A vehicle is exempt from waste transporter requirements in Part 364 if it is transporting a material which is no longer considered a waste under a BUD. The point at which the material ceases to be waste varies based on the BUD. For case-specific BUDs, that point occurs when the material is received at its point of use unless otherwise specified by DEC. For pre-determined BUDs, the point is specified in regulation. For example:

- Some BUD materials cease being waste when they reach the location of use described in the BUD. Pre-determined BUDs of this type are located in §360.12(c)(2). In this case, a Part 364 authorization is required for transportation because the material remains a waste until it is delivered to the location of use.

- Some BUD materials are no longer considered a waste when they meet the requirements of the intended reuse. Pre-determined BUDs of this type are located in §360.12(c)(3). For example, ground granulated blast-furnace slag which meets an industry standard is no longer considered a waste and therefore does not require transport under Part 364.

- §360.13(b) describes the point at which fill material ceases to be waste. Any fill material generated in New York City continues to be considered a waste until it is delivered to the site of reuse; therefore, a Part 364 waste transporter is required for transport. The same is true of restricted-use fill, limited-use fill or contaminated fill generated anywhere in the state. For general fill generated outside of New York City, once the material has been determined to be general fill in accordance with §360.13(f), the material is no longer considered a waste and does not require transport by a Part 364 waste transporter.

- Similarly, any fill material generated outside of New York City which shows no evidence of historical impacts or any visual or other indication of chemical or physical contamination is not considered a waste as per 360.12(c)(1)(ii) and does not require transport by a Part 364 transporter.

- As established in 360.13(b)(3), the pre-determined BUD for general fill generated in New York City does not attach until the material is delivered to the site of reuse. Therefore, it must be transported by a Part 364 registered or permitted transporter. However, general fill is a subset of C&D debris, so shipments of 10 cubic yards or less are exempt from Part 364 waste transporter requirements (§364-3.1(d)).

- Per the DEC’s March 1, 2018 Enforcement Discretion Letter, asphalt pavement or asphalt millings of any size are exempt from Part 364 waste transporter requirements until May 4, 2019, unless an amendment to the rule is promulgated earlier. [http://www.dec.ny.gov/regulations/81768.html](http://www.dec.ny.gov/regulations/81768.html)

- Material which meets the requirements of the pre-determined BUDs found at § 360.12(c)(3)(viii), (ix), and (x) are exempt from Part 364 waste transporter requirements.

- To qualify for the pre-determined beneficial uses set forth in Part 360.12, the material intended for reuse cannot be mixed with any other material. However, in administering the program the Department acknowledges that small amounts of soil or other solid wastes which are present with material that would otherwise meet the requirements of a beneficial use determination (BUD) (e.g., small amounts of soil in a truckload of asphalt pavement or concrete) do not cause the material to
lose its BUD status; therefore, transport of these materials would not require a Part 364 waste transporter. This allowance is made by DEC to avoid unnecessary rejection of BUD material due to small amounts of material which are unavoidably included with BUD materials as they are generated. However, transportation anywhere in the state of mixed loads of C&D debris requires Part 364 authorization and may require waste tracking documents if the material is determined to be limited-use fill, restricted use fill or contaminated fill. DEC expects generators of BUD materials to make efforts to reduce the presence of soil in BUD materials.

- A Part 364 waste transporter registration is not required for transport of soil or fill material generated outside of New York City that has been determined to be general fill or has been determined to not have historical, visual, or other evidence of contamination. Please also see the discussion above about transportation of beneficial use materials.