least the level of vice president;

(2) partnership or limited partnership: by a general partner;

(3) sole proprietorship: by the proprietor; or

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

(b) Permit applications must include, at a minimum, the following information:

(1) the name and date of birth of the applicant's signatory;

(2) full contact information for the applicant;

(3) as appropriate, proof of incorporation, doing business as (dba) filing, or other appropriate documentation identifying the name under which the applicant may legally conduct business;

(4) a description of the types of waste to be transported;

(5) the license plate number and state or province of registration for each transport vehicle that will be used to transport regulated waste;

(6) the address of the primary physical location where the applicant will store the transport vehicles when not in use;

(7) the name, address, and other contact information deemed relevant by the department for all receiving facilities that will be used;

(8) documentation necessary to demonstrate that the proposed receiving facilities are authorized as identified in subdivision 364-4.8(d) or (e) of this Subpart;

(9) for hazardous waste or waste oil, documentation of the transporter's EPA identification number;

(10) proof of insurance from an authorized insurance company including automobile and general liability insurance and additional environmental liability insurance, if required;

(11) the addresses and descriptions of transfer facilities or on-vehicle storage facilities owned or operated by the transporter; and

(12) any other information required by the department to demonstrate compliance with article 27, title 3 of the ECL.

(c) The department may require or conduct inspections of transport vehicles as a condition of application approval.

Section 364-4.3 Application procedures for permit renewals.

(a) Applications for permit renewals must be received by the department at least 30 days in advance of the expiration date of the existing permit.

(b) If the complete permit renewal application is not received at least 30 days prior to permit expiration, the department may treat the application as a new permit application.

(c) Annual reports must be submitted in accordance with Subpart 364-5 of this Part.

(d) A renewal of a permit may be denied by the department for failure of the permittee to submit an annual report, as required by Subpart 364-5 of this Part.

Section 364-4.4 Application procedures for permit modifications.

Applications for permit modifications must identify all proposed changes to the permit including changes in vehicle license plate numbers, additions or deletions of transport vehicles, changes in waste types, and identification of new or deleted receiving facilities.

Section 364-4.5 Emergency waste transporter permits.

(a) Prior to issuing an emergency waste transporter permit, the department must:

(1) make a finding of emergency stating that the action is a natural, accidental, or intentional human caused-event or circumstance which presents an immediate threat to life, health, property, general welfare or natural resources, why the immediate action is needed and the consequences to life, health, general welfare, property or natural resources if the action is not immediately taken; and

(2) determine from the available information that the action will be carried out in a manner that will cause the least change, modification or adverse impact to life, health, property or natural resources.

(b) Only transporters that can demonstrate to the department that they are able to comply with this Subpart may be issued emergency waste transporter permits or emergency waste transporter permit modifications.

(c) Any transporter requesting an emergency waste transporter permit must submit to the department the following:

(1) a description of the location and nature of the emergency, including why the situation is an emergency based on the immediate protection of life, health, general welfare, property or natural resources;

(2) the transporter's name, address and other relevant contact information;

(3) where applicable, a transporter’s EPA identification number and evidence of appropriate training;

(4) the transport vehicle license number, state of vehicle registration, and proof of insurance;

(5) the waste type and estimated quantity of waste to be transported;

(6) the anticipated dates transportation will occur;

(7) all anticipated receiving facilities’ names and contact information, and in the case of hazardous waste transportation, the receiving facilities’ EPA identification numbers;

(8) actions to be taken to minimize environmental impacts; and

(9) any additional information the department deems necessary to make a finding of an emergency.

(d) Emergency waste transporter permits may include additional requirements with respect to waste handling, training, transport, storage and final disposal of the waste. The department may attach

conditions to emergency waste transporter permits and enforce them to assure compliance with the authorization and other regulatory standards that would apply to these actions absent an emergency. These requirements will be determined by the department on a case-by-case basis prior to issuance of the permit.

(e) An emergency permit may be issued for a term not to exceed 30 days and may be renewed for one term not to exceed 30 days.

(f) Tracking documents required under this Part must be filed with the department within 30 days of the completion of waste transport.

(g) The department may waive one or more specific requirements contained in this section if, on the basis of the specific circumstances of the emergency:

(1) the requirement will unduly burden the department's protection of life, health, general welfare, property or natural resources or the department's response to the emergency; and

(2) the waiver of the requirement would have no significant impact on the public health, the environment or natural resources.

Section 364-4.6 Permitting requirements and standards.

(a) Permits issued pursuant to this Subpart are valid for one year from the effective date of the permit.

(b) Permits are not transferable.

A permit issued pursuant to this Subpart is only valid for the permittee identified on the permit application submitted to the department. A change of ownership of the permittee invalidates the permit.

(c) All applicable environmental regulatory fees must be paid annually or whenever a modification to the permit is made that increases the number of transport vehicles or the number of vehicles authorized to transport industrial-commercial waste.

(d) Denial, suspension, revocation or modification. The department may deny a permit application or may suspend, revoke or otherwise modify a permit once issued, for reasons including, but not limited to, the following:

(1) failure to pay the required environmental regulatory fees annually, submit copies of current insurance certificates, permit modifications, annual reports, or a timely permit renewal;

(2) failure to request a permit modification to add additional vehicles, change vehicle storage locations, or change receiving facilities;

(3) violation of any law, rule or regulation or permit condition related to the operation of a receiving facility or if the receiving facility is not authorized to receive the types of waste listed on the application;

(4) A determination that the applicant was unsuitable pursuant to ECL sections 27-0305 and 27-0913; or

(5) a determination that the transporter violated any terms of the permit, the ECL, or any regulation or standard promulgated pursuant thereto.

Section 364-4.7 Insurance requirements for permitted transporters.

The following insurance requirements apply to transporters subject to the permitting requirements of this Part:
(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.

(b) Automobile insurance must be maintained.

(c) All insurance must be endorsed by an insurer authorized to do business in New York State.

(d) Policies of insurance and endorsements required under this section must remain in effect continuously throughout the term of the permittee's waste transporter permit.

(e) Policies of insurance required under this section may be replaced by insurance from another provider during the term of the permit, provided proof of insurance is provided to the department. A change of insurance provider does not require a modification of the permit.

Section 364-4.8 Operating requirements for permitted transporters.

The following operating requirements apply to transporters subject to the permitting requirements of this Part:

(a) Transport vehicles for regulated waste must include a cargo-carrying portion that is enclosed and secured except when loading or unloading regulated waste.

(b) Except for self-transport described in section 364-2.1(b)(2) of this Part, source-separated HHW must be transported by a transporter permitted to transport hazardous waste.

(c) Regulated waste must only be delivered to a receiving facility authorized to accept the waste and the receiving facility must be designated on the transporter permit.

(d) Each receiving facility located within New York State must be authorized to accept the waste pursuant to the requirements of the ECL and applicable regulations.

(e) Each receiving facility located outside the jurisdiction of New York State must be authorized to operate within the state or jurisdiction where the facility is located or otherwise be exempt within that state or jurisdiction.

(f) Transporters must only deliver waste to the receiving facility identified on the waste tracking document, if a waste tracking document is required. In cases where the receiving facility specified on the waste tracking document is unable to accept the waste, the transporter may elect, upon notification to the generator, to either deliver the waste to an alternate receiving facility for that waste type listed on the transporter’s permit or to return the shipment to the generator.

(g) Waste requiring a tracking document must be kept separate from waste not requiring a tracking document.

(h) The operator of any transport vehicle used for activities covered by this Part must carry a legible paper copy, or other format approved by the department, of the most recent permit issued in the transport vehicle. The operator must present the permit, together with associated waste tracking documents or justification that the waste

being transported does not require a Part 364 registration or permit, to authorized representatives of the department or to any law enforcement officer upon request.

(i) Each transport vehicle used by a permitted transporter for activities regulated under this Part, must display the name of the permitted transporter in a prominent position on both sides of the permitted transport vehicle and the permit number of the transporter in prominent position on both sides and the rear of the transport vehicle in numbers and letters at least three inches high and in a color which contrasts with the background color.

(j) A permittee must conspicuously mark or placard every transport vehicle, in a manner consistent with article 2, section 14-f of the New York State Transportation Law and any rules and regulations promulgated thereunder and any related federal requirements, related to the transportation of the regulated waste and its principal hazard.

(k) All wastes must be properly contained during transport to prevent any type of discharge to the environment.

(l) All waste must be properly secured within the transport vehicle during transport to prevent movement or leakage within the transport vehicle during transport.

(m) All waste containers must be oriented in an appropriate manner, as marked on any container, to ensure proper transportation and to avoid spillage or leakage during transport.

(n) The operator of any transport vehicle used for activities covered by this Part must remain with the transport vehicle while it is being loaded or unloaded unless otherwise approved by the department.

(o) Permitted transport vehicles, other than the driver's compartment, are restricted to the transportation of materials not intended for human or animal consumption or for other use by the general public except when properly cleaned or disinfected in accordance with all applicable federal and state regulations governing decontamination.

(p) Any transporter of hazardous waste must also comply with all applicable requirements of Part 372 of this Title. Prior to transport of hazardous waste from a hazardous waste generator, the transporter must provide in writing, to the generator, a statement or proof that the transporter is authorized to deliver the hazardous waste to the designated treatment, storage, or disposal facility. Any transporters who provide a pre-printed manifest to a generator, shipper, or offeror of regulated waste must ensure that all information is correct and clearly legible on all copies of the manifest.

(q) All transport vehicles, including bulk packages and containers used in transporting regulated waste must be kept in a sanitary condition.

(r) Each transporter must also comply with applicable USDOT hazardous materials requirements set forth in 49 CFR 173.196 and 173.197, and 173.199, as incorporated by reference in section 360.3 of this Title, including but not limited to, packaging, labeling, marking and use of appropriate tracking documents pertaining to the regulated waste authorized for transport.

(s) The transporter must comply with the tracking documentation requirements in section 364-5.1 of this Part.

(t) The transporter must comply with the recordkeeping and reporting requirements in section 364-5.2 of this Part.

(u) The department may require or conduct inspections of transport vehicles during the life of the permit.

(v) The transporter must ensure that any vehicle used to transport regulated waste is listed on the permit.

(w) The transporter must ensure that any receiving facility to which regulated waste is delivered is listed on the permit.

(x) The transporter must comply with all applicable state and federal laws and all rules and regulations promulgated thereunder.

Section 364-4.9 Additional operating requirements for transporters of RMW.

In addition to the operating requirements of section 364-4.8 of this Subpart, all transporters of RMW must comply with the following requirements:

(a) Any employee of a transporter who transports these wastes must be trained a minimum of every three years in the proper handling of hazardous materials in accordance with the requirements set forth in 49 CFR 172.602 and 172.704, and 29 CFR 1910.120 and 1910.1200 as incorporated by reference in section 360.3 of this Title, before handling the waste. Transporters are also required to maintain documentation on employee training, packaging instructions, emergency response procedures and copies of incident reports.

(b) Transporters must not accept for transport any waste unless the outer surface of the container is labeled and marked in accordance with the requirements of Part 365 of this Title and there is no visible sign of leakage or loss of package integrity. Packages that leak during transport must be reported to the department within 48 hours.

(c) The transport vehicle must:

(1) have a fully enclosed, lockable, cargo-carrying body that is locked at all times except during loading and unloading operations;

(2) not subject the waste to mechanical stress or compaction during loading, unloading, or transit;

(3) have cargo-carrying bodies in good sanitary condition; and

(4) have a secondary containment system sufficient in size to contain the volume of the largest container of liquid being transported.

(d) Transport vehicles that are removed from service must be decontaminated or disinfected and records of the decontamination or disinfection must be maintained for a period of three years.

(e) Each transporter using a bulk package for RMW must have written protocol and a system for tracking and inspecting each bulk container for its integrity, examination of door seals, disinfection and cleaning, and ensuring tight closures and seals on all access doors.

(f) Treated waste must be accompanied by a completed certificate of treatment form in accordance with Part 365 of this Title.

SUBPART 364-5

RECORDKEEPING AND REPORTING REQUIREMENTS

Section 364-5.1 Waste tracking document applicability and requirements
364-5.2 Records retention and reporting

Section 364-5.1 Waste tracking document applicability and requirements.

(a) Applicability.

The provisions of this section apply to the following:

(1) All transporters registered or permitted pursuant to this Part that transport any of the following wastes must comply with this Subpart:

(i) Fill Type 1, Fill Type 2 or Fill Type 3 transported in the New York City Metropolitan Area Waste Impact Zone;

(ii) Fill Type 4;

(iii) Fill Type 5;

(iv) excavated material that does not meet the requirements of section 360.12 or 360.13 of this Part for reuse;

(v) RMW; and

(vi) non-exempt drilling and production waste as provided in section 364-2.1(b)(14) of this Part.

(2) Transporters of C&D debris generated in the New York City Metropolitan Area Waste Impact Zone.

(b) Requirements.

(1) A waste tracking document or equivalent must be completed for each shipment of waste. The waste tracking document or equivalent must be in a form prescribed or approved by the department.

(2) Transporters must not accept a shipment of waste from a generator unless accompanied by a properly completed waste tracking document or equivalent document approved by the department. The waste tracking document must be legible, and the document certification must be signed and dated by an authorized representative of the generator. The waste tracking document certification shall state: I certify, under penalty of law, that the information provided in this waste tracking document has been prepared under my direction and supervision and further certify that the information contained herein is true and accurate. I am aware that any false statement on this form is punishable pursuant to section 210.45 of the Penal Law.

(3) Transporters must not accept a shipment of waste that does not match the quantity or type of waste listed on the waste tracking document. In cases where volume or weight of waste is unknown, waste tracking documents must reflect that the quantity of waste being shipped is estimated.

(4) Transporters must have the waste tracking document signed and dated by an authorized representative of the receiving location or facility, or obtain from the receiving location or facility an acknowledgement of receipt acceptable to the department, upon delivery of the waste.

(5) Transporters must provide a copy of the tracking document to the receiving location or facility.

(6) All transporters of waste listed in subparagraphs (a)(1) (ii), (iii), (iv) (v), and (vi) and those transporters subject to paragraph (a)(2) of this section must provide copies of waste tracking documents signed and dated by an authorized representative of the generator or containing an acknowledgement of generation acceptable to the department to both the generator and the department within 15 days of waste delivery to the receiving user or facility.

(7) Transporters of RMW that consolidate or re-manifest shipments of waste from multiple generators in a new single tracking document must retain a copy of each generator's original tracking document or maintain a consolidation log indicating all shipments consolidated or re-manifested on a separate tracking document. A copy of the generator's original tracking document and the log that includes the following information must accompany the new tracking document:

(i) name, address and telephone number of each generator;

(ii) quantity and date of shipment of RMW for each generator; and

(iii) if applicable, the names and permit numbers of all previous transporters.

(8) Transporters of RMW must return a copy of each tracking document (including any consolidated or re-manifested documents) to the generator within 15 days of receipt of the document from the receiving facility.

(9) Tracking document discrepancies. Discrepancies including variations in the waste shipment, number of containers or volume, compromised packaging, or waste unaccompanied by a tracking document must be resolved as follows:

(i) within 15 days of receiving the waste, a report must be filed with the department describing the discrepancy and the attempts the transporter has undertaken to reconcile it.

Section 364-5.2 Records retention and reporting.

All permitted and registered transporters must comply with this section.

(a) The transporter must keep records of all regulated waste transported for a period of not less than three years from the date the record was created. For each shipment of waste transported, the records must include, at a minimum:

(1) the name, address and telephone number of the generator;

(2) the location where the waste was picked up;

(3) the name and physical location of the receiving facility or user;

(4) a copy of the required waste tracking documents (if required);

(5) the quantity (by volume or weight) and specific type of waste shipped; and

(6) the date of shipment.

(b) Records of regulated wastes transported must be provided to the department within five business days of the department's request for the records. The refusal to provide any of the records or documents required to be maintained under this provision, established after an opportunity for a hearing, can result in revocation of any permits issued by the department or in revocation of the transporter's status as a registered or permitted transporter, as well as any other penalties as the law may provide.

(c) Transporters of regulated waste must submit an annual report to the department. Instead of submitting two separate annual reports, transporters with both permitted and registered vehicles may submit one annual report containing the information for all of its vehicles to comply with this Part.

The annual reports must include, at a minimum, a complete listing of the amount of each category of regulated waste transported to each receiving facility or user. Annual reports must be submitted to the department:

(1) by March 1st of each year for the previous calendar year; and

(2) in any year in which a transporter's registration or permit expires and is not renewed, no later than 30 days after the date of permit or registration expiration.

(d) Transporters of regulated waste required to report to the department under this Part, or under the terms of any registration or permit issued under this Part, must make, sign, and submit with the report a certification acceptable to the department.

PART 365

REGULATED MEDICAL WASTE AND OTHER INFECTIOUS WASTES

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SUBPART 365-1

RMW GENERATORS

Section 365-1.1 Applicability
365-1.2 Management of RMW by the generator

Section 365-1.1 Applicability.

This Subpart applies to generators of regulated medical waste (RMW) as defined in Section 360.2 of this Title. These regulations apply to veterinary practices, animal research facilities, radiopharmacies, waste management facilities, or any other facilities or persons who generate RMW or other infectious waste. This Subpart also applies to any combination of these activities. This Subpart does not apply to hospitals, residential health care facilities, diagnostic and treatment centers (defined in section 2801 of the Public Health Law) and clinical laboratories (defined in section 571 of the Public Health Law) except to the extent hospitals use bulk packaging or accept RMW from off-site.

Section 365-1.2 Management of RMW by the generator.

(a) Waste management plan.

(1) A generator of RMW is responsible for properly identifying and segregating the waste and must develop, document and implement policies and procedures specific to the management of RMW generated on-site, and for labeling RMW based on the planned method of treatment (*e.g.*, autoclave, incineration, etc.) off-site. The policies and procedures must include, but are not limited to:

(i) a description of the types, and method(s) for treatment or disposal of RMW generated on-site;

(ii) the procedures, including the employee training, for safe handling and transport of the RMW within the facility from the point of generation or acceptance to the point of storage and/or treatment;

(iii) a description of short and long-term storage areas including, as applicable, patient care areas, laboratories, production and testing rooms, etc. which details the location, ventilation and capacity of each storage area, and the length of time waste is to be retained in each area;

(iv) the titles and contact information for persons responsible for monitoring compliance with the waste management plan;

(v) for facilities that treat RMW on-site, an operation plan for each treatment system employed; and

(vi) a contingency plan that addresses emergencies, spills, and other unexpected events.

(b) Containment and storage.

(1) RMW must be separated from other waste as soon as practicable at the point of generation prior to storage, treatment or disposal.

(2) Containers holding RMW that cannot be treated by an autoclave or other approved treatment technology must be labeled accordingly. The label must identify waste types and acceptable treatment method (*e.g.*, incinerate only, etc.).

(3) RMW that contains radioactive isotopes must be stored until decayed to a background radiation level prior to transport off-site, unless returned to the dispensing radiopharmacy or managed as a prohibited radioactive material.

(4) RMW must be contained in a primary container, defined in paragraph (13) of this subdivision.

(5) A sharps container must not be filled beyond the fill line indicated on the container.

(6) Fluids contained in leak-proof containers must be placed in a primary container, oriented in an upright position and secured to prevent leakage, and then placed in a secondary container, defined in paragraph (14) of this subdivision, prior to off-site transport.

(7) Sharps containers must be removed from patient care or use areas to a room or area designated for RMW storage when the container has reached the fill line indicated on the container, is otherwise filled, or generates odors or other evidence of putrefaction, whichever occurs first.

(8) Other RMW containers at a laboratory or other generation area must be moved to an RMW storage area when the container has reached the fill line indicated on the container, is otherwise filled, or generates odors or other evidence of putrefaction, whichever occurs first.

(9) An RMW storage area must be adequately sized for the volume of RMW generated between scheduled waste pick-ups by a transporter, or, for facilities treating the waste on-site, the volume of waste that can be treated on-site within a 24-hour period.

(10) An RMW storage area must:

(i) display prominent signage indicating the area is used to store RMW;

(ii) be designed or equipped to prevent unauthorized access;

(iii) be designed or located to protect waste from the elements, and prevent access by vermin;

(iv) hold the waste at a temperature that prevents rapid decomposition and resultant odor generation;

(v) be appropriately ventilated; and

(vi) be of sufficient size to allow clear separation of RMW from any other waste, if waste other than RMW is stored in the same area.

(11) RMW must not be stored in a storage area for a period exceeding 30 days, except for a generator of less than 50 pounds of RMW per month that does not accept RMW for treatment from

other facilities may store RMW until the container has reached the fill line on the container, is otherwise filled, or generates odors or other evidence of putrefaction, whichever occurs first. For bulk packaging, storage must be in accordance with subparagraphs (14)(vi) and (vii) of this subdivision. For radiological RMW, the RMW may be stored for a period of time necessary to allow decay to a background radiation level, or if long lived must be managed as a prohibited radioactive material (including waste disposal).

(12) Prior to transport of RMW off-site for treatment, the:

(i) primary containers, except sharps containers, must be placed in a secondary container and marked prominently with the universal biohazard symbol or the word Biohazard, and, if applicable, must be affixed with a label indicating that the contents require special handling (*e.g.*, incinerate only, etc.); and

(ii) primary containers must be labeled with the name and address of the generating facility when placed in a secondary container that is a bulk container used by multiple generators.

(13) Requirements for primary containers.

(i) Primary containers, with the exception of sharps containers, must be a plastic bag that complies with the standards prescribed by 49 CFR 173.196, 173.197 and 173.199, as incorporated by reference in section 360.3 of this Title and is certified by the bag manufacturer to meet Federal requirements.

(ii) The primary container for discarded sharps must be rigid, leak-proof on the sides and bottom, puncture-resistant and closable, and may serve as a secondary container for purposes of transport, provided it meets the definition of a secondary container.

(iii) Primary containers must not be filled in a manner that results in the breakage of the container.

(iv) Primary containers in laboratory and clinical settings must be kept in secure locations (*e.g.*, access restricted rooms) when in use and must be properly closed when moved to other locations. In other settings, primary containers must be properly closed at all times when not being filled.

(v) Only primary containers that have been approved for reuse by the United States Food and Drug Administration (FDA) may be reused.

(vi) Prior to transport off-site, RMW must be placed in commercially manufactured disposable (*e.g.*, fiberboard boxes that meet USDOT HMR specifications) or reusable secondary containers.

(14) Requirements for secondary containers.

(i) Secondary containers must comply with the standards prescribed by the USDOT found at 49 CFR 173.134, 173.196, 173.197, and

173.199 as incorporated by reference in section 360.3 of this Title. Reusable secondary containers can include wheeled carts or roll-off bulk containers.

(ii) Reusable secondary containers must be inspected prior to return to use to verify that the containers are not defective (i.e., have no cracks or other defects, that the lid closes and, if available, the locking mechanism works) and are cleaned and disinfected. Reusable containers must be immediately cleaned and disinfected upon emptying if the liner is compromised, visual inspection yields evidence that the container's surface has come in contact with RMW prior to treatment, the contained waste includes cultures and/or stocks, or the contained waste has a highly infectious bioload.

(iii) Wheeled carts or bulk packaging used as secondary containers to contain RMW must be used exclusively to transport RMW.

(iv) Bulk packaging may not be used for the disposal of liquid blood or blood products, sharps, pathological waste, or contaminated animal carcasses or body parts, unless the waste is properly contained in rigid primary containers with enough absorbent material to absorb all liquid present and separated from other regulated medical waste by a leak-proof rigid barrier, divider or separate compartment.

(v) All wheeled carts and bulk outer packages used as secondary containers must be kept in a sanitary condition, disinfected before reuse, and must not be allowed to become putrescent.

(vi) Bulk packages that are roll-off containers (except those used for pathological waste, blood or blood products, or animal waste) that will be sent off-site may only be stored at the site of generation until the container is filled, or for 21 days if ambient temperatures are below 45 degrees Fahrenheit (7 degrees Centigrade) or for 14 days if above 45 degrees, whichever comes first, except that bulk packages that are putrescent must be immediately sent to the receiving facility.

(vii) Bulk packages that are roll-off containers used for pathological waste, blood or blood products, or animal waste that will be sent off-site may only be stored at the site of generation until the container is filled, or for seven days, whichever comes first. Bulk packages that are putrescent must be immediately sent to the receiving facility.

(viii) Bulk outer packaging may not be used for the transport of cultures and stocks containing select agents or toxins of biological origin listed in 9 CFR part 121 and 42 CFR part 73 as incorporated by reference in section 360.3 of this Title.

(ix) All internal surfaces of a reusable secondary container, except for reusable sharps containers, must be completely protected by a disposable liner, which may also function as the primary container provided it meets the criteria for a primary container, or the secondary

container serves as both a primary and secondary container. The liner must be removed as a secured unit with the contained RMW and treated as RMW.

(15) Disposable single-use secondary containers, broken reusable containers or containers no longer in service must be treated as RMW unless decontaminated for recycling.

(16) RMW cannot be transferred from one container to another in a manner that compromises health and safety of the persons handling the RMW. RMW being moved from one container to another, or one location to another within a facility must, at a minimum, be secured in a primary container.

(17) Sharps or other secondary containers must not be opened for consolidation or other purposes unless the container is routinely reopened to add waste or the procedure has been approved as required by Subpart 365-2 of this Part.

(18) Movement of RMW within a facility from the point of generation to the point of storage or treatment must be by covered cart or other appropriately covered conveyance system marked prominently with labeling indicating that the contents are infectious or are RMW; provided, however, waste held in containers meeting the definition of secondary container may be transported within a facility from point of generation to the point of storage or treatment using an open conveyance system (*e.g.*, laboratory cart, dolly, etc.) provided each container is labeled and appropriately closed. RMW must not be moved within a facility by gravity alone (*e.g.*, trash chutes, slides, etc.) without control of impact.

(19) RMW must not be compacted or compressed unless it has undergone treatment in accordance with Subpart 365-2 of this Part.

(c) Transfer of RMW for off-site treatment.

(1) Generators of RMW must transfer the waste for off-site treatment only to a transporter authorized to transport RMW under Part 364 of this Title.

(2) Radiological RMW must be returned to the dispensing radiopharmacy, stored at the generator's location until the RMW has decayed to a background radiation level, or if long lived must be managed as a prohibited radioactive material (including waste disposal).

(3) A hard copy of a medical waste tracking form must accompany each load of RMW leaving the generator. The instructions on the tracking form must be followed.

(4) All municipal solid waste transported in a load containing RMW must also be treated as RMW, unless the RMW is separately contained in a secondary container or is otherwise kept separate from the MSW by leak-proof barriers.

(5) Any pharmaceutical waste that is unable to be separated at the site of generation must include a label that reads "Incinerate Only" on the secondary container and must be disposed at a RMW or municipal waste combustor that is permitted to accept non-hazardous pharmaceutical waste, or at another approved facility. Most non-hazardous pharmaceutical waste may not

be disposed in sanitary sewers, septic systems or wastewater treatment systems. The following are the only types of pharmaceutical waste that may be disposed in sanitary sewers, septic systems or wastewater treatment systems: saline solution; lactate; nutrients such as glucose, vitamins, potassium or other salts; and electrolytes.

(6) Secondary containers, except for non-hazardous pharmaceuticals, must be labeled in accordance with the definitions and applicable classification criteria (*e.g.*, RMW, Infectious Substances or Used Healthcare Products) required by 49 CFR 173.134, as incorporated by reference in section 360.3 of this Title. Each label must be printed on or affixed to a surface (other than the bottom) of the container and be located on the same surface of the container near the proper shipping name marking. Each label, whether printed on or affixed to a container, must be durable and weather resistant.

(7) If an infectious substance, secondary containers, except sharps containers, must be affixed with an "INFECTIOUS SUBSTANCE" label or marked with the fluorescent orange Universal "BIOHAZARD" symbol meeting the specification under 29 CFR 1910.1030(g)(1)(i) in accordance with 49 CFR 173.134, as incorporated by reference in section 360.3 of this Title, date of transport, and if applicable, that the contents (if containing pharmaceutical, chemical or pathological waste) require incineration. An "INFECTIOUS SUBSTANCE" label is not required on a non-bulk secondary container with a "BIOHAZARD" marking.

(d) Processing of RMW on-site.

(1) Unless otherwise exempt or required to obtain a permit under Subpart 365-2 of this Part, facilities (i.e. generators) described in this paragraph are subject to the registration provision of section 360.15 of this title. Each facility identified in this paragraph must obtain a registration from the Department but is not required to comply with section 360.19 of this Title:

(i) a facility that decontaminates or treats less than 500 pounds of RMW (including waste from a laboratory or other generation area operating at biosafety level 2 (BSL-2)) per month of its own waste with autoclaves, a NYSDOH approved alternative treatment system; or with any Department-approved method of treatment of infectious waste regardless of how the waste is disposed; and,

(ii) a facility that decontaminates, inactivates or treats its own waste generated from a biosafety level 3 (BSL-3) or an animal biosafety level 3 (ABSL-3) laboratory or other generation area, subject to the following:

('a') Decontamination and treatment is performed with autoclaves, a NYSDOH-approved alternative treatment system, or with any Department-approved method of inactivation of infectious waste,

('b') The facility has a current registration number with the Federal Select Agent Program (FSAP) authorizing the facility to

possess and work with select agents or toxins of biological origin listed in 7 CFR Part 331, 9 CFR Part 121 or 42 CFR Part 73 as incorporated by reference in section 360.3 of this Title, and

('c') BSL-3 and ABSL-3 wastes generated at these facilities must be decontaminated, inactivated or treated on-site and must be disposed of as RMW at a permitted RMW treatment facility.

(2) The facility registered pursuant to subparagraph 365-1.2(d)(1)(ii) may include another BSL-3 or ABSL-3 laboratory or other generation area at the same institution as the FSAP-registered area which utilizes the biosafety protocols approved as part of the FSAP registration and is overseen by the same institutional biosafety committee and environmental health and safety office, provided decontamination, inactivation or treatment of RMW complies with the Department's registration.

(3) Facilities subject to registration under paragraph 365-1.2(d)(1) of this subdivision must comply with the following operational requirements:

(i) A registered facility under this subdivision must have a written operation and maintenance plan that demonstrates that the RMW will be managed in accordance with this Subpart and sections 365-2.6 and 365-2.7 of this Part.

(ii) The operation and maintenance plan must identify the decontamination, inactivation or treatment locations, types and number of laboratories and types of devices (including devices used to treat waste water and pathological waste) that will be used to decontaminate or treat RMW. Decontamination, inactivation or treatment must comply with sections 365-2.6 and 365-2.7 of this Part.

(iii) The facility must have procedures to segregate RMW to be treated and treated RMW from other waste.

(iv) Each facility employee who will operate decontamination, inactivation or treatment equipment must be trained in the proper use of the equipment.

(v) The facility must maintain records for the operation of each decontamination, inactivation or treatment unit. A log must be maintained that includes the date, time, name of the employee operating each unit, the type and amount of RMW treated, and the dates and results of calibration, validation and bio-challenge testing.

(vi) The facility must maintain a contingency plan for emergencies and spill or release response and cleanup, which includes provisions for RMW storage during emergency situations. All spills and emergency situations must be immediately reported to the department.

(vii) Decontaminated, inactivated and treated waste must be sent for additional treatment to a facility authorized to treat RMW or disposed at a facility authorized to accept treated RMW for disposal. Each

load of waste must be accompanied by a NYSDOH certificate of treatment.

(4) The following types of facilities are subject to regulation under Subpart 365-2 of this Part:

(i) a facility which decontaminates, inactivates or treats more than 500 pounds of RMW per month; and

(ii) a facility operating a BSL-3 or ABSL-3 laboratory or other generation area that is not registered with the FSAP to possess and work with select agents or toxins of biological origin, or whose FSAP registration is no longer in effect and

(iii) A facility operating a BSL-4 or ABSL-4 laboratory or other generation area.

(e) Recordkeeping and reporting.

(1) Recordkeeping. The following records must be maintained on-site for a minimum of three years and must be available for inspection and copying by the department.

(i) A record of RMW managed by quantity and category. Categories include cultures and stocks, human pathological waste, human blood and blood products, sharps, animal waste, and other (specify characteristics).

(ii) A record of how all RMW was managed, including treatment, if applicable. For treatment, copies of certificates of treatment must be retained. For shipment off-site for treatment, copies of tracking documents must be retained.

(iii) In addition, decontamination, inactivation and treatment facilities must comply with the recordkeeping requirements of Subpart 365-2 of this Part.

(2) Reporting. A report of the RMW generated annually, by quantity and category, must be submitted to the department upon request.

SUBPART 365-2

RMW TREATMENT, STORAGE, AND TRANSFER FACILITIES

Section 365-2.1 Applicability
365-2.2 Exempt facilities
365-2.3 Registered facilities
365-2.4 Permit application requirements
365-2.5 Design and operating requirements
365-2.6 General treatment requirements
365-2.7 Requirements for autoclaves used to treat RMW
365-2.8 Recordkeeping and reporting requirements

Section 365-2.1 Applicability.

(a) This Subpart applies to any facility that treats, stores or transfers RMW other than any facility located at and operated by a hospital (except Veterans Affairs medical facilities), residential health care facility, diagnostic and treatment center, or clinical laboratory that manages its own waste, which are regulated under the Public Health Law and10 NYCRR Part 70.

(b) A facility operating a biosafety level 3 (BSL-3) or an animal biosafety level 3 (ABSL-3) laboratory or other generation area that does not hold a valid Federal Select Agent Program (FSAP) Registration is required to obtain a permit pursuant to this Subpart.

(c) A facility operating a BSL-3 or ABSL-3 laboratory or other generation area that holds a valid FSAP Registration may operate under a registration pursuant to Subpart 365-1 of this Part.

(d) A facility operating a BSL-4 or ABSL-4 laboratory or other generation area is required to obtain a permit pursuant to this Subpart.

Section 365-2.2 Exempt facilities.

The following facilities are exempt from this Subpart:

(a) Sharps and pharmaceutical waste collection drop boxes and kiosks provided for collection from homeowners, provided the sharps collected are managed as RMW.

(b) Storage or transfer facilities operated by and located at the site of generation, which are regulated under Subpart 365-1 of this Part.

(c) Generators that source separate used medical devices that are proposed to be reused and that are sent directly to manufactures, remanufacturers, or reprocessors.

Section 365-2.3 Registered facilities.

Unless otherwise exempt or required to obtain a permit under Subpart 365-2 of this Part, facilities of the following types are subject to the registration provision of section 360.15 of this title. Each facility identified in this section must obtain a registration from the Department but is not

required to comply with section 360.19 of this Title.

(a) A storage facility for radiological RMW, including used sharps or other used medical devices, at a radiopharmacy, provided the sharps or other medical devices were dispensed by the radiopharmacy, and the following conditions are satisfied.

(1) In addition to the container requirements provided in Subpart 365-1 of this Part, radiological RMW must be stored at the radiopharmacy until radioisotopes have decayed to a background radiation level. Once decayed, the RMW can be stored for a maximum of 30 days.

(2) The radiopharmacy must have written policies and procedures for the safe handling and storage of the waste within the facility.

(3) Storage areas for radiological RMW must be adequately sized for the volume of RMW generated between scheduled waste pick-ups by a transporter.

(4) Storage areas for radiological RMW must:

(i) display prominent signage indicating the area is used to store RMW;

(ii) be designed or equipped to prevent unauthorized access;

(iii) be designed or located to protect waste from the elements, and prevent access by vectors;

(iv) hold the waste at a temperature that prevents rapid decomposition and resultant odor generation, if necessary;

(v) be appropriately ventilated;

(vi) be of sufficient size to allow clear separation of RMW from any other waste, if waste other than RMW is stored in the same area; and

(vii) the top of the stacked containers must not be more than six feet above the level of the floor. The integrity of the containers must not be compromised by the manner of storage.

(5) Decayed radiological RMW that leaves the radiopharmacy must be accompanied by an RMW tracking document.

(b) Healthcare facilities licensed pursuant to the Public Health Law that treat, store or dispose of RMW from other generators (pursuant to written agreements with or among other generators filed with the NYSDOH and the department) for treatment, or are not operated by the healthcare facility. The operator of the facility must have and adhere to an operation plan for the handling and disposal of RMW. The operation plan is subject to Department approval and must include the following:

(1) A method of receiving wastes which ensures that RMW is handled separately from other wastes until treatment or disposal is accomplished and which prevents unauthorized persons from having access to or contact with the waste.

(2) A method of unloading and processing of RMW which limits the

number of persons handling the waste and minimizes the possibility of exposure of employees and the public using or visiting the facility to RMW.

(3) A method of decontaminating emptied reusable RMW containers, transport vehicles or facility equipment which are known or believed to be contaminated with regulated medical waste.

(4) The provision and required use of gloves and other protective clothing to protect any facility employee who handles RMW.

(5) The means of decontamination of any person having had bodily contact with RMW while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.

(6) A quantification of the maximum amount of RMW to be treated, stored, or disposed of per month.

(7) A new or revised operation plan for treatment, storage or disposal of RMW must be prepared whenever there is an increase of more than 25 percent in the maximum quantity of RMW receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

(8) The treatment of RMW must comply with sections 365-2.5, 365-2.6 and 365-2.7 of this Subpart.

(9) The facility must have procedures to segregate RMW to be treated from other waste.

(10) Each facility employee who will operate treatment equipment must be trained in the proper use of the treatment equipment.

(11) The facility must maintain records for the operation of the treatment unit. A log must be maintained that includes the date, time, name of the employee operating the unit, the type and amount of RMW treated, and the dates and results of calibration, validation and bio-challenge testing.

(12) The facility must maintain a contingency plan for emergencies and spill cleanup, which includes provisions for RMW storage during emergency situations. All spills and emergency situations must be immediately reported to the department.

(13) Approval for acceptance of RMW at a treatment, storage or disposal facility may be withdrawn by the department for noncompliance with the operation plan.

(c) As part of approval of a registration, any person who operates a facility for the treatment, storage and disposal of RMW must provide proof of liability insurance or other form of financial security deemed sufficient by the department to meet all responsibilities in case of release of RMW causing contamination.

Section 365-2.4 Permit application requirements.

A facility that treats, stores or transfers RMW, which is not exempt or subject to the registration provisions of Subpart 365-1 or section 365-2.3 of this Part, must obtain a permit from the department. The permit application must include the requirements

identified in this section and section 360.16 of this Title and include a description of how the facility will comply with the operating requirements of section 360.19 of this Title, and sections 365-2.5, 365-2.6, 365-2.7 and 365-2.8 of this Subpart. An application for a permit under this section must include:

(a) A waste control plan that describes:

(1) the notification program to instruct the generators who will use the facility of the types of RMW that will be accepted and/or treated at the facility including source and quantity. The description of the quantity must specify the expected average and maximum daily and annual amounts, on a weight and volume basis. These quantities must be specified for each general category of RMW;

(2) the service area, that includes a list of all planning units and other generators that are served must be included;

(3) special waste management if any of the following wastes are accepted:

(i) reusable secondary containers including sharps containers;

(ii) reusable medical devices disposed as RMW by the generator;

(iii) waste (including sharps) containing pharmaceuticals or other chemicals;

(iv) wastes from a biosafety level 3 or 4 laboratory or other generation area; or

(v) waste containing select agents or toxins of biological origin listed in 7 CFR Part 331, 9 CFR Part 121 and 42 CFR Part 73, as incorporated by reference in section 360.3 of this Title, or other infectious wastes.

(4) how the facility will ensure that it only receives RMW or other wastes capable of being managed at the facility;

(5) how the facility will identify, store, and dispose of all waste received that cannot be managed at the facility, such as anatomical or pathological waste;

(6) the methods used to inspect all containers received to ensure that they are in compliance with this Subpart;

(7) the methods used to manage the waste that ensures odor, litter and vectors are controlled;

(8) how the facility will be managed to ensure compliance with all applicable storage requirements;

(9) how the facility will handle spills, breached containers or contaminated equipment used for handling the waste;

(10) how inventory will be managed; and

(11) the method that will be used to manage the required tracking forms.

(b) Operation and maintenance plan.

The operation and maintenance plan must include:

(1) a description of the overall operation of the facility including:

(i) a radioactive waste detection plan that includes procedures for detecting prohibited radioactive

material; operation and maintenance documents for radiation detectors including investigation alarm set point settings and calibration methods; and response procedures to be implemented when radioactive waste is detected;

(ii) the method for unloading; and

(iii) the method for decontaminating emptied reusable RMW containers and facility equipment which are contaminated with RMW as follows:

(a) for cleaning, use of a detergent and sufficient agitation or pressure to remove visible contamination from a surface; and

(b) for disinfection, exposure to hot water at a temperature of at least 180 degrees Fahrenheit (82 degrees Celsius) for a minimum of 15 seconds, or exposure to a chemical disinfectant or a pesticide registered for use by the department and used according to the registered label directions.

(2) a list of the type, purpose, size, capacity, and associated detention times for all RMW storage, treatment, and transfer equipment and structures, with supporting capacity calculations;

(3) a process flow diagram for RMW management during operation. The flow diagram must indicate the average and maximum daily quantity of material handled on a weight and volume basis;

(4) a description of all security measures used during operation of the facility;

(5) the operational procedures for each major facility component involved in RMW management;

(6) a description of monitoring and inspection that will be used to identify and correct equipment malfunctions or deteriorations, operator errors, and other malfunctions;

(7) a description of the proposed measures to handle RMW during periods of routine maintenance, emergencies, equipment breakdown, or facility start-up and shutdown;

(8) a description of the daily cleaning and maintenance operations and scheduled downtime maintenance each year and anticipated schedules for major equipment replacement;

(9) a description of how all equipment, personal protective equipment (PPE), or other items that have contacted RMW will be disinfected including identification of the disinfectant or pesticide proposed to be used; and

(10) a list of receiving facilities that will be used for treatment or disposal.

(c) Personnel training and safety plan.

The plan must include:

(1) a description of the employee training program that will be used to teach employees how to correctly operate the equipment they must operate and to discover problems with that equipment;

(2) a general awareness and familiarization component that outlines how each employee will become

familiar with the risks associated with the handling of the RMW and how those risks can be minimized; and

(3) a training component on how to manage compromised packaging, spills, emergencies, or unauthorized wastes.

(d) Contingency plan.

The plan must describe the actions that will be taken to address potential operational problems including, but not limited to, compromised packaging, equipment malfunction or breakdown, delivery of unauthorized waste, waste not packaged appropriately, spills, fire, explosion, power failure, excessive noise, unacceptable odors, litter, and vectors. The plan must also include a contingency for treatment or disposal should processing equipment be non-functional for a period longer than seven calendar days.

(e) A wash-water management plan.

The plan must describe the facility's drainage system and the amount, with supporting calculations, of wash-water emanating from the cleaning of areas, reusable containers or equipment that have come in contact with RMW and the method to collect, store, treat or dispose of wash-water.

(f) Treatment equipment description.

Treatment facilities must provide a detailed description of the treatment device(s) including:

(1) an outline of the equipment features (*e.g.*, manufacturer name, model number, capacity and material of construction), ancillary equipment, physical characteristics and function; and a drawing of the equipment showing piping and instrumentation;

(2) evidence of manufacturer efficacy testing, including the use of biological indicators analyzed by an independent laboratory;

(3) a list of the operating parameters (*e.g.*, temperature, pressure, time, irradiation or chemical levels, etc.) that will be attained for microbial inactivation and treatment;

(4) the frequency, location, and method for monitoring the operating parameters;

(5) the procedures for and frequency of calibration of all instruments and controls;

(6) the procedures for loading the treatment device and unloading the treated waste; and

(7) for facilities using an alternative treatment system, a copy of the NYSDOH approval issued to the system's manufacturer or operator.

(g) Validation plan for treatment systems.

The plan must describe the procedures for validation and bio-challenge testing including, but not limited, to the types of biological indicators employed, the timing of all testing, the location of all monitoring points, protocols and methods for monitoring, laboratory analytical techniques employed, and the laboratory(ies) that will be used for analyses. The plan must also provide sufficient information to address each of the applicable requirements identified in sections 365-2.5, 365-2.6 and 365-2.7 of this Subpart.

(h) A certification that the facility conforms with existing local zoning laws or ordinances.

(i) Closure plan. The plan must describe how all the equipment and facility surfaces will be disinfected, tested for microbial inactivation and decontamination, and how the facility will be properly closed.

Section 365-2.5 Design and operating requirements.

A facility required to obtain a permit under this Subpart must, in addition to the requirements identified in section 360.19 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) An RMW tracking document must be received for each shipment of RMW accepted at the facility. The facility must not accept waste from unauthorized off-site sources (*e.g.*, self-transporters, generators not authorized by the permit, etc.), or waste which is not accompanied by a tracking document. The tracking form must be completed as required as specified in the instructions on the form.

(b) A fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming RMW. In addition:

(1) the investigation alarm setpoint of the radiation detector must be set at least two times but no greater than five times background radiation levels;

(2) the concentration of radiation in any waste received may not exceed background radiation levels;

(3) background radiation readings at the facility must be measured and recorded at least daily;

(4) field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

(i) the radiation detector must be calibrated at least annually or more often as recommended by the manufacturer, and documentation describing the calibration must be maintained at the facility; and

(ii) each instance in which the radiation detector is triggered by a waste load must be documented and reported to the department by the next business day following the event. Recorded information must include the date the waste was received, transporter name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(c) For storage and transfer facilities, the RMW must be maintained in the packaging as received, unless otherwise approved by the department. If any packages are broken, leaking or are otherwise compromised, the RMW must be handled as outlined in the contingency plan. The RMW may only be surrendered to a transporter permitted to transport RMW under Part 364 of this Title.

(d) Incoming RMW must be handled in accordance with the following criteria.

(1) RMW must not be accepted unless there is sufficient storage, transfer or treatment capacity.

(2) RMW must be inspected prior to unloading to ensure the RMW has been packaged appropriately. If any packages are broken, leaking or otherwise compromised, the RMW must be handled as outlined in the contingency plan. Containers of RMW must not be opened for inspection unless authorized by the department.

(3) RMW shipment in bulk packaging cannot be accepted, unless approved by the department as part of the waste control plan.

(4) The facility must record the date of arrival of each waste load at the facility, the original generator identification, package type and weight or volume, and the intended disposition of the waste. These documents may be maintained electronically.

(e) RMW handling and storage.

(1) Entry to the facility must be secured and controlled at all times through the use of gates or other means.

(2) A sign must be conspicuously posted at each entrance to the facility that identifies the types of waste that are acceptable for delivery to the facility and the types of wastes that are not accepted at the facility. This sign must be a minimum of 12 inches high by 18 inches wide and have lettering a minimum of one inch in height. Signs that read "CAUTION - REGULATED MEDICAL WASTE. VISITORS AND UNAUTHORIZED PERSONNEL MUST REPORT TO THE OFFICE." must be posted at each entrance to the facility. These signs must include the universal biohazard warning symbol.

(3) RMW must be completely contained and secured during storage and with appropriate blocking and bracing when moved by a vehicle during transport.

(4) RMW storage and handling procedures must minimize potential occupational exposures and release to the environment.

(5) Containers must be stored in an upright, stable and controlled manner that minimizes the potential for leakage. The top of the stacked containers must not be more than eight feet above the level of the floor. The containers must not be compromised by the manner of storage.

(6) Unauthorized wastes may be temporarily stored in areas specifically designed for these wastes on the facility site in accordance with the waste control plan.

(7) All buildings must be fully enclosed and must have an impermeable floor.

(8) RMW must not be processed to reduce the size prior to treatment, unless approved by the department as part of the operation and maintenance plan.

(9) RMW must not be compacted or compressed. RMW placed into bins for consolidation or treatment must be controlled to minimize aerosolization.

(10) Trash chutes or slides cannot be used to move RMW between containers, vehicles, or treatment devices unless the movement is controlled to maintain the integrity of the containers.

(11) Vehicles must be unloaded in a manner that does not cause containers to break or otherwise release RMW.

(12) Storage of RMW that has the ability to become putrescent is limited to:

(i) three days if the RMW is stored at 45 degrees Fahrenheit (7 degrees Celsius) or greater;

(ii) seven days if the RMW is stored at less than 45 degrees Fahrenheit (7 degrees Celsius) but greater than 32 degrees Fahrenheit (0 degrees Celsius); and

(iii) thirty days if the RMW is stored at 32 degrees Fahrenheit (0 degrees Celsius) or lower.

(13) RMW which becomes putrescent must be treated, refrigerated, or removed from the facility as soon as practicable.

(14) Non-putrescent RMW can be stored above 45 degrees Fahrenheit (7 degrees Celsius) for a maximum of 15 days, and a maximum of 30 days if stored at or below 45 degrees Fahrenheit (7 degrees Celsius).

(15) Treated RMW must be removed from the facility within 30 days.

(16) The facility must be maintained in a clean and sanitary condition and implement a written schedule of appropriate cleaning and disinfection.

(17) The unloading and loading areas must be adequately sized and designed to facilitate efficient transfer of RMW to and from the collection vehicles and the unobstructed movement of vehicles. All unloading, and loading must be performed within a building and on a covered concrete or asphalt surface.

(f) RMW recovery and recycling.

Recovery of RMW for third-party reprocessing of medical devices, or for reuse or recycling of materials must comply with the following:

(1) RMW and used medical devices generated from neurosurgery cannot be recovered or recycled;

(2) used medical devices may be sent to a reprocessor for preparation for reuse without treatment;

(3) used medical devices source separated at healthcare facilities that are managed at RMW processing facilities must be transported directly to the manufacturer, reprocessor or remanufacturer;

(4) recovery, segregation and sorting of used medical devices from RMW received from healthcare facilities. Recovery, segregation and sorting must employ robotic or mechanical equipment, and control the release of microorganisms during processing;

(5) RMW to be recycled must be treated with an autoclave in accordance with the RMW treatment requirements of sections 365-2.6 and 365-2.7 of this Part prior to being sent for recycling;

(6) bio-challenge testing must be conducted in accordance with this Subpart for each load of waste treated before recycling. Bio-challenge testing must demonstrate no growth in ‘Bacillus’ spores for each load of waste proposed to be recycled;

(7) materials recovered for recycling from the RMW stream must be stored at the treatment facility until results of bio-challenge testing have been obtained. If results indicate that treatment was not sufficient, the materials must be treated again and retested.

(g) The facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

(h) The facility must provide proof of liability insurance or other form of financial security deemed sufficient by the department to meet all responsibilities in case of release of RMW to the environment causing contamination.

Section 365-2.6 General treatment requirements.

In addition to the requirements in section 365-2.5 of this Subpart, a RMW treatment facility must comply with the following criteria:

(a) Except as provided in subdivisions (b) and (c) of this section, treatment of RMW must be by:

(1) discharge into a sanitary sewer system connected to a secondary treatment facility, if the waste is liquid or semi-solid, except as specifically prohibited by the NYSDOH, or by local law or ordinance;

(2) incineration in a RMW incineration facility regulated under Subpart 362-1 of this Title;

(3) decontamination or inactivation by autoclaving in conformance with the requirements of this Subpart;

(4) decontamination by discharge to an effluent decontamination system approved by the department; or

(5) an alternative RMW treatment system approved by the NYSDOH.

(b) Restrictions on autoclave use.

(1) An autoclave cannot be used for treatment of RMW containing or mixed with hazardous waste and/or pharmaceuticals.

(2) An autoclave cannot be used for treatment of radiological RMW unless decayed to a background radiation level or the facility set alarm for radiation levels prior to treatment.

(3) An autoclave cannot be used for treatment of recognizable human organs or body parts, or animal body parts or carcasses unless in small quantities, and approved by the department, or provided the NYSDOH has approved the autoclave model as an alternative treatment technology for those wastes.

(4) An autoclave cannot be used for treatment of thermally resistant materials such as solidified liquids or bulk animal bedding having a volume of more than five cubic feet unless approved by the department and NYSDOH as an alternative treatment system

(5) An autoclave cannot be used for the treatment of toxins of biological origin unless autoclaving can be verified by identifying the scientific source documenting it as an effective and appropriate method for inactivating biological toxins or the method used for inactivating toxins of biological origin is one of those listed by the Centers for

Disease Control and Prevention in the *Biosafety in Microbiological and Biomedical Laboratories* publication as incorporated by reference in section 360.3 of this Title.

(c) Cultures and stocks.

(1) Cultures and stocks containing select agents or non-exempt quantities of toxins of biological origin listed in 7 CFR Part 331, 9 CFR Part 121 and 42 CFR Part 73 as incorporated by reference in section 360.3 of this Title, must be treated on-site by incineration, autoclaving, use of an alternative treatment system approved by the NYSDOH, or inactivation in accordance with the Federal Select Agent Program. However, if the generating facility does not have a predictable need for on-site treatment and the waste is incidental to the delivery of medical care or research, the generating facility can arrange for transportation of the select agents and toxins of biological origin to a facility authorized by the department to treat the waste. If the waste is shipped off-site for treatment, the generator must comply with Federal regulations regarding possession, use and transfer of select agents and toxins of biological origin found in 7 CFR part 331, 9 CFR part 121 and 42 CFR part 73 as incorporated by reference in section 360.3 of this Title.

(2) Cultures and stocks containing infectious agents other than those referenced in paragraph (1) of this subdivision may be transported off-site for treatment.

(d) Discarded sharps must be destroyed prior to disposal. Sharps that have not come into contact with infectious agents do not need to be treated.

(e) Treatment facilities must have a response plan in place to be followed in the event the facility is notified or discovers that RMW has left the facility without required treatment.

(f) Treated RMW can be disposed of as MSW at a combustor, landfill or other disposal facility authorized by the department to accept RMW after treatment.

(g) Treated RMW must be accompanied by a NYSDOH certificate of treatment.

(h) Effective treatment of RMW.

Treatment of RMW must be demonstrated by no growth in viable ‘G. stearothermophilus’ spore concentration, or other biological indicator or measure of effectiveness acceptable to the department. In addition:

(1) for infectious agents including certain vegetative bacteria, fungi, lipophilic and hydrophilic viruses, parasites, mycobacteria, and similar organisms, no growth is required;

(2) for human tissues, human organs, or animal waste body parts, the treatment must render the waste visually unrecognizable;

(3) for sharps, the treatment must render the sharps unusable; and

(4) for toxins of biological origin, the decontamination, inactivation and treatment must inactivate the toxin.

(i) Validation testing prior to equipment use.

Prior to using an RMW treatment system, the facility must conduct validation testing. Written approval of validation and repeat validation test protocols and test results must be obtained from the department prior to acceptance of RMW for treatment. The department must be notified before all validation testing is conducted, review and approve the scientific source documenting it as effective.

(1) The testing must include three separate treatment runs in accordance with the following requirements:

(i) the operational parameters used during the tests must be consistent with the parameters that will be used during routine operation of the treatment process (*e.g.*, cycle duration, heat, chemical, or irradiation exposure time, chemical concentration, or other treatment parameters, etc.);

(ii) for autoclaves, each test must document removal of all air from the autoclave and include one or more pre-vacuum cycles or depending on the autoclave one or more steam pulses;

(iii) the RMW composition (*e.g.*, porosity, liquids, solids, organic matter, thermal resistance and type of packaging etc.) and load configuration (*e.g.*, packing density, orientation etc.) during the tests must be consistent with the waste properties and loading process during routine operation; and

(iv) the moisture content (*i.e.*, wet or dry) and volume of the waste during the tests must be consistent with the waste that will be treated during routine operation.

(2) To assess treatment performance, the system must employ commercially-prepared biological indicators from the same lot or batch, each containing spores of 'Geobacillus stearothermophilus' (for steam, moist heat, or hydrogen peroxide systems), 'Bacillus atropheus' (for dry heat or chemical systems) or an organism that demonstrates the necessary resistance for the treatment method, as determined by the department. The indicators must:

(i) have a minimum concentration of 6 $\log_{10}$ spores. The concentration must be higher and more thermally resistant than the bioburden routinely associated with the waste;

(ii) include a supplier's certificate of performance that identifies the organism (genus, species, strain and population) and, for thermal treatment systems, the D-value and the Z-value. The D-value must be 1.8 minutes and the Z-value must be no less than 50 degrees Fahrenheit (10 degrees Celsius);

(iii) be appropriate for the type of RMW and device (*i.e.*, self-contained, suspension or paper strip), including the shelf life, the carrier material and primary packaging, the culture medium for self-contained biological indicators and the media, growth and culture conditions for non-self-contained biological indicators;

(iv) be compatible with the treatment process and have a resistance relative to the temperature, pressures,

conditions, chemicals or irradiation used in the process, the infectious agents on a substrate, the type and density of the waste to be treated and its packaging;

(v) be placed throughout the RMW load during each validation test, including at the coldest point in the treatment system. The department may also require alternative and/or supplemental indicators (*e.g.*, thermocouples, etc.) to demonstrate chemical saturation, heat penetration or irradiation exposure and effectiveness of treatment;

(vi) comply with the following number of biological indicators in each validation test load:

(a) three biological indicators per cycle for 0-110 pounds of RMW per load;

(b) five biological indicators per cycle for 111-550 pounds of RMW per load;

(c) seven biological indicators per cycle for 551-1100 pounds of RMW per load;

(d) nine biological indicators per cycle for 1101-1650 pounds of RMW per load;

(e) eleven or more, as determined by the department, biological indicators per cycle for any treatment system greater than 1650 pounds of RMW per load; and

(f) one or more controls from the same lot or batch;

(vii) be wrapped in a paper towel and encased in cotton batting or in another carrier system designed to mimic the thermal resistance in the RMW before placement into the package to be treated with the RMW. Materials used to hold the indicator units must be similar to the RMW to be treated, provide effective protection from breakage, be loose in the bulk of the RMW and be easily retrievable at the end of each validation run; and

(viii) be wrapped in a thick layer of cotton, wool, or equivalent to prevent direct conduction of heat from the metal if metal containers are used to contain the indicators.

(3) Biological indicators requiring microbial bioassay to confirm efficacy must be quantitatively analyzed after the treatment cycle. All self-contained biological indicators used for test runs must be qualitatively analyzed for color change following incubation.

(4) Unless otherwise approved by the department, the laboratory used to analyze the results of the validation test must be independent of the facility owner or operator. No less than one-third of the biological indicators used during each validation test run must be analyzed by an independent laboratory.

(5) The system must employ process monitoring concurrent with biological indicators, including devices and instrumentation to record temperature and/or other critical operating parameters.

(6) Verification testing for commercially purchased biological indicators. Each lot

or batch of biological indicators with a stated population must be tested prior to use at the facility. Each verification test must use a minimum of three indicators from the same lot or batch that must be sent to an independent laboratory.

(7) All commercially-purchased biological indicators must be stored in accordance with the manufacturer's specifications.

(8) Commercially-purchased indicators in the form of paper strips must not be used in devices or areas where fluids can pool or puddle around the biological indicator. Self-contained biological indicators with vent caps must not be used where liquids may accumulate and contaminate the indicators.

(j) Repeat validation testing.

Validation testing must be repeated when any of the following occurs. The department must be notified before validation occurs:

(1) failure of any treatment process operational parameters such as time, temperature, or pressure during validation;

(2) failure to achieve microbial inactivation and treatment in at least 95 percent of the biological indicators during each treatment cycle during validation;

(3) any modifications to the treatment process operational parameters;

(4) a treatment device has been operational without a repeat validation for at least five years; or

(5) the treatment device has not been used for at least one year.

(k) RMW treatment system operation requirements.

(1) The facility must use controls appropriate for the treatment system (*e.g.*, real time monitoring devices that record process feed rate or flow, cycle time, pressure, temperature, pH, chemical or irradiation levels, etc.).

(2) Biological monitors (*e.g.*, thermochemical indicators and integrators such as autoclave tape, paper strips or small ampoules, thermocouples, wireless data loggers, etc., or other monitors suitable for the treatment technology) must be placed in or on the outside of RMW containers and distributed throughout the load, chamber, or vessel during treatment.

(3) Bio-challenge testing is required with each load for biocontainment facilities at BSL 3 or 4.

(4) Loading devices must be automated or, if mechanical, designed and operated to maintain the integrity of the container being loaded into a treatment device.

(5) Process control instruments must be maintained in operable condition. All process instruments must be calibrated at the intervals recommended by the manufacturer, but not less than once per year.

(6) A general facility inspection must be undertaken at least annually to determine the operating condition of the process and control equipment. The annual inspection must be performed by a qualified individual such as a certified

industrial hygienist or biosafety specialist, or a licensed professional engineer not affiliated with the facility. The results of the inspection must be included in the annual report.

(7) All emptied reusable RMW containers must be appropriately washed and disinfected after each use and facility equipment used for handling and processing the waste must be cleaned and decontaminated whenever it is visibly soiled or contaminated.

(8) If a treatment system fails to operate in accordance with the permitted and acceptable operating parameters (time, temperature, pressure, or chemical concentration), or if more than 5 percent of the biological indicators used during the treatment cycle fail or show growth, the facility must:

(i) discontinue use of the system, using emergency shutdown procedures if appropriate, until corrective action has been taken and then repeat the treatment cycle. Repeat validation or bio-challenge testing must be performed to verify that effective treatment can resume;

(ii) ensure that all RMW that was processed by the system since the last run when the unit was in compliance, is identified as untreated RMW and document that the RMW was properly retreated;

(iii) document the failure, including date and system identifier;

(iv) document the facility response, including corrective action; and

(v) whenever a facility has reason to believe untreated RMW certified as treated RMW has left the facility, notify the waste transporter, the receiving facility, and the department as soon as practicable.

(l) An operation log must be maintained for each treatment device.

The log must record the date, time, name of operator, the type and amount of RMW treated, operating parameters, and the dates and results of calibration and testing. These records may be maintained electronically.

(m) Sharps consolidation.

Sharps consolidation prior to treatment must be conducted as follows:

(1) reusable sharps containers processed at the facility must be processed with an automated or mechanical delidder and dumping system. Lids may not be removed manually;

(2) reusable sharps containers and transport cages must be mechanically cleaned with an appropriate disinfectant prior to reuse;

(3) reusable sharps containers must be approved by the USFDA for reuse;

(4) reusable sharps containers removed from service must be managed as RMW or, if proposed to be recycled, cleaned and decontaminated; and

(5) all reusable containers, including sharps containers, must be tested using bio-challenge tests on an annual basis, in a manner approved by the department.

Section 365-2.7 Requirements for autoclaves used to treat RMW.

In addition to the requirements outlined in sections 365-2.5 and 365-2.6 of this Subpart, RMW treatment facilities that employ the use of autoclaves must comply with the following criteria:

(a) An autoclave that fails to meet the criteria for effective treatment pursuant to this section after validation testing at the site of installation cannot be used to treat RMW.

(b) A facility that seeks to operate an autoclave at other than the generally accepted operating parameters (*i.e.*, time, temperature and pressure) outlined in this section must obtain approval from the NYSDOH as an alternative treatment method.

(c) The facility must be designed to promote safe and effective operation of the autoclave. The facility must have procedures to ensure:

(1) the autoclave meets the criteria in this Subpart for effective treatment of RMW;

(2) loads contain only those items or types of RMW for which effective treatment has been demonstrated by validation testing; and exclude RMW for which effective treatment by the system has not been demonstrated or is prohibited;

(3) each load is treated using residence time, temperature and pressure, and with one or more vacuum cycles that have been validated as effective for the treatment of RMW, and conditions of treatment are monitored and documented for each load;

(4) the effectiveness of treatment is maintained, by including, as applicable, procedures for and frequency of: calibration verification and recalibration of parametric controls; monitoring by bio-challenge testing or other demonstration that treatment has been attained; and preventative maintenance of engineering controls (*e.g.*, charcoal, HEPA filters, etc.) and diagnostic procedures for electronic controls (*e.g.*, integrated computers and mechanical components, etc.);

(5) occupational exposure is minimized, and physical injury to operators is prevented during loading, the cycle, and unloading the autoclave; and

(6) personnel are provided training on the routine operation of the autoclave, are kept current with manufacturer recommendations for operation, and have been instructed in emergency procedures for handling malfunctioning systems and untreated RMW. Training programs must mandate initial training and retraining at least once per calendar year and as necessary for presenting updates on operational information.

(d) Monitoring autoclave operation.

(1) Parametric controls must be employed to monitor operating parameters automatically and continuously throughout the entire cycle and generate a record of operating parameters for each cycle.

(2) Routine operational performance of an autoclave must be monitored by bio-challenge testing, conducted in accordance with subdivision (h) of this section using the validation protocol.

(3) If an autoclave fails to attain no growth in viable spores concentration upon bio-challenge testing or indicators fail to show expected results (*i.e.*, a color change), the load must be handled as untreated RMW, and the facility must demonstrate, through a repeat of bio-challenge testing, that the autoclave effectively treats RMW before resuming its use for treatment purposes.

(e) Containment of RMW for treatment by autoclaving must be by a container or containment system designed to withstand the temperature and pressure of autoclaving, and may, except for sharps, consist solely of a bag.

(f) If the container or containment system does not, by design, allow steam to come into direct contact with the RMW, the facility must take actions to ensure contact.

(g) Sharps treated by autoclaving must be destroyed prior to disposal.

(h) Routine bio-challenge testing for autoclaves.

An autoclave that has been validated and authorized to treat RMW must conduct routine bio-challenge testing as follows:

(1) during the first 30 days of actual operation, the first and third load each day must include biological indicators placed in the waste;

(2) after 30 days of operation, one load each day must include biological indicators placed in the waste;

(3) after six months of successful operation with no failures in daily testing, bio-challenge testing may be conducted every 40 hours of operation. Any bio-challenge test failures will require repeat bio-challenge testing;

(4) bio-challenge testing must include at least one-third of the number of biological indicators that are required for validation or two indicators, whichever is greater;

(5) every 200 hours of operation, biological indicators used during bio-challenge testing must be evaluated by an independent laboratory; and

(6) bio-containment facilities at BSL 3 or 4 using pass-through treatment systems must conduct bio-challenge testing for each load of RMW.

Section 365-2.8 Recordkeeping and reporting requirements.

(a) Recordkeeping.

The following records must be maintained on-site for a minimum of three years and must be available for inspection and copying by the department.

(1) A record of RMW managed by quantity and category as specified by the generator on the container and treated at the facility. Categories include cultures and stocks, human pathological waste, human blood and blood products, sharps, animal waste, and other (specify characteristics).

(2) A record of how all RMW was managed, including treatment, if applicable. For treatment, copies of certificates of treatment must be retained. For shipment off-site for treatment, copies of tracking documents must be retained.

(3) In addition, treatment facilities must:

(i) retain hard copy or electronic records of validation testing and bio-challenge testing, including protocols and test results;

(ii) retain records of parametric monitoring (*e.g.*, the residence time, pressure and temperature of each load treated);

(iii) document each employee's participation in training and/or retraining in treatment equipment operations; and

(iv) document corrective actions.

(b) Reporting.

The facility must submit an annual report covering the previous calendar year, on forms prescribed by or acceptable to the department. The report must include:

(1) a summary of the RMW managed, by quantity and if feasible, by category as specified by the generator on the containers. Categories include cultures and stocks, human pathological waste, human blood and blood products, sharps, animal waste, and other (specify characteristics);

(2) a summary of all waste received that could not be managed at the facility and how it was handled;

(3) for storage and transfer facilities, an identification of the treatment facility that received the RMW; and

(4) for treatment facilities, report any issues that have been identified (*e.g.*, failure to attain operating requirements, equipment failures, etc.), and any corrective action taken including additional bio-challenge testing, management of spills, and special training for employees to resolve the issues.

SUBPART 365-3

OTHER INFECTIOUS WASTES

Section 365-3.1 Applicability
365-3.2 Exempt facilities and activities
365-3.3 Registration
365-3.4 Criteria for off-site transport of waste that has come into contact with an infectious agent

Section 365-3.1 Applicability.

This Subpart applies to:

(a) any incidental waste that is not RMW but that has come into contact or is presumed to be contaminated with an infectious agent or toxins of biological origin. Incidental waste means any material generated as a consequence of mitigating exposure to infectious agents or toxins of biological origin (*e.g.*, including waste from work spaces, living spaces, and other similar locations prior to reoccupancy, etc.). For purposes of this Subpart, an infectious agent includes any agent classified as Risk Group 2, 3, or 4 by the National Institutes of Health in the *NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules*, incorporated by reference in section 360.3 of this Title;

(b) Culture samples and devices that are contaminated with an infectious agent or toxins of biological origin (e.g., pathogenic micro-organisms or toxins that are causative agents of food or water-borne illness) that are likely to pose a health risk to humans or animals and that are not treated before disposal; and

(c) Facilities, including laboratories, conducting research on infectious agents, as defined in subdivision (a) of this section, are regulated by this Subpart.

Section 365-3.2 Exempt facilities and activities.

The following facilities and activities are exempt from this Subpart.

(a) Storage of waste that has come into contact with an infectious agent at the site of generation provided the storage period does not exceed 30 days and the storage criteria outlined in section 365-1.2 of this Part are followed. If the waste becomes putrescent, the waste must be removed from storage and sent for treatment as soon as practicable.

(b) A facility or activity that uses a material containing an infectious agent at a concentration naturally occurring in the environment.

(c) A facility or activity handling contaminated foodstuffs, samples of foodstuff sent for routine laboratory analyses, environmental samples, or quality control samples; provided that contaminated culture samples and devices that are likely to pose a health risk to humans or animals are treated before disposal.

Section 365-3.3 Registration.

Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. These facilities are not subject to section 360.19 of this Title but must comply with the following operating requirements.

(a) Storage of waste at the site of generation that has come into contact with an infectious agent or toxins of biological origin must follow the criteria for RMW found in section 365-1.2 of this Part.

(b) Storage and transfer locations at locations other than at the site of the generation must comply with the following:

(1) each facility must be equipped with potable water and electricity and must implement procedures to minimize the potential for exposure and prevent the release or spread of infectious agents;

(2) the facility must limit the amount of time contaminated waste is staged to a maximum of 14 days and must contain the waste;

(3) the facility must be secured and monitored;

(4) packaged untreated waste or waste that has not met specific treatment standards for microbial inactivation must be separated by waste type in labeled separate containers and locations from waste that has been treated;

(5) waste must be placed on an impermeable surface with the use of berms and absorbents as necessary to prevent a bioaerosol release;

(6) waste must remain in the original containers and the containers may not be opened at the registered facility;

(7) no additional mixing, pumping, altering of packaging or handling of waste which may lead to a discharge is allowed; and

(8) waste must be transported to an authorized facility for treatment or disposal in accordance with this Subpart.

(c) Temporary treatment devices used for 90 days or less to treat waste contaminated with infectious agents at the site of generation must meet the following conditions:

(1) decontamination, inactivation or treatment reduces or destroys infectious agents and toxins of biological origin and tests are performed to confirm no growth of a viable infectious agent;

(2) the on-site treatment technology (autoclave, freezing, fumigation, alkaline hydrolysis, etc.) is effective in treating each of the waste streams that are treated;

(3) process efficacy must be demonstrated with validation testing prior to commencement of operations on the first deployment and bio-monitoring in accordance with section 365-2.6 of this Part; and

(4) if elimination of the infectious agent or toxins of biological origin cannot be confirmed, the waste is packaged and transported in accordance with section 365-3.4 of this Subpart.

Section 365-3.4 Criteria for off-site transport of waste that has come into contact with an infectious agent.

(a) The waste must be packaged using the criteria applicable to RMW, in both a primary and secondary container, as outlined in section 365-1.2(b) and (c) of this Part.

(b) Storage, treatment, or transfer of the waste, other than storage facilities outlined in subdivisions 365-3.2(a) and 365-3.3(b) of this Subpart, must occur at an RMW treatment, storage, or transfer facility approved under Subpart 365-2 of this Part. The treatment system must be capable of treating the type and characteristics of the waste.

(c) The transporter of the waste must be permitted to transport RMW under Part 364 of this Title.

(d) The waste must comply with the tracking document requirements applicable to RMW specified in this Part.

PART 366

LOCAL SOLID WASTE MANAGEMENT PLANNING

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SUBPART 366-1

GENERAL

Section 366-1.1 Purpose and applicability
366-1.2 General criteria

Section 366-1.1 Purpose and applicability.

In furtherance of the policy objectives set forth in subdivision 27-0106(2) of the Environmental Conservation Law, this Part specifies the standards for the content, review and approval of a local solid waste management plan (LSWMP) by the department. As specified in section 360.19(c)(2) of this Title, solid waste management facilities are prohibited from accepting waste from a municipality that is not included in a department-approved LSWMP. As specified in section 360.16(c)(5) of this Title, an application for a solid waste management facility permit is required to demonstrate that the facility is consistent with the goals and objectives of a department approved LSWMP, if one exists. Certain applications for state assistance also require description of consistency with a department-approved LSWMP, as specified in sections 369-2.3(c) and 369-3.3(c) of this Title.

Section 366-1.2 General criteria.

(a) LSWMP must:

(1) comply with the criteria specified in section 27-0107 of the ECL for LSWMPs;

(2) take into account the objectives of the state solid waste management policy set forth in section 27-0106 of the ECL;

(3) take into account, and as appropriate, incorporate the goals and objectives of the current State solid waste management plan;

(4) provide for or take into account all the solid waste generated within the planning unit for a 10-year period; and

(5) embody sound principles of solid waste management, natural resource conservation and energy production while fostering employment-creating opportunities.

(b) The effective date of a LSWMP is the date the LSWMP is approved by the department in accordance with this Part.

(c) Any changes to planning unit membership must be approved by the department, including any increase or decrease in membership. The new LSWMP or biennial update must describe the effect of the change on all impacted planning units. Any planning unit member seeking to become a new planning unit or join an existing planning unit, must first obtain department approval. A LSWMP for the new planning unit must then be approved before the entity leaves its current planning unit. Membership changes may be approved as part of a new LSWMP or a biennial update.

(d) Submittals under this Part are not subject to Part 621 of this Title.

SUBPART 366-2

LOCAL SOLID WASTE MANAGEMENT PLAN (LSWMP) CONTENTS

Section 366-2.1 Description of planning unit
366-2.2 Waste generation and materials recovery data
366-2.3 Existing solid waste management system
366-2.4 Existing administrative and financial structure
366-2.5 Alternatives evaluation and selection
366-2.6 Implementation plan and schedule
366-2.7 Waste stream projections

Section 366-2.1 Description of planning unit.

A LSWMP must include a description of the planning unit, including:

(a) a list of all planning unit members including all municipalities, agencies, and authorities along with a description of each member's role and responsibilities;

(b) the population of the planning unit, including estimates for rural, urban and suburban populations;

(c) a list of neighboring planning units or other neighboring jurisdictions;

(d) a description of any significant or special characteristics or circumstances pertaining to the planning unit which would have a substantial impact on the volume or composition of waste generated within the planning unit as compared to the information available from the department's generic waste composition data. Examples of these special characteristics or circumstances include; major population centers, large or significant industries, institutions, commercial activity, agricultural activities, significant seasonal variations of population and land use, and State or Federal parks, along with their effect on waste generation, materials recovery and program implementation; and

(e) a brief description of the solid waste management activities and practices of the planning unit and its members for the previous 10 years including:

(1) a brief summary of the implementation of the previous LSWMP including a description, in both qualitative and quantitative terms, of the solid waste management practices successfully implemented and a description of practices that were not successfully implemented; and

(2) a summary of changes to the planning unit since approval of the previous LSWMP, and their quantitative and qualitative impacts on the planning unit, neighboring planning units or other neighboring jurisdictions, including but not limited to, planning unit membership changes, new or closed solid waste management facilities (municipal or private), waste generation and/or composition changes, and materials recovery and program implementation.

Section 366-2.2 Waste generation and materials recovery data.

A LSWMP must include a description of the waste stream, including:

(a) a description of the quantity and composition of all solid waste generated and expected to be generated within the planning unit. The source of the data must be identified and can be a combination of data available from the department as well as other information available to the planning unit. If actual data is not available or is incomplete, estimates may be developed based on available information acceptable to the department. The waste streams evaluated must include:

(1) all municipal solid waste (MSW) (*i.e.*, residential, commercial, and institutional waste), subdivided into individual components by type, including, but not limited to: various paper grades (*e.g.*, newspaper, corrugated cardboard, paperboard, and office paper); metal; glass; plastics; textiles; and organics (*e.g.*, yard trimmings and food scraps);

(2) construction and demolition (C&D) debris;

(3) industrial waste; and

(4) biosolids.

(b) a summary assessment of any data gaps and informational needs.

Section 366-2.3 Existing solid waste management system.

A LSWMP must include a description of the solid waste management facilities and programs within the planning unit and/or serve the planning unit including:

(a) An identification and description of all known facilities (including any facilities outside the planning unit that receive waste from the planning unit) including their location, size, capacity, and the type and amount of solid waste originating within the planning unit managed at each facility. The source of the data must be identified and can be a combination of data available from the department as well as other information available to the planning unit.

(1) For facilities located in the planning unit that receive solid waste from outside the planning unit, an identification of the type and amount of waste received from outside the planning unit and the planning unit(s) from which it originated.

(2) The identification must include the ownership type for the facility (*i.e.*, public, private, or an identified public-private arrangement).

(b) An identification and description of all known agricultural operations managing any organic components of MSW.

(c) A description and summary of the following:

(1) the waste reduction, reuse and recycling programs conducted by the planning unit or otherwise known to be conducted within the planning unit, by material type and generating sector including; recyclables collection and processing programs, organics recovery programs, and public outreach and education programs;

(2) efforts to enforce local disposal and recycling laws;

(3) volume-based pricing incentives or other financial incentives used;

(4) recycling market agreements;

(5) local waste transporter licensing if applicable;

(6) recycling data collection efforts; and

(7) a summary of any data gaps and information needs.

Section 366-2.4 Existing administrative and financial structure.

A LSWMP must include a description of the existing administrative and financial structure of the planning unit and an assessment of the strengths and weaknesses of the current structure with respect to attaining the planning unit goals. The description must include:

(a) an organizational chart(s) depicting the staff or entities responsible for implementing each element of the solid waste management system, including but not limited to, operations, administration, finance, outreach and education, enforcement, data collection and evaluation, and LSWMP updates and reports;

(b) the financial structure for all solid waste management facilities and programs operated or administered by the planning unit and/or its members including:

(1) costs, including capital investments, insurance, operation, maintenance, closure and post-closure costs (if applicable), administration, and financing;

(2) revenues, including fees, fines, and recyclables or recovered energy revenues, general fund contributions, special district charges; and

(3) funding mechanisms that are used to finance any facility operations, maintenance, and programs and events administered by the planning unit or its members;

(c) an identification of all laws, regulations or ordinances related to solid waste management within the planning unit, and a description of how these laws, regulations or ordinances are enforced, which are:

(1) in effect when a draft LSWMP is submitted for department approval, including but not limited to:

(i) source separation laws adopted pursuant to section 120-aa of the General Municipal Law (GML);

(ii) waste importation and/or disposal prohibitions, flow control or local waste transporter licensing laws; and

(iii) zoning laws;

(2) a description of any new local laws, ordinances, regulations or amendments to existing local laws, ordinances or regulations that may be required to fully implement a LSWMP submitted to the department for approval;

(d) a description of any solid waste management policies, if any, within the planning unit in effect when a draft LSWMP is submitted for department approval, including:

(1) local product stewardship, green procurement and sustainability initiatives; and

(2) local environmental justice requirements.

Section 366-2.5 Alternatives evaluation and selection.

A LSWMP must include a qualitative assessment of alternatives and enhancements to the existing solid waste management program that will decrease the amount of waste managed through disposal and thermal treatment by increasing waste reduction, reuse and the recovery of recyclables to the maximum extent practicable over the term of the planning period. The assessment must include the following:

(a) Alternatives assessment. The alternatives assessment must address, at a minimum, the introduction or enhancement of the following efforts or describe why they are not applicable:

(1) waste reduction programs;

(2) reuse programs;

(3) recyclables recovery programs for paper, metal, glass, plastic, and textiles;

(4) organics recovery programs for food scraps and yard trimmings;

(5) programs to develop or improve local and regional markets for recyclables;

(6) enforcement programs;

(7) incentive-based pricing;

(8) education and outreach;

(9) data collection and evaluation efforts;

(10) local waste transporter licensing programs, including an assessment of laws preventing commingling of recyclables with waste;

(11) flow control and districting potential;

(12) C&D debris reduction, including deconstruction, reuse and recovery programs;

(13) private sector management and coordination opportunities;

(14) management of waste through thermal treatment technologies; and

(15) waste disposal options.

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

(b) Alternative evaluation.

A LSWMP must include an evaluation of the alternatives that may enhance existing solid waste management program elements or add new program elements. For each alternative evaluated, the following must be addressed:

(1) Administrative/technical impacts. An evaluation of the economic and administrative feasibility of implementation within the planning period including the following information:

(i) the estimated quantitative and qualitative impact of each alternative on the various components of the waste stream;

(ii) the appropriate types and sizing of facilities or programs needed, based on the projected quantities and composition of the solid waste generated;

(iii) a summary of the cost data used for evaluation, including consideration of any available life-cycle analysis data for the various alternatives; and

(iv) the impact or effect on natural resource conservation, energy production and employment-creating opportunities.

(2) Jurisdictional impacts. An analysis of the impact on neighboring planning units and other neighboring jurisdictions, and environmental justice within the planning unit, including:

(i) an assessment of interest in participation by other neighboring planning units or other neighboring jurisdictions;

(ii) alternatives that would be available if any neighboring planning units or other neighboring jurisdictions participated;

(iii) comments and recommendations received from any neighboring planning units or other neighboring jurisdictions; and

(iv) an assessment of the environmental justice impacts in the planning unit.

(c) Selected alternatives and programs identification.

After the various alternatives have been evaluated, a summary of the preferred alternatives and programs to be pursued by the planning unit must be described in the LSWMP, including:

(1) the alternatives chosen and reasons for their selection;

(2) an identification of expected qualitative and quantitative impacts, including, but not limited to, waste reduction, reuse, materials recovery, increased participation in recovery opportunities and product stewardship programs, as well as any economic, administrative or partnership benefits;

(3) an identification of the administrative, contractual, and financial requirements required for program implementation; and

(4) an identification of any new or modified local laws, ordinances or regulations that may be required to fully implement the selected alternatives.

Section 366-2.6 Implementation plan and schedule.

A LSWMP must include an implementation schedule, with appropriate detail, that outlines the dates of all major milestones and events over the LSWMP planning period that will occur to implement the selected alternatives outlined in section 366-2.5(c) of this Part.

Section 366-2.7 Waste stream projections.
A LSWMP must include projections for all MSW generated (both quantity and

composition) within the planning unit, based on actual or estimated solid waste generation data.

(a) Projections must be provided for each year of the planning period based on the implementation plan and schedule developed under section 366-2.6 of this Part.

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

(1) projected MSW generation based on projected population, including the percentage of each generating sector; and

(2) progressively-decreasing quantities of MSW generated in the planning unit managed through thermal treatment and disposal.

SUBPART 366-3

LSWMP PUBLIC PARTICIPATION

Section 366-3.1 Public participation

Section 366-3.1 Public participation.

The planning unit must solicit and address public comments on a LSWMP, as follows:

(a) Prior to submission to the department, a draft LSWMP must be made available for public comment for a period of at least 45 calendar days.

(b) At least one public meeting, with public notice in a publication of wide circulation within the planning unit at least 15 days prior to the meeting, must be conducted by the planning unit, during the public comment period, to present an overview of the draft LSWMP and to receive comments.

(c) A responsiveness summary must be prepared by the planning unit, that includes:

(1) number of attendees (excluding planning unit representatives);

(2) a list of substantive comments (both written and verbal) received during the public comment period; and

(3) a response to each substantive comment individually or by appropriate grouping.

(d) The responsiveness summary identified in subdivision (c) of this section must be included as part of the draft LSWMP submitted to the department for review and approval.

(e) Once the draft LSWMP has been determined to be approvable by the department, another public comment period is required if either the department or the planning unit conclude that the approvable LSWMP differs significantly from the first draft LSWMP. The additional public comment period must follow the criteria outlined in subdivisions (a)-(c) of this section. An additional responsiveness summary must be prepared for the additional public comment period, if required, and must be submitted to the department for review and approval in accordance with the provisions of section 366-4.1(c) of this Part.

SUBPART 366-4

LSWMP APPROVAL

Section 366-4.1 LSWMP approval process
366-4.2 Withdrawal of LSWMP approval

Section 366-4.1 LSWMP approval process.

A draft LSWMP submitted to the department for review and approval must be in a format acceptable to the department.

(a) Draft LSWMP completeness review.

The department will determine if the draft LSWMP contains all the required elements identified in this Part for purposes of commencing review and will provide written notification to the planning unit of its completeness determination within 30 calendar days of receipt of the draft LSWMP. If written notification is not provided within 30 calendar days of receipt of the draft LSWMP, the draft LSWMP will be deemed complete, by default, for the purposes of this subdivision.

(1) If the department determines the draft LSWMP is complete, or the draft LSWMP is deemed complete by default the existing LSWMP will remain in effect for the planning unit throughout the draft LSWMP review and development period, not to exceed one year from the date the draft was determined complete by the department or was deemed complete by default.

(2) If the department determines that the draft LSWMP does not adequately address all the basic elements of a LSWMP, the draft LSWMP will be deemed incomplete and the planning unit will be advised in writing of the deficiencies and will be required to resubmit a revised draft LSWMP for review. Upon resubmittal of the revised draft LSWMP, the department will review for completeness as outlined in this subdivision.

(b) Complete draft LSWMP review.

The department will review the complete draft LSWMP to determine whether it adequately addresses all required elements identified in this Part and will provide written notification to the planning unit of its determination within 120 calendar days after the date the draft LSWMP is deemed complete. If written notification is not provided within 120 calendar days, the complete draft LSWMP will be considered approvable.

(1) If the department determines that the complete draft LSWMP adequately addresses all required elements, the written notification provided by the department to the planning unit will advise that the complete draft LSWMP is approvable and that a final LSWMP must be prepared in accordance with subdivision (d) of this section.

(2) If the department determines that the complete draft LSWMP does not adequately address all required elements, the written notification provided by the

department to the planning unit will identify the deficiencies and a revised complete draft LSWMP will be required to be resubmitted for review. For the second and any subsequent reviews of the revised complete draft LSWMP, the revised complete draft LSWMP will be considered approvable if written notification to the planning unit advising of any deficiencies is not provided from the department within 60 calendar days of receipt of the revised complete draft LSWMP.

(c) If, the approvable LSWMP differs substantively from the first draft LSWMP, as determined by the department or planning unit, the planning unit must commence an additional public comment period in accordance with Subpart 366-3 of this Part. A responsiveness summary must be submitted to the department as part of a revised approvable LSWMP, which will include all changes to the approvable LSWMP based on the additional public comments, with a letter summarizing these changes. The department will provide written notification to the planning unit within 30 calendar days of receipt of the revised approvable LSWMP whether the revised approvable LSWMP is accepted. If written notification to the planning unit is not provided within 30 calendar days, the revised approvable LSWMP will be considered accepted.

(d) Final LSWMP.

Once the department provides written notification to the planning unit that the draft LSWMP is approvable or the revised approvable LSWMP is accepted, the planning unit must submit to the department the following:

(1) a final LSWMP including all corrections, changes and/or revisions resulting from any department review;

(2) a resolution(s) of adoption from all necessary planning unit members, which states that the planning unit or planning unit members, as applicable, will:

(i) adopt the LSWMP, effective upon department approval of the LSWMP;

(ii) implement and maintain the solid waste management system described in the LSWMP; and

(iii) submit biennial updates as required by Subpart 366-5 of this Part.

(e) LSWMP approval.

Once the department has determined that the final LSWMP and adopting resolution or resolutions are complete and acceptable, the department will approve the LSWMP, in writing. The LSWMP, as approved, will then be the LSWMP in effect for the planning unit for the 10-year planning period it describes.

(f) Subsequent LSWMP.

At least 180 days prior to the expiration of the planning period established by an approved LSWMP, a draft LSMWP must be submitted to the department.

(g) Optional LSWMP planning period extension.

As provided in section 366-5.2 of this Part, the planning period of the final LSWMP may be extended by two years as part of the biennial LSWMP update.

Section 366-4.2 Withdrawal of LSWMP approval.

The department may declare an LSWMP to be no longer in effect if the planning unit fails to adhere to all or a substantial portion of its commitments and responsibilities under 27-0106(2) and 27-0107 of the ECL, this Part, or the approved LSWMP.

(a) The department will issue a written declaration of intent to withdraw approval of the LSWMP, that identifies what must be provided to bring the LSWMP back into effect. The LSWMP will no longer be in effect within 30 calendar days of declaration of intent if no objection is received from the planning unit.

(b) Within 30 calendar days of receipt of the written declaration from the department, the planning unit may submit a written objection to the department giving reasons why the LSWMP should not be declared no longer in effect. The department will respond to the planning unit within 30 days of receipt of the objection and either ask for additional information, approve the request to keep the LSWMP in effect, or declare the LSWMP no longer in effect.

(c) The planning unit has the right to request a hearing if the department declares the LSWMP no longer in effect. If the department declares that the LSWMP is no longer in effect, a planning unit may request a hearing within 30 days of receipt of the declaration.

SUBPART 366-5

LSWMP BIENNIAL UPDATES

Section 366-5.1 LSWMP biennial update
366-5.2 Optional LSWMP planning period extension

Section 366-5.1 LSWMP biennial update.

(a) LSWMP biennial update submittal.

A LSWMP biennial update must be submitted to the department for review and approval no later than October 1st of every other year following approval of the LSWMP.

(b) LSWMP biennial update content.

A LSWMP biennial update consists of a summary report, solid waste and recyclables data, any updates to sections of the LSWMP that reflect changes to the LSWMP, and a revised implementation schedule and associated projections incorporating any changes necessary to reflect the current program.

(1) The summary report must include:

(i) any changes to the planning unit structure;

(ii) actual waste generation, recycling and disposal data for MSW, C&D debris, industrial waste, biosolids, and any other waste streams evaluated in the original plan. At a minimum comparisons with and reasons for deviations from projections for the MSW stream should be included;

(iii) a discussion of any changes to solid waste management practices;

(iv) a summary of outreach and education activities;

(v) a description of efforts to ensure compliance with local recycling laws;

(vi) any obstacles preventing the planning unit from implementing tasks and/or achieving the goals of the LSWMP; and

(vii) the status of conformance with the implementation schedule, including discussion of reasons for deviating from the implementation schedule.

(2) Solid waste and recyclables data must be submitted to the department on forms acceptable to the department and must contain:

(i) the names and locations of all known facilities that accepted waste or recyclables from the planning unit during the previous two years; and

(ii) for each facility, the quantity and type of waste and recyclables sent to the facility. The type of waste must include all known MSW, C&D debris, industrial

waste, and biosolids streams. Recyclables for recovery must include separate categories for the various paper components, glass, metal, plastics, textiles, organics etc.

(3) Updates to sections of the LSWMP must be submitted that reflect any significant changes to the LSWMP.

(4) The revised implementation schedule and waste projections must comply with the requirements of sections 366-2.6 and 366-2.7 of this Part.

(c) LSWMP biennial update review and approval.

The department will review the LSWMP biennial update to determine whether it adequately addresses all required elements identified in this section and will provide written notification to the planning unit of its determination within 60 calendar days after receipt. If written notification is not provided within 60 calendar days, the LSWMP biennial update will be considered approved.

(1) If the department determines that the LSWMP biennial update adequately addresses all required elements, the department will provide written notification to the planning unit that the LSWMP biennial update is approved.

(2) If the department determines that the LSWMP biennial update does not adequately address all required elements, the planning unit will be advised in writing of the deficiencies and will be required to resubmit a revised LSWMP biennial update for review. For the second and subsequent reviews of the LSWMP biennial update, the LSWMP biennial update will be considered approved if written notification to the planning unit advising of any deficiencies is not provided from the department within 45 calendar days.

Section 366-5.2 Optional LSWMP planning period extension.

(a) Optional planning period extension.

A planning unit may elect to add an additional two years to a planning period and extend their approved LSWMP expiration date by two years.

(b) Optional planning period extension submittal.

An optional planning period extension submittal must be submitted to the department for review and approval no later than October 1st as part of their LSWMP biennial update submittal.

(c) Optional planning period extension submittal content.

The planning unit must submit all the required information identified in sections 366-2.5 through 366-2.7 of this Part governing an additional two-year period. Solicitation of public comment in accordance with Subpart 366-3 of this Part is not required as part of the optional planning period extension.

(d) Optional planning period extension submittal review and approval.

The department will review the optional planning period extension submittal to determine whether it adequately addresses all required elements identified in this section and will provide written notification to the planning unit

of its determination within 60 calendar days after receipt. If written notification is not provided within 60 calendar days, the optional planning period extension submittal will be considered approved.

(1) If the department determines that the optional planning period extension submittal adequately addresses all required elements, the department will provide written notification to the planning unit that the optional planning period extension submittal is approved.

(2) If the department determines that the optional planning period extension submittal does not adequately address all required elements, the planning unit will be advised in writing of the deficiencies and will be required to resubmit a revised optional planning period extension submittal for review. For the second and subsequent reviews of the optional planning period extension submittal, the optional planning period extension submittal will be considered approved if written notification to the planning unit advising of any deficiencies is not provided from the department within 45 calendar days.

(e) A maximum of five two-year planning period extensions from the expiration date of the approved LSWMP may be requested and approved by the department.

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SUBPART 369-1

GENERAL PROVISIONS

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369-1.5 Additional requirements
369-1.6 Suspension or termination of obligations and return of State assistance for nonperformance

Section 369-1.1 Purpose.

This Part sets forth the application, review, and contracting procedures for the State assistance grant programs for municipal waste reduction, recycling, household hazardous waste collection and disposal, beverage container assistance, targeted priority area municipal waste reduction and recycling projects pursuant to title 7 of article 54 of the Environmental Conservation Law (ECL), and nonhazardous municipal landfill closure and municipal landfill gas management projects pursuant to title 5 of article 54 of the ECL.

Section 369-1.2 Applicability.

(a) This Part applies to requests for funding through grant opportunities provided in the ECL for:

(1) municipal waste reduction, recycling, household hazardous waste collection and beverage container assistance capital projects detailed in Subpart 369-2 of this Part;

(2) education, promotion, planning and coordination costs related to municipal waste reduction and recyclables recovery programs as detailed in Subpart 369-3 of this Part;

(3) education, promotion and disposal costs related to municipal household hazardous waste collection, processing and disposal programs as detailed in Subpart 369-4 of this Part;

(4) targeted priority area municipal waste reduction and recycling projects as detailed in Subpart 369-5 of this Part;

(5) nonhazardous municipal landfill closure projects as detailed in Subpart 369-6 of this Part; and

(6) nonhazardous municipal landfill gas management projects as detailed in Subpart 369-7 of this Part.

(b) An eligible applicant is a municipality, which includes one or more of the following: a county, city, town, village, local public authority or public benefit corporation, Native American tribe or nation residing within New York State, or school district or supervisory district. In addition:

(1) for a beverage container assistance project, a not-for-profit organization also qualifies as an eligible applicant; and

(2) for landfill closure and landfill gas management projects, a State agency, State public authority or State public

benefit corporation also qualifies as an eligible applicant.

Section 369-1.3 Contract requirements.

(a) Upon approval by the department of a grant application, an eligible applicant must execute a contract with the department in order to obtain State assistance.

(b) Contracts for State assistance between the department and an eligible applicant must be in a form provided by the department.

(c) Any grantee under a State assistance contract must undertake and complete the project as set forth in the State assistance contract and, in addition to the requirements of this Part, must adhere to any requirements and conditions set forth in the contract.

Section 369-1.4 Payment requirements.

(a) Under a contract for State assistance, a grantee may periodically request up to 50 percent reimbursement of the eligible costs of completed portions of the project, and, in the case of a landfill closure project, a municipality with a population less than 3,500, as determined by the Federal decennial census at the time of contract, may periodically request up to 90 percent reimbursement of the eligible costs of completed portions of the project. Payment requests are to be submitted to the department in a form prescribed by the department and must contain all information required by the department.

(b) Only expenses determined by the department to satisfy the terms of the contract will be reimbursed. For landfill closure and landfill gas management projects, 10 percent of the approved reimbursement amount will be retained by the State until the completed project is reviewed and approved by the department.

(c) The grantee is required to submit a certificate of completion, in a form prescribed by the department, accompanying the final payment request for the project. The final payment request will be considered incomplete until the department receives the certificate of completion.

(d) The department may conduct inspections of the project or request a presentation by the applicant for planning, promotional and educational projects or household hazardous waste collection and disposal projects before making a determination for final payment approval.

(e) Payment under the State assistance contract will be made only after approval by the department.

Section 369-1.5 Additional requirements.

State assistance toward the cost of an eligible project:

(a) will not exceed 50 percent of the eligible project cost or in the case of a landfill closure project, 90 percent of the eligible cost for a municipality with a population less than 3,500 as determined by the Federal decennial census at the time of contract;

(b) will not exceed $2,000,000;

(c) will be reduced by the amount of any other grants, including matching funds, for the project received by the municipality from any source; and

(d) is subject to final computation and determination by the department upon completion of the project and cannot exceed

the maximum eligible cost set forth in the contract.

Section 369-1.6 Suspension or termination of obligations and return of State assistance for nonperformance.

(a) The following acts by a municipality constitute cause for the suspension or termination of any obligation of the department under a State assistance contract executed pursuant to this Part:

(1) failure to undertake or complete a project funded in whole or part by a State assistance contract;

(2) failure to make satisfactory progress, as determined by the department, on a project funded in whole or part by a State assistance contract;

(3) failure to continue implementation and operation of a project funded in whole or part by a State assistance contract;

(4) changes in the use of the project, or any portion thereof, without the prior written approval of the department.

(b) If the municipal ownership of processing equipment or other similar items, property, the landfill and/or the landfill gas management system, is transferred to a non-municipal entity, the municipality may be required to return any State assistance received by the municipality under the contract, as determined by the department.

SUBPART 369-2

MUNICIPAL WASTE REDUCTION, RECYCLING, HOUSEHOLD HAZARDOUS WASTE COLLECTION AND BEVERAGE CONTAINER ASSISTANCE CAPITAL PROJECTS

Section 369-2.1 General application procedures.
369-2.2 Eligible projects
369-2.3 Application requirements
369-2.4 Ineligible costs

Section 369-2.1 General application procedures.

(a) An eligible applicant, upon the approval of its governing body, may submit an application to the department, in a form and containing information as the department may require, for State assistance toward the cost of an eligible project. The procedures in this section are only applicable to funding provided pursuant to this Subpart.

(b) Application will be limited to eligible costs incurred no more than one calendar year before the date the application is received by the department.

(c) Applications will be reviewed in the order received. If sufficient funding is not available at the time of application review, applications approved under this Subpart will be held in order of submittal until funding becomes available.

(d) Acceptance of an application or determination by the department that an application is complete is not to be interpreted as a guarantee or promise of funding from the department.

(e) Applications will be reviewed and may be approved, disapproved or recommended for modification by the department, consistent with the requirements of this Part.

Section 369-2.2 Eligible projects.

(a) Eligible projects are capital projects and can include municipal waste reduction projects, recycling projects, household hazardous waste collection projects and beverage container assistance projects.

(1) Eligible municipal waste reduction projects may include planning and educational or promotional activities intended to increase public awareness of methods to prevent the generation of waste, including, but not limited to, the reuse of certain materials, substitution of non-toxic household products, and the promotion of backyard composting.

(2) Eligible recycling projects may include:

(i) recyclables recovery equipment purchases;

(ii) recyclables recovery programs; and

(iii) source separation equipment.

(b) For municipal waste reduction and recycling projects, the project must be expected to continue for at least 10 years for vehicles and equipment or 30 years for structures, unless otherwise approved by the department.

(c) The project must be designed to serve a substantial portion of the applicant's population or handle a significant portion of the waste stream.

Section 369-2.3 Application requirements.

The following must be included in an application for a capital project for which an eligible applicant seeks State assistance under this Subpart:

(a) An application cover page signed by a duly authorized representative of the applicant. The application cover page must also designate a project contact person who is available to answer technical or administrative questions regarding the project application.

(b) A project description of the proposed project, including, but not limited to, the following:

(1) Overall objectives or goals of the applicant in seeking to complete the project, such as:

(i) new solid waste management program components to be initiated;

(ii) quantitative improvements in existing solid waste management program components, such as:

(a) increases in tonnages collected;

(b) increases in sectors covered by recyclables recovery programs; or

(c) increases in participation rates;

(iii) qualitative improvements in existing waste reduction, recycling and household hazardous waste program components, such as:

(a) greater collection or processing efficiency; or

(b) improved services;

(iv) other program goals or objectives.

(2) Categories or types of recyclables or household hazardous waste or containers to be managed by the project, including tonnages of materials anticipated to be recovered during the life of the project.

(3) Service area of the project, including:

(i) a complete description and a map including, if applicable, locations of central aggregation or processing facilities and any satellite locations or equipment; and

(ii) location, population and demographic descriptions, including data on the number and types of households, as well as any commercial, industrial and institutional facilities to be served by the project.

(4) Major components of the project, detailing methods, schedules, equipment,

and services required for each subsystem, including but not limited to:

(i) separation methods, including but not limited to, source separation before curbside pickup or at a drop-off location and separation of recyclables at a recyclables or other materials handling and recovery facility;

(ii) collection routes, schedules, equipment and personnel required for recyclable materials collection and aggregation;

(iii) processing design, including:

(a) design and operational capacities of the project equipment;

(b) number and design of structures;

(c) overview of all existing and planned equipment;

(d) floor plans and equipment layout; and

(e) description of basic operation of all equipment;

(iv) methods of preparing collected materials for market such as crushing, baling, chipping, granulating, composting, anaerobic digestion, or methods for handling, processing and storing household hazardous waste collected; and

(v) methods to be employed for protecting recyclables or other materials from contamination and deterioration such as protecting paper from sun, precipitation and contamination from other recyclable or non-recyclable materials, or methods to be employed to ensure proper management of collected household hazardous waste.

(5) A description of the marketing procedures to be used for sale or distribution of recyclables containers or digestate compost.

(6) A description of processes and procedures to be used for minimizing the generation of non-marketable residues, and a description of processes to be used for the handling and management of residues.

(7) A description of the public education and promotion program to be used to facilitate maximum public participation in the project.

(8) An implementation schedule, including:

(i) a timetable for the completion of all phases of the project; and

(ii) the estimated useful life of the project and its components.

(c) A description of the consistency of the proposed project with the department-approved Comprehensive Recycling Analysis (CRA) or Local Solid Waste Management Plan (LSWMP) in effect for the municipality in which the project is located.

(1) If the project is not consistent with a department-approved CRA or LSWMP, the project will be considered ineligible for State assistance funding under this Part, with the following exceptions:

(i) a project for state assistance located completely within the boundaries of a planning unit that has submitted a draft CRA or LSWMP to the department for review, where that planning unit is determined by the department to be making substantial progress towards completing the CRA or LSWMP;

(ii) an applicant that has, in the department's judgment, been prevented by unique circumstances from completing a CRA or LSWMP in a timely fashion; or

(iii) an applicant for a beverage container assistance project.

(d) A project budget, including the following information:

(1) An itemized list of all equipment, materials, and services for which state funding is requested, including, for each item on the list:

(i) estimated costs;

(ii) summaries of use/projected use;

(iii) actual/projected purchase dates; and

(iv) vendor specifications and equipment brochures, or bid specifications issued by the applicant.

(2) For projects that involve structures and facilities, an estimate of other related eligible project costs necessary for completion of the project, including:

(i) engineering and architectural services (up to a maximum of 10 percent of total facility costs) including surveys, plans and specifications, and construction oversight and supervision;

(ii) legal and consultant services;

(iii) land acquisition;

(iv) other direct capital costs; and

(v) force account work necessary for the project limited to site preparation, facility construction, and engineering, architectural, legal, or other professional services.

(3) For any force account work, a cost comparison between the alternatives of using a municipal work force and equipment and non-municipal alternatives.

(4) For any leased or rented items used during site preparation and construction activities, an explanation of the necessity for leasing or renting the equipment.

(5) Identification of all eligible costs for the project.

(6) A description of any State, Federal, or other financial assistance for this project, received directly or indirectly or pending and any rebates or refunds or cost recovery associated with the project.

(e) A copy of the municipality's local source separation laws or ordinances adopted pursuant to General Municipal Law (GML) section 120-aa and a description of efforts undertaken to date to implement the law or ordinance.

(1) If the applicant is a public authority, a public benefit corporation, a school district or a supervisory district, the applicant must provide a copy of the local laws or ordinances adopted pursuant to GML section 120-aa within the applicant's service area.

(2) If the applicant is a Native American tribe or nation, the applicant must describe waste reduction and recycling efforts undertaken within the applicant's service area.

(f) Certification as to title of the property on which the project is to be located, including a legal description in a format prescribed by the department attesting to the applicant's ownership of all properties to be used in the project.

(1) This requirement applies if the project, or project component, includes buildings or structures, or if a fixed location will be used as a waste drop-off, collection, or processing location.

(2) This requirement does not apply to projects consisting only of curbside containers, collection vehicles or mobile equipment.

(3) If the applicant does not own the property where the project is to be undertaken and does not intend to acquire title to the property, documentation must be provided as evidence that the applicant has authorization to use and maintain the property for the useful life of the project (*e.g.*, a lease agreement or similar document).

(4) If the project involves land acquisition, a valid purchase agreement may be substituted for certification required by this subdivision. However, no payment will be allowed for any project under this Subpart until all land acquisition necessary for the project is completed and proof of recording is provided to the department.

(g) Certification that all equipment and construction materials/services are purchased in accordance with the GML and other applicable laws and regulations, signed by a duly authorized representative of the applicant.

(h) Appropriate Minority/Women's Business Enterprise and Equal Employment Opportunity (M/WBE-EEO) documentation as required by State law.

(i) A description of all local, State, or Federal permits or authorizations required for the project.

Section 369-2.4 Ineligible costs.

(a) The following costs are ineligible for State assistance:

(1) costs of vehicles or other equipment used for repair, cleaning or maintenance of roads, sewers, parks, municipal facilities or other public properties;

(2) costs of general purpose vehicles, all-terrain vehicles, passenger cars, and

other similar vehicles even if partially used in a recyclables collection program;

(3) costs of maintenance or operational equipment, including but not limited to, hand tools, power tools, spare parts and backup equipment;

(4) costs of road service or repair of equipment;

(5) costs of engineering services related to individual equipment design, specification, or selection;

(6) costs of deconstruction or demolition related to individual equipment;

(7) non-principal charges for any municipally owned equipment or facilities purchased through a lease-purchase or other similar agreement;

(8) costs of construction or improvements of facilities that are not directly related to waste reduction or recycling activities, household hazardous waste facilities or beverage container projects;

(9) costs of general infrastructure (*e.g.*, roadways, water and sewer lines and facilities, exterior natural gas lines or exterior electric service), when the infrastructure is located outside the property boundaries of the applicable project site;

(10) ordinary program and facility operating costs, including, but not limited to, purchase of leaf collection bags, office supplies and equipment, equipment service, office maintenance, internet service, telephone, utilities, mileage costs, travel expenses, and fuel, or other similar expenses;

(11) costs of equipment used for the collection, processing, transportation, marketing or use of waste tires, used oil, construction and demolition debris, household batteries, antifreeze, refrigerant chemicals, or fluorescent bulbs;

(12) bonus payments to contractors;

(13) damage payments or settlements paid to claimants;

(14) costs incurred in preparing and submitting an application for State assistance;

(15) costs of bonding and interest payments;

(16) costs required by the department as part of an enforcement settlement (*e.g.*, environmental benefit project, compliance schedule, or consent order); and

(17) unnecessary or unreasonable costs as determined by the department.

SUBPART 369-3

MUNICIPAL WASTE REDUCTION AND RECYCLING EDUCATION, PROMOTION, PLANNING AND COORDINATION PROJECTS

Section 369-3.1 General application procedures
369-3.2 Eligible projects.
369-3.3 Application requirements
369-3.4 Ineligible costs

Section 369-3.1 General application procedures.

(a) A municipality, upon the approval of its governing body, may submit an application to the department, in a form and containing information as the department may require, for State assistance toward the cost of an eligible project. The procedures outlined in this section are only applicable to funding provided pursuant to this Subpart.

(b) Department receipt and processing of applications.

(1) A municipality may submit only one application for State assistance for each calendar year for all eligible municipal waste reduction and recycling education, promotion, planning and coordination costs expected to be incurred during that year.

(2) Applications will be accepted by the department during the months of August, September and October of each calendar year for the following calendar year period. All applications must be received during this three-month period. Applications received after October 31st of each calendar year, other than those submitted pursuant to paragraph (3) of this subdivision, will not be accepted. All complete applications received by the department during the three-month period specified in this paragraph will be considered to have been received simultaneously.

(3) If an application is determined by the department to be incomplete, the applicant will be notified by the department, and the application may be revised and resubmitted at the discretion of the department. The department, at its own discretion, will establish a deadline for resubmission of the application, which in no instance will exceed 30 calendar days after notification that an application is incomplete.

(4) The department is authorized, at its own discretion, to combine applications from municipalities in overlapping jurisdictions.

(5) Only applicants who submit complete applications, as determined by the department, will be eligible for State assistance contracts and payments.

(6) Acceptance of an application or determination by the department that an application is complete is not to be interpreted as a guarantee or promise of funding from the department.

(7) Complete applications will be evaluated by the department and, if acceptable, will be approved for State assistance for up to 50 percent of eligible costs. If there are insufficient funds to provide 50 percent reimbursement to all applications, the department may either lower the percentage or set a dollar maximum on the level of funding to be provided to each municipality. In the event the department lowers the maximum reimbursement percentage, the lowered percentage or dollar maximum will be the same for all municipalities that submit a complete application during the application period specified in paragraph (2) of this subdivision.

(c) A project application will be reviewed and may be approved, disapproved, or modified by the department consistent with the requirements of this Part.

Section 369-3.2 Eligible projects.

Eligible projects for State assistance under this Subpart include planning, educational, and promotional activities to increase public awareness of and participation in waste reduction and recycling. Projects may include salary and fringe benefit costs for recycling coordination, publications, education, and outreach for recycling and waste reduction.

Section 369-3.3 Application requirements.

The following must be included in an application for State assistance for eligible projects defined in section 369-3.2 of this Subpart:

(a) An application cover page signed by a duly authorized representative of the municipality. The application cover page must also designate a project contact person who is available to answer technical or administrative questions regarding the project application.

(b) A project description that describes the proposed project, including, but not limited to, the following:

(1) Overall objectives or goals of the applicant in seeking to complete this project, such as:

(i) new municipal program components to be initiated;

(ii) predicted quantitative improvements in existing program components compared to the three previous years of data, if available, such as:

(a) decreases in waste generation and collection;

(b) increases in participation rates; and

(c) increases in sectors covered;

(iii) predicted qualitative improvements to the existing program, such as:

(a) greater program efficiency; and

(b) improved services and information provided to target audiences; and

(iv) other program goals or objectives.

(2) Service area of the project, including, but not limited to, the location, population and demographic descriptions, including data on the numbers and types of households, as well as any commercial, industrial and institutional populations to be served, or planned to be served by the project.

(3) The scope of work, detailing methods, schedules, and services required, including, but not limited to:

(i) overview of work to be performed;

(ii) individual work tasks defined in sufficient detail to describe the basic methods, procedures, and steps that will be followed; and

(iii) a listing of work products (*e.g.*, brochures, mailers, advertisements, promotional items, etc.) to be developed by this project and their projected usage.

(4) An implementation schedule, including:

(i) monthly milestones intended to assess project progress;

(ii) projected accomplishments including all work, work tasks, and work products to be undertaken in the project; and

(iii) the estimated duration or frequency of each work task of the project.

(c) A description of the consistency of the proposed project with the department-approved Comprehensive Recycling Analysis (CRA) or Local Solid Waste Management Plan (LSWMP) in effect for the municipality in which the project is located.

(1) If the project is not consistent with a department approved CRA or LSWMP, the project will be considered ineligible for State assistance funding under this Part, with the following exceptions:

(i) a project located completely within the boundaries of a planning unit which has submitted a draft LSWMP or CRA to the department for review, where the planning unit is determined by the department to be making substantial progress towards completing the CRA or LSWMP; or

(ii) an applicant that has, in the department's judgment, been prevented by circumstances beyond its control from completing the LSWMP or CRA.

(d) A project budget, including the following information.

(1) An itemized list of estimated eligible project costs necessary for completion of the project and acceptable to the department, including the following:

(i) recycling educator/coordinator costs, such as:

(a) personal services, limited to the salary of a recycling educator/coordinator and other integral personnel. All personnel must be employees of the applicant and assigned to the project for no less than 50

percent of their full-time work schedule; and

(b) fringe benefits for the recycling educator/coordinator and other integral personnel assigned to the project for no less than 50 percent of their full-time work schedule. Fringe benefit costs are limited to the employer cost of providing health/medical insurance to the recycling educator/coordinator, and the employer cost for contributions towards the retirement or pension plan of the recycling educator/coordinator. These costs must be documented and acceptable to the department;

(ii) costs for consultant services for education, promotion, planning, public relations, or other specialized purposes, provided that the municipality demonstrates to the satisfaction of the department why the municipality does not use municipal employees or volunteers to provide these services;

(iii) costs for supplies and materials specifically acquired and used as part of the municipal waste reduction and recycling education, promotion, planning and coordination project;

(iv) work product production costs; and

(v) other direct non-capital costs.

(2) Identification of all eligible costs for the project.

(3) A description of any State, Federal, or other financial assistance for this project, received directly or indirectly or pending for this project or of any rebates or refunds or cost recovery associated with the project.

(e) A copy of the municipality's local source separation law or ordinance adopted pursuant to General Municipal Law (GML) section 120-aa and a description of efforts undertaken to date to implement the law or ordinance:

(1) if the applicant is a public authority, a public benefit corporation, a school district or a supervisory district, the applicant must provide a copy of the local laws or ordinances adopted pursuant to GML section 120-aa within the applicant's service area; or

(2) if the applicant is a Native American tribe or nation, the applicant must describe waste reduction and recycling efforts undertaken within the applicant's service area.

(f) Certification that all services for this project are solicited and procured in accordance with the GML and other applicable laws, signed by a duly authorized representative of the municipality.

(g) Appropriate Minority/Women's Business Enterprise and Equal Employment Opportunity (M/WBE-EEO) documentation as required by State law.

Section 369-3.4 Ineligible costs.

(a) The following costs are ineligible for State assistance:

(1) costs of any item not primarily used for educating, promoting, planning, and coordinating the benefits or methods of waste reduction, reuse, and recycling;

(2) ordinary operating costs for facilities and offices, including, but not limited to, office supplies and equipment, equipment service, office maintenance, internet service, telephone (except for dedicated recycling hotlines), utilities, mileage costs, travel expenses, and fuel within an applicant's service area or other similar costs or expenses, as determined by the department;

(3) indirect, overhead, or in-kind costs;

(4) costs incurred in preparing and submitting an application for State assistance;

(5) costs required by the department as part of an enforcement settlement (*e.g.*, environmental benefit project, compliance schedule, or consent order); and

(6) unnecessary or unreasonable costs as determined by the department.

SUBPART 369-4

MUNICIPAL HOUSEHOLD HAZARDOUS WASTE COLLECTION AND DISPOSAL PROJECTS

Section 369-4.1 General application procedures
369-4.2 Eligible projects
369-4.3 Application requirements
369-4.4 Ineligible costs

Section 369-4.1 General application procedures.

(a) A municipality, upon the approval of its governing body, may submit an application to the department, in a form and containing information as the department may require, for State assistance toward the cost of an eligible project. The procedures outlined in this section are only applicable to funding provided pursuant to this Subpart.

(b) All applications received after November 4, 2017 are limited to eligible costs incurred during the previous calendar year.

(c) Department receipt and processing of applications.

(1) A municipality may submit only one application for State assistance for each calendar year for all eligible household hazardous waste collection and disposal costs incurred during the previous calendar year.

(2) Applications will be accepted by the department during the months of January and February of each calendar year for the previous calendar year period. All applications must be received during this two-month period. Applications received after February 28th, or 29th in a leap year, of each calendar year, other than those submitted pursuant to the provisions of paragraph (3) of this subdivision, will not be accepted.

(3) If an application is determined by the department to be incomplete, the applicant will be notified by the department and the application may be allowed to be revised and resubmitted at the discretion of the department. The department, at its own discretion, will establish a deadline for resubmission of the application but which in no instance will exceed 30 calendar days after notification of deficiencies.

(4) The department is authorized to require any additional information from an applicant as may be necessary to complete a project application.

(5) Only applicants who submit complete applications, as determined by the department, will be eligible for State assistance payments.

(6) Acceptance of an application and determination by the department that an application is complete is not to be interpreted as a guarantee or promise of funding from the department.

(7) Complete applications will be evaluated by the department and, if acceptable, will be approved for State assistance of up to 50 percent of eligible

costs. If there are insufficient funds to provide 50 percent reimbursement to all applications the department may either lower the percentage or set a dollar maximum on the level of funding to be provided to each municipality. This lowered percentage or dollar maximum will be the same for all municipalities that submit a complete application during the review period.

(d) A project application will be reviewed and may be approved, disapproved or modified by the department consistent with the requirements of this Part.

Section 369-4.2 Eligible projects.

Eligible projects can include reasonable municipal costs, as determined by the department, related to operating household hazardous waste collection programs or operating a household hazardous waste collection and storage facility or mobile collection facility, and associated educational and promotional expenses. It is not necessary that all types of household hazardous waste be collected for the collection program to be eligible.

Section 369-4.3 Application requirements.

The following application components, if applicable to the project, are required in applications for a project consisting of municipal household hazardous waste collection and disposal expenses:

(a) An application cover page signed by a duly authorized representative of the municipality. The application cover page must also designate a project contact person who is available to answer technical or administrative questions regarding the project application.

(b) Authorization, by certified resolution or other means acceptable to the department, from the governing body of the municipality for submission of the application. The required number of certified copies of the authorization will be determined by the department. The authorization must:

(1) set forth the authority of the municipality to make an application for State assistance under this Part; and

(2) name an individual, by official title, who is authorized to sign the application and any subsequent contracts between the State and the municipality for State assistance under this Part.

(c) A description of the proposed project, including, but not limited to, the following:

(1) a copy of the collection event plan (if applicable) required pursuant to section 362-4.2(a)(3) of this Title;

(2) the dates of the events (or hours of operation) and the service area of the project, including, but not limited to, the location, population, and demographic descriptions, including data on the number and types of households served, or projected to be served by the project; and

(3) the scope of work, detailing methods, schedules, and services provided, including but not limited to:

(i) a listing of education and promotion work products (*e.g.*, brochures, mailers, advertisements, promotional items, etc.) developed under this project and their usage, including electronic copies of all documents and media used to promote the project;

(ii) a description of efforts to coordinate and consolidate household hazardous waste collection programs among municipalities; and

(iii) a description of the use of any innovative or cost-effective methods to manage the collected household hazardous waste.

(d) A schedule of purchases detailing costs for which reimbursement is sought.

(1) Eligible costs include the following, to the extent that they are necessary for program operation:

(i) costs for one or more contractor(s) to accept, segregate, prepare for shipment, or transport household hazardous waste that is brought to the collection event or facility;

(ii) costs for the actual recycling, treatment, or disposal of collected household hazardous wastes; and

(iii) costs for publicity, promotion, and public education directly related to operating a household hazardous waste collection program; and

(2) a description of any State, Federal, or other financial assistance for this project, received directly or indirectly or pending for this project or of any rebates or refunds or cost recovery associated with the project.

(e) A copy of the reports required under section 362-4.5 of this Title.

(f) Certification that all services for this project are solicited and procured in accordance with the General Municipal Law (GML) and other applicable laws, signed by a duly authorized representative of the municipality consistent with this Part.

(g) Appropriate Minority/Women's Business Enterprise and Equal Employment Opportunity (M/WBE-EEO) documentation as required by State law.

(h) A description of all local, State, or Federal permits or authorizations required for the project.

Section 369-4.4 Ineligible costs.

(a) The following costs are considered ineligible:

(1) costs incurred to conduct a household hazardous waste collection program if it is not fully implemented in accordance with the requirements of Subpart 362-4 of this Title;

(2) costs incurred in preparing and submitting an application for State assistance under this section;

(3) costs that were incurred outside of the calendar year for which the application was submitted to the department;

(4) costs defrayed by Federal or other outside funding;

(5) costs related to or for municipal staff and or volunteers;

(6) indirect, overhead or in-kind costs;

(7) costs incurred in securing required permits from the department or any other permitting authority;

(8) program and facility operating costs, including, but not limited to, purchase of office supplies and equipment, equipment service, office maintenance, internet service, telephone, utilities, health and safety equipment and training, mileage costs, travel expenses, and fuel, or other costs as determined by the department;

(9) costs incurred for the collection and disposal of materials that have an established program for statewide take-back, product stewardship or return including, but not limited to used oil, vehicle lead acid batteries, wireless telephones, electronic waste, rechargeable batteries and any other similar materials as determined by the department;

(10) costs incurred from the collection, handling, and disposal of types of waste that except under extraordinary circumstances would not meet the definition of household hazardous waste, including, but not limited to, explosives, ammunition, emergency flares, empty containers, empty aerosol cans, batteries, electronic waste, asbestos, bulk metal, white goods, construction and demolition debris, latex paint, empty paint cans, empty propane tanks, empty refrigerant cans, radioactive material, pharmaceutical waste, household medical waste, regulated medical waste, smoke detectors, fire extinguishers, tires, used oil, and any miscellaneous materials and packaging received;

(11) costs of a household hazardous waste collection event or collection events required by the department as part of an enforcement settlement (*e.g.*, environmental benefit project, compliance schedule, or consent order); and

(12) unnecessary or unreasonable costs as determined by the department.

SUBPART 369-5

TARGETED PRIORITY AREA MUNICIPAL WASTE REDUCTION AND RECYCLING PROJECTS

Section 369-5.1 Purpose and applicability
369-5.2 Application procedures

Section 369-5.1 Purpose and applicability.

The department, at its own discretion and upon availability of funds, may from time to time establish targeted State assistance programs for priority area municipal waste reduction and recycling projects or activities. These programs may take various forms as determined by the department to help advance waste reduction and recycling activities and projects in the State. The details of each program including, but not limited to, purpose, scope, eligibility requirements, eligible and ineligible costs, application procedures and evaluation criteria, will be developed and a notice of availability with these individual program requirements will be issued by the department.

Section 369-5.2 Application procedures.

(a) Upon availability of funding, the department will issue a notice of availability with the individual program requirements for a State assistance program pursuant to this Subpart. The details of each program and an application filing deadline will be included in the notice of availability.

(b) Any municipality, upon the approval of its governing body, may submit to the department an application, in a form and containing information as the department may require, for State assistance toward the cost of an eligible project. The procedures outlined in this section are only applicable to funding provided pursuant to this Subpart.

(1) Each application will undergo an initial review by the department to determine potential project eligibility and compliance with terms set forth in the notice of availability. This initial review is not intended to be a detailed project review to determine full or final eligibility of the project or project costs but instead to eliminate clearly ineligible projects from further consideration. The initial review may include meetings and presentations of project aspects in order for the department to gain an understanding of the project and consequently expedite review.

(2) The department may require any additional information from an applicant as may be necessary to complete a project application. A project application will be reviewed and may be approved, disapproved or modified by the department, consistent with the requirements of this Part.

(3) The department will evaluate, rate, rank or score eligible applications received in accordance with the procedures identified in the notice of availability to determine which, if any, of the projects will be funded through the State assistance program.

(c) Upon availability of funding, the department will contact the selected applicant(s) to notify them of their selection and offer to enter into a State assistance contract for the project.

(d) Applications must consist of the application components in sections 369-2.3, 369-3.3 or 369-4.3 of this Part, as applicable to the type of project, in accordance with the criteria specified in the notice of availability.

(e) Any project funded pursuant to this subpart that previously existed on a waiting list for funding will be removed from that waiting list and is ineligible for duplicate funding under this State assistance program.

SUBPART 369-6

NONHAZARDOUS MUNICIPAL LANDFILL CLOSURE PROJECTS

Section 369-6.1 General application procedures
369-6.2 Eligible projects
369-6.3 Application components
369-6.4 Ineligible costs

Section 369-6.1 General application procedures.

(a) A municipality, upon the approval of its governing body, may submit an application to the department, in a form and containing information as the department may require, for State assistance toward the cost of an eligible project defined in section 369-6.2 of this Subpart. The procedures outlined in this section are only applicable to funding provided pursuant to this Subpart.

(b) For projects identified in this Subpart, the department will use pre-application procedures to facilitate the application process. A municipality has the option of submitting either a pre-application or a complete application.

(1) If a pre-application is submitted, it must consist of, at a minimum:

(i) the name and address of the municipality including the name, e-mail address and telephone number of a designated project manager;

(ii) a description of the project; and

(iii) the estimated project cost and amount to be requested, including an itemized list of equipment, materials and services to be procured.

(2) The department will establish and maintain a combined waiting list for qualifying municipal landfill closure projects and landfill gas management projects. The waiting list will be comprised of potentially eligible pre-applications and applications received by the department. An applicant's position on the waiting list is determined by the date on which the department receives the submitted a pre-application that complies with this section or a complete application.

(3) An applicant’s position on a waiting list does not constitute, and is not to be interpreted as, a guarantee or promise of funding from the department.

(4) Department processing of applications.

(i) Upon availability of funding, the department will contact applicants in the order they appear on the waiting list and notify the next applicant that it is required to submit a complete final application within 60 calendar days. If the final application or a written request for an extension to submit the application is not received by the department within 60 calendar days, the department may determine the applicant is no longer eligible for funding.

(ii) The department is authorized to require any additional information from an applicant as may be necessary to complete a project application and maintain a position on the waiting list.

(iii) The department will perform an initial review of all applications received for completeness. Any application that is deemed to be substantially incomplete will be returned to the applicant and must be resubmitted. The original receipt date will not be retained.

(c) A project application will be reviewed and may be approved, disapproved or modified by the department consistent with the requirements of this Part.

Section 369-6.2 Eligible projects.

Eligible projects include landfill closure costs if the landfill closure project meets the following requirements:

(a) the landfill is municipally-owned and the municipality is liable for all closure and post closure activities;

(b) the landfill ceased receiving waste no later than April 9, 1997;

(c) the municipal landfill closure project complies with applicable landfill closure requirements as set forth in Part 363 of this Title;

(d) the municipality waives any right to assistance under section 27 1313 of the ECL; and

(e) the landfill closure site is not classified as a classification 1 or classification 2 site in the Registry of Inactive Hazardous Waste Disposal Sites.

Section 369-6.3 Application components.

The following application components are required of applications for a project consisting of municipal landfill closure expenses:

(a) An application cover page signed by a duly authorized representative of the municipality. The application cover page must also designate a project contact person who is available to answer technical or administrative questions regarding the project application.

(b) Authorization, by certified resolution or other means acceptable to the department, from the governing body of the municipality for submission of the application. The required number of certified copies of the authorization will be determined by the department. The authorization must:

(1) set forth the authority of the municipality to make an application for State assistance under this Subpart; and

(2) name an individual, by official title, who is authorized to sign the application and any subsequent contracts between the State and the municipality for State assistance under this Part.

(c) A copy of the closure investigation report required under Part 363 of this Title, and correspondence from the department indicating the approval status of the report.

(d) A copy of the administrative order, court order or permit condition containing the obligation to close the landfill.

(e) A municipal landfill closure project work plan outlining the tasks to be completed and tasks already completed, a timetable for the proposed or actual completion of each task, and estimated or actual costs for each task.

(f) A statement that the landfill site is not currently a classification 1 or classification 2 site in the Registry of Inactive Hazardous Disposal Waste Sites.

(g) A statement that another landfill will not be constructed on the landfill closure project area.

(h) A statement that post closure monitoring and maintenance of the landfill site will be implemented in accordance with Part 363 of this Title.

(i) A project budget, consisting of:

(1) an itemized list of all the estimated eligible project costs necessary for completion of the project; and

(2) a description of any State, Federal, or other financial assistance for this project received directly or indirectly or pending for this project and of any rebates or refunds or cost recovery associated with the project;

(3) reasonable costs directly related to designing and constructing a municipal landfill closure project will be considered eligible. Eligible costs include the following, to the extent they are necessary for actual project construction:

(i) costs for preparation of a closure investigation report;

(ii) costs for engineering, consultant services, and architectural services;

(iii) costs for preparation of plans and specifications;

(iv) costs for legal services for bonding landfill closure projects and for reviewing contracts with project contractors;

(v) costs for closure construction; and

(vi) costs for other direct capital expenses incident to the municipal landfill closure project as approved by the department.

(j) Certification that all services for this project are solicited and procured in accordance with the General Municipal Law (GML) and other applicable laws, signed by a duly authorized representative of the municipality consistent with this Part.

(k) Minority/Women's Business Enterprise and Equal Employment Opportunity (M/WBE-EEO) documentation as required by State law.

Section 369-6.4 Ineligible costs.

(a) The following costs are considered ineligible:

(1) costs incurred to perform the municipal landfill closure project if it is not fully implemented in accordance with plans and reports approved by the department;

(2) post closure monitoring and maintenance costs associated with a municipal landfill closure project;

(3) costs for activities associated with development of alternative waste disposal sites or techniques;

(4) costs incurred before April 1, 1993;

(5) costs incurred if the department determines that the landfill closure site is a classification 1 or classification 2 site in the Registry of Inactive Hazardous Waste Disposal Sites;

(6) costs incurred to perform the municipal landfill closure project that are inconsistent with or in violation of the procedures and requirements for the State assistance program under title 5 of article 54 of the ECL, section 56 0403 of the ECL, or other applicable laws;

(7) costs associated with a municipal landfill closure project that does not comply with the landfill closure requirements as set forth in Part 363 of this Title or the applicable regulations in effect six months before the application date for State assistance;

(8) any portion of the cost for which Federal, State or other specific assistance has been or will be received;

(9) costs funded under Subpart 369-7 of this Part, Nonhazardous Municipal Landfill Gas Management Projects; and

(10) unnecessary or unreasonable costs as determined by the department.

SUBPART 369-7

NONHAZARDOUS MUNICIPAL LANDFILL GAS MANAGEMENT PROJECTS

Section 369-7.1 General application procedures
369-7.2 Eligible projects
369-7.3 Application components
369-7.4 Ineligible costs

Section 369-7.1 General application procedures.

(a) A municipality, upon the approval of its governing body, may submit an application to the department, in a form and containing information as the department may require, for State assistance toward the cost of an eligible project. The procedures outlined in this section are only applicable to funding provided pursuant to this Subpart.

(b) For projects identified in this subdivision, the department will use pre-application procedures to facilitate the application process. A municipality has the option of submitting either a pre-application or a complete application.

(1) If a pre-application is submitted, it must consist of, at a minimum:

(i) the name and address of the municipality including the name, e-mail address and telephone number of a designated project manager;

(ii) a description of the project; and

(iii) the estimated project cost and amount to be requested, including an itemized list of equipment, materials and services to be procured.

(2) The department will establish and maintain a combined waiting list for qualifying municipal landfill gas management projects and landfill closure projects. The waiting list will be comprised of potentially eligible pre-applications and applications received by the department. An applicant's position on the waiting list is determined by the date on which the department receives the submitted pre-application or complete application.

(3) An applicant’s position on a waiting list does not constitute, and is not to be interpreted as, a guarantee or promise of funding from the department.

(4) Department processing of applications.

(i) Upon availability of funding, the department will contact applicants in the order they appear on the waiting list, and notify the applicant that they are required to submit a complete final application within 60 calendar days. If the final application or a written request for an extension to submit the application is not received by the department within 60 calendar days, the department may determine the applicant is no longer be eligible for funding.

(ii) The department is authorized to require any additional information from an applicant as may be

necessary to complete a project application and maintain a position on the waiting list.

(c) A project application will be reviewed and may be approved, disapproved or modified by the department consistent with the requirements of this Part.

(d) The department will perform an initial review of all applications received for completeness. Any application that is deemed to be substantially incomplete will be returned to the applicant and must be resubmitted. The original receipt date will not be retained.

(e) Eligible costs include reasonable costs directly related to designing and constructing a landfill gas management system. Eligible costs include the following to the extent that they are necessary for the actual project construction:

(1) costs for the landfill gas generation investigation, landfill gas generation tests (which can include hood-type testing to determine the rate of landfill gas generation) and subsequent analysis;

(2) costs for preparation of a landfill gas management system engineering report;

(3) costs for engineering services associated with the preparation of design documents, plans and specifications associated with the landfill gas management system; associated construction inspection services including quality assurance and quality control services during construction; surveying services; and laboratory testing services including the costs associated with collection of samples for testing;

(4) costs for construction of landfill gas collection and treatment systems, including vertical gas wells, horizontal gas collector systems or devices, gas collection system headers and associated valves and sampling ports, landfill gas blowers and compressors, gas handling systems, leak detection and repair to limit methane emissions, stationary ground-type flares, internal combustion engines, turbines and air pollution control devices associated with the landfill gas management system from initial collection through the conversion of landfill gas into a marketable product;

(5) costs associated with the design and construction of structures to house or enclose the landfill gas collection and treatment equipment, to facilitate maintenance and to minimize related operational noise;

(6) costs for legal services for bonding landfill gas management projects and for reviewing contracts with project contractors; and

(7) costs for other direct capital expenses related to proper design and construction of the landfill gas management system as approved by the department.

Section 369-7.2 Eligible projects.

Eligible projects include municipal landfill gas management system costs if the landfill gas management system meets the following requirements:

(a) the site is municipally-owned and the municipality is responsible for the continued operation and maintenance of the landfill gas management system for its useful life; and

(b) the active landfill gas collection and treatment system is in compliance with the design requirements of Part 208 of this Title, if applicable, has been approved by the department, conforms to the requirements set forth in Part 363 of this Title, and is designed to maximize the capture of air emissions from the landfill.

Section 369-7.3 Application components.

The following application components are required for applications under this Subpart:

(a) An application cover page signed by a duly authorized representative of the municipality. The application cover page must also designate a project contact person who is available to answer technical or administrative questions regarding the project application.

(b) Authorization, by certified resolution or other means acceptable to the department, from the governing body of the municipality for submission of the application. The required number of certified copies of the authorization will be determined by the department. The authorization must:

(1) set forth the authority of the municipality to make an application for State assistance under this Subpart; and

(2) name an individual, by official title, who is authorized to sign the application and any subsequent contracts between the state and the municipality for State assistance under this Part.

(c) A copy of the landfill gas management system report. This report must include:

(1) landfill gas investigatory information and analysis which supports the landfill gas management system project, including an economic feasibility study which demonstrates a positive return on the investment;

(2) a gas management system design report, including detailed plans of the active landfill gas collection and treatment system. These plans must adequately delineate, in plan view and in cross-sectional views, the location and grades of all landfill gas collection lines and horizontal gas collector systems, locating all critical elevations of the collection pipe inverts, clean-outs, condensate traps/knockouts, and valves. These plans must include the layout of the facility's structure including locations of equipment such as gas handling and treatment systems, flares, internal combustion engines, turbines and air pollution control devices associated with management of the landfill gas from initial collection through conversion of landfill gas into electricity or a marketable product such as pipeline quality gas. These plans must also include: temperature and pressure indicators; sampling port locations; and extraction well locations, depths of placement, and associated construction drawings; and

(3) if the applicant does not propose to convert the collected landfill gas to energy, the applicant must include a justification explaining why it is not feasible.

(d) A landfill gas management system work plan outlining the tasks to be completed, the tasks already completed, a timetable for the proposed or actual completion of each task and the estimated or actual cost for each task, including the actual or estimated project cost.

(e) A statement that the construction, operation, monitoring and maintenance of the landfill gas management system will be implemented in accordance with the new source performance standards or emission guidelines of the United States Environmental Protection Agency (USEPA) landfill gas rule, Part 208 of this Title, if applicable, and Part 363 of this Title to the extent the requirements apply to the landfill site.

(f) A project budget consisting of:

(1) an itemized list of all estimated eligible project costs necessary for completion of the project; and

(2) a description of any State, Federal, or other financial assistance for this project, received directly or indirectly or pending for this project or of any rebates or refunds or cost recovery associated with the project.

(g) Certification that all services for this project are solicited and procured in accordance with the GML and other applicable laws, signed by a duly authorized representative of the municipality consistent with this Part.

(h) Appropriate Minority/Women's Business Enterprise and Equal Employment Opportunity (M/WBE-EEO) documentation as required by State law.

Section 369-7.4 Ineligible costs.

The following costs are considered ineligible:

(a) costs incurred to develop the landfill gas management system if it is not fully implemented in accordance with plans and reports approved by the department;

(b) costs for operating and maintaining the landfill gas management system;

(c) costs associated with design and construction of electrical or gas line transmission systems and costs associated with the marketing and sale of the processed landfill gas or electrical energy derived from the landfill gas;

(d) costs incurred before April 1, 1993;

(e) costs for purchasing air emissions credits;

(f) any portion of the costs for which Federal, State or other specific assistance has been or will be received;

(g) costs incurred if the department determines that the landfill closure site is a classification 1 or classification 2 site in the Registry of Inactive Hazardous Waste Disposal Sites;

(h) costs which have previously been reimbursed under Subpart 369-6 Nonhazardous Municipal Landfill Closure Projects of this Part; and

(i) unnecessary or unreasonable costs as determined by the department.

Department of
Environmental
Conservation