DRAFT

Generic Environmental Impact Statement (GEIS) on the Proposed Amendments to

6 NYCRR Part 360 Solid Waste Management Facilities
6 NYCRR Part 364 Waste Transporter Permits
6 NYCRR Part 369 Municipal Waste Reduction and Recycling Projects

With minor amendments to:

6 NYCRR Part 621 Uniform Procedures

6 NYCRR Part 361 Siting of Industrial Hazardous Waste Facilities
 6 NYCRR Part 362 State Aid to Municipalities for Planning the
 Construction or Improvement of Solid Waste Disposal Facilities
 6 NYCRR Part 363 State Aid for Planning for Collection, Treatment and
 Disposal of Refuse

6 NYCRR Part 370 Hazardous Waste Management System-General 6 NYCRR Part 371 Identification and Listing of Hazardous Wastes

6 NYCRR Part 372 Hazardous Waste Manifest System and Related

Standards for Generators, Transporters and Facilities 6 NYCRR Part 373 Hazardous Waste Management Facilities 6 NYCRR Part 374 Management of Specific Hazardous Waste

-STATEWIDE ACTION-

LEAD AGENCY: NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Prepared by NYS Department of Environmental Conservation

Comments must be submitted to the contact person listed below by June 24, 2016

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EXECUTIVE SUMMARY

This Generic Environmental Impact Statement (GEIS) has been prepared by the New York State Department of Environmental Conservation (Department) in compliance with the State Environmental Quality Review Act (SEQR) for revisions to Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York and related regulations as set out below. Specifically, this rulemaking includes revisions to 6 NYCRR Part 360 Solid Waste Management Facilities, 6 NYCRR Part 364 Waste Transporter Permits, and 6 NYCRR Part 369 Municipal Waste Reduction and Recycling Projects. These are the implementing regulations for the solid waste program. These revisions incorporate statutory changes, address advancements in solid waste technology, clarify and streamline the current regulations, and address issues raised by the regulated community since the last major revision of Part 360 in 1993.

The proposal includes significant reorganization and subdivision of requirements contained in the existing 6 NYCRR Part 360 into a Part 360 series. To facilitate the reorganization, the existing Part 361 Siting of Industrial Hazardous Waste Facilities would be renumbered as Part 377. The reorganization would also repeal existing Parts 362 and 363 which are antiquated state aid regulations that are no longer funded or needed. In addition to amendments to Part 360, Part 364, and Part 369, minor revisions will be made to 6 NYCRR Part 621, Uniform Procedures, and minor revisions to numbering will be made to existing Parts 370, 371, 372, 373, and 374 to ensure appropriate cross references.

The Department has not identified any significant adverse environmental impacts that may result from adoption of the proposed regulations. To the contrary, the Department believes that the proposed regulations would, if adopted, improve the management of solid waste in New York and therefore have a positive impact on the environment. However, in as much as the proposed changes significantly modify the existing regulations, the Department has chosen to use the GEIS format, as it has done in the past, as the means to describe the changes, facilitate a public discussion as to the impacts of each of the changes and to examine alternatives. Through the GEIS, the Department: 1) discusses the objectives and the rationale for the proposed amendments; 2) presents why alternative measures were not considered; and 3) provides the maximum opportunity for public participation.

In developing the revisions to Part 360, the Department has evaluated and identified solid waste management facilities, activities, and waste streams that are not clearly addressed in the current Part 360. These include navigational dredged materials, oil and gas brine, historic fill, end-of-life vehicle dismantlers, wood debris, used cooking oil, and biohazard incident waste. The revisions have also relaxed or eliminated Part 360 requirements that have proven to be burdensome to the regulated community and have provided little or no incremental benefit of environmental protection, such as landfill siting study requirements, certain out-dated construction

quality assurance/construction quality control testing requirements, and the extent of groundwater monitoring. For other facilities, the applicable technical criteria have been updated to current standards.

The regulations also contain enhanced requirements for facilities or waste streams which have proven to be problematic in the past. The addition of requirements may be perceived as burdensome to those affected by the enhanced requirements, due to potential increased cost in complying with the regulation. One type of facility that will be subject to enhanced regulation in this rulemaking includes wood debris and yard trimmings processing facilities. These facilities, which shred or grind wood debris and yard trimmings into mulch product, have become more prevalent in the state, and some of the larger facilities have caused problems associated with odors, dust, runoff and fires. The addition of regulatory restrictions on pile size and other criteria to control odor and fire is necessary to protect human health and the environment. Another example of enhanced regulation is for waste tire storage facilities. The proposed regulations eliminate permitting provisions for waste tire storage facilities, thereby limiting management of waste tires to processing and recovery.

Another waste stream that has been problematic is historic fill. Historic fill consists of municipal solid waste incinerator ash, coal ash, wood ash, and other wastes that were used to create new usable land by filling water bodies, wetlands, and topographical depressions. These materials are most closely associated with urban areas such as the greater New York City metropolitan area. As these areas have been redeveloped, excavated historic fill has illegally been delivered to registered construction and demolition (C&D) debris processing facilities, where it ends up in the fines fraction of the processed material. This fines fraction containing historic fill has at times been marketed as topsoil and placed in new development projects, especially in suburban areas of the state. Historic fill is a solid waste and its use and placement needs to be more closely regulated due to the contaminants contained in it. The proposed regulations establish criteria for the on-site use, off-site use, and disposal of historic fill. It requires that historic fill be covered by a building foundation, paved surface, or one to two feet of suitable soil cover, depending on the land use of the area, if placed on-site within the footprint of the historic fill disposal area. Otherwise, the historic fill can only be used if a case-specific BUD is granted or disposed of in a municipal solid waste landfill, unless it can be demonstrated to the department's satisfaction that the waste contains only concrete, asphalt, rock, brick, glass or similar uncontaminated C&D debris materials. Proposed amendments to Part 364 include requirements for registration for the transport of commercially generated historic fill in quantities greater than 10 cubic yards, and also include requirements for waste tracking forms for historic fill. The addition of these new provisions for management and transport of historic fill should result in appropriate and consistent management of this material which has created problem disposal sites, especially in Long Island and the Lower Hudson Valley.

There have also been a number of issues related to the improper management of construction and demolition (C&D) debris including instances of environmental harm,

adverse impacts to residents and communities in the State, resulting in significant costs for clean-up of illegal disposal. The Department has evaluated these sensitive issues many times over the last two decades and has implemented several targeted enforcement strategies with limited long-term success. The impediments encountered in these efforts are addressed by a number of revisions related to C&D debris management in the proposed solid waste management regulations. New provisions have been added requiring registration under the waste transporter regulations (Part 364) for transportation of C&D debris and tracking forms to accompany C&D debris loads from their point of generation to an acceptable disposal or recycling facility which will provide additional enforcement tools for managing these activities for use by field staff, legal staff and law enforcement personnel. The proposed regulations also place size limitations on exempt C&D debris disposal facilities and require separate processing of asphalt pavement to enhance the recycling opportunities for both asphalt and the remaining C&D waste streams. The proposed regulations also expand the beneficial use determinations for select types of C&D debris, which will provide environmentally safe avenues of reuse of certain materials. The proposed revisions are expected to reduce the number of illegal C&D disposal cases and improve the Department's enforcement capacity

This action sets forth a set of solid waste regulations which reflects current knowledge and technology, as well as the experiences gained over the last twenty years in implementing the current Part 360, Part 364, and Part 369. The proposed regulations implement the Department's December 2010 Solid Waste Management Plan entitled, *Beyond Waste: A Sustainable Materials Management Strategy for New York,* which sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling.

The organization of the document is described below:

Section I serves as its introduction, which describes the action; outlines the legal authority for the revisions; describes the environmental setting in which the action is undertaken; and describes the reorganization of Part 360 into a series format.

Section II outlines the proposed revisions and evaluates the alternatives to the action.

Section III discusses the general environmental, coastal, economic, and other impacts of the action.

I. INTRODUCTION

A. Description of Action

The New York State Department of Environmental Conservation (DEC or Department) proposes to amend the regulations that implement the solid waste program in New York State. This includes amendments to existing regulations on Solid Waste Management Facilities (6 NYCRR Part 360), Waste Transporters (6 NYCRR Part 364) and Waste Reduction and Recycling Projects (6 NYCRR Part 369).

In addition to the amendments to existing Parts 360, 364, and 369, this rulemaking will incorporate minor amendments to 6 NYCRR Part 621, Uniform Procedures. These amendments specifically address paragraph 621.4(m)(2), which sets forth a list of minor solid waste management facility projects. This list has been revised to reflect the criteria in the proposed revisions concerning permitting thresholds for certain facilities and also includes a new provision which should help foster the development of anaerobic digestion facilities proposed to be located at the site of an existing solid waste landfill.

Due to significant reorganization of the existing Part 360 into the series format described below, minor revisions addressing renumbering will be made to existing Parts 370, 371, 372, 373, and 374 to ensure appropriate cross references. Additionally, proposed revisions to existing Part 360 include the removal of existing Subpart 360-14, the regulatory criteria for used oil. The regulatory criteria for used oil will now be contained solely in Subpart 374-2, Standards for the Management of Used Oil. However, permits for used oil handling facilities will still be issued pursuant to Part 360. Revisions to Subpart 374-2 will be included in this rulemaking to address this change. Used oil collection center requirements are amended to more closely parallel federal requirements. There are no other proposed changes to the technical standards associated with this revision.

This rulemaking will also include specific amendments to 6 NYCRR Subpart 373-4, Facility Standards for the Collection of Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Small Quantity Generators. Currently, household hazardous waste collection facilities and events are regulated as Part 360 non-specific facilities, using the requirements of 6 NYCRR Subpart 373-4, though no permits are issued under Subpart 373-4. Under this action, existing Subpart 373-4 is proposed to be repealed and the requirements of that subpart are proposed to be incorporated into the new Subpart 362-4.

B. Organization of Document

This document is intended to address the environmental significance of the action by means of a discussion and evaluation of the changes made to existing regulations. Section I serves as its introduction, which describes the action and describes the legal authority for the revisions. Section II outlines the proposed revisions and evaluates the alternatives to the action. Section III discusses the general

environmental, coastal, economic, and other impacts of the action.

C. Legal Authority

This revision is primarily being undertaken pursuant to the Department's experience with implementing the solid waste regulations. The regulations have not been comprehensively updated since 1993 and both revisions and enhancements are appropriate and necessary. Environmental Conservation Law (ECL) Section 27-0703, allows the Department to:

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

ECL Section 27-0301 outlines the intent and purpose as it relates specifically to the transport of waste:

"... to protect the environment from mishandling and mismanagement of all regulated wastes transported from the site of generation to the site of ultimate treatment, storage or disposal and to prevent a discharge of wastes into the environment, whether accidental or intentional, except at a site approved for the treatment, storage or disposal of such wastes."

Revision of these regulations falls under the Department's authority and is needed periodically to ensure the ECL mandates are met. In addition, changes to the ECL addressing waste tires, mercury-added consumer products, and vehicle dismantlers have been incorporated into these regulations.

The Department's statutory authority to undertake amendments to Part 360 is specifically found in Environmental Conservation Law Sections: 1-0101, 3-0301, 8-0113, Titles 3, 5, 7 and 8 of Article 17, 19-0301,19-0303,19-0306, Title 23 of Article 23, Titles 1, 3, 5, 7, 9, 10, 13, 15, 18, 21, 23, 25, 26, 27, 29 of Article 27, 27-1901, 27-1903, 27-1911, 54-0103, Titles 5 and 7 of Article 54, Title 1 of Article 70, 71-2201, Titles 27, 35,40 and 44 of Article 71, and 72-0502.

D. Environmental Setting

The Department has chosen to discuss the subject of environmental setting through the prism of the regulatory landscape as the action involves a statewide rulemaking.

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

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

For both landfills and other solid waste management facilities, updating the regulatory criteria does not necessarily mean more stringent criteria in all cases. If Department research and experience has found that the current regulatory requirement is too stringent, the proposed revision will justifiably lessen the burden on the regulated community. In all cases, the goal of the revisions is to ensure that the citizens of New York State are protected by the most up to date and appropriate solid waste management regulations.

To complete the regulatory package, the Department is proposing updates to

three related regulations – those governing State assistance grants to municipalities, local solid waste management planning, and waste transporters.

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

- Organization involved ensuring that language was included in the appropriate portion of the regulation. For example, definitions for all the subsequent parts of the series have been centralized in Part 360 itself, and operating requirements have been separated from permit application requirements to the extent possible. Organization also included minimizing repetition between the standard facility application and operating requirements now located in the new Part 360 and the requirements specific to particular facilities located in the various new parts.
- Precision involved restricting the language in the new regulation to direct requirements and obligations and requirements of the facility. Explanatory or guidance language was intentionally kept to a minimum.
- Consistency involved keeping similar requirements standard to the extent practical and necessary across various facility types. Examples include facility siting requirements and waste pile size restrictions.
- Necessity involved a critical evaluation of the requirements and language currently in the regulation. By reducing unnecessary requirements and language, the Department has reduced regulatory burdens on the regulated community while maintaining protection of public health and the environment.

Currently, municipalities in New York State are meeting their solid waste management needs through a combination of reuse and recycling (including composting), combustion, landfilling, and exporting solid waste to out-of-state facilities. The methods for managing solid waste in New York State have changed significantly since 1990. This can be attributed to a stronger emphasis being placed on waste reduction/reuse/recycling, including significant investment in recycling-related capital costs and municipal recycling education staff; a major investment in local solid waste management planning and a concerted effort made to close unlined landfills which posed a threat to the environment. In December of 2010, the Department adopted a new State Solid Waste Management Plan, entitled *Beyond Waste: A Sustainable Materials Management Strategy for New York State*

(http://www.dec.ny.gov/chemical/41831.html). This Plan sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling.

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

The proposed changes include the addition of solid waste management facilities, activities, and waste streams that are not currently addressed within the existing Part 360, to institute a level of control necessary to ensure protection of public health, safety, natural resources and the environment. Likewise, the amendments have relaxed or eliminated existing Part 360 requirements that have proven to be burdensome to the regulated community and have provided little or no benefit of environmental protection or are just outdated and no longer applicable based on the current state of practice. The amendments incorporate recommendations of task forces that were convened to analyze specific solid waste issues encountered by the Department and found to be problematic.

E. Reorganization of Part 360

The Department proposes to revise/enhance Part 360 - Solid Waste Management Facilities, Part 364 - Waste Transporter Permits, and Part 369 - Municipal Waste Reduction and Recycling Projects to incorporate legal, technological, and policy developments and experiences gained since the last major revision of these regulations in 1993. In making these revisions, the Department proposes to repeal existing Part 360 - Solid Waste Management Facilities, Part 362 - State Aid to Municipalities for Planning the Construction or Improvement of Solid Waste Disposal Facilities, Part 363 - State Aid for Planning for Collection, Treatment and Disposal of Refuse, Part 364 - Waste Transporter Permits, and Part 369 - Municipal Waste Reduction and Recycling Projects.

An intended component of this proposed rulemaking is to divide solid waste facilities into groups that are similar in nature, such as facilities that recycle and recover materials. Therefore, the current Part 360 criteria will be found in Parts 360, 361, 362, 363, 365, 366, and 369 reorganized as:

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

Existing Parts 362 and 363 are antiquated state aid regulations which are no longer funded or needed. Existing Part 361, Siting of Industrial Hazardous Waste Facilities, will be renumbered Part 377.

In addition, the proposal also repeals and replaces existing Part 364 - Waste Transporter Permits regulations with a revised Part 364 - Waste Transporters to incorporate legal and policy developments and experiences gained since the last major revision of these regulations. The definitions from Part 364 were also incorporated into the comprehensive definition section of new Part 360 to eliminate duplication and inconsistencies. Provisions related to the packaging of regulated medical waste have been moved from current Part 364 to the proposed Part 365. Existing Part 369 - Municipal Waste Reduction and Recycling Projects Regulation is proposed to be repealed and replaced with Part 369 State Assistance Projects which will include the waste reduction and recycling programs addressed in current Part 369 but also include other State Assistance programs for municipal landfill closure currently included in existing Part 360 and for household hazardous waste collection currently included in Subpart 373-4.

II. PROPOSED REVISIONS, EVALUATION OF ALTERNATIVES TO THE ACTION, AND POTENTIAL ENVIRONMENTAL IMPACTS

The following is a discussion of the proposed revisions to Part 360, Part 364 and Part 369. Each change is organized by proposed section or subpart, and may include:

1) an identification of the issue that is the basis for each substantive proposed amendment;

- 2) a brief summary of the proposed amendment;
- 3) a discussion of the implications of the proposed amendment; and
- 4) a description of the alternatives which were considered, where applicable. In some instances there is no discussion of alternatives, as none, other than the no action alternative, have been identified. We invite comments on other suggested alternatives.

Due to the significant reorganization of the regulations, the numbering system assigned to the proposed provisions will in most cases not correlate to existing regulations. The summary of amendments provided below correlates to the newly assigned numbering system.

PART 360 SOLID WASTE MANAGEMENT FACILITIES - GENERAL REQUIREMENTS

Section 360.2 Definitions

<u>Issue:</u> Definitions contained in the regulations need to be updated for clarification, to improve implementation of the regulations, and to reduce ambiguity.

<u>Proposed revision:</u> Definitions have been updated as necessary. All definitions for Parts 361-366 and 369 are now contained in Part 360 instead of the individual Parts or Subparts.

<u>Discussion:</u> Clarification of existing definitions, the addition of new definitions, and removal of outdated definitions will provide for consistent implementation of the solid waste management regulations. Existing definitions that describe a specific type of facility, such as the definitions of transfer station and recyclables handling and recovery facility, have been removed. Instead, the applicability section of each Subpart will address the types of activities and facilities that will fall under the

jurisdiction of that Subpart.

<u>Alternatives considered:</u> The Department considered placing definitions that only relate to a particular Part or Subpart within that Part or Subpart, similar to the existing regulations. However, it was determined that all definitions relating to the Part 360 series should be contained in Part 360, General Requirements. The previous format has led to inconsistency in both the interpretation and the regulations themselves over time. Having all the definitions contained in Part 360 will make it easier for the regulated community to quickly locate a specific definition and will ensure consistency throughout the Parts.

<u>Environmental Impact:</u> Clarification of the definitions will result in enhanced implementation of the solid waste program, thereby reducing potential environmental harm due to misinterpretation.

Section 360.4 Transition

<u>Issue</u>: Transition requirements need to be modified to address facilities which may be regulated under a different mechanism in the revised regulations. For example, certain facilities that may now operate by registering with the Department will need to have a permit to operate under the revised regulations.

<u>Proposed revision</u>: Transition requirements have been modified to facilitate the existing changeover from Parts 360, 364, and 369.

<u>Discussion:</u> The proposed transition requirements provide reasonable, clear timeframes for facilities currently subject to existing Part 360 and those facilities currently not subject to existing Part 360, but subject to the proposed Part 360, to come into full compliance with the proposal's requirements.

<u>Alternatives considered:</u> The transition requirements needed to be modified to address facilities which may be regulated under a different mechanism in the proposed regulations. A no action alternative was therefore rejected.

<u>Environmental Impact</u>: The transition requirements will ensure that all solid waste facilities will continue to be regulated via an appropriate regulatory mechanism and all will move to compliance with the proposed regulations in a timely manner.

Section 360.11 Comprehensive recycling analyses

<u>Issue:</u> For the last 27 years, applications submitted by or on behalf of municipalities for initial permits to construct and operate, or to renew a permit for most types of solid waste management facilities needed to include a comprehensive recycling analysis (CRA), or be covered under a previously approved CRA or Local Solid Waste Management Plan (LSWMP). In addition, Part 360 has required that most facility permits contain a condition that precluded the permittee from accepting waste from a municipality that had not completed a CRA (or been included in another municipality's CRA) and had not implemented the recyclables recovery program determined feasible by the analysis. A CRA has also been a required component in a LSWMP.

<u>Proposed revision:</u> The requirements for a CRA are essentially unchanged in this rulemaking. Several unneeded references to incinerators were removed, and an annual reporting requirement was added. While a LSWMP meeting the

requirements of Part 366 will be considered to meet the requirements of a CRA, a clarification has been made between the requirements in a CRA and those of a LSWMP. Additionally, the vehicle for the requirement precluding acceptance of waste from municipalities that have not completed CRAs or LSWMPs will be a direct regulatory requirement in 360.19, rather than a permit condition in each permit.

Discussion: The CRA requirements have been a mainstay in the regulations since 1988 and have helped drive the development of local recycling programs across the State. The CRA requirements were incorporated by reference in the requirements for the contents of LSWMPs in Subpart 360-15 in 1989 when that Subpart was added to the regulations to ensure these important elements were included in each LSWMP. The incorporation by reference has led to confusion over the years as to the requirements for formatting and whether or not the CRA was required to be a stand-alone document incorporated into the LSWMP or if the elements of the CRA could be embedded in the LSWMP. The Department's direction has been to directly incorporate the components of the CRA in the base LSWMP as opposed to a stand-alone document. An independent CRA can still be developed by those municipalities that are not included in a LSWMP. Alternatives considered: There was consideration given to eliminating the standalone CRA component, and replacing the requirement of a CRA with a requirement for an LSWMP. The overall requirements of a CRA have been directly incorporated in the LSWMP requirements of Part 366 to make a more cohesive LSWMP document and to avoid the previous confusion of the required components of an LSWMP. The thought was that it might make a simpler regulatory landscape if all municipalities in the State were operating under LSWMPs; however, since not all municipalities are required to have an LSWMP, it was ultimately decided to leave the CRA requirements in the regulations to ensure recycling planning remains in place for all municipalities. Environmental Impact: None

Section 360.12 Beneficial use

<u>Issue:</u> A beneficial use determination (BUD) is a mechanism for the Department to determine that a material is no longer a solid waste when used in a specified beneficial manner. The approval of a case-specific BUD petition depends on a demonstration that the material does not contain pollutants that will cause environmental harm when used in compliance with the petition and that the material has the properties to be an effective substitute for a material already in commerce. The current regulations contain both "pre-determined" BUDs that do not require approval, such as the use of woodchips for mulch, and a process to obtain a case-specific BUD for other wastes and uses. New pre-determined BUDs need to be added to the regulations to address common, acceptable uses. The regulations also need to address waste material and uses that are not eligible for beneficial use. The duration of the approval of a case-specific BUD also needs to be addressed in regulations.

<u>Proposed revision:</u> New pre-determined BUDs have been added to address common, acceptable uses including: wood pallets reused as pallets; use of street

sweepings as fill; materials approved by the Department for remedial projects; the use of up to 1000 tires to hold down tarps; the use of up to 150 tires as planters, etc.; and materials emanating from facilities regulated by Part 361 (recyclables, compost, etc.). The proposed revision to the BUD section also includes a list of materials and uses that are not eligible for a BUD such as the use of large quantities of flowable fill. All case-specific BUDs will now be required to be renewed every 5 years. Also, under the transition provisions in the proposed 360.4, old BUDs (more than 5 years old) will expire if a petition to renew the BUD is not received by the Department.

<u>Discussion</u>: The Department has implemented the BUD provisions for many years and the proposed revisions will clarify some of the pre-determined BUDs, will add new pre-determined BUDs, will establish a periodic timeframe for review of casespecific BUDs, will eliminate the tracking of old BUDs that are no longer used, and will exclude uses that are considered to be disposal.

Alternatives considered: The revised criteria include a 5-year term on BUD approvals. An alternative considered was to leave the BUD approvals without a term. This would be less of a workload for the Department and for the regulated community since the BUD would not expire. However, this alternative was rejected because a 5-year term allows the Department to remove inactive BUDs from the database and allows the Department another look at BUD petitions every 5 years to determine if any modifications are warranted. This renewal process will give the Department an opportunity to re-evaluate BUD's for compliance with potentially revised standards. The revisions to the pre-determined BUDs were based on a review of the existing BUD records. Other alternatives that were considered were to adopt additional pre-determined BUDs such as the use of water treatment residuals as a component in topsoil, but only those included in the proposed revisions were deemed appropriate based on the information currently available to the Department. Other uses may also be appropriate for a BUD but the need to evaluate the quality and use of the material dictates the need for a case-specific BUD.

<u>Environmental Impact</u>: Enhancement of the BUD program will provide more consistent and uniform procedures and regulatory criteria which will reduce the potential for materials to be mismanaged through the BUD program.

<u>Issue:</u> To assist those entities seeking to use navigational dredged material (NDM), specific provisions are needed in the regulations to address the requirements for the upland use of NDM. There has been interest in the New York City area in clarification of the requirements due to significant amounts of NDM routinely generated in the area. Under the current regulations, the use of NDM may be authorized under the BUD program.

<u>Proposed revision:</u> Specific provisions have been included in Section 360.12 to address the beneficial use of NDM, including the testing protocol required to determine if the NDM is acceptable for use as fill. Provisions for both predetermined BUDs and case-specific BUDs for the use of NDM have been added. <u>Discussion:</u> Providing clear, concise criteria for the use of NDM will result in more effective management of this material.

<u>Alternatives considered</u>: NDM could continue to be handled under the general case-specific BUD criteria. However, this is not the preferred alternative since additional criteria in regulation that outlines the Department's standards and expectations for the beneficial use of NDM material leads to more consistent implementation of the program and a better understanding by the regulated community of the requirements that must be met.

<u>Environmental Impact</u>: Addition of BUD provisions for NDM will provide uniform standards that apply to the reuse of this material thereby reducing the potential for misuse.

<u>Issue:</u> Specific provisions, including maximum pollutant levels, are needed for the use of oil and gas brine for dust control on unpaved roads and for snow and ice control in winter conditions. Under the current regulations, a case-specific BUD is required for brine use but the specific criteria for approval and use are not specified in the regulations.

<u>Proposed revision:</u> Specific criteria have been included in Section 360.12 to address the beneficial use of oil and gas brine for road application, including application criteria and pollutant limits.

<u>Discussion</u>: Providing clear criteria on the beneficial use of brine will result in more uniform, acceptable use of the material.

<u>Alternatives considered:</u> Brine could continue to be handled under the general case-specific BUD criteria. However, this is not the preferred alternative since additional criteria in regulation that outline the Department's standards and expectations for the beneficial use of brine leads to more consistent implementation of the program and a better understanding by the regulated community of the requirements that must be met.

<u>Environmental Impact</u>: Addition of BUD provisions for brine, including operational criteria and pollutant standards, will reduce the potential of environmental harm due to poor road spreading practices.

Section 360.13 Special requirements for management of historic fill

<u>Issue:</u> Historic fill consists of municipal solid waste incinerator ash, coal ash, wood ash, and other wastes that were used to create new usable land by filling water bodies, wetlands, and topographical depressions. These materials are most closely associated with urban areas such as the greater New York City metropolitan area. As these areas have been redeveloped, excavated historic fill has illegally been delivered to registered construction and demolition (C&D) debris processing facilities, where it ends up in the fines fraction of the processed material. This fines fraction containing historic fill has at times been marketed as topsoil and placed in new development projects, especially in suburban areas of the state. Historic fill is a solid waste and its use and placement needs to be more closely regulated due to the contaminants contained in it.

<u>Proposed revision:</u> This new section establishes criteria for the on-site use, offsite use, and disposal of historic fill. It requires that historic fill be covered by a building foundation, paved surface, or one to two feet of suitable soil cover, depending on the land use of the area, if placed on-site within the footprint of the historic fill disposal area. Otherwise, the historic fill can only be used if a case-specific BUD is granted or disposed of in a municipal solid waste landfill, unless it can be demonstrated to the department's satisfaction that the waste contains only concrete, asphalt, rock, brick, glass or similar uncontaminated C&D debris materials.

<u>Discussion:</u> The addition of these new provisions for management of historic fill should result in appropriate and consistent management of this material which has created problem disposal sites, especially in Long Island and the Lower Hudson Valley.

<u>Alternatives considered:</u> Since there are currently no specific requirements in the existing regulations addressing management of historic fill, a no action alternative was rejected. The addition of these regulatory requirements for management of historic fill is the only acceptable option for furthering the goal of its proper management.

<u>Environmental Impact:</u> The addition of criteria for the management and disposal of historic fill will reduce the potential for using this material in a manner which could potentially cause negative impacts to surface and groundwater resources.

Section 360.14 Exempt facilities

<u>Issue:</u> Exemptions identified in existing regulation, which describe facilities that are not subject to regulation under Part 360, need to be updated.

Proposed revision: Exemptions which address disposal have been moved to Part 363, Landfills. The proposed exemption for on-site transfer, storage, treatment, processing or combustion at the site of waste generation expands the current exemption to include locations statewide under the same ownership or control as the site of waste generation, rather than only within a single region of the Department as authorized under the current regulations. This exemption has also been modified to exclude on-site regulated medical waste treatment facilities, facilities for the storage and processing of waste from a biohazard incident, facilities for animal prion wastes, composting facilities for animal mortalities and parts from a slaughterhouse or butcher, and composting facilities for municipal solid waste, sewage sludge or other sludges. A new exemption was added for rendering facilities which process animal or food-derived fats, oil, grease and animal parts. An exemption has also been added to relieve the regulatory burden on those entities approved by the United States Drug Enforcement Administration as authorized collectors, and by Federal, State, tribal or local law enforcement agencies, who provide household pharmaceutical collection opportunities that achieve compliance with the October 9, 2014 Disposal Act regulations. Discussion: The proposed revisions will ensure that facilities that pose no significant environmental impact will be exempt from regulation under Part 360 and the waste streams managed at the exempt facilities will not consume capacity in registered and permitted solid waste management facilities. In the case of existing exemptions which have been broadened, such as the exemption for on-site transfer, storage, treatment, processing, or combustion at the site of waste

generation, no negative impacts to the environment are expected as a result of the revisions. For example, the generator will no longer be restricted to storage in one DEC region. DEC regional staff across the state routinely work together on facility issues, so limiting activities to one DEC region is not necessary or appropriate. <u>Alternatives considered:</u> The Department considered each of the current exemptions and whether or not each should be made more restrictive or more lenient. Also, the addition of new exemptions based on issues that have arisen in the past were considered. The proposal represents the results of that evaluation and determination of what exemptions are appropriate to represent facilities or activities that have little potential for negative environmental impact. <u>Environmental Impact</u>: Exempt facilities are limited in scope and therefore not expected to result in any negative environmental impact.

Section 360.15 Registered facilities, transporters, and events

<u>Issue:</u> Existing registration provisions need to be updated to address registration duration. The current Part 360 places no expiration on registrations, which has been problematic in certain circumstances in trying to ascertain the operational status of a registered facility. Additionally, the registration provisions need to be revised to allow the Department to determine whether the impacts of having one or more registered facilities on a site warrants further evaluation and environmental regulatory control via the Part 360 permitting process. Provisions also need to be added to the regulations to allow the Department to determine an applicant's compliance history when reviewing a registration application.

<u>Proposed revision:</u> The registration provisions have been modified to restrict the duration of registrations to a maximum of 5 years. This section also has been modified to add a provision which gives the Department discretion to require a permit if more than one facility or event that qualifies for registration is located on geographically contiguous land under the control or ownership of the same person. A provision has also been added to allow the Department to evaluate an applicant's compliance history when reviewing a registration application for the purpose of determining the validity of a registration. The addition of these provisions is intended to address any potential adverse impacts from these registered facilities.

<u>Discussion:</u> The proposed revisions which limit the duration of registration to 5 years will assist the Department in ascertaining the operational status of registered facilities. The revisions will also allow the Department to evaluate an applicant's compliance history when reviewing a registration application.

<u>Alternatives considered:</u> The Department evaluated the current registration provisions which have been problematic in certain circumstances. It was determined that making the proposed changes is necessary to reduce the chance of any potential adverse impacts from registered facilities. A no action alternative was therefore rejected.

<u>Environmental Impact</u>: The revisions to the registration provisions will have a positive impact to the environment by giving the Department greater authority to restrict operations at registered facilities by enhancing our ability to require permits

at these facilities if warranted.

Section 360.16 Permit application requirements and permit provisions

<u>Issue:</u> This section needs revision to more concisely set forth the requirements for new permit applications, modifications, or renewals of existing permits.

Proposed revision: The required elements for an application for a new permit will include the submission of a facility manual, which must include a waste control plan, operations and maintenance plan, training plan, emergency response plan, and a closure plan. This is not a significant change, as these plans are generally required for all permitted facilities under the current regulations, but rather more of a restructuring that consolidates all of these plans into a single facility manual. The requirements for each of these plans are set forth in this section. This section also requires that all (both private and municipal) facility permit applications demonstrate consistency with the department-approved LSWMP in effect for the municipalities in the proposed facility's service area. The existing Part 360 regulations require that of the municipal facility applications but only require private facility applications to describe the *impact* on LSWMPs of the planning unit in which the facility is located and the planning units from which solid waste is expected to be received. The proposed changes will also treat most expansions as new applications under Part 621. These include all horizontal or vertical expansions of landfills and all other expansion or acceptance rate increases not specifically designated as minor projects under Part 621.

<u>Discussion</u>: The proposed changes should assist in streamlining the permitting process by providing concise requirements for permit applications. The clearly specified application requirements will ensure that an accurate assessment of the probable impacts the facility will have on the environment can be made before a permit is granted. The revisions support local solid waste management planning efforts by expanding the requirement for the demonstration of consistency with the goals and objectives of LSWMPs to all permit applications for new facilities instead of just those submitted by a municipality.

<u>Alternatives considered</u>: Maintaining the current permit application requirements would not result in a streamlining of the permit process. Revisions of the existing permit application requirements are needed to ensure an accurate assessment of the probable impacts of a permitted facility is made before a permit is issued. A no action alternative was therefore rejected.

<u>Environmental Impact</u>: The amendments to the permit application and permit provisions will result in a positive impact to the environment by providing additional oversight by the Department and more input from the public regarding expansions to existing facilities.

Section 360.19 Operating requirements

<u>Issue</u>: General operating requirements for all facilities, both registered and permitted, should be revised to reflect current and best practice.

<u>Proposed revision</u>: The existing requirement that sound levels from on-site equipment not exceed 80 decibels at a distance of 50 feet from that equipment has been removed from the regulations. Mufflers will still be required on all internal combustion powered equipment used at the facility, and maximum noise levels must still be adhered to at the property line of the facility. A second change will add tank requirements for solid waste management facilities that store liquid waste. The proposed changes require that overfill prevention and secondary containment equipment be utilized for all aboveground tank systems and double-wall construction with leak detection be utilized for all storage tanks, and establishes minimum self-inspection criteria for the tanks and associated equipment. Currently, the Department requires these safeguards through special permit conditions.

<u>Discussion:</u> Facilities have expressed difficulty in finding and purchasing equipment that conforms to the current 80 decibel requirement, and consequently the Department has previously issued variances from the requirement. This change will reduce the cost of operating a solid waste management facility without any negative effect on the facility, the surrounding community, or the environment. The sound level requirements must still be met at the property line. The addition of tank requirements in the regulations will codify current practice.

<u>Alternatives considered:</u> Removal of all sound level requirements associated with on-site equipment was considered. However, it was determined that mufflers should remain a requirement for all internal combustion powered equipment used at the facility along with sound level requirements at the property line. A no action alternative was rejected.

<u>Environmental Impact</u>: Updated operating requirement will ensure that facilities are operated to the most current standards, thereby reducing the potential for any releases to surface or groundwater resources.

Section 360.20 Environmental monitoring services

<u>Issue:</u> The current on-site environmental monitor provisions are outdated and should be revised to reflect current practice and policy.

<u>Proposed revision</u>: The provisions related to on-site environmental monitors have been updated to reflect a more refined set of circumstances and limitations for environmental monitoring services. The term "on-site environmental monitor" has also been changed to "environmental monitoring services".

<u>Discussion:</u> The current regulations authorize the Department to require the imposition of an on-site environmental monitor to be funded by the facility. The provisions in the current regulations pertain primarily to the funding requirements and mechanisms but are outdated. A Draft Commissioner's Policy concerning Environmental Monitoring Services has been developed and the proposed revisions are consistent with that draft Policy.

<u>Alternatives considered:</u> Since the current provisions are inconsistent with the Department's draft Policy and the language related to funding is no longer accurate, a no action alternative was rejected. The addition of these updated

regulatory requirements consistent with the draft Department Policy is the only acceptable option for describing environmental monitoring services requirements. <u>Environmental Impact</u>: None

Section 360.22 Financial assurance

<u>Issue:</u> Financial assurance regulations ensure that sufficient funds are available for the Department to hire a third party to perform closure activities at a facility, or closure, post-closure, or corrective measures activities at a landfill, if the owner or operator fails to perform those required activities. Under current regulations, financial assurance requirements are located in sections 360-1.12, 360-2.19, and 373-2.8. These requirements should be consolidated in one location in the regulations with the intent to aid in the understanding of and improve compliance with the requirements as well as to better ensure that funds will be available for closure, post-closure care, and/or custodial care activities. In addition to the consolidation of financial assurance language, there are certain circumstances where the requirements can be eased and certain areas where the requirements.

<u>Proposed revision and discussion:</u> One proposed change allows a municipality that no longer meets the standards for a local government financial test to begin a 10-year payment period toward another acceptable financial assurance mechanism. Under current regulations, a municipality in such a condition is required to fully fund another mechanism immediately. This revision will provide regulatory relief to a municipality in difficult financial circumstances while helping ensure that sufficient financial assurance funds would be available, if required.

Another proposed change which will provide support for municipallyowned facilities requires that, if a financial assurance mechanism is provided by the private operator of a municipally-owned facility, the fully funded financial assurance mechanism must be transferred to the municipality upon return of the facility to municipal operation or control. This change will help ensure that municipalities are not left with the requirement to generate the full cost of postclosure care and custodial care at the end of the active life of a landfill previously operated on their behalf by a private entity.

The proposed revisions also clarify that closure cost estimates must include 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. This is substantially the same requirement as currently exists, but it has been reworded to lessen confusion that has existed within the regulated community.

The proposed revised section also will include the specific acceptable language that must be used in financial assurance instruments. Previously, portions of this language were incorporated by reference from Part 373-2.8.

An additional proposed change clarifies that the owner or operator of a landfill must include a custodial care cost estimate as part of its financial assurance calculations. This change builds on the current requirement that landfills must calculate post-closure cost estimates for at least 30 years, and each subsequent year's estimates must be for 30 years until the owner or operator can demonstrate that the landfill no longer poses a threat to human health or the environment. The requirements relating to custodial care in the proposed Part 363 are a clarification of the current post-closure requirements for long-term care of the landfill.

Another proposed change restricts the allowable financial assurance mechanisms for post-closure and custodial care of a municipally-owned landfill which operates as a revenue-oriented municipal facility to a trust fund, a capital reserve fund, or a solid waste management facility reserve fund. The proposed revisions define a revenue-oriented municipal facility as a municipally-owned and operated facility that receives waste for disposal from outside its municipality for the purpose of generating revenue beyond that necessary to operate the facility or associated solid waste management activities. Local government financial tests and local government guarantees are intended to provide financial assurance for municipalities which provide for the handling of their own solid waste management needs. Municipally-owned and operated landfills that act as merchant facilities incur long-term liability beyond that of a standard municipallyoperated solid waste management facility. This requirement will protect the public from bearing the long-term financial responsibility of that revenue-oriented activity.

The final proposed change will eliminate surety bonds guaranteeing performance, insurance policies, corporate guarantees, and corporate financial tests as acceptable financial assurance mechanisms. The Department has concluded that these mechanisms do not assure that the basic requirements for financial assurance mechanisms will be met, which include: that funds must be sufficient to cover the costs of closure, post-closure, custodial care, or corrective measures; that funds must be available when needed; and that mechanisms must be legally valid, binding, and enforceable under state and federal law. The department is confident that the remaining mechanisms, which include trust funds, surety bonds guaranteeing payment, letters of credit with standby trust funds, local government financial tests, local government guarantees, and reserve funds meet these requirements and will provide statewide consistency regarding acceptable financial assurance mechanisms. While we acknowledge that the remaining mechanisms may marginally increase costs for facilities that must change mechanisms, currently 237 facilities, more than three quarters of the facilities that are required to maintain financial assurance, utilize one of the remaining mechanisms. Further, transition requirements will provide registered facilities that must change mechanisms five years to obtain an approved mechanism. Permitted facilities which have valid financial assurance mechanisms in place but must change mechanisms under this revision will have until their permit renewal date to obtain an approved mechanism. Alternatives considered: The Department considered continuing existing requirements that municipalities which no longer qualify for the local government financial test must immediately fund an alternative mechanism. This alternative was rejected as burdensome on municipal finances and detrimental to the proper funding of post-closure care and custodial care activities.

<u>Environmental Impact</u>: No new environmental benefits are expected from the revisions since financial assurance is currently required in the existing Part 360.

PART 361 MATERIAL RECOVERY FACILITIES

Subpart 361-1 Recyclables Handling and Recovery Facilities

<u>Issue:</u> A permitting throughput threshold should be added to the regulations for recyclables handling and recovery facilities (RHRFs) to appropriately evaluate and address the potential for impacts to the surrounding community and environment. Current regulations do not require permitting for any RHRFs.

<u>Proposed revision</u>: The proposed revisions require a permit rather than a registration for a RHRF that receives more than 250 tons per day of recyclables. <u>Discussion</u>: This revision was made to address concerns related to noise, truck traffic, and other nuisance impacts resulting from RHRFs that are currently operating and receiving more than 250 tons per day of recyclables. Requiring permitting of these facilities will allow these environmental issues to be addressed on a site-specific basis through the permitting process. Based on annual reports from RHRFs, this change is likely to affect 11 of the 86 facilities (13%) operating in the State. These 11 facilities managed approximately 44% of the recyclables stream. They are primarily located in DEC Region 2, with several others in DEC Regions 1 and 3.

<u>Alternatives considered:</u> Staff evaluated other throughput rates prior to choosing the 250 tons per day threshold. Facilities with high waste-acceptance rates are more likely to cause impacts to the surrounding community and the environment. Staff estimates that a RHRF which receives 250 tons per day of recyclables will receive 32 or more trucks per day, which could cause an adverse impact to the surrounding community and environment.

<u>Environmental Impact</u>: The addition of permitting standards for large RHRFs will result in reduced environmental impact due to greater Department oversight of these facilities.

<u>Issue:</u> Clearer delineation of the exemptions identified in current paragraphs 360-12.1(b)(2) and (5), for "manufacturing facilities" and "intermediate processors," respectively, is needed. The original intent of these provisions was to remove manufacturing facilities from the requirements of existing Subpart 360-12 if they utilized recyclables as a feedstock. Identifying a legitimate manufacturing facility or intermediate processor under these criteria has proven difficult.

<u>Proposed revision:</u> The exemptions for manufacturing facilities and intermediate processors have been replaced with a pre-determined BUD in section 360.12 for materials processed by an RHRF for use as an ingredient in a manufacturing process or other acceptable use.

<u>Discussion:</u> This BUD provision is intended to provide the same relief as was intended by the exemptions in the existing regulation, but should allow for clearer delineation of regulated and unregulated activities.

<u>Alternatives considered:</u> Revisions to the exemption language related to these facilities in order to more effectively define "marketable product" were considered. Requiring registration for these currently exempt facilities was also considered. <u>Environmental Impact</u>: This clarification should not result in environmental impact.

Subpart 361-2 Land Application and Associated Storage Facilities

<u>Issue:</u> Minor changes are needed to this subpart to address current practices in land application and septage management.

<u>Proposed revision:</u> Two minor changes include the elimination of the ability to use lagoons for septage disposal and the elimination of the cumulative loading limits for heavy metals.

<u>Discussion:</u> Septage disposal lagoons have been essentially eliminated in the State due to potential for groundwater impacts. The revisions will end the practice. The tracking of cumulative metal loading for biosolids is a vestige of the 1980s and is not required by federal regulations or necessary for environmental protection. The pollutant standards that apply in Subpart 361-2 are low enough that the material can be applied without a build-up of concern of metals over time.

<u>Alternatives considered:</u> Continuing to allow the disposal of septage in lagoons was deemed to be an unacceptable alternative due to the potential for groundwater impacts. The continued tracking of cumulative metal loading was considered but is inconsistent with federal regulations.

<u>Environmental Impact</u>: The elimination of septage disposal lagoons will result in a positive environmental impact to due to the reduction in the potential for groundwater contamination from these facilities.

Subpart 361-3 Composting and Other Organics Processing Facilities

<u>Issue:</u> The regulations need to be revised to facilitate composting at small-scale facilities.

<u>Proposed revision:</u> The subpart adds a new exemption for small-scale composting facilities to facilitate composting at community gardens. The registration provision for food scraps has also been increased from 1000 cubic yards to 5000 cubic yards per year.

Discussion: Under the current regulations, the addition of any amount of food scraps to a community garden that are generated by a resident requires a registration. This is burdensome and not needed. The revised criteria allow a small amount (1000 pounds per week) of food scraps to be composted under an exemption. Also, the registration provisions have been modified to allow up to 5000 cubic yards of food scraps to be composted each year. The registration allows the Department to provide limited oversight of these operations but promotes this small-scale composting by dispensing with the requirement to obtain a permit.

<u>Alternatives considered:</u> The Department promotes the recycling of organic waste through composting and other means but recognizes that environmental impacts can occur if the operations are not managed properly. The alternatives considered relate to the size and character of the facilities that will be allowed under an exemption or under a registration. The chosen alternatives are based on the Department's experience with these operations over the last two decades. <u>Environmental Impact:</u> None

<u>Issue:</u> The existing regulations prohibit certain radioactive waste from being accepted at a facility which receives municipal solid waste (MSW). However, there is no current requirement for installation and operation of fixed radiation detectors to be installed at these facilities.

<u>Proposed revision</u>: The proposed revisions require facilities that compost mixed MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g may not be accepted at the facility. No regulated radioactive wastes, including naturally occurring radioactive material (NORM) which has been processed and concentrated (i.e., technologically enhanced naturally occurring radioactive materials or TENORM) may be accepted at the facility.

<u>Discussion</u>: Radiation detectors will ensure that radioactive waste is detected and evaluated prior to disposal at an MSW composting facility.

<u>Alternatives considered:</u> Continuing with only administrative prohibition of radioactive waste was considered but rejected.

<u>Environmental Impact</u>: The addition of monitoring equipment for the detection of radioactive waste at compost facilities will result in a positive environmental impact by ensuring that these wastes are not processed at these facilities.

Subpart 361-4 Wood Debris and Yard Trimmings Processing Facilities

<u>Issue:</u> Under the current regulations, the production of mulch from the grinding and storage of clean wood is exempt from regulation. With the increase in popularity of the use of mulch, especially in urban and suburban areas, the number of facilities producing mulch has grown, and in some cases, the facilities are very large. Odor problems, leachate concerns, and fires have become a common problem at some of these facilities.

<u>Proposed revision:</u> A new subpart has been established to address wood debris and yard trimmings processing facilities. This subpart contains an exemption for small facilities (less than 2 acres in size) that process wood debris and yard trimmings, provided specific pile size restrictions are followed. For facilities between 2 acres and 10 acres in size, a registration will be required, and those greater than 10 acres in size will require a permit. For both registered and permitted facilities, criteria relating to pile size, temperature monitoring, and other management methods to minimize environmental concerns have been specified in the regulations.

<u>Discussion:</u> There is no guarantee that a pile of wood will not catch fire. However, the proper management of the pile required by the proposed regulation will reduce the potential for adverse environmental impacts such as fire, dust, and odor concerns. Proper site management will also facilitate emergency personnel access and response, if needed.

<u>Alternatives considered:</u> Due to the significant concerns that have been raised related to these facilities, the no action alternative was rejected. The proposed revisions include restrictions on pile size, buffers between piles, and other criteria to control environmental concerns. There is no universally accepted pile size requirement. The Department considered various pile sizes and, based on the research currently available, decided to use the size restrictions in the proposal. <u>Environmental Impact</u>: Enhanced regulatory requirements will reduce the potential for negative environmental impacts including dust, fires and groundwater impacts that have plagued many of these larger facilities that are currently unregulated.

Subpart 361-5 Construction and Demolition Debris Processing Facilities

<u>Issue:</u> Many areas of the State, especially DEC Regions 1 and 3, have experienced significant illegal disposal of C&D debris. Additional criteria are needed in the regulation to specify proper C&D debris management.

<u>Proposed revision:</u> The proposed revisions expand the existing tracking form requirements for material leaving permitted C&D debris processing facilities to also include material leaving registered C&D debris processing facilities. <u>Discussion:</u> Expanding C&D debris tracking requirements will enable the Department to more easily investigate and enforce against those who illegally dispose of C&D debris.

<u>Alternatives considered:</u> Due to the significant concerns that have been raised related to management of C&D debris, the no action alternative was rejected. <u>Environmental Impact:</u> Expanded tracking requirements for C&D will result in reduced illegal dumping of this material, especially in large urban areas.

<u>Issue:</u> The permitting thresholds for facilities that receive only recognizable uncontaminated concrete, asphalt, rock, brick, and soil (CARBS) in the current regulations needed to be reevaluated. Current regulations require these facilities to register and do not designate a throughput threshold at which a permit is required for processing these types of waste.

<u>Proposed revision:</u> The proposed revisions require asphalt to be handled separately from concrete, brick, rock and soils (CRBS). The proposed revisions will require a registration for a facility that receives less than 250 tons per day of only CRBS, only asphalt, only asphalt roofing shingles or only uncontaminated gypsum wallboard. A facility may receive more than one of the waste types so long as they are processed, received, and stored separately, and the total amount of material received is less than 250 tons per day. A permit will be required for the receipt of 250 tons per day or greater of these materials. <u>Discussion:</u> Processing of C&D debris can generate noise, dust, and odors. It was concluded that processing of more than 250 tons per day of any C&D debris

is likely to have some adverse impact on surrounding community and the environment.

Based on annual reports from this portion of the current C&D debris processing industry, the change is likely to affect 28 of the 143 (20%) facilities operating in the State. These 28 facilities managed 76% of this portion of the C&D debris waste stream. The facilities are primarily located in DEC Regions 1 and 2, with several others located in DEC Regions 3, 8, and 9.

<u>Alternatives considered:</u> Various throughput thresholds, both greater than and less than 250 tons per day, were considered, but the proposal is expected to address potential adverse environmental impacts adequately.

<u>Environmental Impact</u>: The additional requirements should result in reduced processing of petroleum based asphalt materials in sensitive environmental settings. It also will reduce the potential negative impacts from processing of painted or otherwise contaminated wallboard.

<u>Issue:</u> Based on concern relating to odor and noise impacts to surrounding communities, the operational requirements for receiving, processing, and sorting mixed C&D debris need to be revisited in the regulations.

<u>Proposed revision:</u> The proposed revisions will require the receiving, processing, and sorting of mixed C&D debris to be performed within an enclosed building in order to minimize potential impacts on the surrounding community.

<u>Discussion:</u> The transition provisions of Part 360 will not require retrofitting of existing facilities which do not meet this enclosure requirement. However, many C&D debris processing facilities that currently handle mixed C&D debris already comply with this requirement through special permit conditions. Newly constructed facilities which process mixed C&D debris will have to meet the enclosure requirement.

<u>Alternatives considered:</u> Enclosure for facilities that accept any C&D debris, including CRBS, was considered but determined to be unnecessary. <u>Environmental Impact:</u> The addition of an enclosure requirement will reduce the potential for negative environmental impacts on surrounding neighborhoods such as dust, odors, and noise.

<u>Issue:</u> Current Part 360 regulations for C&D debris processing facilities that handle only CARBS or similar material have no restriction on the storage of unprocessed or processed material. This has led to facilities storing vast quantities of processed C&D debris for extended periods of time, which may adversely impact surrounding communities.

<u>Proposed revision:</u> The proposed revisions will restrict the allowable storage period and storage volume for unprocessed or processed C&D debris of any kind.

<u>Discussion</u>: Storage restrictions are expected to significantly reduce the potential for adverse impacts that surrounding communities have experienced from C&D debris processing facilities.

<u>Alternatives considered:</u> Various size, volume, and dimensional limits were considered, but it was determined that the proposal will adequately address potential adverse environmental impacts.

<u>Environmental Impact</u>: New storage limitation requirements will reduce negative environmental impacts including odors and dust.

<u>Issue</u>: Historic fill is not C&D debris and should not be handled by a C&D debrisprocessing facility. In the past, excavated historic fill has been illegally delivered to registered C&D debris-processing facilities, where it ends up in the fines fraction of the processed material. This fines fraction containing historic fill has at times been marketed as topsoil and placed in new development projects, especially in the more suburban areas of the state. The regulations will address this problem.

<u>Proposed revision:</u> The proposed regulation will prohibit historic fill from being accepted at a C&D debris-processing facility.

<u>Discussion</u>: This prohibition, in combination with other proposed modifications aimed at historic fill, should significantly reduce the improper management of historic fill in the State.

Alternatives considered: None.

<u>Environmental Impact</u>: This provision will prevent historic fill from being recycled at C&D facilities, thereby reducing the potential negative environmental impact that could result from this material being marketed as clean topsoil.

<u>Issue:</u> The regulations should provide acceptable beneficial uses of C&D debris and C&D debris residues in order to reduce illegal disposal.

<u>Proposed revision:</u> The proposed revisions establish acceptable pre-determined BUDs for C&D debris and C&D debris residues, which can be used without additional department approval. In order to simplify the use of the regulations in this regard, these pre-determined BUDs are described in this Subpart, and referenced in section 360.12.

<u>Discussion</u>: Establishing explicit acceptable uses for C&D debris and C&D debris residues will foster proper management of these materials and reduce illegal disposal.

<u>Alternatives considered</u>: Restricting use of C&D debris residues to landfill applications such as alternative operating cover was considered but found to be overly restrictive.

<u>Environmental Impact</u>: The provision will promote proper management of certain C&D materials and reduce the negative impacts of illegal disposal.

<u>Issue:</u> The current exemption in 360-16.1(b) for land clearing debris (LCD) processing facilities needed to be revisited based on the fact that facilities of this type have created significant impacts on their surrounding communities and the environment, especially in highly populated areas of the State.

<u>Proposed revision:</u> Facilities that process wood wastes and similar materials will now be regulated under new Subpart 361-4 Wood Debris and Yard Trimmings Processing Facilities, where they will be required to adhere to storage pile

restrictions, facility size restrictions, and property line buffer zones, among other operational requirements.

<u>Discussion:</u> The proposed revisions will more effectively control storage and operating practices for wood processors, thereby reducing the potential for adverse impacts on surrounding communities.

<u>Alternatives considered:</u> The exemption could have been maintained in the regulations but this alternative would not have addressed fire, odor, and runoff concerns associated with large piles of wood debris. Under new Subpart 361-4, various exemptions, registrations, and permit thresholds were considered and criteria were selected that provide environmental protection without undue impact on the regulated community.

<u>Environmental Impact</u>: Enhanced regulatory requirements will reduce the potential for negative environmental impacts including dust, fires and groundwater impacts that have plagued many of these larger facilities that are currently unregulated.

<u>Issue:</u> Mulch produced by C&D debris processing facilities is often contaminated with compounds found in adulterated wood. These compounds can then be introduced to settings where mulch is typically used, including residential neighborhoods and playgrounds.

<u>Proposed revision:</u> The proposed revisions will remove the ability of C&D debris processing facilities to produce mulch without being granted a case-specific BUD.

<u>Discussion</u>: The proposed revisions are standard best management practices in the mulch manufacturing industry.

<u>Alternatives considered:</u> Negative sorting procedures (removing only contaminated wood from the mass of wood, which can result in significant amounts of contaminated material remaining in the wood that will be processed) were considered but did not meet best management practices.

<u>Environmental Impact</u>: This provision will ensure that only good quality mulch is being produced at C&D processing facilities.

Subpart 361-6 Waste Tire Handling and Recovery Facilities

<u>Issue:</u> The significant investment by the State in abating waste tire stockpiles and developing markets for waste tire recycling since 2003 through the administration of the Waste Tire Management and Recycling Act has necessitated a change in the focus of the regulations from storage of waste tires to handling and recycling of waste tires.

<u>Proposed revision:</u> The proposed revisions will require facilities that process tires into products, feedstocks, etc. to obtain a permit. The revisions will also limit the storage of waste tires at tire services or tire recovery facilities and will provide an exemption for the storage of less than 1000 waste tires at any one time.

<u>Discussion</u>: The current regulations allow a facility to process waste tires into a product, feedstock, or fuel under a registration. Many of these facilities have

experienced significant operational issues, including fires and marketing difficulties. Proposed amendments will address these issues and potential adverse impacts through the permit process.

<u>Alternatives considered:</u> Maintaining registration requirements for waste tire processors was considered but found to be insufficiently protective of human health and the environment. Facility types such as tire services were considered to be identified as exempt facilities under this Part; however, it was determined that the exemption should be limited to the storage of less than 1000 waste tires at any one time.

<u>Environmental Impact</u>: The provision will eliminate the generation of new waste tire stockpiles in the state and eliminate the significant negative environmental impacts associated with stockpiling of tires, including fire and vector issues.

Subpart 361-7 Metal Processing and Vehicle Dismantling Facilities

<u>Issue:</u> The regulations should incorporate the requirements of Article 27, Title 23 Vehicle Dismantling Facilities, which was promulgated and went into effect in 2006, establishing operating and annual reporting requirements for vehicle dismantling facilities.

<u>Proposed revision:</u> The proposed revisions incorporate the requirements of the Vehicle Dismantling Facilities law within this subpart. Because of issues associated with mobile vehicle crushers, operations which include crushing vehicles using mobile vehicle crushing equipment will be required to be registered with the Department.

<u>Discussion</u>: Article 27, Title 23 created explicit reporting and operating requirements for vehicle dismantling facilities. The requirements protect groundwater and surface waters by requiring waste fluid removal prior to crushing or shredding of vehicles and proper waste fluid storage. Air emissions are also addressed through requirements to remove mercury switches prior to crushing or shredding of vehicles and subsequent recycling at steel furnaces. These facilities are most appropriately included as registered facilities under Part 361.

<u>Alternatives considered:</u> Requiring full registration of facilities which handle end of life vehicles of any number was considered. Instead, facilities which store less than 50 end of life vehicles are either exempt or will be allowed to operate under minimal registration requirements.

<u>Environmental Impact</u>: Incorporation of the requirements of Article 27, Title 23 Vehicle Dismantling Facilities into Part 361 requirements will help clarify the requirements of vehicle dismantling for the regulated community.

<u>Issue:</u> Because operations at large scrap metal processors may have potential adverse environmental impacts on the surrounding community, the current exemption for all scrap metal processing facilities is untenable. The regulations should place operating requirements on those facilities to address potential adverse impacts.

<u>Proposed revision:</u> The proposed revisions require registration for scrap metal processors that store more than 500 cubic yards of metal.

<u>Discussion:</u> Scrap metal processors can generate significant amounts of waste and can create dust and noise impacts on surrounding communities. Requiring these facilities to be registered will reduce their potential environmental impact and their impact on surrounding communities.

<u>Alternatives considered:</u> No exemption threshold from the registration requirement for scrap metal processors was considered but it was determined to be unduly burdensome on facilities with small potential impacts.

<u>Environmental Impact</u>: These new registration provisions will reduce the potential impact that these facilities can have on surrounding communities including dust and noise issues.

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

<u>Issue:</u> Used cooking oil and yellow grease is a potential alternative fuel. In order to produce a higher grade fuel, the oil must be processed to remove food particles, water, and other contaminants. While facilities that perform such processing are not explicitly addressed under the current regulations, the Department routinely requires them to obtain a permit as a non-specific facility. A permit is not appropriate for some of the facilities that are smaller in scale.

<u>Proposed revision</u>: A new subpart has been added to specifically address the processing of used cooking oil and yellow grease. Under the proposed criteria, small operations (no more than 1000 gallons per year) are exempt, those greater than 500,000 gallons per year will be subject to permit, and those falling between those thresholds will be required to register and will be subject to basic operating requirements. The proposed criteria address potential concerns with the proper storage and processing of these putrescent liquid wastes.

<u>Discussion</u>: The use of alternate fuels is growing in importance in the State. The proper management of this potential fuel is necessary to limit the potential for environmental harm from spills or leaks.

<u>Alternatives considered</u>: The alternative evaluated by the Department was to continue to require a permit for all used cooking oil and yellow grease processing facilities. This approach is overly restrictive. Many of these operations are limited in size and can be appropriately managed under registration provisions. <u>Environmental Impact</u>: These provisions will the improve the management of used cooking oil and yellow grease to prevent potential spills.

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

Subpart 362-1 Combustion Facilities and Thermal Treatment Facilities

<u>Issue:</u> The regulations should enhance or add requirements for emerging thermal treatment technologies such as gasification and pyrolysis.

<u>Proposed revision:</u> The proposed revisions clarify that emerging thermal treatment technologies are regulated under the proposed 362-1.

<u>Discussion</u>: Many types of thermal treatment processes have been developed in recent years. It is important to clarify that those facilities are regulated in a similar fashion to municipal waste combustors and must meet the same regulatory requirements.

<u>Alternatives considered:</u> A separate subpart for thermal treatment facilities was considered.

Environmental Impact: None

<u>Issue:</u> Under current regulations, refuse-derived fuel (RDF) processing facilities are regulated under Subpart 360-3 along with municipal waste combustors and pyrolysis units. Since RDF processing facilities are not combustion facilities or thermal treatment facilities, the requirements for these facilities should be relocated to a more appropriate subpart in the regulations.

<u>Proposed revision:</u> The proposed revisions relocate RDF processing facility requirements to a new facility type termed MSW Processing Facilities under new Subpart 362-2.

<u>Discussion:</u> RDF processing facilities are not combustion facilities or thermal treatment facilities. Their operations more closely resemble post-collection processing facilities, which are currently regulated under the transfer station regulations found at Subpart 360-11. Both of these facility types have been relocated to a more appropriate subpart in the revised regulations.

<u>Alternatives considered:</u> Maintaining the current structure was considered; however, since no RDF processing facility is currently operating in combination with a combustion facility, the proposed revision was determined to be more appropriate and provide more clarity and consistency to the public. Environmental Impact: None

<u>Issue:</u> Under current regulations, with the exception of one pre-determined BUD for whole tires or tire chips when used for energy recovery, combustion of all other waste requires a permit, unless it fits a narrow opportunity to qualify for a case-specific BUD. An opportunity for combustion of limited amounts of wastes with minimal potential pollutant content should be considered for regulatory relief provided all Division of Air Resources requirements are met.

<u>Proposed revision:</u> The proposed revisions add a registration provision for limited amounts of three material types: waste tires, unadulterated wood and used cooking oil and yellow grease, with applicable limiting conditions. <u>Discussion:</u> With rare exception, a solid waste management facility permit is required for the combustion all wastes. There are a number of instances where combustion of a limited amount of certain wastes with minimal potential pollutant content does not warrant the need for a solid waste management facility permit. Limited amounts of certain waste streams such as waste tires, unadulterated wood and used cooking oil or yellow grease, if managed on-site under specific conditions, should be allowed regulatory relief from full permitting under new Subpart 362-1. Regardless of the regulation under Part 362, all combustion units must comply with the applicable Division of Air Resources regulations.

Accordingly, a registration mechanism was created for these waste streams to more appropriately regulate the combustion of these wastes.

<u>Alternatives considered:</u> Full permitting of combustion of all wastes was considered but, understanding that the Division of Air Resources regulates emissions from these activities, it was determined that additional permitting under these regulations would be overly restrictive. Treating fuel use under BUD provisions of the regulations was considered but rejected as being inconsistent with the intent of the BUD program, and all combustion-related wastes and activities were included in new Subpart 362-1.

<u>Environmental Impact</u>: The addition of this provision gives the Department additional oversight to ensure that these activities do not result in spills and fires and their associated negative impacts.

<u>Issue:</u> Municipal solid waste combustor ash residue testing requirements need to be revised to reflect the current practice in the industry. Current regulations require that combustor ash residue be analyzed for unburned waste, referred to as volatile matter, and that volatile matter be limited to less than 10% of the ash residue stream. The Department's Division of Air Resources regulations are sufficient to control combustion efficiency. Combustor operators are expected to continue to seek to maximize combustion efficiency in order to minimize ash residue disposal costs. Current regulations require semi-annual testing of residue ash for leaching potential and total metals content. This frequency of testing has been routinely reduced through variance approvals by the Department.

<u>Proposed revision:</u> The proposed revisions remove the requirement to test for volatile matter in combustor ash residue. Additionally, the proposed revisions allow for the reduction in testing frequency of combustor ash residue, but require confirmation testing to be performed no less than once every 5 years. <u>Discussion:</u> The removal of the volatile matter test will eliminate an unnecessary and burdensome requirement. The inclusion of an explicit allowance for reduced testing frequency will reduce the regulatory burden on combustors while establishing a regular confirmation test to ensure that residues have not changed significantly.

<u>Alternatives considered:</u> Omitting the 5-year confirmatory ash testing requirement was considered but rejected in order to account for changes in waste stream content over time.

Environmental Impact: None

<u>Issue:</u> A list of source-separated waste streams which are restricted from being processed at a combustion or thermal treatment facility should be added to the regulations to reflect recycling and product stewardship efforts.

<u>Proposed revision:</u> The regulations add a list of source-separated materials that cannot be processed at a combustor or thermal treatment facility. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other recyclable items that are subject to legislatively enacted product stewardship programs.

<u>Discussion</u>: Materials which have been diverted from the MSW stream for reuse, recovery or other proper management should not be returned to the waste stream for combustion.

<u>Alternatives considered:</u> Broad restriction of these source-separated waste streams from processing at any solid waste management facility was considered and rejected as being too restrictive.

<u>Environmental Impact</u>: This provision will ensure that materials not suited for thermal treatment are prohibited from acceptance, thereby increasing recycling of these materials. This will reduce potential air pollutants and improve ash quality.

<u>Issue:</u> The existing regulations prohibit certain radioactive waste from being treated at a combustion facility. However, there is no current requirement for installation and operation of fixed radiation detectors to be installed at these facilities.

<u>Proposed revision</u>: The proposed revisions require municipal waste combustors and thermal treatment facilities that process MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g may not be accepted at the facility. No regulated radioactive wastes, including naturally occurring radioactive material (NORM) which has been processed and concentrated (i.e., technologically enhanced naturally occurring radioactive materials or TENORM) may be accepted at the facility.

<u>Discussion</u>: Radiation detectors will ensure that radioactive waste is detected and evaluated prior to acceptance at a combustion facility.

<u>Alternatives considered:</u> Continuing with only administrative prohibition of radioactive waste was considered but rejected.

<u>Environmental Impact</u>: The addition of monitoring equipment for the detection of radioactive waste at combustion facilities will result in a positive environmental impact by ensuring that these wastes are not processed at these facilities.

<u>Issue:</u> The current regulations incorporate requirements for submission of information related to non-waste portions of the municipal waste combustion system, such as steaming rates, to be included as part of a solid waste permit application.

<u>Proposed revision</u>: The proposed revisions remove non-waste-related elements from permit application requirements.

<u>Discussion</u>: These changes streamline the regulations to focus on waste-related issues at the combustion facility.

Alternatives considered: None.

Environmental Impact: None

<u>Issue:</u> Definitions related to combustion should be revisited to better clarify their meaning.

<u>Proposed revision:</u> Under current regulations, 'nonprocessible waste' is defined as waste that cannot be incinerated due to legal, technical, or environmental limitations. The proposed revisions replace this term with the term 'excluded waste.' Also, the term 'untreatable waste' is redefined to describe waste that cannot be physically treated by a combustion system due to its size or composition, and the term 'bypass waste' is added to describe material that is destined for treatment but cannot be treated due to facility downtime or capacity issues.

<u>Discussion</u>: These definitions more clearly identify the various types of waste streams that are dealt with at combustion facilities.

Alternatives considered: None.

Environmental Impact: None

Subpart 362-2 Municipal Solid Waste Processing Facilities

<u>Issue:</u> Municipal Solid Waste Processing Facilities include both RDF processing facilities and post-collection recyclables recovery facilities. These facilities process MSW in order to recover recyclables or to convert the waste into a municipal waste combustor feedstock. Currently there are no RDF processing facilities or post-collection recyclables recovery facilities operating in the State.

<u>Proposed revision:</u> The proposed revisions create a new subpart for RDF processing facilities and post-collection recyclables recovery facilities. The proposed revisions require MSW processing facilities to install and utilize fixed radiation detectors to monitor all incoming waste loads. The proposed regulations for MSW processing facilities restrict several source-separated waste streams from being processed at these facilities. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated recyclable batteries, source-separated mercury-containing products, and other recyclable items that are subject to legislatively enacted product stewardship programs. These materials have been diverted from the MSW stream for reuse, recovery or other proper management and should not be returned to the waste stream.

<u>Discussion:</u> The revision addresses two similar facility types, post-collection processing facilities and RDF processing facilities, in the same subpart of the regulations. The change will provide consistency in program implementation as new facilities are permitted and begin operation.

Alternatives considered: None.

<u>Environmental Impact</u>: The proposed revisions will ensure that these facilities are producing material which can be combusted without potential concerns related to radioactive substances or other problematic pollutants.

Subpart 362-3 Transfer Facilities

<u>Issue:</u> Current Part 360 exemptions for transfer facilities need to be revisited to address current practices in the industry.

<u>Proposed revision:</u> The proposed revisions provide relief from current regulations by expanding exemptions for three specific transfer facility types, including vehicle to vehicle transfer, small municipally-owned transfer facilities, and small sourceseparated organic waste transfer facilities. All permitted transfer facilities that transport waste out-of-state will also be required to install and utilize fixed radiation detectors to monitor all incoming waste loads. Additionally, sourceseparated recyclables, source-separated household hazardous waste, sourceseparated electronics, source-separated rechargeable batteries, sourceseparated mercury-containing products, and other recyclable items that are subject to legislatively enacted product stewardship programs accepted at a transfer facility will not be allowed to be transferred to a combustor, thermal treatment facility, or landfill.

<u>Discussion:</u> Small-scale collection of food scraps and other organic wastes increases the ability of the public to recycle household organic waste. Therefore, in order to ease the authorization process, it was made subject to registration rather than permitting requirements. Materials which have been diverted from the MSW stream for reuse, recovery or other proper management should not be returned to the waste stream for combustion.

<u>Alternatives considered:</u> The Department considered requiring all permitted transfer facilities to install and utilize fixed radiation detectors. However, since the fixed radiation detectors are also being required to be installed at all MSW landfills and municipal waste combustors in the State, it was determined that it would not be necessary to require detectors at transfer facilities that were sending all their waste to in-state facilities. Registration of some types of privately owned transfer stations was considered but rejected in favor of permitted for any private transfer facilities. Fixed radiation detectors were considered for all permitted transfer stations, but this was rejected to avoid unnecessary duplication of monitoring.

<u>Environmental Impact:</u> These provisions will ensure that materials which should be diverted from the MSW stream are properly managed through recycling or other means. It also eliminates the issue of radioactive waste being transferred from transfer facilities to other solid waste management facilities for further processing or disposal.

Subpart 362-4 Household Hazardous Waste Collection Facilities and Events

<u>Issue:</u> Currently, household hazardous waste collection facilities and events are regulated as Part 360 non-specific facilities using the requirements of Subpart 373-4 though no permits are issued under Subpart 373-4.

<u>Proposed revision:</u> Existing Subpart 373-4 is proposed to be repealed and the requirements of that subpart will be incorporated into the new Subpart 362-4. Registration and permit criteria, operational requirements, and recordkeeping and reporting requirements are contained in this subpart.

<u>Discussion:</u> This revision moves regulatory requirements into the solid waste regulations and management program, where the waste is regulated and where the program is administered.

Alternatives considered: None.

Environmental Impact: None

<u>Issue:</u> Currently, household hazardous waste collection events require submittal of a collection day plan 60 days prior to each collection event and approval by the

Department prior to holding the event. This has created significant work for municipalities sponsoring events as well as Department staff for activities that have become quite routine and held multiple times a year by many municipalities across the State.

<u>Proposed revision:</u> The current individual collection event approval process in Part 360 will be replaced by a registration program.

<u>Discussion:</u> This revision will streamline the application and approval process for municipalities, especially for those that sponsor frequent and ongoing programs. <u>Alternatives considered:</u> The current collection day approval process was considered but a change is needed because it has evolved into a cumbersome process for both municipalities and the Department with little or no additional environmental protection. Requiring municipalities to seek full permits for all activities related to household hazardous waste collection was considered but rejected as overly restrictive and unnecessary. The registration process was determined to be a good fit for the circumstances to relieve some of the burden on management of household hazardous waste by municipalities through collection events.

Environmental Impact: None

PART 363 LANDFILLS

Subpart 363-2 Exempt Facilities

<u>Issue:</u> Exemptions related to disposal currently located in the general provisions of Part 360 should be relocated to Part 363, Landfills.

<u>Proposed revision</u>: Exemptions related to disposal have been moved into Section 363-2, Exempt Facilities. The exemption for on-site disposal by a homeowner has been modified to exclude manufactured homes that are not the owner's primary residence, friable asbestos-containing waste, pesticides, pesticide containers, waste tires, septage, raw sewage, used oil, mercury-added consumer products, e-waste and bio-hazard waste. Similarly, the proposed exemption for on-site disposal of solid waste generated by a farm will exclude the same materials identified above. The exemption for burial of animal mortalities at pet cemeteries has been modified to address the burial of animal cremains as well. Several new exemptions have been added, including disposal of overburden, tailings, and other similar mining waste when generation and disposal occur at the same mine location subject to regulation under 6 NYCRR Parts 421-425, and disposal facilities for the burial of religious items.

<u>Discussion:</u> Proposed revisions will ensure that facilities that pose no significant adverse environmental impact will be exempt from regulation under Part 360 and the waste streams managed at the exempt facilities will not consume capacity in registered and permitted solid waste management facilities. Revisions to existing exemptions which narrow an exemption, such as the on-site disposal exemption for homeowners, have been made to be more protective of the environment. <u>Alternatives considered:</u> The Department considered each of the current exemptions and whether or not each should be made more restrictive or more expansive. Also, the addition of new exemptions based on issues that have arisen in the past was considered. The proposal represents the results of that evaluation and determination of what exemptions are appropriate to represent facilities or activities that have little potential environmental impact. <u>Environmental Impact:</u> None

<u>Issue:</u> Current regulations exempt land clearing debris (LCD) disposal when the material originates on properties with the same ownership or control, and require registration rather than permitting for LCD landfills of less than 3 acres in size.

<u>Proposed revision:</u> The proposed revisions remove the current registration and exemption, and replace them with an exemption for facilities no more than one acre in size for the disposal of tree debris. This exemption will not be available inside Nassau and Suffolk counties.

<u>Discussion:</u> If the currently registered LCD landfills choose to continue operating under the proposed exemption at their current acceptance rate, the five largest of those LCD landfills by waste received would have approximately 3 to 6 years of capacity remaining. The other registered LCD landfills would have 15 years of capacity or more.

<u>Alternatives considered:</u> Registration of disposal facilities of any type or size was considered to be inappropriate and was rejected. Disposal, except for small-volume disposal of CARBS and tree debris, was determined to be best reserved to permitted facilities.

<u>Environmental Impact:</u> The proposed revision will eliminate high-volume disposal of wood wastes without proper oversight, a practice which has led to fire, odor, dust, and runoff impacts. The proposed revision will also encourage wood wastes to be directed toward recycling rather than disposal.

<u>Issue:</u> Current regulations exempt disposal of certain materials such as concrete, asphalt, rock, brick, soil, and glass, collectively known as CARBS. There are no volume or size restrictions associated with this exemption, and several DEC Regions, especially DEC Regions 1, 2 and 3, have experienced problems with large-volume exempt disposal sites which have adversely impacted surrounding communities. In addition, non-exempt wastes such as C&D debris processing facility residues have been found at exempt sites.

<u>Proposed revision:</u> The proposed revisions prohibit disposal of C&D debris processing residues at an exempt site, and restrict disposal at exempt sites to no more than 5000 cubic yards of CARBS. The exemption will not be available at all inside Nassau and Suffolk counties.

<u>Discussion</u>: This revision will reduce the potential adverse impacts of improper disposal on surrounding communities.

<u>Alternatives considered:</u> Various exemption threshold volumes were considered for this provision. The chosen volume was considered to be a reasonable volume for small-scale disposal, taking into account that the chosen waste stream is a material that is unlikely to adversely impact the environment in small volumes.

<u>Environmental Impact</u>: This provision will eliminate the potential negative environmental impacts caused by illegal disposal of CARBS, including fires, odors and dust.

Subpart 363-3 Inactive Disposal Facilities

<u>Issue:</u> Under current regulations, solid wastes excavated from inactive landfills as part of a construction project must be handled, relocated, and disposed by practices approved in writing by the Department. This language currently exists under exempt facility requirements.

<u>Proposed revision:</u> Inactive disposal facilities which are encroached upon or which exhibit environmental impacts are subject to the requirements of the current regulations, and the owners of these facilities must provide notice to the Department of intent to alter the facility end use or upon discovery of a disturbance or upon discovery of environmental impacts.

<u>Discussion</u>: The handling of solid wastes should only be performed in a manner which is protective of human health and the environment. These requirements will provide the Department oversight for the handling of solid wastes which have previously been disposed and will require action at disposal sites where environmental impacts are evident.

<u>Alternatives considered:</u> Many variations on these requirements were considered, including requiring registration for inactive facilities which are disturbed or encroached upon. The chosen requirements were determined to be most protective with the least regulatory burden.

Environmental Impact: None

Subpart 363-4 Permit Application Requirements

<u>Issue:</u> All solid waste management activities, including landfill operations, should be conducted in a manner that minimizes adverse impacts on the environment and that conserve and sustain natural resources.

<u>Proposed revision</u>: The proposed revisions require that a sustainability plan be included as a part of all landfill permit applications.

<u>Discussion</u>: The sustainability plan will require a description of operations that will conserve landfill airspace, reduce receipt of organic wastes, utilize alternative operating cover materials, enhance waste mass stabilization, include landfill reclamation techniques, and utilize other sustainable landfill management techniques. This plan must be updated and submitted to the Department at least every 3 years.

Alternatives considered: None.

<u>Environmental Impact</u>: The requirement for submission of a sustainability plan will increase recycling of organic waste and result in the conservation of natural resources.

Subpart 363-5 Siting Requirements

<u>Issue:</u> Current Subpart 360-2 describes the minimum siting criteria for the siting of a landfill. The subpart also describes the actions that must be taken in order to site a landfill in an area that does not meet all siting requirements. Under this scenario, the applicant must complete a site selection study which identifies a range of alternative sites, and describes the process used to select the proposed site. While this process may be useful for a municipality which has multiple available parcels from which to choose, a private applicant usually will find the process unworkable.

<u>Proposed revision:</u> The proposed regulations provide relief to applicants by removing the requirement for a site selection study while still maintaining minimum siting criteria for landfills.

<u>Discussion</u>: The siting criteria that are included in the proposed revisions are sufficient to ensure that a proposed site is appropriate for disposal of solid wastes and that potential impacts will be adequately addressed. It is unnecessary to require a comparison of various proposed sites.

<u>Alternatives considered:</u> Continuation of the site selection study requirements was considered and rejected.

Environmental Impact: None

Subpart 363-6 Design, Construction and Certification Requirements

<u>Issue:</u> Under current regulations, the quality of the landfill liner is evaluated after construction by measurement of the allowable leakage rate (ALR) into the secondary leachate collection system. ALRs below 20 gallons/acre/day are considered to be acceptable. However, since the development of the current regulations, technologies known as liner integrity testing have been developed which can pinpoint defects in geomembranes immediately after installation. These tests have been used successfully during the construction of many landfill cells in the State over the past decade.

<u>Proposed revision:</u> The proposed revisions require that liner integrity testing be conducted on both geomembrane liners of a double-composite liner system. <u>Discussion:</u> Most defects in landfill liner geomembranes are caused during construction activities. Liner integrity testing will help pinpoint defects before construction continues. This will reduce defects overall and will reduce the cost of defect repairs and overall reduce potential adverse impacts.

Alternatives considered: None.

<u>Environmental Impact:</u> The requirement for liner integrity testing on both geomembrane liners of a double-composite liner will ensure that all potential defects are located, thereby minimizing the potential for leakage through the liner and potential impacts to groundwater.

<u>Issue:</u> Current Part 360 construction requirements for a double-composite liner system allow the use of either 6 inches of compacted clay or a geosynthetic clay liner (GCL) in the construction of the primary composite liner system. However, compacting a primary clay layer is often difficult, time consuming and costly, and the clay layer can be less effective than a GCL.

<u>Proposed revision:</u> The proposed revisions will require that the primary composite liner be constructed of a GCL as a standard construction requirement.

<u>Discussion:</u> GCLs are expected to reduce costs and increase performance of landfill liner systems. This change will clarify that GCLs are required in liner construction.

<u>Alternatives considered:</u> GCLs are standard construction media in modern landfill designs. Allowing the continued use of clay was considered and rejected. <u>Environmental Impact:</u> The requirement for use of a GCL in the primary composite liner will minimize the potential for leakage through the liner and potential impacts to groundwater.

<u>Issue:</u> In order to assure that leaks in the primary composite liner are detected quickly, the secondary leachate collection and removal system must be designed with a high hydraulic conductivity which will transport leachate rapidly to the secondary leachate observation point.

<u>Proposed revision:</u> In order to ensure this rapid detection, the proposed revisions require that the secondary leachate collection and removal system be designed to a minimum capacity of 1000 gallons per acre per day.

<u>Discussion:</u> The requirement for a highly conductive secondary leachate collection and removal system will ensure rapid detection of leaks in the primary liner.

<u>Alternatives considered:</u> The design requirements of the existing regulations were considered and rejected.

<u>Environmental Impact</u>: This provision will result in rapid detection of any leaks in the primary liner thereby reducing potential impacts to groundwater.

<u>Issue:</u> Current regulations require that destructive testing of geomembrane liner seams be conducted at least every 500 feet of seam length.

<u>Proposed revision:</u> To reduce the cost associated with this testing, the proposed revisions reduce destructive testing requirements for geomembrane liner seams from one sample every 500 feet of seam length to one sample every 1000 feet of seam length.

<u>Discussion</u>: Improved installation techniques and equipment have significantly reduced the failure rate observed in these tests. The Department concludes that this change in testing frequency will still be protective of human health and the environment.

<u>Alternatives considered:</u> The testing requirement of the existing regulations were considered and rejected.

Environmental Impact: None

<u>Issue:</u> A 24-inch barrier protection layer is currently required immediately above the geocomposite liner of a landfill cover system. The Department has issued several variances to this requirement dependent on the type of vegetation chosen to be grown on the cover.

<u>Proposed revision:</u> The proposed revisions reduce the required thickness of the barrier protection layer of the final cover system from 24 inches to either 12 or 18 inches depending on the vegetation selected and its average root length.

<u>Discussion</u>: This reduction in barrier protection layer thickness is expected to reduce the cost of landfill cover construction while maintaining the effectiveness of the final cover system.

<u>Alternatives considered:</u> A standard 18-inch barrier protection layer was considered, but rejected because certain plant species exhibit shorter root length which would allow for layers as thin as 12 inches. Environmental Impact: None

<u>Issue:</u> Under current regulations, external slopes of final cover systems may not be constructed at slopes which exceed 33 percent. This requirement is intended to maintain the stability of the slope and reduce the chance for slope and cover failures. However, as waste degrades these slopes are often reduced to angles significantly below regulatory limits. This recovered airspace can be of significant value. Another current requirement is that final cover systems be installed within 210 days following the last receipt of waste in the landfill cell. Waste degradation and the associated airspace recovery may take much longer than 210 days to come to completion.

<u>Proposed revision:</u> In order to allow landfill operators to take advantage of the recovered airspace and avoid the cost to install and subsequently remove a final cover system to access that airspace, the proposed revisions allow the external slopes of a landfill cell to be constructed initially at a greater than 33 percent slope upon demonstration by the owner or operator of the stability of that slope, as long as slopes are not greater than 33 percent upon final closure of the landfill. In addition, the proposed regulations allow up to 5 years after a landfill cell has reached final grade before construction of the final cover system is required.

<u>Discussion:</u> These changes are expected to greatly increase the opportunity for the owner or operator of a landfill to use the full airspace of a given landfill cell. This added airspace will allow for a longer lifespan of the landfill and increased efficiency of existing landfill airspace, reducing the need for new landfills in the future.

<u>Alternatives considered:</u> Allowance of greater than 33 percent slopes upon final closure was considered, but rejected in order to help ensure that slopes remain stable during post-closure care and custodial care.

<u>Environmental Impact</u>: This provision should result in longer lifespans for landfills and increased efficiency of existing landfill airspace, thereby reducing the need for additional landfill space, which will reduce the amount of land used for disposal.

<u>Issue:</u> Long Island landfills are currently regulated differently from standard MSW landfills, in a different subpart of the regulations.

<u>Proposed revision:</u> The proposed revisions incorporate the specific requirements associated with Long Island landfills required by the ECL into the general landfill requirements found in proposed Part 363.

<u>Discussion</u>: These revisions do not change the requirements for Long Island landfills.

Alternatives considered: None.

Environmental Impact: None

Subpart 363-7 Hydrogeologic Investigation Requirements

<u>Issue:</u> The hydrogeologic investigation, sampling and monitoring requirements of the current regulations need to be adjusted to improve data gathering and analysis in a number of circumstances.

<u>Proposed revision and discussion:</u> Instead of the current requirement of an interwell statistical database, the proposed revisions will allow both an interwell subset and intrawell subset, as warranted. While the interwell method compares data from a given groundwater well against a statistical database composed of data from upgradient wells, the intrawell method compares each well's data against a database composed of its own historical data. This change will result in more representative and accurate operational monitoring. The proposed revisions will also allow a landfill owner or operator to demonstrate that a significant increase in groundwater monitoring data is not attributable to a problem with the landfill by allowing collection of verification samples and a demonstration to be included in quarterly monitoring reports. In practice, false positives are a regular occurrence at most landfills due to temporal or spatial variability, or changes in groundwater quality related to site operations unrelated to waste disposal. The revision will streamline the demonstration process for these situations.

Current language requires parameter concentrations at or below existing groundwater quality values to return from contingency monitoring, which requires increased numbers of samples and analytical parameters to track exceedances, to more standard operational monitoring. Since existing water quality is by definition an average, this is not practical. The proposed revisions will instead require that parameter concentrations be below applicable trigger values for two consecutive sampling events in order for a landfill to return from contingency monitoring to operational monitoring.

The proposed revisions will require quarterly analyses for baseline parameters in secondary leachate collection systems rather than semi-annual analyses. A better definition of secondary leachate character will allow the source of ALR exceedances to be more effectively evaluated, and will allow better comparisons between any apparent groundwater impacts and secondary leachate character. The proposed revisions will allow semi-annual sampling of monitoring wells and other sampling points for baseline parameters. This is a reduction of the current requirement of quarterly sampling with one round of baseline parameters and three rounds of routine parameters, upon approval by the Department after five years of acceptable quarterly monitoring data which has proven to be warranted based on the Department's evaluation of monitoring results.

The proposed revisions will allow baseline sampling to be conducted at the same time each year instead of the current requirement that baseline sampling rotate from quarter to quarter. This change will reduce seasonal variability in the baseline results and will allow for better year-to-year comparisons. The proposed revisions will include arsenic as an analytical parameter on the baseline parameters list. Arsenic is one of the most commonly identified components of contamination plumes at MSW landfills and is of particular concern. Inclusion in the baseline parameters list will be more protective of human health and the environment.

The proposed revisions will change statistical methods for calculating groundwater monitoring trigger values in order to more effectively accommodate non-normally distributed data. The change will provide a more statistically valid method of dealing with non-detects and will reduce excessively large standard deviations and unrealistically high trigger values.

<u>Alternatives considered:</u> The only alternative considered was no action which was determined to be inappropriate since in most instances they reduce requirements that are not necessary and in a few instances update the requirements where additional safeguard to the environment is warranted, based on over 20 years of experience in implementing the regulations.

Environmental Impact: None

Subpart 363-8 Operating Requirements

<u>Issue:</u> Current regulations allow the use of surface impoundments for the management of landfill leachate.

<u>Proposed revision:</u> The proposed revisions require aboveground or on-ground leachate storage tanks to be used at any new landfills or subsequent development at existing landfills. Existing surface impoundments may continue to be used.

<u>Discussion:</u> Though most surface impoundments appear to perform satisfactorily, it is difficult to identify leaks that may develop. Aboveground or onground storage tanks allow greater scrutiny of the integrity of the storage vessel. <u>Alternatives considered:</u> Requiring the replacement of existing surface impoundments with leachate storage tanks was considered and rejected. <u>Environmental Impact:</u> The elimination of surface impoundments for the storage of landfill leachate should reduce the potential for groundwater impacts from leaking storage impoundments.

<u>Issue:</u> Thresholds for alternative daily cover material acceptance need to be established in regulation.

<u>Proposed revision:</u> In order to minimize the misuse of alternative daily cover provisions by landfill operators that accept far greater amounts of waste than envisioned under their permit, the proposed revisions require that alterative operating cover used in excess of 20 percent of the landfill's annual tonnage be counted toward the facility's annual tonnage established in their permit. <u>Discussion:</u> Cover material is required to be applied to the working face of a landfill cell at the end of each working day in order to minimize odors, vector impacts, fire potential, and blowing litter. Current regulations allow waste materials such as petroleum-contaminated soil, municipal waste combustor ash, automobile shredder residue or C&D debris processing residues to be used as

alternative daily cover materials. Although landfill owners or operators often charge tipping fees for acceptance of these materials, they have not been counted against a landfill's daily or annual waste acceptance limit established through permit because they are used in place of raw materials such as virgin sand. While the vast majority of the MSW landfills are currently within the proposed 20% threshold, there have been some significant anomalies. This requirement will restrict the practice to industry standards and practice and will ensure the waste acceptance rates in the permits are followed.

<u>Alternatives considered:</u> Allowing greater percentages was considered, but limits greater than 20 percent were determined to be inappropriate and inconsistent with industry standards and practice.

Environmental Impact: None

<u>Issue:</u> Landfill leachate collection and removal systems may clog during normal facility operations.

<u>Proposed revision:</u> In order to ensure that the primary and secondary leachate collection and removal systems remain in a free-flowing condition, the proposed revisions require annual cleaning of the primary leachate collection and removal system, and biennial video inspection of any primary or secondary leachate collection and removal system constructed in accordance with Part 363. <u>Discussion:</u> These are activities that will properly maintain leachate collection systems and promote proper drainage and overall landfill liner performance. <u>Alternatives considered:</u> None.

Environmental Impact: This provision will ensure that leachate collection and removal systems are properly functioning, thereby reducing the potential for groundwater impacts.

<u>Issue:</u> While existing regulations prohibit certain radioactive waste from being disposed of at a landfill, there are no specific operating requirements to monitor incoming loads for radioactivity.

<u>Proposed revision:</u> The proposed revisions require all landfills that accept MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. <u>Discussion:</u> Operating requirements associated with the fixed radiation detectors include concentration limits for the acceptance of naturally occurring radioactive material (NORM), daily background radiation readings, weekly field checks utilizing a known radiation source, annual detector calibration and staff training, required investigation alarm setpoint levels, and documentation requirements. <u>Alternatives considered:</u> The department considered maintaining the current regulatory language that restricted disposal of regulated radioactive waste. However, given the availability and relatively small expense of radiation detection equipment, it was determined that use of radiation detectors was a prudent requirement.

<u>Environmental Impact</u>: The addition of monitoring equipment for the detection of radioactive waste at landfills will result in a positive environmental impact by ensuring that these wastes are not disposed at these facilities.

<u>Issue:</u> Disposal of source-separated recyclables should be specifically prohibited in landfills.

<u>Proposed revision:</u> The proposed regulations restrict several source-separated waste streams from being disposed in a landfill. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other recyclable items that are subject to legislatively enacted product stewardship programs. These materials have been diverted from the MSW stream for reuse, recovery or other proper management and should not be returned to the waste stream for disposal. In addition, the proposed revisions prohibit the disposal of mercury-added consumer products and any other products or materials that are prohibited by law from disposal.

<u>Discussion:</u> Materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for disposal in landfills. <u>Alternatives considered:</u> Prohibition of source-separated recyclables was considered for all solid waste management facilities, but was restricted to particular facilities including landfills.

<u>Environmental Impact</u>: This provision will promote recycling of source separated recyclables and extend landfill life.

<u>Issue:</u> Under the current solid waste regulations, landfill gas, which contains significant percentages of methane, is allowed to be passively emitted from landfills without treatment. Division of Air Resources regulations limit gas emissions from landfills but are not applicable to the smaller MSW landfills in the State. A Commissioner's Policy requires reduction of greenhouse gas emissions, including methane, by integrating climate change mitigation into all program areas.

<u>Proposed revision:</u> The proposed revisions require active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills.

<u>Discussion:</u> The generation of odors is inherent in solid waste disposal and landfill management. Current solid waste management facility regulations require odors from landfills to be controlled but do not specify any specific mechanism to accomplish that control. The most effective means of comprehensive odor management is active gas collection and destruction, and landfill cells designed and constructed to collect landfill gas are more efficient in collecting landfill gas than those retrofitted after construction. Requiring installation of active gas collection on all active landfill cells improves gas collection efficiencies and minimizes odor impacts. Active collection and destruction of landfill gas is no longer considered cutting edge, but instead is standard practice for a modern landfill. This is supported by the fact that 22 of 26 MSW landfills accepting biodegradable waste in New York State currently conduct active collection and destruction of landfill gas. It is likely that only two MSW landfills in the state would be required to change their operations under the proposed requirement. (Of the two remaining landfills, one does not accept organic wastes and the other is expected to close without further expansion). In addition to reducing greenhouse gas emissions, the proposed revision is intended to reflect the state of the art in the landfill industry by establishing the expectation that landfill gas will be collected and destroyed. <u>Alternatives considered:</u> The Department considered several alternatives to the proposed regulation. Continuing the current requirements of passive gas venting was not pursued, given that the vast majority of active landfills in the state already perform some variety of active gas collection and destruction. Another alternative included requiring active gas collection at all closed cells at active landfills. This requirement would reduce even further the greenhouse gas footprint associated with landfills, but it was rejected in favor of requiring collection at active cells or subsequently constructed cells given the cost associated with adding gas collection equipment on the closed cells, and given that active gas collection systems function most efficiently if they are included in the design and the construction of the landfill cell.

<u>Environmental Impact</u>: Requiring active gas collection at landfills reduces methane gas emissions which minimizes greenhouse gas effects.

Subpart 363-10 Closure Activities

<u>Issue:</u> Under the current regulations, landfills are required to conduct post-closure care monitoring and maintenance after landfill closure, including leachate collection and treatment, gas monitoring, and groundwater monitoring for a minimum of 30 years until the landfill is no longer capable of adversely impacting the environment. Some landfill owners have misinterpreted this requirement to mean that the post-closure period ends 30 years from the date of closure.

Proposed revision: The proposed revisions include new language to clarify the responsibilities of landfill owners after landfill closure by introducing the concept of landfill custodial care. Under the proposed revisions, post-closure care activities including leachate collection and treatment; landfill cover inspection, maintenance and repair; and regular landfill gas, groundwater, and surface water monitoring must be conducted until the owner or operator can demonstrate to the Department that the landfill's threat to public health or the environment has been reduced to a level where environmental monitoring and maintenance can be reduced. At that point, custodial care activities including: landfill cap and vegetative cover maintenance; sampling of groundwater, surface water, and leachate at least every five years; maintenance of landfill gas venting system; and periodic inspections must commence and continue while waste remains onsite. In keeping with these requirements, the facility manual for a landfill will include a requirement for a custodial care plan. Throughout both the postclosure and custodial care periods, the owner or operator must maintain financial assurance to ensure that post-closure and custodial care activities will continue. Discussion: The proposal will ensure that landfills will not become a threat to public health or the environment during post-closure and custodial care.

<u>Alternatives considered:</u> Variations on custodial care operating requirements such as verification sampling frequency and reporting requirements were considered.

<u>Environmental Impact</u>: These provisions will ensure that landfills will not pose a threat to groundwater over the post-closure and custodial care period.

PART 364 WASTE TRANSPORTERS

<u>Issue:</u> Part 364 governs the transportation of regulated waste such as industrialcommercial waste and other select waste streams. The regulations have not been comprehensively revised in over 25 years and revision will help clarify what wastes require a permit to transport and will allow better tracking of some waste streams that have been problematic.

<u>Proposed revision:</u> The exemptions for small loads will be increased from 500 pounds to 2000 pounds. For the first time, Part 364 will include registration criteria in addition to its permitting requirements. The registration criteria will apply to the self-transport of regulated medical waste in quantities less than 50 pounds per month; the transport of less than 50 pounds of source-separated household hazardous waste; the transport of commercial solid waste in quantities greater than 2000 pounds; the transport of commercially generated C&D debris or historic fill in quantities greater than 10 cubic yards, and the transport of sharps from a household medical waste collection facility. For commercial solid waste and C&D debris, this will be the first time the transport of these waste streams will be subject to Part 364. The revisions to Part 364 will also include requirements for waste tracking forms for C&D debris, drilling and production waste, and historic fill. In addition, the regulated medical waste (RMW) generator standards have been removed from this Part and are now incorporated in Part 365 Biohazard Waste Management Facilities.

<u>Discussion:</u> Part 364 needs to be revised to recognize the limited potential impact from small loads of solid waste. The exemption for small loads has been increased from 500 pounds to 2000 pounds. There is also a need to track certain waste materials that have not previously been permitted or tracked under Part 364. Because a permit and associated fees are too burdensome for these waste streams, registration provisions have been added to Part 364. These registration provisions will govern limited amounts of RMW, household hazardous waste, more than one ton of commercial solid waste, and more than 10 cubic yards of C&D debris or historic fill. To help ensure proper management and prevent illegal disposal, Part 364 has also been enhanced to require tracking of RMW or other biohazard waste, C&D debris, drilling and production waste, and historic fill.

<u>Alternatives considered:</u> The types of wastes regulated by the transporter regulations are specified in the ECL. The alternatives evaluated relate to the quantities of regulated waste that should qualify for exemption, registration, or permit. The alternative of retaining the small load exemption at 500 pounds was evaluated but rejected because up to 2000 pounds can be carried in a pickup truck, which poses limited potential concern. For some waste, such as C&D

debris, the evaluation of the appropriate mechanism for regulation led to the development of registration criteria in Part 364.

Environmental Impact: New tracking requirements for certain commercial waste transporters will reduce the potential for illegal disposal of waste.

PART 365 BIOHAZARD WASTE MANAGEMENT FACILITIES

Subpart 365-1 General

Issue: There are approximately 36,000 generators of RMW in New York State that produce 250,000 tons each year. Generators include healthcare facilities such as nursing homes, hospitals, and clinical laboratories, blood establishments (those that collect, manufacture, store, or process blood and blood products), colleges and universities, veterinarian and dental offices, funeral homes, research laboratories, and pharmaceutical and biotechnology facilities. In accordance with state laws and regulations, the New York State Department of Health (DOH) and the Department jointly administer New York State's RMW Program. In accordance with Parts 360 and 364, the Department has oversight authority for: all storage, treatment and destruction processes located at facilities not under DOH jurisdiction; all off-site storage, transfer, treatment and disposal facilities; off-site transport of RMW; tracking of RMW; and response to illegal disposal incidents. Most RMW is treated at a facility that is not located at the site of generation. In accordance with both federal and state requirements, untreated RMW must be appropriately packaged and labeled prior to transport. Treated RMW may be disposed at a landfill or combustor authorized to accept the waste. Additionally, under the current regulations in Part 360, the treatment and management criteria apply only to RMW, as defined by statute. There are other waste streams (e.g., trauma scene waste, bioterrorism waste, etc.) that pose similar concerns due to biological contamination. These regulations need to be updated to reflect changes in federal and state regulations.

Proposed revision and discussion: The proposed revision updates and enhances the existing requirements in the form of a single set of regulations entitled "Biohazard Waste Management Facilities". Under the current regulations in Part 360, the treatment and management criteria apply only to RMW, as defined by statute. There are other waste streams (e.g., trauma scene waste, bioterrorism waste, etc.) that pose similar concerns due to biological contamination. The term "biohazard waste" has been developed to clarify that all wastes must be appropriately managed, not just RMW. Many new definitions and exclusions have been added to identify, classify and enhance an understanding of the biohazard waste stream based on the potential risk to human health or the environment as well as new RMW treatment technologies and associated treatment standards. Requirements for on-site storage, use of both primary and secondary containers and management procedures have been upgraded to ensure that RMW or RMW mixed with or containing hazardous waste; pharmaceutical waste; and radioisotopes resulting from medical procedures are separated and accurately labeled. The revisions underscore the generator's responsibility to document standard operating procedures for

management of RMW or other biohazard waste generated and treated on-site or transported for off-site treatment. Descriptive limitations are proposed for waste management activities involving segregation of wastes that require incineration from those that are suitable for treatment and those that can be landfilled. The proposal also rescinds the requirement for submission of an annual report to the Department describing the quantity of RMW produced by each generator. Alternatives considered: The overarching alternative considered was to limit the regulation to the current definition of RMW. The current definition of RMW is specific to treatment and research and does not address other waste streams with similar biological threats, such as trauma scene waste or bioterrorism waste. Therefore, the alternative to continue with the limited RMW definition was rejected. Within the proposed regulations there were many alternatives considered regarding storage standards and treatment criteria (such as number of bioindicators used for treatment verification). The criteria proposed were based on extensive discussions with DOH and other experts in the field. Environmental Impact: The new provisions will ensure that in the instance of a biohazard incident, all waste that could contain infectious agents will be properly managed and disposed.

Subpart 365-2 Regulated Medical Waste Management Facilities

Issue: Thirteen commercial RMW transfer and treatment facilities, several on-site treatment operations and approximately 112 waste transporters are currently permitted by the Department to handle RMW. In addition, thirteen radiopharmacies are permitted to store low-level radio pharmaceuticals that are also considered RMW. Once low-level radio pharmaceutical waste decays to background levels at the storage facility, it may be safely managed as an RMW. Since 1995, RMW generators and solid waste management facility installations have relied on regulations, and supplemental guidance documents issued by the Department and DOH to inform affected facilities as to the Department's interpretation of changes brought about by Chapter 438 of the Laws of 1993 which amended both the Public Health Law (PHL) and ECL to revise definitions for RMW, standards for infectious agents and waste treatment, and waste container labeling requirements. The regulations need to be revised to incorporate these amendments.

<u>Proposed revision:</u> The proposed revisions ensure that the Department requirements are consistent with the changes to PHL and ECL, the DOH 2006 amendments to 10 NYCRR Part 70, and consideration of regulatory changes brought about by federal legislation pertaining to high risk waste; medical device recovery, reprocessing and recycling; and waste packaging, labeling and transportation. Small quantity generators of less than 220 pounds per month, radiopharmacies which are currently required to have a Part 360 permit, and onsite treatment facilities of less than 50 pounds per month employing single use container treatment systems will be required to have a registration rather than a permit. Proposed amendments for commercial facility installations include waste pre-acceptance procedures that include waste audits, quality assurance of treatment efficacy and emissions monitoring as necessary. The proposal allows

for residence time, temperature or pressure parameters beyond the parameters codified in current regulations, provided the user facility demonstrates to the Department the effectiveness of treatment. The amendment further clarifies that time/temperature indicators must be used in treatment devices at all times and requires the use of operation and treatment logs for each treatment device. The proposal also eliminates the requirement for submission of quarterly reports for permitted facilities requiring only an annual report.

<u>Discussion:</u> Proposed revisions will assist regulated entities who manage RMW by incorporating requirements of law and guidance into the regulations. <u>Alternatives considered:</u> The proposed revisions update the technical standards that apply to the treatment and management of RMW. These updates are needed for consistency with DOH standards and currently practices. No other alternatives were considered.

Environmental Impact: None

Subpart 365-3 Household Medical Waste Sharps Collection Facilities

<u>Issue:</u> Approximately three million RMW sharps (needles, etc.) are generated in private residences each day in New York State. These sharps are currently exempt from Part 360 regulations and have historically been disposed as solid waste in landfills and municipal waste combustors. These disposal practices pose a potential risk to solid waste industry personnel who handle the waste, public health and the environment if improperly managed. In response to those concerns, some pharmacies and other entities have sponsored separate collection sites specifically for sharps collection. Current regulations do not address these collection sites.

<u>Proposed revision:</u> The proposed revisions allow the use of collection kiosks located at sites registered with the DOH AIDS Institute and the Department under the Safe Sharps Collection Program.

<u>Discussion:</u> Currently there are approximately 125 kiosk collection sites located throughout the state. Also, New York State hospitals and nursing homes are required by law to accept home-generated sharps for disposal. The amendment clarifies appropriate measures and requirements for collection site activities. <u>Alternatives considered:</u> The alternatives to the current proposal would be to continue to allow the regulations to remain silent on the appropriate standards for these collection sites allowing them to operate unmonitored or require permitting of these collection sites. Remaining silent was determined inappropriate and requiring permits was determined to be an overly restrictive approach. Since these sites are increasing in popularity and are a good means to promote sharps collection provided standards are met, the registration provisions were formulated.

Environmental Impact: None

Subpart 365-4 Other Biohazard Waste Management Facilities <u>Issue:</u> Incidents of bioterrorism in NYC and other locations in the fall of 2001 involving preparations of *Bacillus anthracis* mailed to public and private institutions, as well as an accidental release of the agent in 2006 required extensive building decontamination at significant costs. Decisions had to be made about which sites required cleanup, what method to use, how to determine the effectiveness of the cleanup and how to handle, store, treat and dispose of tons of decontamination debris. In addition, the concerns associated with foreign animal disease outbreaks such as Foot and Mouth Disease that may involve numerous animal mortalities, contaminated food supply incidents and the recent Ebola incident have made it clear that available knowledge and current regulations would make it difficult to process contamination, and satisfy stakeholder and waste disposal concerns. Current Parts 360 and 364 requirements do not address these waste streams effectively.

<u>Proposed revision:</u> The amendment sets stringent but broad requirements for handling and treating biohazard waste from biohazard incidents and provides flexible standards on a case-by-case basis to streamline the waste storage, treatment, transport and disposal process.

<u>Discussion</u>: The proposed regulations address waste generated from emerging pathogens or to protect public health and the environment from events involving the potential release of pathogens associated with natural disasters, foreign animal diseases, pandemics or bioterrorism.

<u>Alternatives considered:</u> The Department determined that the alternative of continuing to handle incidents on a case-by-case basis was not prudent. During a biohazard incident, having criteria in place concerning the proper handling and management of the waste, is critical to environmental protection and returning the location to its previous state and safe conditions as rapidly as possible.

<u>Environmental Impact:</u> The addition of requirements for the management of biohazard incident waste will ensure that any waste containing infectious agents will be properly managed and disposed. <u>PART 366 LOCAL SOLID WASTE MANAGEMENT PLANNING</u>

<u>Issue:</u> LSWMP requirements are currently found in Subpart 15 of Part 360, and were promulgated in accordance with sections 27-0107 and 27-0109 of the ECL. Much of current Subpart 360-15, the first eight of twelve sections, addresses the former planning grant program which has long been concluded and are out-of-date. The plan contents section is also dated and currently incorporates by reference the current CRA requirements of 360-1.9(f). The cross-reference has led to confusion over the years as to the requirements for formatting. The Department's direction has been to directly incorporate the components of the CRA in the base LSWMP as opposed to a standalone document. Additionally, public involvement in the local planning process has been implemented inconsistently across the planning units due to the limited discussion and specific requirements.

<u>Proposed revision:</u> Part 366 will replace and revise the requirements for preparing and implementing Local Solid Waste Management Plans (LSWMPs). ECL 27-0109 outlines the process for administering the program for state assistance to planning units for the development of LSWMPs. In 1988, through the Solid Waste Management Act, the legislature appropriated \$7.5 million for a

grant program to assist local governments in developing solid waste management plans. These LSWMPs were expected to foster the implementation of the state solid waste management hierarchy and ensure environmentally sound and integrated programs that include robust waste reduction, reuse and recycling components. The department received 50 applications requesting a total of \$14.9 million, and was able to fund 36 projects before funds were exhausted in November 1992. Because no additional funds were ever appropriated, \$7.4 million in eligible applications were never funded. With this grant program inactive for 20 years, the state assistance portion of the existing planning regulations is no longer necessary and has been eliminated from Part 366.

ECL 27-0107 lays out the general requirements for LSWMPs, and directed the department to promulgate rules and regulations for implementation of section 27-0107. In developing Part 366, the department has made a concerted effort using the experience gained over the last 25 years in implementing the LSWMP program to update and streamline the requirements found in the current 360-15 to provide a more comprehensive, unified and logical, yet simplified format for LSWMP development and implementation. An example of this is the direct incorporation of the CRA requirements into all aspects and sections of the LSWMP allowing for easier preparation, understanding and implementation while continuing to satisfy all basic elements contained in the CRA. Part 366 will also replace the current updates, modifications and biennial compliance reports with an annual planning unit report, accompanied every other year with a biennial update. These updates will allow for evaluation and adjustment of the LSWMP, taking into account changes that will occur on a routine basis following initial approval. Part 366 also clarifies the process in which the public is to be involved in the preparation of an LSWMP to ensure consistent application across the state.

<u>Discussion:</u> The streamlining and reorganization of the LSWMP development and approval process is intended to make the preparation and implementation of LSWMPs less complicated for municipalities, yet at the same time assist them in reducing the amount of waste they are disposing and in increasing the percentages of recyclables removed from the waste stream. These changes are expected to make it easier for municipalities to understand the LSWMP requirements and develop and implement compliant plans.

<u>Alternatives considered:</u> Leaving the current regulations in place with only the requisite reference adjustments was considered but rejected due to the outdated nature of the current regulations and the confusing reporting requirements. The possibility of completely eliminating the CRA as a stand-alone document from the regulations was considered, thus requiring all municipalities to develop LSWMPs; however, it was decided to leave the existing CRA portion in Section 360.11 for those municipalities who choose not to develop an LSWMP or are unable to act as a planning unit.

Environmental Impact: None

PART 369 STATE ASSISTANCE PROJECTS

<u>Issue:</u> Current Part 369 sets forth the application, review, and contracting procedures for the state assistance grant programs for municipal waste reduction and recycling; current section 373-4.6 sets forth the application, review, and contracting procedures for the state assistance grant programs for municipal household hazardous waste collection and disposal; and current Subpart 360-9 sets forth the application, review, and contracting procedures for the state assistance grant program procedures for the state assistance grant programs for municipal landfill closure, with a program policy containing the guidance for the municipal landfill gas management program. The regulations and guidance documents for these programs are currently in disjointed locations with many application and contracting provisions out-of-date, making them difficult for municipalities to easily locate, understand and use.

<u>Proposed revision:</u> Proposed Part 369 combines regulations for all solid waste management-related state assistance programs in one location. This new subpart both updates and sets forth the application, review, and contracting procedures for each of the state assistance grant programs for municipal waste reduction and recycling, municipal household hazardous waste collection and disposal, municipal landfill closure, municipal landfill gas management, beverage container assistance, and new, innovative and/or targeted priority area municipal waste reduction and recycling projects pursuant to the requirements set forth in the ECL.

The proposed revisions include establishment of separate funding categories for capital waste reduction, recycling and household hazardous waste projects, waste reduction and recycling education and coordination projects, household hazardous waste collection and disposal. The capital funding category will continued to be managed through a waiting list program based on the order an application is received. An annual application process for education/coordination and household hazardous waste collection and disposal programs will be established to better assist municipalities to receive reimbursement for these recurring costs more quickly and on a routine basis and schedule.

The revisions also set forth a targeted priority area assistance program, such as organics projects or inter-municipal projects, which will allow the Department to help advance certain waste reduction and recycling activities and projects in the state. The proposed revisions will limit the awarding of state assistance grants to municipalities covered by an approved LSWMP or CRA to ensure consistency with the waste reduction and recycling plans, requirements and initiatives. The provisions for the landfill closure grant program have been revised to allow funding only for landfills that stopped receiving waste prior to April 9, 1997. Any landfill operating after this date has been required to have a completely funded surety mechanism in place to pay for closure and post-closure care. Provisions for landfill gas management projects were developed in regulation for the first time in a manner consistent with the currently administered program. Discussion: The regulations and guidance documents for these programs are currently in disjointed locations with many application and contracting provisions out-of-date making them difficult for municipalities to easily locate, understand and use. Relocating all of the solid waste management-related state assistance in a separate subpart will make their accessibility and use much easier.

Additionally, over the years of implementation of these programs, a number of changes have occurred with the basic administration of state assistance programs and contracts in the State that need to be reflected in the regulations. The need for funding of these programs by municipalities has continued to grow over the past 20 years as well and the available annual resources have decreased necessitating revision in the administration of the various programs in order to maximize available resources to the largest number of municipalities and priority project areas on an annual basis. Additionally, a change to the landfill closure program was needed to recognize the adjustment in landfill management regulation in 1993 requiring landfills that stopped receiving waste prior to April 9, 1997 have established financial assurance mechanisms in place to address all closure and post-closure costs.

<u>Alternatives considered:</u> The Department considered leaving the capital projects and the education and coordination projects grouped together in one application waiting list pool but rejected that alternative in favor of dividing those programs to address municipalities' requests to develop a structure that could more routinely and readily fund routine recurring municipal costs such as education, coordination and household hazardous waste collection. The Department considered the elimination of funding for landfill gas projects for any landfill operating after April 9, 1997 under the assumption that any landfill operating beyond that date already had an active gas collection system, or had the means through tip fees received to install such a system if needed. That alternative was rejected to ensure that all municipalities that still operate landfills had the opportunity to apply for assistance to install landfill gas management systems on their landfill regardless of their funding and planning circumstances. <u>Environmental Impact:</u> None

III. OTHER IMPACTS ASSOCIATED WITH THE ACTION

- A. Coastal Consistency
- 1. Development Policies

Five development policies are listed in 19 NYCRR 600, Section 600.5, pertaining to restoration and revitalization of existing waterfront facilities, siting of water-dependent uses and facilities, development and strengthening of both major and small ports, and locating development near adequate services.

The proposal would continue to allow most solid waste management facilities upon coastal floodplains, providing that adequate environmental protection measures have been taken. Thus, there is no change to existing regulations or policies regarding location of solid waste facilities in coastal floodplains. This could allow development of port facilities. This does not represent a change from the existing regulations, and the proposed regulatory change will have no major impact.

2. Fish and Wildlife Policies

Four fish and wildlife policies are discussed in 19 NYCRR Part 600 that address protection of habitat, expansion of recreational use and development of commercial fisheries.

The proposal would increase the level of protection at nearly all regulated solid waste management facilities. For those which are located at coastal areas, the ultimate impact of the proposal will be to provide additional protection of the resources. The overall impact, therefore, is one of enhanced environmental protection and consistency with the Fish and Wildlife coastal policies.

3. Agricultural Lands Policy

The intent of this policy is to help protect important agricultural lands in coastal areas. This rulemaking leaves unchanged any restrictions to development on agricultural lands. Therefore, there is no inconsistency with the agricultural lands policy.

4. Scenic Quality Policies

Two policies address preventing degradation to, or enhancing, the scenic quality of coastal areas. This proposal neither encourages nor discourages the development of solid waste management facilities in scenic coastal areas and does not change any existing law or regulations that would serve to protect the scenic quality of coastal areas. With the intense public scrutiny solid waste management facilities receive, development in a scenic area is highly unlikely without urgent, overriding public need. Therefore, there is no inconsistency with the scenic quality costal policies.

5. Public Access Policies

Two policies are listed to enhance or increase access to water-related recreation resources or facilities. The discussion in 4, Scenic Quality Policies, above, also applies to public access policies. The proposed changes would not change the existing law or regulations with regard to public access to water related resources or facilities.

6. Recreation Policies

Three policies address encouraging water-related recreation providing for multiple use in other coastal developments, and enhancing cultural facilities. The discussion in 4, Scenic Quality Polices, above, also applies to recreation policies. The proposal is consistent with the recreation policies.

7. Flooding and Erosion Hazard Policies

Six specific policies address flood and erosion control: Non-structural measures are encouraged. Excavation or mining in coastal waters should not cause erosion. Erosion control structures should be long term. Development should not negatively affect the flood and erosion control features of coastal areas (e.g., dunes), nor should it cause an increase in flooding or erosion.

The proposal contains no change to the provisions for construction of solid waste management facilities upon floodplains and wetlands with the exception of a siting prohibition for landfills. Therefore, the proposed regulations are consistent with the flooding and erosion hazard policies.

8. Water Resources Policies

Five policies are presented to protect water quality through alternate discharge of chemical or sanitary wastes.

Since the proposal has a goal of reducing the discharge of all pollutants from solid waste management facilities through proper management of solid waste, this is consistent with these policies. The overall impact therefore will be positive.

B. Unavoidable Adverse Environmental Effects

The proposal should not result in unavoidable adverse environmental effects since its goal is environmentally sound management of solid waste.

C. Mitigation Measures

Since no direct adverse environmental impacts have been identified, no mitigation measures are given.

D. Growth Inducement

The Department has not identified any potential for growth inducement as a result of this action. It is possible that the increase in organics recycling could lead to more facilities and employment.

E. Irreversible and Irretrievable Commitment of Resources

There are no known iirreversible and irretrievable commitment of resources

F. Use and Conservation of Energy

The regulations would have a positive impact on the use and conservation of energy since they promote the increased use of anaerobic digesters, which generate methane for conversion to energy (which may otherwise remain in the land fill or be vented as greenhouse gases). The energy generated can be used to run other operations at the facility (such as running the pumps at a wastewater treatment plant) or sold back to the electrical company. The energy produced can be used to offset energy use from out-of-state facilities.