

CONSOLIDATED REGULATORY IMPACT STATEMENT

To repeal existing:

- 6 NYCRR Part 360 Solid Waste Management 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 364 Waste Transporter Permits**
- 6 NYCRR Part 369 Municipal Reduction and Recycling Projects**
- 6 NYCRR Subpart 373-4 Facility Standards for the Collection of Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Small Quantity Generators**

To renumber:

- 6 NYCRR Part 361 Siting of Industrial Hazardous Waste Facilities as Part 377 Siting of Industrial Hazardous Waste Facilities**

To adopt new:

- 6 NYCRR Part 360 Solid Waste Management Facilities**
- 6 NYCRR Part 361 Material Recovery Facilities**
- 6 NYCRR Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities**
- 6 NYCRR Part 363 Landfills**
- 6 NYCRR Part 364 Waste Transporters**
- 6 NYCRR Part 365 Biohazard Waste Management Facilities**
- 6 NYCRR Part 366 Local Solid Waste Management Planning**
- 6 NYCRR Part 369 State Assistance Projects**

With minor amendments to:

- 6 NYCRR Part 621 Uniform Procedures**
- 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**

INTRODUCTION

The Department of Environmental Conservation (Department) is authorized to promulgate regulations to establish requirements for solid waste management in New York State pursuant to multiple statutes which provide general and specific authority. The proposed regulations govern the full range of activities associated with the handling and disposal of solid waste, and will address the funding of costs associated with solid waste management, the development of local solid waste management plans, the transportation of waste, and the design and operation of solid waste management facilities. Solid waste is generated by virtually all public and private entities, including individuals, households, institutions, and businesses. The Department's statutory authority associated with the proposed revisions to the solid waste management regulations is outlined in Section 1 below. Section 2 summarizes relevant legislative objectives, and Section 3 discusses the needs and benefits of the proposed regulations. An assessment of the potential costs associated with the proposed regulations is found in Section 4. Mandates on local government are described in Section 5, while Sections 6 through 8 address the paperwork requirements, whether the regulations duplicate other federal and state programs, and alternatives to the proposed rules. Finally, Sections 9 and 10 describe the applicability of any federal programs to the activities covered by the proposed regulations and the compliance schedule of the proposed rules for the regulated community.

This proposed rulemaking is a comprehensive revision to the Department's existing regulations. The existing regulations for solid waste management facilities are currently found in Part 360. A component of this proposed rulemaking is to subdivide the solid waste management facility regulations and group together regulations applicable to facilities that are similar in nature, such as facilities that recycle and recover materials. Therefore, the content found in the current Part 360 will now be distributed into seven different parts: Parts 360, 361, 362, 363, 365, 366 and 369. The types of facilities covered by each proposed part are described in more detail below and in the express terms themselves. In addition to the solid waste management facilities and activities currently regulated under Part 360, this proposed rulemaking includes revisions to regulations governing waste transportation (Part 364) and state assistance grants to municipalities related to solid waste management (Part 369).

In addition to the amendments to existing Parts 360, 364, and 369, this rulemaking will incorporate minor amendments to Parts 621, 362, 363, 370, 371, 372, 373 and 374 as outlined below:

- The proposed amendments to Part 621, Uniform Procedures, specifically address paragraph 621.4(m)(2), which sets forth a list of facilities are considered minor solid waste management facilities. This list has been revised to reflect 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 municipal solid waste landfill.

- Existing Parts 362 and 363 are antiquated state aid regulations which are no longer funded or needed and will be repealed and replaced with the proposed Parts 362 and 363.
- Due to the significant reorganization of the existing Part 360 into a series format, minor revisions addressing renumbering will be made to existing Parts 370-374 to ensure appropriate cross references.
- Proposed revisions to existing Part 360 also include removal of existing Subpart 360-14 regulatory criteria for used oil. The regulatory criteria and requirements for used oil will be contained solely in Subpart 374-2, Standards for the Management of Used Oil. Permits and registrations for used oil handling facilities will continue to be issued pursuant to Part 360. Used oil collection centers are currently subject to transfer facility regulation and Part 360 permitting. The proposed revisions to Subpart 374-2 would more closely follow EPA regulations in 40 CFR Part 279, and subject these entities to used oil generator standards and Part 360 registration. There are many benefits to this approach, especially for used oil generators located in rural areas of the state. It could increase the aggregation of used oil by small entities. However, there may be additional impacts on affected the communities due to increased traffic and concerns about used oil burning. Used oil collection centers, and the generators from which they receive used oil, would continue to comply with the used oil marketing requirements of 6 NYCRR Section 374-2.8 if the collection centers burn the used oil in used oil fired space heaters. Used oil collection centers would be subject to reporting requirements.
- 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 are regulated as 6 NYCRR Part 360 non-specific facilities (facilities that do not fit under any specific subpart) using the requirements of 6 NYCRR Subpart 373-4, though no permits are issued under Subpart 373-4. Under this rulemaking, 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.

In addition, existing Part 361, Siting of Industrial Hazardous Waste Facilities, will be renumbered as Part 377.

1. STATUTORY AUTHORITY

The Department's statutory authority to undertake amendments to Part 360 is found in Environmental Conservation Law Sections 1-0101, 3-0301, 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.

- ECL section 1-0101 declares a policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people and their overall economic and social well being.
- ECL Section 3-0301 empowers DEC to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in Section 1-0101.
- ECL Section 8-0113 gives the Department the authority to implement regulations to implement the State Environmental Quality Review Act (SEQRA). This rulemaking includes minor amendments to Part 621, the implementing regulations for SEQRA.
- Titles 3, 5, 7, and 8 of Article 17 give the Department authority to regulate the classification of water in the State and control discharge of pollutants to water. Discharges of leachate from solid waste management facilities must be conducted in accordance with the requirements set forth in Article 17.
- ECL Sections 19-0301, 19-0303 and 19-0306 gives the Department authority to regulate air emissions. Solid waste management facilities may have air emissions, such as landfills and combustors.
- Article 23, Title 23 of the ECL, in concert with Article 3 and 27 of the ECL, empowers the Department to promote resource recovery in the State, and specifically, to encourage the use of rerefined oil.
- ECL Section 23-2305 directs the Commissioner to "promulgate rules and regulations governing used oil collectors and rerefiners, in conformance with article twenty-seven of this chapter." In furtherance of this directive, the proposed rulemaking makes necessary changes to the Department's used oil regulations to conform the engineering, reporting and operational requirements applicable to used oil facilities to the solid waste regulatory program implemented pursuant to ECL Article 27.

- ECL Section 23-2307 specifically authorizes the Department to promulgate rules and regulations for the proper design and maintenance of a retention facility, as applied to both service and retail establishments. The proposed rules include application, reporting and design requirements for facilities subject to Title 23 of ECL Article 23.
- ECL article 27, title 1: Article 27 empowers the department to regulate the collection, treatment and disposal of solid waste and title one provides for solid and hazardous waste management policy and planning. Section 27-0101 states the purpose of article of 27 is, among other things, to encourage the development of economical projects for the past and future collection, treatment, and management of solid and hazardous waste in a manner that will assure full consideration of all aspects of planning for proper and effective solid and hazardous waste disposal, coordinated, so far as practicable with other related state, regional and local planning activities, and consistent with the protection of public health. It also states a further purpose to effect maximum resource recovery from solid waste on a cost-effective basis, with minimum environmental debit, energy-efficient materials recovery, prudent land use, maximum economic benefits and maximum effective private sector participation. Section 27-0103 designates the department as the official state agency with responsibility for preparing and updating the New York state solid waste management plan consistent with the state resource recovery policies declared in the New York state resource recovery policy act, and provides for biennial review and updates, and what amendments to the plan must include. Section 27-0105 provides the preferred statewide hazardous waste management practices hierarchy. Section 27-0106 establishes the state solid waste management policy and provides that this policy shall guide the solid waste management programs and decisions of the department and other state agencies and authorities. Section 27-0107 provides the purpose and scope of local solid waste management plans. Section 27-0109 provides for state assistance for local solid waste management plans.
- ECL article 27, title 3 empowers the department to regulate waste transporters and authorizes the department to issue waste transporter permits. Section 27-0301 provides that the intent and purpose of this title is 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. Section 27-0303 defines the key terms used in this title. Section 27-0305 provides, among other things, that, unless exempt, no person shall engage in the transportation of regulated waste originating or terminating at a location in this state without a permit, and sets forth who may be exempt, requirements for permit applications pursuant to this title, conditions for permits, annual renewals, and when the department may suspend or revoke permits. This

section also authorizes the department to adopt rules and regulations implementing this section. Section 27-0307 provides for notifications of waste transporter permit revocations.

- ECL article 27, title 4 contains provisions relating to the marketing of recyclable materials. Section 27-0401 defines secondary materials and provides for the department to assist in providing consumer education on the benefits of solid waste management practices and the need for waste reduction. Sections 27-0403 and 27-0405 provide the legislative intent of this title and specify what the state's local resource reuse and development program shall include.
- ECL article 27, title 5 contains provisions relating to state aid for implementation of resources recovery and improved solid waste management systems. Sections 27-0501 through Section 27-0509 include definitions of terms used in this title; authorize the commissioner to make or contract to make a state grant for the payment to any municipality not more than fifty percent of the eligible cost of collection system development programs, preparation of contract documents and implementation feasibility projects; delineate the powers and duties of the commissioner in administering and enforcing the provisions of this title, including the ability to promulgate rules and regulations to effectively carry out the provisions of this title; specify the powers of municipalities under this title; and provide for a technical assistance program.
- ECL article 27, title 7 authorizes the department to regulate solid waste management and resource recovery facilities. Section 27-0701 defines important terms used in this title. Section 27-0703 sets forth the powers and duties of the department with respect to solid waste management facilities, including the department's power to adopt rules and regulations governing the operation of solid waste management facilities. Section 27-0704 specifies special provisions for land burial and disposal in Nassau and Suffolk Counties. Section 27-0705 specifies that rules and regulations shall not be adopted until after public hearings are held, and provides when and how notice of hearings must be given and when regulations will become effective. Section 27-0706 sets forth closure requirements for certain landfills and recycling requirements for certain municipalities. Section 27-0707 sets forth requirements for permits for solid waste management facilities and states that rules and regulations adopted by the department to implement article 27, along with the provisions of article 70, shall govern permit applications, renewals, modification, suspensions, and revocations of solid waste management facilities. Section 27-0711 provides that local laws, ordinances and regulations that are not inconsistent with article 27, title 7 or any rule or regulation promulgated pursuant to such title, shall not be superseded by it. Section 27-0712 provides that all vehicles transporting solid waste, including barges, must be covered. Section 27-0715 dictates that the department must conduct a program of solid waste management technical

assistance to local governments, the private sector and individuals to enhance their capabilities to properly plan for and implement solid waste management programs consistent with the solid waste management policy set forth in Section 27-0106. Section 27-0717 provides for the establishment of a Bureau of Waste Reduction and Recycling at the department. Section 27-0719 sets forth definitions and requirements for proper battery management and disposal in the state.

- ECL article 27, title 9 entitled “Industrial Hazardous Waste Management” authorizes the department to regulate the management of hazardous waste in this state in a manner consistent with federal law. Sections 27-0900 through 27-0911 contain provisions regarding the applicability of this title; definitions; identification and listing of hazardous waste; a manifest system to monitor the transportation, storage, and disposal of hazardous waste; standards applicable to generators of hazardous waste; hazardous waste reduction plans; standards applicable to transporters of hazardous waste; standards applicable to marketers of hazardous waste fuel; and standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities. Sections 27-0912 through 27-0926 contain provisions relating to land disposal of hazardous waste; permits and registrations for storage, transportation, treatment, or disposal of hazardous wastes; unauthorized possession, disposal and dealing in hazardous wastes; inspections and general reporting; department authority for cleanups; financial requirements for hazardous waste facilities; closure and post-closure plans; proprietary information; reports; short-term management; prohibitions on the use of waste oil or used oil or other material that is contaminated or mixed with any hazardous waste; special assessments on hazardous wastes generated; a hazardous materials enforcement training program; local assessments on hazardous waste treatment, storage and disposal facilities; and the use and recycling of elemental mercury and dental amalgam by dentists.
- ECL article 27, title 10 contains provisions concerning litter and solid waste control, specifically with respect to beverage containers. Section 27-1001 sets forth legislative findings and Section 27-1003 defines terms used in this title, including the term “redemption center.” Sections 27-1005, 27-1007, 27-1009, and 27-1011 contain requirements for beverage containers sold in the state, specify requirements for the mandatory acceptance of redeemable beverage containers, and provides for the refusal of such beverage containers under certain circumstances. Sections 27-1013 and 27-1014 provide the department with authority to promulgate rules and regulations necessary and appropriate for the administration of title 10. Section 27-1015 sets forth penalties for violations of this title. Section 27-1016 states that the commissioner shall establish a public education program regarding implementation of title 10. Section 27-1018 provides for a beverage container assistance program and authorizes the commissioner to make state assistance payments for the costs of equipment,

real property, or structures related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of this title.

- ECL article 27, title 13 authorizes the department to regulate inactive hazardous waste disposal sites. Sections 27-1301 through 27-1313 define terms used in this title and provide requirements for identification of sites, a state registry of sites, access to records and sites, confidentiality, and remedial programs. Section 27-1315 authorizes the department to promulgate rules and regulations necessary and appropriate to carry out the purposes of title 13. Sections 27-1316 through 27-1323 contain provisions concerning citizen technical assistance grants; the new use of sites, institutional and engineering controls, the state superfund management board, protections against liability, and liability exemptions and defenses.
- ECL article 27, title 15, contains provisions concerning the storage, treatment, disposal and transportation of regulated medical waste. Section 27-1501 defines terms used in this title. Section 27-1503 states that the requirements of this title apply to any person engaged in the storage, containment, treatment, disposal or transfer of regulated medical waste off the site of the facility producing such waste and that this title and the rules promulgated pursuant to this title supersede all other state and local laws relating to the transportation of regulated medical waste. Section 27-1504 requires the department to promulgate regulations establishing a regulated medical waste tracking program. Sections 27-1505 through 27-1513 contain provisions relating to the storage and containment of regulated medical waste (RMW), the treatment and disposal of RMW, the transfer of RMW to off-site treatment and disposal facilities, standards applicable to generators of RMW, standards applicable to transporters of RMW, and requirements for RMW treatment, storage and disposal facilities. Section 27-1515 requires the department to promulgate rules and regulations in conformity with the standards for storage, containment, transportation and disposal of regulated medical waste and consistent with standards established by the department of health for decontamination and treatment of regulated medical waste pursuant to the provisions of title 15. Section 27-1517 states that in order to assure that permits under this title are not issued to or held by unqualified or unsuitable persons, the commissioner may deny, suspend, revoke or modify any permit, renewal or modification, upon written determination that such action is required to protect the public health and safety. Section 27-1519 requires the commissioner to cooperate with the commissioner of health to develop pilot projects to promote the safe handling, treatment and disposal of medical waste generated in private residences.
- ECL article 27, title 17 contains provisions concerning the collection and recycling of lead-acid batteries. Section 27-1701 defines terms used in this title,

provides legislative findings stating that improper disposal of lead-acid batteries is a direct threat to the health and safety of the citizens of the state, provides lead acid battery disposal prohibitions, and requirements for retailers, and distributors regarding the acceptance of lead acid batteries from consumers.

- ECL article 27, title 18 authorizes the department to regulate the recycling of rechargeable batteries. Section 27–1803 defines key terms in this article. Section 27–1805 prohibits any person from knowingly disposing of rechargeable batteries as solid waste at any time in the state. Section 27–1807 establishes a rechargeable battery recycling program and authorizes the department to promulgate any rules and regulations needed to implement this title. Section 27–1809 provides for enforcement of this title by the department and certain penalties to be assessed against violators. Section 27–1811 establishes that the state has exclusive jurisdiction in all matters pertaining to rechargeable battery recycling.
- ECL Article 27, title 19 provides for the management and recycling of waste tires in the state. Section 27-1901 defines key terms used in title 19. Section 27-1903 establishes the state’s policy on the management of waste tires and lists the waste tire management priorities of the state, which includes reducing the number of waste tires generated and remediating waste tire stockpiles in noncompliance. Section 27-1911 prohibits the disposal of waste tires in a landfill.
- ECL article 27, title 21 regulates mercury-added consumer products. Section 27–2101 defines terms used in in this title. Section 27–2103 specifies labeling requirements for mercury-added consumer products. Section 27–2105 prohibits the disposal of mercury-added consumer products in solid waste. Section 27–2107 contains several prohibitions on the sale and distribution of mercury-added products. Section 27–2109 calls for establishing an advisory committee on mercury pollution and Section 27-2115 authorizes the department to participate in the regional, multi-state clearinghouse. Section 27–2111 declares that the department shall promulgate and enforce any regulations necessary to implement to provisions of this title. Section 27–2113 exempts certain products from the requirements of this title. Section 27–2117 calls for the phase-out of mercury-added components in motor vehicles, but allows for a manufacturer to apply for an exemption.
- ECL article 27, title 23 (as added by chapter 180 of the laws of 2006) regulates vehicle dismantlers and vehicle dismantling facilities. Section 27-2301 defines terms used in this title 23. Section 27-2303 specifies requirements for vehicle dismantlers owning or controlling a facility for the dismantling of end of life vehicles.

- ECL article 27, title 23 (as added by chapter 730 of the laws of 2006) regulates the recycling of wireless telephones. Section 27–2301 defines terms used in this title; Section 27–2303 contains provisions for the collection of wireless telephones by wireless telephone service suppliers; Section 27–2305 provides that local laws or regulations governing the collection, return or recycling of wireless telephones are preempted.
- ECL article 27, title 25 governs the phase-out of creosote. Section 27–2501 defines terms used in this title. Section 27–2503 prohibits the manufacture, sale, and use of creosote in this state. Section 27–2505 prohibits the disposal of creosote and products treated with or containing creosote, except at a landfill permitted and approved by the department to accept this material, and Section 27–2507 prohibits the combustion of creosote, except in a facility permitted pursuant to article 27 and article 19 to burn the specific type of creosote waste. Section 27–2509 delineates the powers and duties of the commissioner under this title, including empowering the commissioner to adopt rules and regulations as deemed necessary for the implementation of this title. Section 27–2511 delineates the powers and duties of the department of this title, including the authority to administer and enforce this title and any rules and regulations adopted pursuant to this title. Section 27–2513 exempts certain entities, such as railroads, from the requirements of this title.
- ECL article 27, title 26 governs the recycling and reuse of electronic equipment or “e-waste.” Sections 27–2601 through 27-2609 define terms used in this title; provide requirements for manufacturers of e-waste to collect, handle and recycle e-waste and require recycling surcharges for those that do not meet their acceptance standards; delineate registration requirements and responsibilities for manufacturers of e-waste; provide requirements for retailers; and specify labeling requirements. Section 26-2611 bans the disposal of e-waste at a solid or hazardous waste management facility and prohibits the placing of e-waste out for collection that is intended for disposal.
- Section 27–2613 delineates requirements for e-waste collection, consolidation and recycling. Section 2702615 includes the department’s responsibilities under this title and authorizes the department to promulgate rules and regulations necessary to implement this title.
- Section 27–2617 list reporting requirements; Section 27–2619 preempts local laws and regulations on all matters pertaining to e-waste recycling; and Section 27–2621 requires all fees and charges collected pursuant to this title to be deposited into the environmental protection fund.
- ECL article 27, title 27 (as added by chapter 625 of the laws of 2008) governs drug management and disposal. Section 27–2701 defines terms used in this title

and Section 27–2703 requires the department, in consultation with the health department, to develop and implement a public information program on the proper disposal of drugs and to establish a notice containing information on the proper storage and disposal of drugs, which must be displayed in pharmacies.

- ECL article 27, title 27 (as added by chapter 641 of the laws of 2008) governs the reduction, reuse and recycling of plastic bags. Section 27–2701 defines terms used in this title. Sections 27-2703 through 27-2713 contain provisions concerning store operator responsibilities, recycling program requirements, responsibilities of plastic bag manufacturers, and responsibilities of the department. Section 27–2711 authorizes the department to promulgate any rules and regulations necessary to implement the provisions of this title. Section 27–2713 vests jurisdiction in all matters pertaining to plastic bag recycling vested exclusively in the state.
- ECL article 27, title 29 governs the collection and disposal of mercury thermostats. Section 27–2901 defines terms used in this title. Sections 27–2903, 27–2905, and 27–2907, respectively, contain requirements for thermostat manufacturers for the collection, transportation, recycling, disposal and proper management of out-of-service mercury thermostats; requirements for thermostat wholesalers and retailers; and the department’s responsibilities under this title. Section 27–2909 prohibits several activities, including prohibiting transporters from commingling mercury-added thermostats with solid waste or recyclable materials and from delivering these materials to an incinerator, landfill, transfer station or anyone that will commingle the materials.
- ECL Section 54-0103 lists the powers and duties of the commissioner of the Department of Environmental Conservation or the New York State Secretary of State under Article 54, the Environmental Protection Act, including the ability of the commissioner to, in the name of the state, enter into contracts with not-for-profit corporations, public benefit corporations, and private contractors for services contemplated by Article 54, and to perform any other and further act as may be necessary, proper or desirable to carry out the provisions of article 54.
- Article 54, Title 5: Section 54-0501 defines the terms used in title 5 relating to non-hazardous municipal landfill closure projects and municipal landfill gas management projects. Section 54-0503 provides eligibility criteria for municipalities to receive state assistance payments for municipal landfill closure projects. Section 54-0504 states which municipalities are eligible to receive state assistance payments for municipal landfill gas management projects and that applications for these projects must comply with all applicable regulations promulgated by the department. Section 54-0507 describes the state assistance application procedures and states that commissioner shall review project applications and may approve, disapprove or recommend modifications to the

application, consistent with applicable law, criteria, standards or rules and regulations relative to such projects. Section 54-0509 dictates requirements for contracts for state assistance payments for municipal landfill closure projects and municipal landfill gas management projects. Section 54-0511 describes which municipalities are eligible for loans for municipal landfill closure projects and municipal landfill gas management projects and requirements for such loans. Section 54-0513 declares the powers and duties of the commissioner in administering the provisions of title 5 of article 54. Section 54-0515 lists the powers and duties of a municipality under this title.

- Article 54, Title 7: Section 54-0701 defines the terms used in title 7 relating to municipal waste reduction or recycling projects. Section 54-0703 provides for commissioner approval of state assistance payments for municipal recycling or waste reduction projects, sets out criteria the commissioner will consider in reviewing applications, and provides for the maximum amount of such payments. Section 54-0705 dictates that the commissioner shall promulgate, in consultation with the director of the budget and the commissioner of economic development, rules and regulations that must include, among other things, criteria for determining eligible expenditures, application procedures, and project approval criteria. Section 54-0707 sets forth procedures for state assistance applications. Section 54-0709 dictates requirements for contracts for state assistance payments for waste reduction or municipal recycling projects.
- ECL Article 70, Title 1 establishes uniform review procedures for major regulatory programs of the department, such as the regulation of solid waste management facilities, and establishes time periods for department action on permits under such programs. Sections 71-0101 through 71-0105 provide the purpose, legislative finding and declarations, and definitions applicable to this article. Section 70-0107 states that the department shall adopt rules and regulations to assure the efficient and expeditious administration of article 70, and lists the regulatory programs that are subject to the procedures in this article, including the collection, treatment and disposal of refuse and other solid waste (article twenty-seven of the ECL). Sections 70-0109 through 70-0119 sets out time periods for department action on permit applications; requirements pertaining to applications for minor projects; confidentiality; permit modification, suspensions, revocations, renewals, reissuances and re-certifications; emergency authorizations; special provisions; and public hearings.
- ECL Section 71-2201 provides civil and administrative sanctions for those persons that violate Article 23 as it relates to the management of used oil. This rulemaking includes minor amendments to 374-2, Standards for the Management of Used Oil.

- Titles 27, 35, 40 and 44 of Article 71 provides the Department with enforcement authority related to the provisions of Article 27, Collection, Treatment, and Disposal of Refuse and Other Solid Waste and Article 71 Enforcement. Title 40 sets forth criminal and civil penalties for the rules and regulations promulgated by the Department. Title 44 of Article 71 sets forth enforcement provisions for violations related to the management of regulated medical waste which is regulated under Part 365.
- ECL Section 72-0502 sets forth the fees for the waste transporter program regulated under Part 364.

2. LEGISLATIVE OBJECTIVES

Since the last comprehensive revision to the 6 NYCRR Part 360 regulations, which became effective on October 9, 1993, only minor modifications have been made in the regulations to accommodate changes in the ECL and to make technical amendments. The effective dates of these subsequent revisions are as follows: December 14, 1994, January 14, 1995, November 26, 1996, September 29, 1997, November 21, 1998, November 24, 1999, March 10, 2003 and June 16, 2013. These changes concerned loans for municipal landfill closure projects, used oil, landfill gas, land application and composting, and minor technical amendments. The last revision of 6 NYCRR Part 364, albeit minor, occurred in May 2006, and 6 NYCRR Part 369 has not been revised since 1997.

The revisions sought in this proposed rulemaking are primarily based on the Department's experience with implementing the existing solid waste regulations. The Department's experience has shown that revisions and enhancements to both the organization and substance of Part 360 are necessary and appropriate. The overarching legislative objective of ECL Article 27 as it relates to solid waste management is found in ECL Section 27-0703, authorizing the Department to:

Adopt and promulgate, amend and repeal rules and regulations governing the operation of solid waste management facilities. Such rules and regulations shall be directed at the prevention or reduction of (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.

Through the proposed regulations the Department can further this legislative objective by addressing new solid waste management technologies, such as those that recover energy or produce fuel, which do not fit squarely within the current Part 360. In addition, amendments and new titles added to the ECL addressing such things as waste tires, mercury-added consumer products, biohazard waste and vehicle dismantlers have been incorporated into these proposed regulations and will further this legislative objective.

3. NEEDS AND BENEFITS

The last comprehensive revisions to the regulations governing solid waste management in New York State occurred more than 20 years ago in 1993. Many legal and technological changes have occurred in that time period that dictate the need for an overhaul of the regulations at this time. The Department has gained significant knowledge and expertise on 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 intricate double-lined floors designed to prevent leachate from reaching groundwater and to provide a means to collect and remove that leachate effectively. In addition to leachate, landfills generate gas, primarily methane, which must be effectively collected and managed, both during and after the landfill's active life. Of course, 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 treatment facilities. Some of these types of 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 regulated facilities and their purposes include: recyclables handling and recovery; land application; composting and other organics processing; wood debris and yard trimmings processing; construction & demolition debris processing; waste tire handling and recovery; scrap metal processing and vehicle dismantling; used cooking oil and yellow grease processing; combustion and other thermal treatment; municipal solid waste processing and transfer; household hazardous waste collection; landfilling;

and biohazard waste management. Each type of facility has its own potential environmental concerns and controls that need to be updated to ensure that public health and the environment are protected.

For landfills and other solid waste management facilities, updating the regulatory criteria does not mean more stringent criteria in all cases. If Department research and experience have found that a current regulatory requirement is too stringent, a proposed revision will justifiably lessen the requirement 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 two related regulations – those governing state assistance grants to municipalities related to solid waste management and those related to 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 regulations in their entirety. Because of this, internal inconsistencies and ambiguities have developed. Unlike previous revisions, the proposed rulemaking has been modified in its entirety in order to eliminate those inconsistencies and ambiguities. The proposed rulemaking was developed and structured around four central principles: organization; precision; consistency; and necessity.

- **Organization.** As indicated above, the existing Part 360 is broken down into seven separate Parts. Each Part consists of several Subparts that group together regulatory criteria for facilities that are similar in nature. The revised Part 360 will include general criteria applicable to all solid waste management facilities and the definitions applicable to all the subsequent parts of the series have been centralized in the new Part 360. Operating requirements have been separated from permit application requirements to the extent possible. Reorganization of the existing regulations also entailed minimizing repetition between the standard facility application and operating requirements now located in the new Part 360 and the requirements specific to particular facilities covered in the various new parts.
- **Precision.** The proposed rulemaking more efficiently cites the criteria applicable to a given facility. Explanatory or guidance language was intentionally kept to a minimum.
- **Consistency.** The revised rules use similar siting and operational criteria for like-kind facilities and minimizes the number of regulatory requirements that are unique to a specific waste stream or facility. Examples include facility siting

requirements and waste pile size restrictions.

- Necessity. 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.

In making these revisions, the Department proposes to repeal existing 6 NYCRR 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.

Existing Part 361, Siting of Industrial Hazardous Waste Facilities, will be renumbered Part 377. Existing Parts 362 and 363 are antiquated regulations which are no longer needed. Existing 6 NYCRR Part 369 Municipal Waste Reduction and Recycling Projects regulation is proposed to be repealed and replaced with Part 369 State Assistance Projects.

The proposal includes significant reorganization and subdivision of requirements contained in the existing 6 NYCRR Part 360 into a Part 360 series, which will include:

- 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

In addition, the proposal repeals and replaces existing 6 NYCRR Part 364 Waste Transporter Permits regulations to incorporate legal and policy developments and experience gained since the last major revision of these regulations.

The proposed changes include the addition of solid waste management facilities, activities, and waste streams that are not currently addressed within 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. The amendments also incorporate recommendations of various task forces that were convened to analyze specific solid waste issues which have been encountered by the Department over the years that were problematic to implement on a consistent basis statewide.

Many new or expanded solid waste management facilities, particularly recycling facilities and landfills, have been constructed since the last comprehensive revision in 1993, providing the Department with experience in applying those regulations. This experience has demonstrated that many areas of the regulations would benefit from revision, clarification, or modification to allow for new, technically appropriate alternatives to the design and operation criteria for solid waste management facilities found in the existing regulations, and to streamline the regulatory process.

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. One of the recommendations of the State Solid Waste Management Plan is revisions of the Part 360 regulations to:

- Update requirements for construction and operation of solid waste management facilities to better protect human health and the environment.
- Revise and update the Beneficial Use Determination (BUD) program regulations.
- Add new requirements for the management of historic fill, including additional operational conditions for its use that protect neighboring areas, particularly in communities of disproportionate impact.
- Restrict the disposal of yard trimmings and source-separated recyclables in solid waste management facilities and other recyclable materials as product stewardship programs are established.
- Take a regulatory approach to ensure consistent implementation of the requirements to source separate recyclables, particularly in areas served by private collectors.
- Establish separate tracks and waiting lists for Environmental Protection Fund funding for recycling coordinators, educational activities, reuse programs, and other high-priority projects.
- Review existing state regulations to remove or address contradictory regulatory requirements that limit the creation or expansion of composting and other organics recycling facilities.

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

The following discussion outlines *the significant changes* contained in the proposal, including the need for these changes and the benefit the changes will provide, organized by newly assigned Parts:

Part 360 General Requirements

Since the requirements for the various solid waste facilities have been moved to Parts 361, 362, 363, and 365, there is a need for a Part that sets the basis for all regulated facilities and provides the background information that applies to all facilities. Part 360 will now play that role – to serve as the home for general requirements for all solid waste management facilities. This includes definitions, general exemptions, variance criteria, financial assurance criteria, general permit application and operation standards, and provisions to petition the Department for a jurisdictional determination that a material is not a solid waste through a beneficial use determination and other means.

- Under Section 360.2, all definitions applicable to the facilities have been compiled in one location. Under the current Part 360 regulations, definitions are found in multiple Subparts which has led to confusion. In addition, the definitions have been updated – those that are no longer used have been deleted and those that have led to multiple interpretations have been clarified. For example, the term land clearing debris has been removed from the regulation and its two primary components, wood debris and inert wastes such as rock and soil are now handled under distinct subparts. The current definition was the basis for a court determination in conflict with the Department’s interpretation and position.
- Section 360.11 outlines the requirements for a Comprehensive Recycling Analysis (CRA), which remain essentially unchanged from existing Part 360 CRA requirements and can be used by a municipality that is not covered by a Local Solid Waste Management Plan to provide for appropriate waste reduction and recycling planning and compliance with regulatory requirements for the management of waste at solid waste management facilities.
- Section 360.12 provides the requirements for beneficial use determinations (BUDs). BUDs are jurisdictional determinations of whether a material, used in a beneficial manner, is no longer considered a solid waste. The regulations contain both “pre-determined” BUDs – materials and uses that have already been found to qualify as BUDs and a procedure for considering case-specific BUDs, based on a petition to the Department for a determination. Since the last revision to Part 360, the BUD program has accumulated information that warrants changes to the provisions. Several new pre-determined beneficial uses have been added based on case-specific BUDs that have been routinely approved over the past several years 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 silage tarps; the use of up to 150 tires for planters, etc.; and materials emanating from facilities regulated by the new Part 361 (recyclables, compost, etc.). Some uses are specifically excluded from BUDs, such as mass fills. Also, the use of coal ash as

raw feed in the manufacture of cement was removed as a pre-determined BUD and will require a case-specific BUD. The criteria for petitioning for a BUD including the petition content and approval criteria has also been updated to make them clearer to the regulated community and other stakeholders. The requirements for case-specific BUDs have been modified to specify who can apply for a case-specific BUD. All case-specific BUDs will now be required to be renewed every 5 years. Also, under transition provisions in proposed Section 360.4, previously approved BUDs (more than 5 years old) will expire if a petition to renew the BUD is not received by the Department.

- The use of brine (salt water) from gas or oil wells for spreading on roads is a practice that has occurred in New York State and elsewhere for decades. The brine is used to suppress dust on unpaved roads and to melt snow and ice on paved roads. A case-specific BUD is required to spread brine from these sources. New criteria have been added to Section 360.12 to address the use of brine. In addition to the beneficial properties of brine, trace contaminants can also be present. The criteria contained in the proposed rulemaking addresses both contaminant limits and the need to adhere to good application practices.
- The dredging of navigational channels and other water bodies is necessary for the economy of the State and the enjoyment of its natural resources. The potential for use of dredged material has been the focus of attention in recent years. To help clarify what information needs to be submitted with a BUD petition for the use of navigational dredged material and to include an exclusion for material that is known to be clean due to character or history, a new subdivision has been included in Section 360.12. The subdivision specifies the criteria for the use of navigational dredged material and includes the testing protocol to determine if the navigational dredged material is acceptable for use as fill.
- A new Section 360.13 has been added to address the management of historic fill, including criteria for the on-site use, off-site use, and disposal of the waste. Historic fill consists of municipal solid waste incinerator ash, coal ash, wood ash, and other wastes that were used to create usable land by filling water bodies, wetlands, and topographical depressions. These materials were not previously identified or separately managed under Part 360, and improper handling and disposal have become problematic. The proposed regulations will provide necessary control on their handling and disposal.
- Under Section 360.14, the exempt facilities have been revised and clarified. Exemptions related to disposal have been relocated to Part 363 Landfills. Several new exemptions have been added to include solid waste activities which have been found to be of minimal environmental concern.

- Under Section 360.15, 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. Provisions have also been added to allow the Department to evaluate an applicant's compliance history when reviewing a registration application for the purpose of determining whether a registration is appropriate.
- Under Section 360.16, permit application requirements are clearly specified to ensure that an accurate assessment of the probable impacts the facility will have upon 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 objects of local solid waste management plans to all permit applications for new facilities instead of just those submitted by a municipality as is required in the current regulations. The Department has for years been called upon by the planning units in the state to provide for this enhancement to support their long-standing solid waste management programs and planning efforts.
- Under Section 360.19, operating requirements have been revised to reflect current and best management practices.
- Under Section 360.20, 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.
- Under Section 360.22, financial assurance requirements have been consolidated in one location in the regulations with the intent to ease 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 in one location, several changes are proposed that are intended to strengthen financial assurance requirements where needed. These include clarifying the continuous provision of financial assurance on a rolling 30-year basis for landfills in post-closure care, allowing a surety mechanism pay-in period for municipalities that no longer qualify for the local government financial test due to a poor bond rating, obliging municipal landfills which are operated as revenue-oriented facilities to utilize surety mechanisms similar to those required of private facilities, and requiring that the surety mechanism provided by private operators of municipal landfills be transferred to the municipality upon the expiration of the municipality's contract with the private operator.

Part 361 Material Recovery Facilities

As outlined earlier, the regulations governing solid waste management facilities have been divided into multiple parts – Part 360, 361, 362, 363, and 365. As a starting point, the facilities were placed in parts based on their location within the solid waste hierarchy – recycling facilities in Part 361, energy recovery and other management facilities in Part 362, and disposal facilities (landfills) in Part 363. Due to their unique nature, the criteria for all biohazard facilities are placed together in Part 365.

Since the facilities found in Part 361 are recycling and recovery facilities, they are operations that are strongly encouraged by the Department. However, there can be environmental concerns with the operation of the facilities and use of the products in some cases, so regulation is needed. The Department has set the criteria and level of regulation - exemption, registration, or individual permit - based on the potential for environmental harm. Permits for recycling facilities are only required for those activities, based on size and/or waste managed, that warrant greater oversight.

Subpart 361-1 Recyclables Handling and Recovery Facilities

- Under this subpart, a recyclables handling and recovery facility which receives more than 250 tons per day of recyclables will require a permit rather than the current requirement for registration. This is based on the impacts that have been experienced at some existing facilities such as noise, dust, and truck traffic which large-volume facilities are likely to impose on their surrounding communities. Assessment of potential environmental impacts like these will be required during the permit review process, but would not be conducted as part of the issuance of a registration.

Subpart 361-2 Land Application and Associated Storage Facilities & Subpart 361-3 Composting and Other Organics Processing Facilities

- Unlike most parts of Part 360 which have not been revised in 20 years, the regulations governing these facilities were last comprehensively revised in 2003, with additional changes in June 2013. There are no significant changes to the design and operating standards.
- One area of increased interest recently is the composting of limited amounts of food scraps, either on the community garden scale or on a limited commercial scale. To encourage these activities that have limited potential environmental impact, an exemption for small-scale food scrap composting has been added and the registration provisions for food scrap composting has been raised from 1000 cubic yards per year to 5000 cubic yards per year or 4,000 wet tons per year, whichever is less.

- Regulated radioactive wastes are prohibited under current regulations from being processed at any solid waste management facility. The proposal requires any facilities that process mixed municipal solid waste (MSW), including MSW composting facilities, to install and utilize fixed radiation detectors to monitor all incoming waste loads. Facilities that compost mixed MSW will be required to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g or are regulated radioactive wastes may not be accepted at the facility.

Subpart 361-4 Wood Debris and Yard Trimmings Processing Facilities

- The shredding or grinding of tree limbs or other similar materials to produce mulch is a common practice. Facilities that produce and store mulch are currently exempt from Part 360. This practice has increasingly become a concern as the size of the facilities in some areas in the State have grown from an acre or two to dozens of acres, and piles of mulch have turned into mountains of mulch. These larger facilities have caused problems associated with odors, dust, runoff, and fires and regulation is needed in order to protect human health and the environment. For these reasons, a new subpart has been added to address the processing of woody material from trees and yard trimmings. It includes restrictions on pile size and other criteria to control odor and fire. The level of regulation is dependent on the size of the site, and small sites will continue to be exempt from regulation.

Subpart 361-5 Construction and Demolition (C&D) Debris Processing Facilities

To address potential adverse environmental impacts and curtail unpermitted activity, the Department is proposing the following:

- A registration for a facility that receives less than 250 ton per day of only concrete, brick, rock and soils (CRBS), only asphalt, only asphalt roofing shingles or only uncontaminated gypsum wallboard. A permit will be required for the receipt of 250 tons per day or greater of these materials. This is based on the impacts experienced at some existing facilities such as noise, dust, and truck traffic which large-volume facilities are likely to impose on their surrounding communities. Assessment of environmental impacts like these will be required during the permit review process, but would not be conducted as part of the issuance of a registration.
- A requirement will be added that specifies that receiving, processing, and sorting of mixed C&D debris be performed within an enclosed building in order to minimize impacts on the surrounding community.

- Existing tracking form requirements will be expanded for material leaving permitted C&D debris processing facilities to also include material leaving registered C&D debris processing facilities, to enable the Department to more easily investigate and enforce against those who illegally dispose of C&D debris. These tracking form requirements are included in the proposed Part 364 waste transporter requirements for transporters registered to transport C&D debris.
- The allowable storage period and storage volume for unprocessed or processed C&D debris of any kind would be restricted. Under current regulations, C&D debris processing facilities that handle only concrete, asphalt, brick, rock and soils (CARBS) or similar material have no restriction on storage of unprocessed or processed material. This has led to facilities storing vast quantities of processed C&D debris, which may impact surrounding communities.
- Current regulations allow facilities which accept only unadulterated wood to operate under a registration. Enforcement efforts focused on restricting adulterated wood from these facilities have proven difficult, and there is a growing concern that adulterated wood is being processed and sold into the community as mulch. In order to combat these problems, the registration available for unadulterated wood processors has been removed from the C&D debris processing facility portion of the regulations. Facilities that process wood wastes and similar materials will now be regulated under 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 intended to minimize the potential for fire and nuisance odors. Similar to the management of CARBS, the current exemption for these wood wastes has led to facilities with vast quantities of processed tree debris and yard trimmings which have adversely impacted the environment. Mulch produced by C&D debris processing facilities is often contaminated with compounds found in adulterated wood. These compounds can then be introduced into settings where mulch is typically used, including residential neighborhoods and playgrounds. C&D debris processing facilities will no longer be allowed to produce mulch without being granted a case-specific BUD. This reflects standard best management practices in the mulch manufacturing industry.
- The proposed regulation would establish acceptable pre-determined beneficial uses for C&D debris and C&D debris residues, which can be utilized without additional Department approval. Pre-determined beneficial uses for recycled asphalt pavement and residues from processing of asphalt pavement have been restricted to use as an ingredient in asphalt pavement for roadways, parking lots, or other paved surfaces. Residue from the processing of asphalt pavement can impact environmental quality if used on the ground in an unbound form.

Subpart 361-6 Waste Tire Handling and Recovery Facilities

- To support the significant effort and financial commitment of 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, this subpart has been developed to focus on the recovery of used tires rather than the current regulations focus on storage of waste tires. The proposed revisions eliminate the current allowance for storage of vast quantities of waste tires unassociated with the production of a marketable product.
- Waste tire handling and recovery facilities store used tires, sell used tires and retreaded used tires for reuse, and process used tires into useful products, feedstock, or fuel. The proposed revisions require facilities that process tires into products or feedstocks to obtain a permit. Currently, many of these facilities are registered and have experienced significant operational issues, including fires. Permits would now be required in order to more closely regulate this activity.

Subpart 361-7 Metal Processing and Vehicle Dismantling Facilities

- A new Subpart has been added to provide exemption and registration provisions for scrap metal processors and vehicle dismantling facilities based on the amount of waste received and stored on-site. The subpart also incorporates and clarifies the requirements of the New York State Vehicle Dismantler Law. This Law was promulgated and went into effect in 2006 and has yet to be incorporated into the regulations.

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

- The production and use of biodiesel has recently become more popular as use of alternative fuels become more prominent. Under the current regulations, a permit is required for facilities that process used cooking oil and yellow grease for the production of biofuel such as biodiesel because they fall under the provision of a nonspecific facility. Although regulation of these facilities is needed due to the potential for spills or water impacts as a result of improper management of the liquids, a graduated approach is appropriate based on the quantity of waste managed. Therefore, the regulations will provide regulatory relief for the smaller processors. Under the proposed criteria, small operations (no more than 1000 gallons per year) are exempt, those greater than 500,000 gallons per year are subject to permit, and those in between are eligible for registration. The proposed criteria include standards for the proper storage and management of these putrescent liquid wastes.

Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities

Subpart 362-1 Combustion Facilities and Thermal Treatment Facilities

- The Department regulates solid waste combustion or thermal treatment facilities. While the existing Part 360-3 regulations describe requirements for municipal waste combustors and pyrolysis facilities, several new technologies have been developed which are similar but not identical to combustion or pyrolysis. The proposed revisions clarify that emerging thermal treatment technologies such as gasification and other non-combustion thermal processes are regulated under this Subpart.
- Registrations have been added for the combustion or thermal treatment of specific waste types, specifically waste tires, unadulterated wood, used oil and yellow grease, under specific feedrate limits, storage restriction, and operating conditions. While some of these materials have previously received beneficial use determinations for these activities, the Department will now regulate these activities through facility registrations.
- The current requirement to test for volatile matter in combustor ash residue has been removed because Division of Air Resources emissions regulations are sufficient to ensure maximum combustion efficiencies are maintained. In addition, the proposed revisions will allow for the reduction in testing frequency of combustor ash residue, but will require confirmation testing to be performed no less than once every 5 years. This will reduce unnecessary ash testing while providing for periodic verification of the content of the ash residue.
- Regulated radioactive wastes are prohibited under current regulations from being processed at any solid waste management facility. The proposal requires municipal waste combustors and thermal treatment facilities that process MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Facilities that combust MSW will be required to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g or are regulated radioactive wastes may not be accepted at the facility.
- Materials which have been diverted from the municipal solid waste stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the proposed revisions restrict several source-separated waste streams from being managed in municipal waste combustors or thermal treatment facilities that accept the full MSW stream. 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.

Subpart 362-2 Municipal Solid Waste Processing Facilities

- Under current regulations, facilities that process MSW to produce a fuel for MSW combustors are regulated under Part 360-3, while facilities that process MSW in a similar way for other uses are regulated under Part 360-11 and 360-12. In order to provide the regulated community with a more consistent and centralized regulatory framework, a new Subpart for refuse-derived fuel processing facilities and post-collection recyclables recovery facilities has been created.
- As with combustors and other selected solid waste management facilities, the proposed revisions require MSW processing facilities to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g or are regulated radioactive wastes may not be accepted at the facility.
- As with combustors, materials which have been diverted from the municipal solid waste stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the proposed revisions 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 rechargeable batteries, source-separated mercury-containing products, and other recyclable items that are subject to legislatively enacted product stewardship programs.

Subpart 362-3 Transfer Facilities

- 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, small source-separated organic waste transfer facilities, and retail or wholesale take-back sites.
- Additionally, as with combustors and other selected solid waste management facilities, all permitted transfer facilities that transport wastes out-of-state will be required to install and utilize fixed radiation detectors to monitor all incoming waste loads.
- Materials which have been diverted from the municipal solid waste stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the proposed revisions will now allow transfer stations also authorized as recyclables handling and recovery facilities to accept particular source-separated waste streams for recycling. 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.

Subpart 362-4 Household Hazardous Collection Facilities and Events

- Regulations governing household hazardous waste collection facilities and collection events currently exist under both Part 360 and the hazardous waste regulations at 373-4 and include several overlapping provisions and requirements whose applicability depend upon the participants. Permits for household hazardous waste collection facilities are currently issued as nonspecific facility permits under Part 360 using the requirements of 373-4 while collection day events are administered via the requirements of Part 360. Each of these programs has been implemented through the Department's Materials Management program. In order to consolidate program requirements, the current household hazardous waste regulations located in Subpart 373-4 are proposed to be repealed and the requirements of that Subpart to be incorporated into this new Subpart.
- Registration and permit criteria, operational requirements, and recordkeeping and reporting requirements are contained in this subpart. The current individual collection event approval process in Part 360 will be replaced by a registration program streamlining the application and approval process for municipalities, especially for those that sponsor frequent and ongoing programs.

Part 363 Landfills

- The proposed revisions require active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills.
- The proposed revision includes new language to clarify the responsibilities of landfill owners after landfill closure. Under the proposed revisions, post-closure care activities including leachate collection and treatment; landfill cover maintenance and repair; regular landfill gas, groundwater, and surface water monitoring; and regular inspection must be conducted until the owner or operator can demonstrate to the Department that the landfill's potential 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 the landfill gas venting system; and periodic inspections must commence and continue while waste remains on-site. In keeping with these requirements, the facility manual for a landfill will now include a requirement for a custodial care plan. Throughout both the post-closure and custodial care periods, the owner or

operator must maintain financial assurance to ensure that post-closure and custodial care activities will continue.

- Disposal of land clearing debris has become problematic in some areas of the state, creating nuisance odors and reducing the amount of wood wastes that could be directed to reuse or recycling. Therefore, the current registration and exemption for disposal of land clearing debris have been removed and replaced with an exemption for a facility no more than one acre in size for the disposal of tree debris. This exemption will not be available inside Nassau and Suffolk counties.
- Outside of Long Island, current C&D debris landfill construction requirements are based on the size of the landfill: facilities of less than three acres are allowed to utilize single liners without leachate collection, while greater than three-acre facilities must utilize single composite liners with leachate collection. The revisions require that any C&D debris landfill utilize at minimum a single composite liner with leachate collection.
- Current regulations exempt disposal of certain materials such as uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock. There are currently no volume or size restrictions associated with this exemption, and several areas of the state have experienced problems with large-volume exempt disposal sites which have impacted surrounding communities. In addition, non-exempt wastes such as processing residues have been found at exempt sites. The proposed revisions replace the current exemption for the disposal of these materials with an exemption that prohibits disposal of processing residues at an exempt site, and restricts disposal to no more than 5,000 cubic yards of these materials. This exemption will not be available inside Nassau and Suffolk counties.
- Under current regulations, landfills are required to register with the Department after final closure. In order to ensure that a closed landfill does not impact human health or the environment during post-closure care, the proposed revisions require a permit for post-closure care operations and maintenance.
- A number of revisions related to groundwater monitoring requirements have been included based on experience with monitoring well data. The proposed revisions are intended to provide relief and flexibility to the regulated community. These include the following:
 - Allowing 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.

- Allowing semi-annual sampling of monitoring wells and other sampling points for baseline parameters upon approval by the Department after five years of acceptable quarterly monitoring data, rather than the current requirement of quarterly sampling with one round of baseline parameters and three rounds of routine parameters.
 - Allowing baseline sampling to be conducted at the same time each year, rather than the current requirement that baseline sampling rotate from quarter to quarter.
- All solid waste management activities, including landfill operations, should be conducted in a manner that minimizes impacts on the environment and that conserve and sustain natural resources. To that end, the revisions require that a sustainability plan be included as a part of all landfill applications. The plan will require a description of operations that will conserve landfill airspace, encourage diversion of natural resources, 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 will be required to be updated and submitted to the Department at least once every 3 years.
 - In order to take into account increasingly intense precipitation events, applicants will now be required to evaluate the impacts of 500-year storms, rather than the current requirement for 100-year storms, on leachate collection and removal systems and stormwater/run-off conveyance systems.
 - Current regulations describe the minimum criteria for the siting of a landfill, but also describe the actions that must be taken in order to site a landfill in an area that does not meet all siting requirements. Under this second 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 may find the process unworkable. The Department has concluded that the siting criteria included in the proposed revisions are sufficient to ensure that a proposed site will have no adverse impact on human health, safety, welfare, the environment or natural resources, and that it is unnecessary to require a comparison of various proposed sites. Therefore, the proposed revisions provide relief to applicants by removing the requirement for a site selection study.
 - Current regulations require that a minimum of 10 feet of soil separate bedrock from the base of a constructed landfill liner. The proposed revisions will allow that separation to be reduced to no less than 5 feet, based on Department approval, if the separating soil has a maximum hydraulic conductivity of 1×10^{-6} centimeters per second.

- Most defects in landfill liner geomembranes are caused by damage sustained during landfill construction activities. Under current regulations, the competence of the landfill liner is evaluated after construction by measurement of the allowable leakage rate (ALR). ALRs below 20 gallons/acre/day are considered to be acceptable. However, new 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. Therefore, the proposed revisions require that liner integrity testing be conducted on both geomembrane liners of a double-composite liner system.
- Current regulations allow the use of either six 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 and time consuming and has been primarily replaced by use of a GCL in the industry. The proposed revisions will require that the primary composite liner be constructed of a GCL as a standard construction requirement.
- 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. In order to ensure this rapid detection, the proposed revisions require that the secondary leachate collection and removal system be designed to a minimum flowrate capacity of 1000 gallons per acre per day. This is a highly conductive system which will ensure rapid detection of leaks.
- Current regulations require that destructive testing of geomembrane liner seams be conducted at least every 500 feet of seam length. Improved installation techniques and equipment have significantly reduced the failure rate observed in these tests. Therefore, in order to reduce the cost associated with destructive testing of geomembrane liner seams, 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.
- A 24-inch barrier protection layer is currently required immediately above the geocomposite liner of a landfill cover. The Department has issued several variances to this requirement based on the type of vegetation chosen to be grown on the cover. The proposed revisions establish this criterion in the landfill construction requirements by reducing the required thickness of the barrier protection layer of final cover system from 24 inches to either 12 or 18 inches depending on the vegetation selected and its average root length. This reduction is expected to reduce the cost of landfill cover construction.

- 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 failures 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 to the landfill owner or operator. Another current requirement is that final cover systems be installed within 210 days following the last receipt of waste in the cell. Waste degradation and the associated airspace recovery may take much longer than 210 days to come to completion. In order to allow landfill owners or operators to take advantage of the recovered airspace and avoid the cost of installing and subsequently removing a final cover system in order to effectively use this airspace, the proposed revisions allow the initial external slopes of a landfill cell to be constructed at greater than 33 percent upon a demonstration to the Department by the owner or operator that the slope will be stable. 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. These changes are expected to greatly increase the opportunity for the owner or operator to utilize the full airspace of a given landfill cell.
- In order to increase consistency in implementation and interpretation of the regulations, the proposed revisions incorporate the specific requirements associated with Long Island landfills which currently exist in Subpart 360-8 into the general landfill requirements found in the proposed Part 363.
- Current regulations allow the use of surface impoundments for the management of landfill leachate. Though most impoundments appear to perform well, it is difficult to identify leaks that may develop. Aboveground or on-ground storage tanks are a superior method of leachate storage and management. Therefore, while existing surface impoundments will be allowed to continue to be used, the proposed revisions require aboveground or on-ground leachate storage tanks to be used at any new landfills or subsequent development at existing landfills.
- Daily 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, because these materials are used in place of raw materials such as virgin sand, they have not been counted against a landfill's daily or annual waste acceptance limit established through permit. This allowance has inadvertently created circumstances where a landfill owner or operator can accept a combined quantity of material at the landfill which is far in excess of the permitted acceptance rate. While the vast majority of the MSW

landfills are not accepting an exceptional volume of these materials for daily cover, there have been some severe anomalies. In order to minimize abuse of alternative daily cover provisions, the proposed revisions require that alternative operating cover in excess of 20 percent of the landfill's annual tonnage be counted toward the facility's annual tonnage limit in the permit.

- 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 primary leachate collection and removal systems, and biennial video inspection of any primary or secondary leachate collection and removal systems.
- In order to minimize potential for exposure to radiation, the proposed revisions include a landfill disposal prohibition for wastes which exhibit greater than 25 pCi/g of radium-226, regardless of the waste type.
- In order to ensure that fine material associated with waste from well drilling activities does not interfere with leachate collection and removal systems, and to ensure a minimum separation from the landfill surface, an operating requirement has been added to require that the material be placed no closer than 6 feet to a leachate collection and removal system and no closer than 10 feet to a final cover.
- Regulated radioactive wastes are prohibited under current regulations from being processed at any solid waste management facility. The proposed revisions require all landfills that accept MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Operating requirements associated with the fixed radiation detectors include daily background radiation readings, weekly field checks utilizing a known radiation source, annual detector calibration and staff training, minimum and maximum investigation alarm setpoint levels, and documentation requirements.
- Radionuclides, including radium-226, radium-228, and total uranium, as well as gamma spectrum analysis have been added to the water quality analysis tables for Expanded Parameters.
- Materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for combustion or disposal. Therefore, the proposed revisions 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.

Part 364 Waste Transporters

Part 364 is unique to the Part 360 series in that it governs the transportation of waste instead of a facility and in that it also governs transportation of hazardous waste in addition to non-hazardous waste. Part 364 has not been comprehensively revised in over 25 years and the definitions and criteria are not always consistent with the definitions and criteria in Part 360. Part 364 has been revised to operate in concert with new Parts 360, 361, 362, 363 and 365 to include tracking of wastes that have been a problem or concern such as C&D debris, historic fill, and drilling and production waste, and to exclude the permitting of wastes with little potential harm when transported. Regulated medical waste requires tracking under the current Part 364 regulations, and that will continue in the proposed regulations.

- All non-transportation regulated medical waste provisions of the current Part 364, such as packaging requirements, have been moved to the new Part 365.
- Exemptions have been clarified and new exemptions added for electronics destined for recovery, elemental mercury and dental amalgam from dental facilities destined for mercury recovery, and regulated medical waste transported by emergency rescue vehicles.
- The exemptions for small loads of most waste will be increased from 500 pounds to 2000 pounds.
- Registration criteria have been added for 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. The registration requirements are minimal as compared to the permitting requirements and do not include a regulatory fee, unique insurance requirements and amounts or special vehicle identification requirements. The requirements are limited to completion of an annual report and any tracking forms that may be required for certain waste types, and recordkeeping of load-specific information which must be available at the department's request. For commercial solid waste and C&D debris, this will be the first time the transport of these waste streams is subject to Part 364. The illegal disposal of C&D debris has been a significant problem in Regions 1, 2 and 3 and is now expanding into portions of Region 4. Registration under Part 364 will provide an additional enforcement tool for managing these activities for use by field staff, legal staff and law enforcement personnel.

- The proposed regulation includes a requirement of waste tracking forms for the transport of certain wastes including C&D debris (both to processing or disposal facilities as well as residues from C&D processing facilities), drilling and production waste, and historic fill. Regulated medical waste will continue to require a tracking form.

Part 365 Biohazard Waste Management Facilities

Currently, two subparts in Part 360 and portions of section 364.9 contain regulations for the treatment and management of regulated medical waste (RMW). RMW has a specific statutory definition which limits the waste by origin as well as characteristics. This current definition excludes waste that may have the same biological hazard as others, but originates from a different location. For example, the waste from a terrorist attack that is biological in nature is not considered RMW by definition although it carries the same type of risk as other medical waste. A new Part 365 is proposed to consolidate all the treatment and management of RMW in one location, address all wastes that present a biological hazard and contain the standards for treatment and management of those wastes.

- Includes criteria for regulated medical waste, household medical waste sharps collection, and biohazard-incident, animal and contaminated food supply waste.
- Identifies standards for handling and storage of regulated medical waste at the site of generation and trauma scene responders.
- Provides operation requirements for autoclave and alternative treatment devices.
- Provides requirements for sharps consolidation and reusable device sorting.

Part 366 Local Solid Waste Management Planning

- The current requirement for updates, modifications and biennial compliance reports for local solid waste management plans (LSWMPs) has been replaced with a requirement for 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 LSWMP 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. The streamlining and reorganization of the LSWMP 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 increase the percentages of recyclables removed from the waste stream.

Part 369 State Assistance Projects

Currently, state assistance programs for municipalities for waste reduction and recycling are guided by the Part 369 regulations. Landfill closure is governed by Subpart 360-9, landfill gas collection is administered through a program policy, and household hazardous waste is covered by Subpart 373-4. These various state assistance programs related to solid waste management will be consolidated into Part 369.

- There has been concern in the past regarding funding of waste reduction and recycling education and coordination projects and positions; the delay in reimbursement to municipalities can be problematic for municipal budgeting, and has even resulted in some municipalities eliminating these important positions. The proposed revisions establish 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 as well as establishment of an annual application process for education/coordination and household hazardous waste (HHW) collection programs to better control and direct available funding to municipalities in a timely manner. For the annually funded projects, should insufficient funds be available to provide 50% reimbursement, the department may either lower the percentage or set a dollar maximum on the funding level.
- Due to changing technologies and evolving priorities, the department needs to have flexibility to help advance certain waste reduction and recycling activities and projects in the state. In order to accomplish this, the proposed revisions establish a targeted priority area assistance program that the Department can use as needed in accordance with available funding and program needs and priorities.
- In order to ensure that funded projects are well thought out and part of a reasonable and structured program consistent with state and local waste reduction and recycling efforts, awarding of state assistance grants will be limited to municipalities guided by approved Local Solid Waste Management Plans (LSWMPs) or Comprehensive Recycling Analyses (CRAs) and those found to be making substantial progress toward completion of an LSWMP or CRA, unless unique circumstances prevent the municipality from completing an LSWMP or CRA in a timely fashion.
- The intent of the waste reduction and recycling state assistance grants has been to fund projects that will create new programs or improve the performance of existing programs. Replacing existing equipment with similar equipment does not generally significantly improve an existing program. Routine replacement of

equipment is considered more akin to an operating expense to maintain an established municipal program. Provisions to explicitly specify that costs for replacement of previously funded equipment are ineligible for reimbursement have been added. This will avoid any confusion on the part of municipalities as they plan their programs and annual budgets. This will also assist the Department in maximizing limited funding on new initiatives as the project waiting list continues to grow at a rate that exceeds routine annual appropriations. The significant waiting list of over 200 projects (\$70 million) currently awaiting funding has resulted in an anticipated wait time of over 10 years for reimbursement to municipalities for project costs or for initiation of projects by municipalities. Without more clearly focusing the eligibility qualifications, this shortfall and waiting list will continue to grow.

- In an effort to focus funding of waste reduction and recycling state assistance grants on new initiatives, a provision has been added limiting capital funding to eligible costs incurred no more than one calendar year prior to the date an application is submitted to the Department.
- 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. There is no reason to apply limited state resources to fund landfill closure activities that have already been fully funded through the required regulatory mechanism that has been in place since 1993.

4. COSTS

For a limited number of facilities, such as mulch facilities, the proposed regulations will result in some additional costs for regulated parties, including local governments. For most facilities, no significant change from the current regulatory program costs is anticipated.

The majority of the action does not represent a change from how the Department currently regulates solid waste management facilities. In most cases, therefore, the ultimate costs associated with complying with the current regulatory program will be similar to those for the program established under the action. The costs are addressed in greater detail below:

Costs to Industry:

Part 360 General Requirements:

- Clarification of criteria for beneficial use determinations will help industry

determine if their waste could be used in a beneficial manner, which will likely lead to cost savings through the sale of additional reused materials and avoided disposal costs.

- Specifying criteria for the use of navigational dredged materials will facilitate the use of appropriate materials and reduce the significant cost associated with disposal.

Part 361 Material Recovery Facilities:

- The regulations include an exemption for small-scale food scrap composting that will promote additional recycling and reduce the cost of management. The increase in the size of a facility eligible for registration related to food scraps will have a similar positive effect.
- The tree debris and yard trimmings processing facility standards are new and may result in increased cost to the industry due to the need for additional land for the quantity of material managed, since pile size restrictions are included in these new criteria. However, the need for odor and fire control dictates the need for some level of control on the size of piles of ground wood. Currently there are no restrictions in Part 360 over these storage piles and piles over 50 feet high have led to fires and significant odor and dust emissions.
- The registration criteria for used cooking oil and yellow grease will result in decreased costs to a facility owner since they will no longer need to incur the cost of obtaining a permit.
- Facilities which compost mixed municipal solid waste must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from \$5,000-\$7,000 per unit. The cost of maintenance, including calibration, is expected to be \$2,000-\$3,000 annually.

Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities:

- Permitted transfer facilities from which waste is transported out-of-state and municipal solid waste processing facilities must install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from \$5,000-\$7,000 per unit. The cost of maintenance, including calibration, is expected to be \$2,000-\$3,000 annually.
- The registration for the combustion of limited amounts of waste tires, unadulterated wood, used cooking oil and yellow grease under prescribed conditions will result in decreased costs for a small facility owner since they will

not incur the cost of obtaining a permit.

- Removal of the requirement for testing for volatile matter in combustor ash residue and the provision in the regulations which allows for reduction in the semiannual testing of ash residue for leaching potential and total metals content will result in cost savings to combustion facility owners.

Part 363 Landfills:

- Removal of the requirement for submission of a site selection report for new landfill construction will save affected local governments and private entities from having to prepare this report, which has historically resulted in cost and delay in processing landfill applications under the Part 360 permit process. Elimination of the requirement to submit a site selection report will result in cost savings of tens of thousands of dollars to landfill owners for the preparation of this report and time and associated savings in the shortened permitting process.
- Upon permit renewal or modification, the owners of all existing municipal solid waste landfills will be required to submit a Facility Manual that describes the day-to-day facility operations throughout the active life of the landfill, addresses appropriate sequencing of all major landfilling activities, demonstrates how the landfill will meet all operating and reporting requirements and places increased emphasis on landfill operations being conducted in a more resource-conscious manner to aid in the conservation of air space and land resources. This requirement will cost the owners of all existing municipal and private landfills \$5,000 - \$10,000 in preparation of the updated report. However, it is anticipated that substantial air space savings will result from the planning required to prepare the Manual.
- The requirement for adding electrical resistivity testing on the upper and lower liner system as part of a Construction Quality Assurance (CQA) Plan will add cost to the construction of new landfill cells. Costs associated with the requirement are expected to be \$2,000-\$3,000 per acre of geomembrane tested. Based on the known improvement gained in construction quality and liner system performance, it makes sense environmentally and economically to perform these surveys as matter of routine. The cost of performing the electrical resistivity testing on both upper and lower landfill liners will be borne by the landfill owner as part of the cost of constructing a modern landfill, but is a small fraction of the overall cost of constructing the entire landfill. The relative low cost to repair leaks during installation and the limiting of future liability of discovering these liner defects after operation begins far exceeds the cost of the testing. The use of electrical resistivity testing for leak location as part of landfill CQA plan is becoming more standard practice as evident by the landfill construction projects which have voluntarily performed electrical leak detection and have seen excellent results.

- The regulations require all landfills that receive municipal solid waste to install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from \$5,000-\$7,000 per unit. The cost of maintenance, including calibration, is expected to be \$2,000-\$3,000 annually.
- The requirement for active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills will likely result in increased cost to two existing landfills in the state which currently do not conduct active collection and destruction of landfill gas, if they were to choose to expand. The actual cost of installing, operating, and maintaining a gas collection system varies depending on the size of a landfill. The average capital cost of landfill gas collection systems at municipal solid waste landfills in New York State, including wells, wellheads, pipe collection system, blower, knockout, and flare has been approximately \$43,650 per acre. This is greater than the USEPA estimate of \$27,667 per acre. Because the landfill gas management state assistance program available to municipally-owned landfills is a reimbursement system, the entire capital cost must be initially borne by the municipality, with 50 percent eventually reimbursed to the municipality by the State, up to a maximum of \$2 million per project. Annual operating costs can be up to \$75,000. Though this revision to the regulations only requires a landfill to flare landfill gas, those landfills that choose to generate and sell electricity to the grid may find that the additional revenue source offsets the cost of construction and maintenance. Nine landfills in New York currently participate in the Renewal Portfolio Standard and receive additional subsidies that offset the cost of energy production. The increased collection of landfill gas will provide significant environmental benefits by reducing the release of methane, a potent greenhouse gas, into the environment.

Part 364 Waste Transporters:

- There may be an increased cost for transporters that will be required to register and comply with reporting requirements. There are no fees associated with registration, only minor costs associated with the completion and maintenance of tracking forms and with the completion and submission of an annual report similar to those now prepared by registered facilities.
- There will be a decrease in the cost of compliance for small transporters of regulated solid waste. The amount of material that can be transported without a permit will be increased from 500 to 2000 pounds. Those transporters that manage between 500 and 2000 pounds will save the cost of permitting under the waste transporter program.

Part 365 Biohazard Waste Management Facilities:

- Most generators choosing to treat RMW or other biohazard waste on-site will incur no additional costs since many, especially those based in healthcare, academic or research institutions, already have autoclaves in place for processing their waste. There may be costs associated with verification testing to determine that their equipment can meet required standards. Facilities that choose to treat RMW on-site that currently do not may incur an initial cost increase to purchase treatment devices and the testing to insure proper treatment, but over the long term, will experience considerable cost savings over transportation and off-site treatment.
- New requirements limiting the length of time RMW may be stored on-site, which was not previously regulated, may impact facilities that currently store RMW on-site for extended periods of time prior to off-site transport. These facilities may incur additional costs for more frequent third-party collections of the RMW but it is not expected to impact the large-quantity generators who already have frequent collections.
- Requirements have been added for household medical waste sharps collection facilities, entities working with high-risk biological agents, management of waste generated from a biohazard incident, animal and contaminated food supply waste management and trauma scene practitioners that will be required to manage waste from a trauma scene as a biohazard waste. Each of these new requirements are intended to bolster the state's ability to provide oversight of potentially high-risk waste streams and ensure proper management of the waste that is protective of the environment and human health. These new requirements are unlikely to add significant cost to the management of these waste streams. Although not currently required to meet standards applicable to regulated medical waste, most of these generators are already voluntarily complying with these standards. It is possible that some generators, such as small trauma scene practitioners are not currently managing the waste as a biohazard waste and the new criteria will add costs. However, due to the potential for disease transmission, proper management of these wastes is necessary and is already handled appropriately by larger trauma scene practitioners.
-

Part 366 Local Solid Waste Management Planning:

- No change in cost to industry.

Part 369 State Assistance Projects:

- No change in cost to industry.

Costs to the Department and the State:

The cost to the State lies within the Department, for implementation and administration of the regulatory program. Since this is an existing regulatory program, it is not expected to be a significant increased cost to the Department. The primary impact will be with increased staff time needed to develop new forms, guidance and information related to the new criteria in the regulations. Providing technical assistance to the regulated communities on how the revised criteria will affect their activities will also be borne by existing Department staff. No additional staff are needed solely due to these proposed revisions.

Costs to Local Governments:

This proposal will not impose any direct costs on local governments in general. However, local governments may own and operate solid waste management facilities such as recyclables handling and recovery facilities, composting facilities, municipal waste combustors, transfer facilities and landfills. If a local government owns a solid waste management facility, the costs associated with the revised rulemaking for that facility will be similar to those described under Costs to Industry for the same type of facility. With respect to solid waste management planning, no additional costs are anticipated and the proposed revisions are expected to result in a reduction of municipal expenses and staff time necessary in the preparation of LSWMPs and LSWMP updates.

5. LOCAL GOVERNMENT MANDATES

This proposal does not directly mandate the expenditure of funds by any sector of local government. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities. If a local government or small business owns and operates a solid waste management facility, the costs associated with revisions to criteria for that facility apply, as discussed in Section 4. The proposed rulemaking is not expected to negatively affect local governments.

6. PAPERWORK

The proposed rulemaking does not impose additional paperwork requirements for the regulated community, with the exception of certain waste transporters. Transporters of C&D debris, historic fill and commercial waste will be required to register under Part 364 and comply with reporting requirements. A waste tracking document, prescribed by the department, is required for the transport of regulated medical waste and other biohazard waste, C&D debris, historic fill and drilling and

production waste under the proposed revisions. A waste tracking document must accompany each load and be presented to authorized representatives of the department or to any law enforcement officer upon request. The current regulations require annual reports from most solid waste facilities, and these requirements continue under the proposed regulations. However, the proposed regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and annual reports. Also, the proposed regulations allow electronic submissions whenever possible to ease the transfer of data and information. The Department intends to develop new forms to simplify and standardize electronic reporting requirements to ease the paperwork requirements imposed by the proposed regulations.

7. DUPLICATION

The proposed regulations are not intended to duplicate any other federal or State regulations or statutes. There is no federal regulatory program covering most of the facilities or activities governed by Parts 360-365, 366 or 369. There are standards for the design and operation of solid waste landfills in 40 CFR Part 258. The criteria in Part 363 are equivalent to or more stringent than those found in 40 CFR Part 258 and the State has been approved by the United States Environmental Protection Agency to implement the federal Part 258 criteria. Although New York State does not have a delegated program, the federal criteria applicable to biosolids recycling were incorporated into Part 360 in 2003. Those criteria have been moved to Part 361 in the proposed rulemaking.

8. ALTERNATIVE APPROACHES

The Department examined the no regulatory action or “no-action” alternative, which would be to continue its present method of administering the solid waste management regulatory program. This program consists of existing Parts 360, 364 and 369, Division guidance memoranda, program policies, and interpretation of Division memoranda on solid waste management issues and topics. Continuing this approach would provide the Department with a wide degree of administrative discretion and allow for rapid changes in management to account for recent advances in solid waste management. However, this approach may result in inconsistent application of the program across the State due to variations in the interpretation of Part 360 where other Department guidance is not available. It also would leave the Department in a vulnerable legal position due to the question of the enforceability of policy that does not have an express regulatory basis. Additionally, the rulemaking is one of the key recommendations of the State Solid Waste Management Plan. For these reasons, the no-action alternative was rejected.

In each of the individual proposed parts of this rulemaking there could have been criteria that was more or less stringent than the criteria in the proposal. The rulemaking has been the subject of both extensive internal review and public review and discussion for several years. The result of this process is the subject proposed rulemaking that the Department considers protective of environmental resources in a manner that limits the cost to the regulated community. In many cases, the cost to adhere to the regulatory criteria has been reduced without any reduction in environmental protection.

9. FEDERAL STANDARDS

As stated above, there are no federal regulations for most of the facilities and activities contained in the proposed rulemaking. The current and proposed regulations for landfills and biosolids recycling exceed the federal regulatory framework found in 40 CFR Part 258 and 503, respectively.

10. COMPLIANCE SCHEDULE

For new facilities, compliance will be required upon adoption of the final rule. For existing facilities, transition provisions are specified in proposed Section 360.4.

11. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within 3 years as required by SAPA §207.