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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK

TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CHAPTER IV. QUALITY SERVICES

SUBCHAPTER B. SOLID WASTES

PART 366. LOCAL SOLID WASTE MANAGEMENT PLANNING

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(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, art. 27, titles 1, 7, 10,
art. 70, title 1, art. 71, titles 27, 35, 40, 44)

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PART 366. LOCAL SOLID WASTE MANAGEMENT PLANNING

SUBPART 366-1. GENERAL

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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.

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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.

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SUBPART 366-2. LOCAL SOLID WASTE MANAGEMENT PLAN (LSWMP) CONTENTS

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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.

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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) projections of MSW generation for each year of the planning period based on estimated population changes and other factors, including an explanation of the information used to develop the projections;

(c) a summary assessment of any data gaps and informational needs.

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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 serve the planning unit including:

(a) An identification and description of all known facilities (including any facilities outside the planning unit that receives 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 hauler licensing if applicable;
- (6) recycling data collection efforts; and
- (7) a summary of any data gaps and information needs.

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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 hauler 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.

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6 CRR-NY 366-2.5

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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 hauler 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.

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6 CRR-NY 366-2.6

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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.

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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.

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SUBPART 366-3. LSWMP PUBLIC PARTICIPATION

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6 CRR-NY 366-3.1

6 CRR-NY 366-3.1

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.

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SUBPART 366-4. LSWMP APPROVAL

6 CRR-NY IV B 366 366-4 Notes

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6 CRR-NY 366-4.1

6 CRR-NY 366-4.1

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

identifying 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 annual planning unit reports and biennial updates.

(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.

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6 CRR-NY 366-4.2

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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 the 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.

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SUBPART 366-5. LSWMP BIENNIAL UPDATES

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6 CRR-NY 366-5.1

6 CRR-NY 366-5.1

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 May 1st of every other year following approval of the LSWMP.

(b) LSWMP biennial update content.

An 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 and comparisons with and reasons for deviations from projections;

(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.

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6 CRR-NY 366-5.2

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366-5.2 Optional LSWMP planning period extension.

Optional planning period extension. The planning unit may elect to add an additional two years to a planning period and extend their approved LSWMP expiration date two years. The planning

unit must submit all the required information identified in section 366-2.5(b) and (c) and sections 366-2.6 and 366-2.7 of this Part governing an additional two year period. A maximum of five two-year planning period extensions may be requested and approved by the department prior to soliciting public comment in accordance with Subpart 366-3 of this Part with respect to the additional planning period extensions and any other adjustments made to the LSWMP, and receive approval in accordance with the procedures outlined in subdivision (c) of this section.

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