

PROPOSED

6 NYCRR Part 360

SOLID WASTE MANAGEMENT FACILITIES

General Requirements

Statutory authority: 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.

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Section 360.1 Purpose and applicability

(a) Purpose

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

- (i) Parts 372, 373 or 376 of this Title, or Subpart 374-1 or 374-3 of this Title; or
- (ii) Parts 380, 382, and 383 of this Title.

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

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

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(b) Applicability. All solid waste, other than waste subject to the criteria in subparagraphs (a)(1)(i) or (a)(1)(ii) of this section, must be transferred, processed, recovered, stored, reclaimed or disposed of in a manner consistent with Parts 360, 361, 362, 363, and 365, and Subpart 374-2 of this Title. However, the management of nonhazardous solid waste in a portion of a facility that also handles hazardous waste is subject to the requirements of Part 373 of this Title unless the facility or event is exempted under that Part. Any facility or event exempt from regulation under Part 372, 373, or 376 or from Subpart 374-1 or 374-3 of this Title is subject to Parts 360, 361, 362, 363, and 365 of this Title. The requirements governing the transportation of waste are set forth in Part 364 of this Title. The provisions of sections 360.6(b), 360.10, 360.11, 360.12, 360.13, 360.17, 360.18, 360.19(c), and 360.19(l) through (o), of this Part do not apply to the portion of any solid waste management facility subject to regulation under Subpart 374-2 of this Title.

Section 360.2 Definitions

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

(a) Solid waste and related terms.

(1) Solid waste or waste means, except as described in paragraph (4) of this subdivision, discarded materials including solid, liquid, semi-solid, or contained gaseous material, resulting from industrial, municipal, commercial, institutional, mining or agricultural operations or from residential activities including materials that are recycled or that may have value.

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

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

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

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

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

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

(ii) materials that are used in the production of food products for human consumption;

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

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(iv) any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly or privately owned treatment works for treatment;

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

(vi) irrigation return flows;

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

(viii) soil that has no known or suspected contaminants present due to human activity;

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

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

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

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

(xiii) a hazardous secondary material that is sent to a verified reclamation recycler for purposes of reclamation and that is excluded from the definition of solid waste pursuant to Part 371 of this Title.

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

(1) *Accumulated speculatively* means a waste accumulated before being beneficially used or a waste-derived material or product accumulated after qualifying for a beneficial use without a realistic potential for being beneficially used.

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

(3) *Acute hazardous waste* means any waste listed in subdivision 371.4 of this Title.

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

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

(6) *Agronomic rate* means the rate of nitrogen addition designed to provide the amount of nitrogen needed by a crop or vegetation grown on the land, and to minimize the amount of nitrogen that passes below the root zone of the crop or vegetation grown on the land to ground water.

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

(8) *Alternative fuel* means a waste or byproduct material that has been authorized by the department for use as a fuel in either a combustion or other thermal unit.

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

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

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

(12) *Animal cremains* means the ash or bone shadows that remains after cremation of an animal.

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

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

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

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

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

(18) *Authorized collector* means a manufacturer, reverse distributor, distributor, narcotic treatment

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program, hospital or clinic with an on-site pharmacy, or retail pharmacy that has modified its United States Drug Enforcement Administration (DEA) registration to obtain authorization to receive controlled substances for the purpose of destruction.

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

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

(ii) *Principal aquifer* means a highly productive aquifer or deposits whose geology suggests abundant potential water supply, but which is not intensively used as a source of water supply by major municipal systems at the present time. Some water supply development has taken place in some of these areas but it is generally not as intensive as in the primary aquifer areas.

(iii) *Sole source aquifer* means an aquifer which has been designated by the EPA as the sole or principal source of drinking water for a community.

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

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

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

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

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

(24) *Beverage Container Assistance Project* for the purposes of Part 369 of this Title means equipment costs or the acquisition or rehabilitation costs of real property or structures related to the collecting, sorting, and packaging of empty beverage containers subject to the provisions of Title 10 of Article 27 of the ECL.

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

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

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

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

(29) *Biohazard incident waste* means waste generated as a result of, contaminated by or including any residue associated with: a spill or release of an infectious agent or biological toxin with a recognized high or elevated risk of morbidity or mortality, regardless of origin (including from a naturally occurring source), in a public space or area, or the environment.

(30) *Biohazard waste* means regulated medical waste and other solid wastes that present a risk similar to or greater than regulated medical waste due to the presence of infectious agent(s). Biohazard waste can include, but is not limited to, biohazard incident waste, trauma scene waste, human remains management waste, prion or animal prion waste, and waste from microbiological, biomedical, pharmaceutical or research laboratories.

(31) *Biohazard waste management facility* means a facility involved in the management of biohazard wastes, including regulated medical waste.

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

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

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

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

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

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

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

(39) *Building decontamination materials* for the purpose of Part 365 of this Title, means materials removed from a building impacted by a biohazard incident such as personal protection equipment (PPE), small materials and equipment, large durable items, building and decorating materials, mail suspected of contamination, trash, food and other unwanted materials present at the site at the time of disinfection or other materials used in the assessment of contamination of a building or its contents and disinfection intended for disposal. The term does not include materials from portions of the building that did not come in contact with infectious agents or toxins.

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

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

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

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

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

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

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

(iv) in the case of a facility with a proposed service area that includes municipalities from two

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

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

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

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

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

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

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

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

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

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

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

(53) *Commercial waste* means waste that is not residential waste, institutional waste or industrial

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waste and is discarded from stores, offices, restaurants, warehouses and other nonmanufacturing businesses.

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

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

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

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

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

(59) *Comprehensive Nutrient Management Plan* means a plan for the mitigation of pollution sources from a concentrated animal feeding operation farm through the implementation of farm-specific best management practices.

(60) *Comprehensive Recycling Analysis or CRA* means a recycling analysis and plan prepared by a planning unit pursuant to section 360.11 of this Part.

(61) *Concentrated Animal Feeding Operation or CAFO* means an animal feeding operation that is a point source as defined pursuant to ECL section 17-0105(16).

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

(63) *Construction* for the purpose of permitting means any physical modification to the area or location at which an existing or proposed facility is or will be located, including, but not limited to, site preparation (e.g., clearing, grading, and excavation, etc.) and building of structures.

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

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(65) *Construction and demolition debris processing facility* means a facility that handles and/or processes construction and demolition debris.

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

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

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

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

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

(iv) household hazardous waste collection and disposal costs;

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

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

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

(69) *Crumb rubber* means material produced from waste tires that is 3/8-inch and less in size in all directions, 99 percent free of wire and fiber by volume, and contains no deleterious materials.

(70) *Cultures and stocks* means materials derived from the management of agents infectious to humans, and associated biologicals, from medical or pathological laboratories, from research and industrial laboratories, or from the production of biologicals and includes discarded live or attenuated vaccines capable of propagation, or culture dishes and devices used to transfer, inoculate or mix cultures.

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

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

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

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

(75) *DEA* means the United States Drug Enforcement Administration.

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

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

(78) *Decontamination* means a method that results in the reduction in the concentration of microorganisms or biological toxins of concern to a level considered safe by an appropriate regulatory authority for the intended use, handling or disposal. Washing with water (with or without soap), antiseptics, disinfection, and some types of treatment are all forms of decontamination.

(i) *Antiseptics* means any procedure that involves the application of a topical antiseptic (e.g., antiseptic hand wash, hand sanitizer, etc.) consistent with its approved use, to living tissue of humans or animals.

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

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

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

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

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

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

(84) *Disinfectant* means an antimicrobial product used on hard inanimate surfaces and objects to

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destroy or irreversibly inactivate infectious agents but not necessarily their spores.

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

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

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

(88) *Drilling and production waste* means waste that has emanated from a wellbore during the drilling, completion or production of an oil or gas well, or during the drilling or completion of a solution mining, stratigraphic, brine disposal or geothermal well. Drilling and production wastes include, but are not limited to, used drilling and completion fluids that are not intended for reuse at the originating well or another well, drill cuttings, flowback waters or fluids, and production water or brine.

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

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

(89) *Drilling and production waste tracking form* means a New York State shipping paper, shipping order, bill of lading, manifest or other shipping document serving a similar purpose and approved by the department.

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

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

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

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

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

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

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

(97) *Event* means a planned activity of limited duration which includes the collection or management of solid waste.

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

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

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

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

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

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

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

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

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

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

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

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

(110) *Flowable fill* means a self-compacting, cementitious, low-strength mixture of soil, water, or coal combustion residuals, used to backfill excavations.

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

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

(113) *Food processing waste* means waste resulting solely from the processing of fruits, vegetables, grains, dairy products, and related food products. It does not include waste from the processing of animal carcasses or parts. Food processing waste includes, but is not limited to:

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

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

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

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

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

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(117) *Friable asbestos-containing waste* means any waste containing greater than one percent asbestos that can be crumbled, pulverized, or reduced to powder by hand pressure when dry; and any asbestos-containing waste that is collected in a pollution control device designed to remove asbestos. This definition does not include friable asbestos-containing wastes that are discarded by a household.

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

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

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

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

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

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

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

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

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

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

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

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

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to serve as a cushion to protect geomembranes, or to provide structural support.

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

- (i) in the case of a county outside the City of New York, the county board of supervisors or other elective governing body;
- (ii) in the case of a city or village, the local legislative body thereof, as the term is defined in the municipal home rule law;
- (iii) in the case of a town, the town board;
- (iv) in the case of a public authority, the governing board of directors, members, or trustees thereof;
- (v) in the case of a public benefit corporation, the board of directors, members, or trustees thereof;
- (vi) in the case of a not-for-profit corporation, the board of directors thereof or such other body designated in the certificate of incorporation to manage the corporation;
- (vii) in the case of a Native American tribe or nation, any governing body recognized by the United States or the State of New York;
- (viii) in the case of a school district or supervisory district, the board of education, or board of directors, members, or trustees thereof; and
- (ix) in the case of a State agency, the commissioner of the State agency.

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

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

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

(134) *Hazardous waste* means solid waste that is a hazardous waste as defined in Part 371 of this Title.

(135) *High-volume organic waste generators* means commercial food wholesalers or distributors,

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industrial food manufacturers or processors, supermarkets, resorts, conference centers, colleges, universities, or other entities that generate an average volume of more than 104 tons per year of food scraps and unrecyclable paper.

(136) *Historic fill* means solid waste including, but not limited to, coal ash, wood ash, municipal solid waste combustor ash, construction and demolition debris, dredged sediments, railroad ballast, and tree debris, which was used before October 12, 1962 to create, or to subsequently function as, usable land by filling water bodies, wetlands or topographic depressions. Historic fill includes any soil or soil-like wastes excavated from any area, which is designated using the term fill, spoils, urban land, made land, udorthents or similar term, on a map issued by a local, state or federal government agency, or which is otherwise known to have been filled using solid waste. Any soil or soil-like wastes excavated from any area, which is designated on such maps using the term landfill or any area that was operated by a municipality or other person as a disposal facility, is municipal solid waste and is not considered historic fill. For purposes of this Part and Parts 361, 362, 363 and 364 of this Title, historic fill does not include any solid waste that is contaminated with:

- (i) petroleum and petroleum products, except those present solely as a result of normal use of vehicles,
- (ii) pesticides except those present solely as a result of normal application for agricultural or horticultural practices,
- (iii) industrial waste, or
- (iv) hazardous waste.

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

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

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

(140) *Household hazardous waste collection program*, for the purpose of Part 369 of this Title, means municipal collection events and facilities approved by the department.

(141) *Household medical waste* means household waste which, but for its point of generation, would be a regulated medical waste and includes residential sharps (e.g., lancets, hypodermic needles and syringes) generated in a household in the course of medical self-management. Regulated medical waste collected by mobile units, home health care providers, hotels or other commercially operated

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temporary residences, including those facilities operating as an extension of a healthcare treatment process as de facto outpatient recovery facilities, is not considered household medical waste and must be managed by the provider as regulated medical waste.

(142) *Human remains management waste* means waste that includes blood, body fluids, human tissue, organs, or body parts generated at, but not limited to, a funeral home, morgue, medical examiner's office, forensic laboratory, college or university, or trauma scene.

(143) *Humus* means organic matter that has reached the point of stability, where it will break down no further.

(144) *Hydraulic conductivity* means the rate of flow of water through a cross section of one square foot under a unit of hydraulic gradient, at the prevailing temperature.

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

(146) *Inert material* for the purpose of Part 363 of this Title means material that is non-putrescible and, when analyzed using the EPA SW-846 synthetic precipitation leaching procedure (SPLP) method, does not exceed groundwater quality standards found in Part 703 of this Title.

(147) *Infectious agent* means any organism or agent, including a synthetic agent, that causes disease or an adverse health impact in humans or can be transferred to a human population and any additional organisms identified by the commissioner of the Department of Health pursuant to section 1389-aa of the New York State Public Health Law; including, but not limited to, organisms requiring Biosafety Level two, three, or four protections.

(i) *Synthetic infectious agent* means a genetically engineered infectious agent developed from material that is synthesized *de novo* (e.g., chemical units or bases developed and assembled with, but not limited to, recombinant technologies). Modified retrovirus vectors are examples of synthetic infectious agents.

(148) *Institutional waste* means waste that is generated by institutions, including but not limited to, hospitals, long-term care facilities, schools, prisons and government agencies.

(149) *Intermediate cover* means a temporary layered system consisting of either soil or geosynthetic barriers that are designed to effectively control air emissions (including odors), leachate surface seeps and stormwater.

(150) *Land application facility* means an area or location where waste is applied to the soil surface or injected into the upper layer of the soil to improve soil quality or provide plant nutrients.

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

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

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

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

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

(156) *Landfill reclamation* means the excavation of a portion or all of a landfill for purposes including, but not limited to, creating capacity, reducing closure costs, recovering recyclables, or reducing environmental impacts with the ultimate goal of either removing the landfill or reducing the landfill's volume.

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

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

(159) *Leak-proof* means designed and maintained to prevent the escape of contained liquids or other materials.

(160) *Lift* means the vertical thickness of compacted waste and the cover material immediately above it.

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

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

(163) *Local Solid Waste Management Plan* or *LSWMP* means a plan prepared by a planning unit pursuant to Part 366 of this Title.

(164) *Manufactured home* means the same as defined in Article 21-B, Section 601 of the New York State Executive Law.

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

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

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

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

(169) *Metal processing and vehicle dismantling facility* means a facility that performs receiving, decommissioning, processing, dismantling, storage, and recycling of metal from discarded metal-containing products such as appliances and end of life vehicles.

(170) *Mixed or dual wastes* for the purposes of Part 365 of this Title means pharmaceutical waste mixed with one or more other waste streams including, but not limited to, toxic drug waste, regulated medical waste, hazardous waste, or solid waste.

(171) *Mobile vehicle crusher* means any person engaged in the business of operating a transportable vehicle crusher.

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

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

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

(175) *Municipal solid waste processing facility* means a facility that performs post-collection

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separation and/or processing of municipal solid waste to recover recyclables or to produce a refuse-derived fuel.

(176) *Municipal Waste Reduction and Recycling Project* for the purposes of Part 369 of this Title means:

- (i) a capital project for municipal waste reduction, recycling, and household hazardous waste collection; or
- (ii) a coordination and education project for municipal waste reduction and recycling.

(177) *Municipality*, except for the purposes of Part 369 of this Title, means a county, village, town, city, any designated agency thereof, a solid waste management district, a public benefit corporation having power granted otherwise than under ECL Article 51 to construct, operate and maintain a solid waste management facility, including a public corporation created pursuant to agreement or compact with another State; or any combination thereof.

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

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

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

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

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

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(183) *Operating cover* means a compacted layer of soil placed on all exposed waste at the end of each working day or where no additional waste will be deposited within a specified time period.

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

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

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

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

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

(189) *Owner* means a person who is recognized by law as having legal title to a facility. For the purposes of this Title, this shall include a person with full title or a part thereof.

(190) *Parametric control* means an electronic or other device designed to monitor the performance of a regulated medical waste treatment system or device or regulate the system's or device's operation to achieve and maintain preset operating parameters.

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

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

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

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

(195) *Person* means any individual, public or private corporation, political subdivision,

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government agency, school, institution, university, authority, department or bureau of the state, municipality, industry, partnership, association, firm, trust, estate, or any other legal entity.

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

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

(198) *Post-closure care period* means the period after final closure of a facility that continues until the owner or operator of the facility can demonstrate to the department that the threat to public health or the environment has been reduced to a level where environmental monitoring and maintenance can be reduced.

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

(200) *Prion waste* means waste that is contaminated with proteinaceous infectious particles that lack nucleic acids and are capable of causing neurodegenerative diseases known as the transmissible spongiform encephalopathies (TSEs) of humans.

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

(202) *Processing*, for the purposes other than Subpart 361-8 of this Title, means the use of a combination of structures, machinery or devices to alter the volume or the chemical or physical characteristics of solid waste.

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

(204) *Project engineer* means a professional engineer who is the official representative of the permittee and who is responsible for certifying that activities related to the facility conform to the engineering design contained in the permit and the applicable regulations.

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

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

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

(208) *Pulverized* means processed by mechanical means, including, but not limited to, crushing, grinding, chipping, or shredding, by mobile or fixed equipment that breaks and intermixes the components of waste into small fragments so that the basic constituents of these fragments cannot be readily identified by the department through unaided visual observation.

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

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

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

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

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

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

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

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accordance with the permit for such facility.

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

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

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

(219) *Recyclables recovery program* means a program approved by the commissioner, which is undertaken by a municipality consistent with requirements of section 120-aa of the New York State General Municipal Law and any Local Solid Waste Management Plan (LSWMP) in effect pursuant to Part 366 of this Title, to provide for the environmentally sound recovery of recyclables, primarily involving the collection, aggregation and processing of recyclable materials for their use as raw materials for new products or for other useful purposes other than energy recovery, through facilities planned, designed and constructed to ensure environmental protection and to maximize the potential for recyclables recovery.

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

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

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

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

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

(ii) human pathological waste, including tissue, organs, body parts, excluding teeth and contiguous structures of bone and gum, body fluids removed during surgery, autopsy or other medical

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procedures, specimens of body fluids and their containers, and discarded materials saturated with body fluids other than urine. Human pathological waste shall not include urine or fecal material submitted for purposes other than diagnosis of infectious diseases;

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

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

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

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

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

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

(226) *Representative sample* means a sample collected from a population or whole that exhibits the average or typical properties of the larger population or whole.

(227) *Residence time* means the time necessary for effective treatment of regulated medical waste at a specific temperature, pressure, irradiation level or chemical concentration.

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

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

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

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

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

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

(234) *Scrap metal processor* means a facility that processes metal, including decommissioned vehicles, destined for recycling.

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

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

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

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

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

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

(241) *Sludge* means any solid, semi-solid or liquid waste generated from a wastewater treatment plant, water supply treatment plant, industrial process, or air pollution control facility but does not include the treated effluent from a wastewater treatment plant.

(242) *Soil* means a body of naturally occurring unconsolidated material consisting of variable

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proportions of rock fragments, sand, silt, clay and organic matter, the latter derived from plants and animals living within or upon the soil. Soil that has come into contact with C&D debris residue or historic fill is no longer considered soil regardless of any subsequent processing.

(243) *Soil moisture holding capacity* means the ratio of the total volume of water that a soil retains after gravity drainage to the total volume occupied by the soil.

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

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

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

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

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

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

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

(247) *Source-separated organics* means readily degradable organic material that has been separated at the point of generation including, but not limited to, food scraps, soiled or unrecyclable paper, animal mortalities and parts, and yard trimmings. Source-separated organics do not include biosolids, sludge, or septage.

(248) *Source-separated recyclables* means materials that have been separated from the waste stream at the point of generation pursuant to state or local law or ordinance.

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

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

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

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

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

(254) *State Fiscal Year* means the period of April 1 through March 31 of the following year.

(255) *Sterilize* means to inactivate all microbial forms of life.

(256) *Storage* means the temporary holding or containment of waste in a manner which does not constitute disposal, provided, however, that any waste retained on-site for a period in excess of 12 months constitutes disposal.

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

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

(259) *Surface impoundment* means a facility or part of one that is designed to hold waste in semi-solid or liquid form and that is not an injection well or a tank.

(260) *Surface water* means lakes, bays, sounds, ponds, impounding reservoirs, perennial streams and springs, rivers, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of New York State, and all other perennial bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private.

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

(262) *Tank* means a stationary device designed to contain an accumulation of waste or leachate which is constructed of non-earthen material that provides structural support.

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

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

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

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

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

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

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

(270) *Transfer facility* means a facility that receives solid waste for the purpose of subsequent transfer to another facility for further processing, treatment, transfer, or disposal.

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

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

(273) *Trauma* means a physical injury primarily to a human causing a severe loss of blood, body fluids, tissue, organs or body parts.

(274) *Trauma scene waste* means waste generated from any area where a trauma occurred that has been visibly contaminated by blood, body fluids, human tissue, organs, or body parts but does not include waste generated in the treatment of humans or animals.

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

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

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

(278) *Tree debris* means waste consisting of tree parts including branches, brush, stumps, trunks, branches with attached leaves, and other materials similar in nature. Tree debris does not include dimensional lumber, pallets and other similar wood material used in construction.

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

(280) *Unadulterated wood* means wood, other than tree debris, that is not painted, chemically treated (e.g., pressure-treated wood or treated railroad ties), or manufactured with chemicals such as glues or adhesives (e.g., plywood or particle board).

(281) *Uncontaminated* means not commingled with, and not containing,

(i) other waste;

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

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

(iv) hazardous waste.

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

(283) *Underground tank* means any stationary tank completely or partially covered with earth or other material.

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

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

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

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

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

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

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

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

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

(293) *Validation testing* means procedures conducted at the site of an alternative waste treatment system, a combustor, or an autoclave prior to initial operation for waste treatment, the purpose of which is to demonstrate, under pre-established operating parameters, the effective treatment of regulated medical waste at the installation site.

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

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

(296) *Vehicle* for the purposes of Part 364 of this Title means any motor vehicle, trailer, water vessel, railroad car, airplane, or other device used for transporting waste.

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

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

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

- (i) methods to prevent the generation of waste;
- (ii) the recovery and reuse of certain materials;
- (iii) the use of refillable or reusable packaging;
- (iv) audits of procedures and practices, resulting in the elimination or reduction of materials disposed;
- (v) substitution of nontoxic household products; and
- (vi) the promotion of backyard or on-site composting.

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

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

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

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

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

(305) *Wood debris and yard trimmings processing facility* means a facility that processes yard trimmings and unadulterated wood debris, other than construction and demolition debris, into mulch or other beneficial wood products.

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

(307) *Yard trimmings* means, leaves, grass clippings, garden and other plant debris, small tree branches and limbs, aquatic weeds and other similar materials.

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

Section 360.3 References

The following documents are incorporated by reference and are on file with the New York State Department of State. The documents are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and for inspection and copying at the department's offices at 625 Broadway, Albany, New York, 12233.

(a) Code of Federal Regulations (CFR):

(1) 7 CFR- Title 7 of the Code of Federal Regulations (Agriculture), Volume 5, Subtitle B, Chapter III, Part 331 Possession, Use, and Transfer of Select Agents and Toxins, January 1, 2015

(2) 9 CFR-Title 9 of the Code of Federal Regulations (Animals and Animal Products) , Volume I, Chapter I, Subchapter D, Part 121 Possession, Use and Transfer of Select Agents and Toxins, January 1, 2015

(3) 21 CFR- Title 21 of the Code of Federal Regulations (Drug Enforcement Administration), Volume 9, Chapter II, April 1, 2015:

(i) Part 1300 Definitions

(ii) Part 1301 Registration of Manufacturers, Distributors, and Dispensers of Controlled Substances

(iii) Part 1304 Records and Reports of Registrants

(iv) Part 1305 Orders for Schedule I and II Controlled Substances

(v) Part 1307 Miscellaneous

(vi) Part 1317 Disposal

(4) 29 CFR - Title 29 of the Code of Federal Regulations (Labor):

(i) Part 1910 Occupational Safety and Health Standards, Volume 6, Subtitle B, Chapter

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XVII, Section 1910.1200 Hazard Communication, July 1, 2013

(ii) Part 1910 Occupational Safety and Health Standards, Volume 5, Subtitle B, Chapter XVII, Section 1910.120 Hazardous Waste Operations and Emergency Response, January 1, 2015

(5) 40 CFR - Title 40 of the Code of Federal Regulations (Protection of Environment):

(i) Part 61 National Emission Standards for Hazardous Air Pollutants, Volume 9, Chapter I, Subchapter C, National Emission Standards for Hazardous Air Pollutants, Subpart A-General Provisions, and Subpart M-National Emission Standard for Asbestos, July 1, 2015

(ii) Part 141 National Primary Drinking Water Regulations, Volume 23, Chapter I, Subchapter D, July 1, 2014

(iii) Part 144 Underground Injection Control Program, Volume 23, Chapter I, Subchapter D, Section 144.62 Cost Estimate for Plugging and Abandonment, July 1, 2014

(iv) Part 258 Criteria for Municipal Solid Waste Landfills, Volume 25, Chapter I, Subchapter I, July 1, 2014

(v) Part 264 Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Volume 26, Chapter I, Subchapter I, July 1, 2014

(vi) Part 265 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Volume 26, Chapter I, Subchapter I, July 1, 2014

(vii) Part 280 Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (UST), Volume 27, Chapter I, Subchapter I, July 1, 2014

(viii) Part 503 Standards for the Use or Disposal of Sewage Sludge, Volume 30, Chapter I, Subchapter O, July 1, 2015

(ix) Part 761 Polychlorinated biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, Volume 31, Chapter I, Subchapter R, July 1, 2014

(6) 42 CFR- Title 42 of the Code of Federal Regulations (Public Health), Volume 1, Chapter I, Subchapter F, Part 73- Select Agents and Toxins, October 1, 2014

(7) 49 CFR - Title 49 of the Code of Federal Regulations (Transportation):

(i) Part 172-Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans, Volume 2, Subtitle B, Chapter I, Subchapter C, Subpart G, Section 172.602 Emergency Response Information and Subpart H, Section 172.704 Training Requirements, October 1, 2014

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(ii) Part 173 Shippers- General Requirements for Shipments and Packagings, Volume 2, Subtitle B, Chapter I, Subchapter C, Subpart E, Section 173.196 Category A Infectious substances, Section 173.197 Regulated Medical Waste, and Section 173.199 Category B infectious substances, October 1, 2014.

(iii) Part 173 Shippers- General Requirements for Shipments and Packagings, Volume 2, Subtitle B, Chapter I, Subchapter C, Subpart D, Section 173.134 Class 6, Division 6.2-Definitions and Exceptions, October 1, 2014.

(iv) Part 387 Minimum Levels of Financial Responsibility for Motor Carriers, Volume 5, Subtitle B, Chapter III, Subchapter B, October 1, 2014

(b) United States Environmental Protection Agency

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

(2) Determination of Inorganic Anions by Ion Chromatography, EPA Method 300, Revision 2.1, John D. Pfaff, USEPA, August 1993.

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

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

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

(c) Federal Laws

(1) Section 80a-2 of the Investment Company Act of 1940 (15 USC 80a-2(a)), as amended through 2011.

(d) Other

(1) Biosafety in Microbiological and Biomedical Laboratories, 5th Editions, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health, HHS Publication No. (CDC) 21-1112, Revised December 2009.

(2) United States Department of Agriculture, Natural Resource Conservation Service Conservation Practice Standard, Waste Storage Facility, (No.) Code 313, October 2014.

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(3) United States Department of Agriculture, Natural Resource Conservation Service Conservation Practice Standard, Waste Management System, (No.) Code 312, April 2007.

Section 360.4 Transition

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

(a) Except as provided in subdivisions (b) through (t) of this section, a person must comply with the requirements set forth in this Part and in Parts 361, 362, 363, 364, 365, 369 and Subpart 374-2 of this Title as they pertain to the type of facility, transporter, event, or activity at issue starting 60 days after the effective date of this Part. Prior to the expiration of 60 days from the effective date of this Part, the facility, transporter, event, or activity must continue to comply with all applicable requirements set forth in the version of Part 360 or Part 364 in effect immediately before the effective date of this Part.

(b) Exempt, registered, permitted facilities, transporters, and events with new design and/or operational conditions imposed as of the effective date of this Part.

(1) Within 90 calendar days of the effective date of this Part, facilities exempt from permitting requirements and facilities, transporters, and events registered prior to the effective date of this Part must comply with the requirements set forth in Parts 360 through 365 of this Title as they pertain to the type of facility, transporter, or event. Existing registered facilities which continue to be registered facilities pursuant to this Part and Parts 361, 362, 363, 364 and 365 of this Title must also comply with the registration notification requirement of section 360.15 within 60 days after the effective date of this Part.

(2) For existing permitted facilities, transporters and events, the permit in effect immediately before the effective date of this Part is continued until the expiration date of the permit, and the facility must comply with the conditions of the permit and the solid waste management facility regulations in effect on the day when such permit was issued for the duration of that permit, unless a modification under Part 621 of this Title is approved or as otherwise specified in this section. At the time of permit renewal the facility, transporter or event must comply with the criteria as of the effective date of this Part and Parts 361, 362, 363, 364, 365, and Subpart 374-2 of this Title that pertain to the type of facility, transporter or event unless otherwise excluded under this section. Nothing in this paragraph shall be construed to limit or prohibit department-initiated modification of such permit under the provisions of Part 621 of this Title.

(3) Retrofitting of facilities that were constructed pursuant to a permit prior to the effective date of this Part is not required in order to comply with the design and construction requirements of this Part and Parts 361, 362, 363, 364 and 365 of this Title. New structural components built after the effective date of this Part must comply with the applicable requirement of this Part and Parts 361, 362, 363, 364 and 365 of this Title.

(c) Exempt facility, transporter, or event, now a registered facility, transporter, or event. A facility, transporter, or event exempt prior to the effective date of this Part, that is now subject to the registration provisions of this Part and Parts 361, 362, 363, 364 and 365 of this Title, must:

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(1) within 90 calendar days after the effective date of this Part, comply with the registration notification requirement of section 360.15; and

(2) within 120 days after the effective date of this Part, comply with the applicable requirements set forth in this Part and in Parts 361, 362, 363, 364 and 365 of this Title.

(d) Exempt facility, transporter or event now requiring a permit. Any facility, transporter, or event exempt prior to the effective date of this Part which requires a permit as of the effective date of this Part must have a complete application on file with the department for the facility or event within 180 days of the effective date of this Part.

(e) Registered facility now an exempt facility. Any facility required to be registered prior to the effective date of this Part that is an exempt facility on the effective date of this Part and Parts 361, 362, 363, 364 and 365 of this Title is not required to continue registration and any registration issued by the Department prior to the effective date of Parts 360 to 365 of this Title will no longer be in effect.

(f) Registered facility now a facility requiring a permit. Any facility that was required to be registered prior to the effective date of this Part which is subject to permitting requirements as of the effective date of this Part and Parts 361, 362, 363, 364 and 365 of this Title, must have a complete application on file with the department within 180 days of the effective date of this Part.

(g) Permitted facility now a registered facility. A facility permitted prior to the effective date of this Part that is eligible for registration as of the effective date of this Part and Parts 361, 362, 363, 364, 365, and Subpart 374-2 of this Title must remain in compliance with the terms and conditions of the permit until a registration is obtained.

(h) Permitted facility now an exempt facility. A facility permitted prior to the effective date of this Part that is exempt from regulation as of the effective date of this Part and Parts 361, 362, 363, 364 and 365 of this Title must remain in compliance with the permit until the permit expires or is surrendered.

(i) Existing facilities subject to an order. Any order in effect prior to the effective date of this Part and Parts 361, 362, 363, 364, 365, and Subpart 374-2 of this Title pertaining to a solid waste management facility is hereby continued until the order expires.

(j) Permitted or registered facilities required to obtain financial assurance.

(1) A permitted or registered facility that does not have a valid financial assurance mechanism in place on the day before the effective date of this Part, but which is required to obtain financial assurance after the effective date of this Part, must comply with the financial assurance provisions of section 360.22 of this Part within 3 years of the effective date of this Part.

(2) A registered facility that has a valid financial assurance mechanism in place prior to the effective date of this Part and is required to obtain additional financial assurance on the effective date of this Part, must comply with the financial assurance provisions of section 360.22 of this Part within 5 years of the

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effective date of this Part.

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

(k) Complete applications pending on the effective date of this Part. On the effective date of this Part, any pending complete application for a facility subject to the permitting requirements of Part 360 immediately effective prior to the effective date of this Part will be reviewed for conformance with those Part 360 regulations.

(l) Applications that were not complete on the effective date of this Part. Applications on file with the department not deemed complete on the effective date of this Part are subject to this Part and Parts 361, 362, 363, 364, 365, 366, and Subpart 374-2 of this Title.

(m) Expansion. An expansion of any facility existing on the effective date of this Part is subject to all applicable requirements of this Part and of Parts 361, 362, 363, 365, 366, and Subpart 374-2 of this Title.

(n) Closed facilities. Facilities that closed in compliance with the Part 360 regulations in effect on the date of closure remain subject to all the requirements in effect on the date of closure. For landfills, the additional requirements outlined in section 363-3.1 apply.

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

(1) Subsequent landfill development, such as the construction of additional lined landfill areas, or vertical height or waste loading increases for areas included in the permit but for which engineering reports, plans, and drawings have not been approved by the department, must comply with the requirements of this Part and Part 363 of this Title.

(2) Retrofitting of existing landfill liners, buried pipes, leachate storage tanks and similar existing structural components is not required. New lined areas, leachate storage tanks, etc., built after the effective date of this Part must comply with the criteria in Part 363 of this Title.

(3) Landfills which ceased accepting waste between October 9, 1993 and the effective date of this Part and Part 363 must comply with the Part 360 regulations in effect on the date of their closure, with the exception that the registration requirement may be replaced by a one-time notification to the department on a form prescribed by the department.

(4) Any pending application for a landfill which was deemed complete prior to the effective date of this Part will be reviewed for conformance with the Part 360 regulations in effect at the time of application. However, if a permit is issued following the effective date of this Part, the permittee must comply with the operational, closure, and post-closure requirements set forth in this Part and Part 363 of this Title.

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(p) Beneficial use. Pre-determined beneficial use determinations in effect prior to the effective date of this Part that are inconsistent with this Part will no longer be in effect 120 days after the effective date of this Part but may be eligible for a case-specific beneficial use determination. Case-specific beneficial use determinations granted by the department within five years prior to the effective date of this Part shall remain in effect for a period of five years from the date of issuance, subject to all conditions contained therein, unless specifically addressed by subsequent department action. One hundred and eighty days after the effective date of this Part, all other case-specific beneficial use determinations are no longer in effect. These case-specific beneficial use determinations will require a new petition to be submitted to the department in accordance with section 360.12 of this Part.

(q) Local Solid Waste Management Plans. A Local Solid Waste Management Plan (LSWMP) approved prior to the effective date of this Part remains in effect for the planning period established in the approved LSWMP. However, the reporting requirements of Subpart 366-5 replace reporting requirements that existed prior to the effective date of this Part. In addition, the requirements of section 366-4.2 will take effect upon the effective date of this Part.

(r) State Assistance Grants for municipal waste reduction and recycling projects. On the effective date of this Part, the Municipal Waste Reduction and Recycling Project waiting list that existed on the day before the effective date of this Part shall expire. For projects on the prior waiting list the following shall apply:

(1) Applicants for capital projects on the waiting list that existed prior to the effective date of this Part that meet the eligibility requirements for funding under Subpart 369-2 will have 60 days from the effective date of this Part to submit an application in accordance with section 369-2.1(a). Should the applicant submit an application within 60 days from the effective date of this Part in accordance with section 369-2.1(a), their original pre-application date will remain as the submittal date for purposes of section 369-2.1(c). Failure to submit an application pursuant to section 369-2.1(a) within 60 days will result in the project being eliminated from consideration under this transition provision. Applications will be evaluated in accordance with the criteria of Subpart 369-2.

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

(3) Applicants with education, promotion, planning and coordination projects which were on the waiting list that existed on the day before the effective date of this Part that seek reimbursement for costs that will occur after the effective date of this Part will be required to submit an application in accordance with subdivision 369-3.1(b).

(s) State Assistance Grants for Landfill Closure/Landfill Gas Projects. Projects on waiting lists that existed on the day before the eligible date of the Part will remain on waiting lists as described in paragraphs 369-6.1(b)(2) or 369-7.1(b)(2) depending on the type of project; however, no project will

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remain on the waiting list if it does not satisfy the eligibility requirements of subparts 369-6 or 369-7.

Section 360.5 Severability

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

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

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

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

Section 360.7 Inspection of facilities

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

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

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

- (1) whether authorized department staff requested access to the facility or to any of the records or

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documents required to be maintained under this Part or under Part 361, 362, 363, 365, or Subpart 374-2 of this Title;

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

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

Section 360.8 Prohibited siting

(a) Special flood hazard areas. No person shall construct a new facility or expand an existing one, in a special flood hazard area, unless provisions acceptable to the department have been made to prevent flooding of the facility and to prevent the constriction of floodwaters. The facility must not pose a significant hazard to human life, wildlife, fisheries, or land or water resources.

(b) Endangered species. No person shall construct a facility or laterally expand an existing one in a manner that causes or contributes to the taking of any endangered or threatened species or to the destruction or adverse modification of their critical habitat.

(c) Wetlands. No person shall construct a new facility or laterally expand an existing one within the boundary of either state or federally regulated wetlands, unless the appropriate permits are obtained from the U.S. Army Corps of Engineers and/or the department.

Section 360.9 Prohibited Activities

(a) Except as provided in sections 360.4 and 360.14 of this Part, no person shall:

(1) construct or operate a facility, or any phase of it, except in accordance with a registration or a permit issued pursuant to this Part; nor

(2) modify or expand any aspect of the construction or operation of a facility except in accordance with written approval of the department.

(b) No person may:

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

(i) any provision of this Title, the ECL, or other applicable statute or regulation;

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

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

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

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otherwise;

(2) own or operate, or modify any aspect of the department-approved construction or operation of a facility in violation of:

(i) any provision of this Title, the ECL, or other applicable statute or regulation;

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

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

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

(3) dispose of waste except at:

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

(ii) a disposal facility authorized by the department to accept the waste for disposal pursuant to Part 363 or pursuant to a department-issued or court-issued order;

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

(5) accept waste except at:

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

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

(c) In the case of a facility or event owned or operated by or on behalf of a municipality that is in violation of any provisions of this Title, in addition to any other penalties the department may assess, the department may suspend the making of payments of state assistance as provided under Part 369 of this Title.

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

(e) A person who operates, or who causes or allows the operation of a facility or event without a requisite permit or registration is also subject to penalties arising out of that person's failure to submit to

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the department all reports, plans, and other materials relating to the facility's or event's operation and closure identified in Parts 360, 361, 362, 363, 365, 366, or Subpart 374-2 of this Title as they pertain to the facility or event; and each failure shall constitute a separate and distinct violation and a violation separate and distinct from the violation of operation of the facility or event without the requisite permit or registration.

Section 360.10 Variances

(a) Applicability.

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

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

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

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

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

(iv) the requirements related to registered facilities;

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

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

(b) Variance applications. A variance application must be submitted as part of a permit application or modification of an existing permit. In addition, an application for a variance must:

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

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

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

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

necessary.

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

- (1) materially false or inaccurate statements in the variance application or supporting papers;
- (2) failure by the permittee to comply with any terms or conditions of the variance approval;
- (3) exceeding the scope of the project as described in the variance application;

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

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

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

Section 360.11 Comprehensive Recycling Analyses

The following constitutes the requirements for preparation of a municipality's comprehensive recycling analysis (CRA). The purpose of a CRA is to ensure the development and implementation of a sound, long-range, recyclables recovery program that is an integral component of a sustainable solid waste management system by a municipality, which maximizes the recovery of recyclables and reduces the amount of waste requiring thermal treatment or disposal. A CRA must take into account the objectives of the state solid waste management policy set forth in section 27-0106 of the ECL and reflect the goals and objectives of the current state solid waste management plan. For the purpose of Parts 360, 361, 362, 363, 364, 365, and 369, a Local Solid Waste Management Plan satisfying the requirements of Part 366 shall satisfy the requirements requiring a CRA.

(a) The comprehensive recycling analysis must include the following:

(1) Identification of the actual or estimated quantity of recyclables, by type, that could potentially be recovered (whether or not feasible at the time of CRA preparation), reflecting the State's solid waste management policy identified in section 27-0106 of the ECL and the goals and objectives of the New York State Solid Waste Management Plan. This identification must be determined by means of the following:

(i) an analysis of the composition (i.e., quantity and characteristics) of the solid waste presently generated within the municipality(ies) and projections for future waste generation including data which accounts for seasonal variations. This analysis may be based upon applicable published information. These projections must include a year-by-year evaluation of the solid waste stream generation for a ten

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year period;

(ii) an identification and evaluation of the types of solid waste contained in the overall waste stream (such as newsprint, corrugated and other grades of paper, glass, aluminum, ferrous and nonferrous metals, construction and demolition debris, textiles, tires, batteries, plastics, food scraps including those from high-volume organic waste generators, and yard trimmings) and, if the application pertains to a combustion facility, its residue that could be reused, recovered as recyclables or composted; and

(iii) a description of the various strategies to achieve a reduction in the amount of solid waste destined for disposal including, but not limited to, residential source separation and collection, intermediate processing, industrial, institutional and commercial recyclables recovery efforts, composting, organics processing, and public education efforts, describing the benefits of reuse and recyclables recovery.

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

(i) identification of existing municipal, commercial, institutional, industrial and private efforts to recover recyclables. Data must include quantity and types of recyclables recovered, and a description of recyclables recovery programs used; and

(ii) an assessment of the impact of the proposed recyclables recovery effort on existing recyclables recovery programs.

(3) Identification of available and potential markets for recovered recyclables. This identification must be determined by means of the following:

(i) a review of available information to identify potential markets;

(ii) a survey of potential markets for recovered recyclables, an identification of all local and regional markets contacted, and the results of the survey. Survey data also must include material quality requirements and market pricing structures, if available;

(iii) an identification of the types of processing necessary for separation and upgrading of recovered recyclables to assure market acceptance;

(iv) an identification of market services available for assistance in preparation and transportation of recovered recyclables; and

(v) an identification of current and future restrictions to market development.

(4) Identification of alternative source separation/recyclables recovery programs considered, a description of the programs selected, and reasons for selection of the programs to be implemented.

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(5) Recyclables recovery program implementation in terms of:

(i) a detailed description of the procedures for implementation of the selected recyclables recovery program, including: plan and scope of operation, equipment to be used, collection arrangements, processing and storage procedures, market agreements, funding sources, the entity responsible for program operation and management, and the availability of staff for program implementation;

(ii) the inclusion of a schedule with specific dates for implementation of the selected program (including dates to attain specified, progressively increasing percentages of the waste stream that will be recovered as recyclables) and a description of the proposed service area to be included in the selected program;

(iii) the inclusion of actions to be taken to maximize, to the extent practicable, the development and enhancement of economic markets for recyclables recovered within the service area under local laws or ordinances adopted or to be adopted under section 120-aa of the General Municipal Law; and

(iv) identification of the specific public relations and education programs to be undertaken for implementation or continuation and growth of the recyclables recovery program.

(6) Legal and institutional analysis, including:

(i) an identification of the laws, rules, regulations, or ordinances which could cause potential constraints on the selected recyclables recovery program; and

(ii) the inclusion of a schedule and description of appropriate local laws or ordinances, if any, that will be adopted to facilitate the implementation of the selected recyclables recovery program and to develop and enhance economic markets for recyclables recovered within the service area.

(7) A discussion of possible future actions in the facility's service area to further the objectives of the State's solid waste management policy identified in section 27-0106 of the ECL. This discussion must include:

(i) a discussion pertaining to the scope of existing or new recyclables recovery programs;

(ii) a discussion of other means of program enhancement to promote recyclables recovery; and

(iii) a discussion of procurement practices to encourage the use of products containing recyclables.

(b) Reporting

An annual report must be submitted on forms prescribed by or as acceptable to the department, no later than May 1 of each year, providing waste recovery data and implementation schedule progress.

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Section 360.12 Beneficial use

(a) Applicability.

(1) This section applies to the use of certain wastes as effective substitutes for commercial products or raw materials as determined by the department. The materials cease to be solid waste when used according to this section. This section does not apply to materials or facilities that are subject to Subparts 361-2 or 361-3. This section also does not apply to waste used in a manner that constitutes disposal.

(2) The department reserves the right to require a permit pursuant to section 360.17 of this Part for land placement, including mine reclamation or subsurface mine filling, in place of a beneficial use determination, if deemed necessary to prevent adverse impacts to public health and the environment.

(3) Materials may not be stored for more than 180 days prior to beneficial use unless otherwise approved through a registration, permit condition or case-specific beneficial use determination. For all waste materials, it must also be shown that during any calendar year the amount of material that leaves the site for beneficial use or disposal equals at least 75 percent (by weight) of the amount of that material produced during the calendar year.

(b) Unacceptable uses. Uses that are not acceptable beneficial uses include, but are not limited to:

(1) The use of flowable fill for mined land reclamation.

(2) The encasement of waste tires in concrete.

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

(c) Pre-determined beneficial uses.

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

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

(ii) soil with known or suspected contaminants present due to human activity, provided the soil meets the unrestricted use limits found in Part 375 of this Title. If the soil has a contaminant that does not exist in these criteria, exceeds the criteria, or contains solid waste, a case-specific beneficial use determination (BUD) is required.

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

(i) uncontaminated newspaper and newsprint used as animal bedding;

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

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wood pallets;

(iii) uncontaminated street sweepings, car wash grit, and water system catch basin materials that consist of sand and gravel and are free from litter and objectionable odors, when used as a substitute for commercial aggregate for the construction of roads or parking areas; or as backfill for utilities within transportation corridors other than potable water utility lines; or in commercial or industrial land use locations as defined by subparagraphs 375-1.8(g)(2)(iii) and (iv) of this Title;

(iv) up to 1000 waste tires per bunker or storage area to secure tarpaulins in common weather protection practices such as agricultural storage covers and salt pile protection, provided whole tires are cut in half or have holes drilled in them allowing water to drain;

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

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

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

(i) ground granulated blast-furnace slag for use as a raw feed in the manufacture of cement and in concrete in accordance with specifications acceptable to the Department;

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

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

(iv) fats, oil, grease, and rendered animal parts;

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

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

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

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

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(i) materials produced by a recyclables handling and recovery facility for use as an ingredient in a manufacturing process or other acceptable end use. For glass, this includes uncontaminated glass-derived aggregate that meets a governmental or industrial organization specification acceptable to the department. The glass aggregate must not exceed one percent, by mass, of deleterious materials, of which only 0.05 percent, by mass, of paper is allowed;

(ii) compost and other waste-derived soil conditioning products;

(iii) woodchips, mulch, sawdust, bark, and other similar processed wood debris from a wood debris and yard trimmings processing facility used for mulch and other common uses;

(iv) C&D debris use in accordance with section 361-5.6 of this Title;

(v) tire-derived aggregate for use as:

(a) residential on-site septic system drainage media, provided the tire-derived aggregate meets the 10 NYCRR Appendix 75-A specifications of the Department of Health,

(b) landscape mulch provided the tire-derived aggregate has a nominal size of less than 1 inch in any direction, is at least 99.9 % wire free, and has no protruding wire, or

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

(vi) crumb rubber;

(vii) scrap metal;

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

(ix) alternate operating cover approved pursuant to Part 363 of this Title.

(5) The department, at its sole discretion, may rescind pre-determined beneficial use determinations previously applicable to one or more categories of materials if it finds it necessary to prevent adverse impacts to public health or the environment, or to control nuisances, and upon notice in the Environmental Notice Bulletin.

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

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(d) Case-specific beneficial use determinations – general. For navigational dredged materials or brine, the applicable requirements are outlined in subdivisions 360.12(e) and (f).

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

(2) A petition must contain the following information:

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

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

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

(iv) analytical data concerning the chemical and physical characteristics of the waste under review and of each type of proposed product, and chemical and physical characteristics of any analogous raw material or commercial product for which the waste under review is proposed to be an effective substitute. A minimum of one chemical analysis for every 1000 cubic yards of waste that is proposed for use is required;

(v) a justification that the waste under review functions as an effective substitute for a commercial product or raw material and that the use meets or exceeds national, New York State, or industry standards or specifications acceptable to the department;

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

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

(b) a demonstration that the proposed product complies with industry standards and specifications for that product; or

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

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

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

(1) procedures for periodic testing of the waste under review;

(2) the type of storage and the maximum anticipated volume of the waste under review to be stored before beneficial use. Storage before beneficial use may not exceed 180 days;

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

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

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

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

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

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

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

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

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

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

(vi) heavy metals or other pollutants present in the waste under review are present at acceptable levels for the proposed product or use as determined by the department. For soil-like materials and uses of such materials, the material must not be used in ecologically sensitive areas and must not contain pollutants above the levels indicated in Table 375-6.8(b) of this Title, entitled "Restricted Use Soil Cleanup Objectives, Protection of Public Health," for Residential use and Protection of Groundwater, or other department-issued pollutant criteria cleanup objectives, whichever objective is lower, unless the petitioner can demonstrate properties or characteristics unique to the material or use that are acceptable

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to the department, provided, however, that nothing in this subparagraph shall have the effect of modifying any existing Memorandum of Understanding to which the Department is a party; and

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

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

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

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

(7) An approved case-specific beneficial use determination is valid for no more than 5 years from the date of approval. Case-specific beneficial use determinations may be renewed upon review and approval of the department.

(8) Case-specific beneficial use determinations are jurisdictional determinations and are not subject to Part 617 or Part 621 of this Title. However, once granted, case-specific beneficial use determinations are subject to Part 622 and Part 624 of this Title.

(9) By March 1 following each calendar year of operation, those petitioners who have approved case-specific beneficial use determinations must submit a report to the department, on a form prescribed by the department that includes the quantity of waste beneficially used during the previous calendar year of operation; any analytical data and any other information required in the approved case-specific beneficial use determination. This report must also contain a signed statement by a responsible official of the petitioner's organization that the organization has been in compliance with the terms and conditions of the approved case-specific beneficial use determination during the reporting period.

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

(1) Applicability. This subdivision applies to projects for the upland management of navigational dredged materials (NDM) in a beneficial manner. This subdivision does not apply to NDM management in the footprint of the surface water where it is generated, or in the riparian zone, or to the upland management of NDM if it is included under a dredging permit or other applicable permits specified in subparagraph 360.2(a)(4)(viii).

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

(i) NDM used outside ecologically sensitive areas, as aggregate in place of sand or gravel if the NDM contains less than 0.5 percent total organic carbon and more than 90 percent sand and gravel, as determined by a standard grain size analysis method approved by the department provided one of the following is met:

(a) the NDM originates from lands underlying waters in which there has not been a direct historic or current industrial discharge, and in which no spills or discharges of pollutants have occurred, in the last ten years which may have impacted sediment quality;

(b) NDM must not contain pollutants above the levels indicated in Table 375-6.8(b) of this Title, entitled “Restricted Use Soil Cleanup Objectives, Protection of Public Health,” for Residential use and Protection of Groundwater, if applicable pursuant to Part 375, other department-issued pollutant criteria cleanup objectives, whichever objective is lower, or Rural State Background as stated in Appendix D of the New York State Brownfield Cleanup Program, Development of Soil Cleanup Objectives, Technical Support Document, September 2006, for pollutants without a cleanup objective, unless the petitioner can demonstrate properties or characteristics unique to the material or use that are acceptable to the department, provided, however, that nothing in this subparagraph shall have the effect of modifying any existing Memorandum of Understanding to which the Department is a party.

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

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

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

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

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

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

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

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

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

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(v) a demonstration that the management of the NDM will not adversely affect human health and the environment by providing a material management plan that describes the following:

(a) procedures for periodic testing of the NDM and end product after processing to ensure that the composition has not changed significantly;

(b) the disposition of any waste which may result from use or processing of the NDM;

(c) a description of the type of storage (the duration of which must not exceed 90 days unless the department approves in writing a longer period) and maximum anticipated inventory of NDM before being used;

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

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

(f) a description of how unamended or amended NDM that will be used as structural fill will attain a minimum shear strength of five pounds per square inch and contain a maximum saturation moisture of 80 percent, by weight, when received at the site of placement;

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

(4) General provisions.

(i) The department will determine in writing, on a case-specific basis, whether the proposal constitutes a beneficial use, based on requirements described in this section and subdivision 360.12(d) of this Part.

(ii) NDM approved for beneficial use under this section ceases to be a waste when it meets the technical requirements or specifications for the intended end use, provided it is not stored for longer than 90 days after meeting the technical requirements or specifications, unless otherwise approved by the department. Storage of the NDM prior to use may be included in the approved beneficial use.

(5) Sampling protocol and analytical methods.

(i) In satisfying the following requirements, the petitioner may submit analytical results generated for another purpose, including *in-situ* sediment sampling performed in support of a state or federal permit to dredge. Untreated, unamended NDM and treated or amended NDM subject to a case-specific NDM beneficial use determination must be analyzed for the following parameters as the

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

(ii) A minimum of one sample (a composite of 5 grab samples for analyses other than volatile organics) must be analyzed for each 1000 cubic yards of material that will be beneficially used unless the total quantity of dredged material exceeds 5000 cubic yards, in which case the table below or a department-approved sampling frequency will be accepted. If the source of the NDM has a history of significant contamination or highly variable contamination, additional sampling will be required. Where sampling will be performed to support beneficial use, the sampling plan must be submitted and approved by the department prior to sampling the NDM. The department may also require additional samples in areas of known contamination.

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

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

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

(iv) Statistical analysis in accordance with USEPA SW-846, as incorporated by reference in section 360.3 of this Part, may be used to justify compliance of NDM with department-imposed contaminant limits where results may show an exceedance. If the pollutant limit determined by the department for beneficial use is lower than the required detection limit, an analytical result less than the required detection limit will be considered to comply with the pollutant limit.

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

(1) Applicability. This subdivision applies to the use of gas storage brine or production brine on roads to control dust, stabilize unpaved road surfaces, reduce ice, or reduce snow.

(2) Case-specific brine beneficial use determination petition. A written petition must be submitted to

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the department, containing the following information:

- (i) the name, address and telephone number of the person or entity that is road spreading the brine;
- (ii) a map or a listing of roads where brine will be applied;
- (iii) an original, signed, and dated brine spreading authorization letter from the government agency or other property owner of the road(s) identified in accordance with subparagraph (ii) of this paragraph;
- (iv) the physical address of the brine storage location(s) or wells from which the brine is hauled;
- (v) a description of the system used at the well location(s) to remove and minimize any oil or gas residue from becoming part of the brine;
- (vi) an analysis of a representative sample of the brine for the parameters found in subparagraph 360.12(f)(3)(ii). All analyses must be performed by a laboratory certified by the New York State Department of Health using methods acceptable to the department;
- (vii) a road spreading plan that includes a description of the procedures to prevent the brine from flowing or running off into streams, creeks, lakes and other bodies of water. The plan should include, at a minimum:
 - (a) the type of use: dust control, road stabilization, or ice and snow control;
 - (b) a description of how the brine will be applied, including the equipment to be used and the method for controlling the rate of application;
 - (c) the proposed rate and frequency of application; and
 - (d) if the proposed use is ice or snow control, a description of how the operation complies with New York State Department of Transportation guidelines for snow and ice control.

(3) Conditions for brine use – all uses.

- (i) Only gas storage brine and production brine from wells producing from formations other than the Marcellus Shale are approvable under this subdivision for road spreading.
- (ii) Road spreading of drilling fluids, flowback water and plugging fluids is prohibited.
- (ii) Brine must comply with the following standards (test methods are incorporated by reference in section 360.3 of this Title):

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BUD Criteria for the Use of Oil/Gas Brine for Road Uses

Parameter	Criteria, mg/L	Test Method
Total Dissolved Solids	>170,000	Method approved by Department
Chloride	>80,000	EPA Method 300.00
Sodium	>40,000	SW-846 6010C
Calcium	>20,000	SW-846 6010C
Iron	< 30	SW-846 6010C
Barium	< 1.0	SW-846 6010C
Lead	< 2.5	SW-846 6010C
Sulfate	< 250	EPA Method 300.0
Oil/Grease	< 15	EPA Method 1664
Benzene	<0.5	SW-846 8260
Ethylbenzene	<0.5	SW-846 8260
Toluene	<0.5	SW-846 8260
Xylene	<0.5	SW-846 8260

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

(iv) No brine can be applied within 50 feet of a stream, creek, lake, or other body of water.

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

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

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

(viii) One representative analysis of the brine for the constituents in subparagraph 360.12(f)(3)(ii) must be submitted after each three years of use. All analyses must be performed by a laboratory certified by the New York State Department of Health using methods acceptable to the department.

(ix) An annual report must be submitted to the department by March 1 of each year containing data for the previous calendar year. The report must include:

(a) the source of the brine;

(b) analytical data (if required);

(c) total amount of brine applied;

(d) dates of brine application;

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

(f) effectiveness of brine application (excellent, good, fair, poor), etc.

(x) The department will determine in writing, on a case-specific basis, whether the proposal constitutes a beneficial use, based on requirements described in this section and subdivision 360.12(d) of this Part.

(xi) Brine approved for beneficial use under this section ceases to be a waste when it meets the technical requirements or specifications for the intended end use.

(4) Conditions for brine use - dust control and road stabilization on unpaved roads.

(i) No brine application is allowed between sundown and sunrise.

(ii) No brine application is allowed on sections of road with a grade exceeding 10 percent.

(iii) No brine application is allowed on wet or frozen roads, during rain, or when rain is imminent.

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- (iv) Brine application must occur only on unpaved roads.
 - (v) A spreader bar or similar device designed to deliver a uniform application of brine must be used.
 - (vi) The application vehicle must have shut-off controls in the cab.
 - (vii) Brine cannot be applied directly to vegetation near the surface that is being treated.
 - (viii) Application within 12 feet of structures crossing bodies of water or crossing drainage ditches is prohibited.
 - (ix) When the vehicle stops, the discharge of brine must stop.
 - (x) The vehicle must be moving at least five miles per hour when brine is being applied.
- (5) Conditions for brine use – ice and snow reduction. The brine application must not be used at a rate greater than needed for snow and ice control.

Section 360.13 Special requirements for management of historic fill

(a) Historic fill that has been disturbed as part of a construction project may be used on areas of the project property where all individual chemical levels in the placement locations are equal to or greater than that of the historic fill, as measured by the ninetieth (90th) percentile concentration in both the historic fill and proximate in-place soil, if placed above the seasonally high groundwater table in the following manner:

(1) It is covered by a building foundation or a paved surface, or it is covered with at least two feet of suitable cover soil, or at least one foot of suitable cover soil for a commercial or industrial land use area. Suitable cover soil means soil that does not contain pollutants above the levels indicated in Table 375-6.8(b) of this Title, entitled “Restricted Use Soil Cleanup Objectives, Protection of Public Health,” for Residential use and Protection of Groundwater, if applicable pursuant to Part 375, or other department-issued pollutant criteria cleanup objectives, whichever objective is lower.

(2) It is only used within the footprint of the historic fill disposal area, at an elevation that does not exceed surrounding properties.

(b) Except as otherwise provided in subdivision (a) of this section, disturbed historic fill must be disposed of at landfills which are constructed with double composite liners and which are authorized by the department to accept this waste, unless it can be demonstrated to the department’s satisfaction that it contains only uncontaminated soil, recognizable concrete, concrete products, asphalt pavement, brick, glass, and rock, in which case it can be managed as C&D debris.

(c) Use of historic fill, other than specified above, must obtain a case-specific beneficial use

determination under subdivision 360.12(d) of this Part.

Section 360.14 Exempt facilities

(a) While this Part or Parts 361 through 365 may exempt solid waste management activities from regulation by the department, other activities, unrelated to solid waste management, occurring at the facility identified as an exempt facility may be subject to regulation under this Title.

(b) A facility is no longer considered an exempt facility if it fails to comply with any operational conditions that apply or if the facility poses a potential adverse impact to public health and the environment. In either case, the facility must cease accepting waste and remove and properly dispose of all waste and products resulting from the processing of waste at the facility in accordance with department instructions.

(c) General exemptions. In addition to exemptions provided in Parts 361 to 365 of this Title, the following facilities are exempt from this Part:

(1) A transfer, storage, treatment, processing, or combustion facility located at the site of waste generation or at a location in the state under the same ownership or control as the site of waste generation. For the purposes of this Part, all locations under the ownership or control of municipal agencies and departments are considered under the ownership or control of the parent municipality. This exemption does not apply to the following facilities:

(i) A facility owned or operated by a municipality that accepts more than 250 tons of waste per day.

(ii) A regulated medical waste treatment facility.

(iii) A facility for disinfected, contaminated and suspect contaminated waste from a biohazard incident.

(iv) A facility for animal prion wastes.

(v) A composting facility for animal carcasses and parts from a slaughterhouse.

(vi) A composting or other facility subject to Subpart 361-3 for municipal solid waste, sewage sludge, or other sludges.

(vii) A mobile vehicle crusher.

(viii) A manufactured home processor.

(ix) Storage of petroleum-contaminated soils for more than 60 days, unless a longer time period is approved by the department.

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(x) A surface impoundment for handling of coal ash or coal combustion residuals.

(2) A transfer, storage, treatment, or combustion facility, other than a composting or other facility that is subject to regulation under Subpart 361-2 or 361-3 of this Title, located at a publicly owned treatment works or other sewage treatment plant, and used exclusively for grit, screenings, sewage sludge, septage, or leachate. Also, the receipt of organic waste at a publicly owned treatment works or other sewage treatment plant for addition to an anaerobic digester that also treats sewage sludge.

(3) The storage of nonputrescible waste on a vehicle for 10 days or less, or nonputrescible biohazard waste on a vehicle for 5 days or less, provided:

(i) the property where the storage occurs is owned or leased by the transporter;

(ii) if containers and roll-offs are used, they must remain on or attached to the vehicles that transported them;

(iii) no container, roll-off or transport vehicle may be opened or uncovered for any purpose including transfer or treatment; and

(iv) if handling hazardous waste from conditionally exempt small quantity generators, the facility complies with the standards for hazardous waste discharges from transporters specified in subdivision 372.3(d) of this Title.

(4) The storage of putrescible waste on a vehicle overnight, provided:

(i) the property where the storage occurs is owned or leased by the transporter;

(ii) if containers and roll-offs are used, they must remain on or attached to the vehicles that transported them;

(iii) no container, roll-off or transport vehicle may be opened or uncovered for any purpose, including transfer or treatment; and

(iv) storage is conducted in manner that does not cause odor.

(5) The storage of waste on a vehicle during routine transportation operations such as stops for meals, rest periods and fuel.

(6) A facility that treats wastewater that is subject to regulation under Parts 750 through 757 of this Title.

(7) A rendering facility for animal or food-derived fats, oil, grease, and animal parts.

(8) Collection of pharmaceutical waste generated by a household or ultimate user, including controlled substances, by the following entities, provided there is compliance under the requirements of

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21 CFR Parts 1300, 1301, 1304, 1305, 1307, and 1317, as incorporated by reference in section 360.3 of this Title, and provided that if disposal occurs in New York State, the collected pharmaceutical waste is destroyed in a municipal waste combustion facility or by another method approved by the department:

(i) Manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies that collect pharmaceutical waste from ultimate users, including controlled substances, by voluntarily administering mail back programs and maintaining collection receptacles provided they have received authorization from the United States Department of Justice Drug Enforcement Administration as an authorized collector.

(ii) Federal, State, tribal or local law enforcement agencies who conduct take-back events or maintain a collection receptacle for household pharmaceuticals at their own law enforcement location.

(iii) Federal, State, tribal, or local law enforcement agencies who partner with any person or community group to conduct take-back events at a location other than their own law enforcement location.

Section 360.15 Registered facilities, transporters and events

(a) General.

(1) Certain facilities, transporters, or events may be eligible for registration pursuant to the conditions specified in this section and under Parts 361, 362, 363, 364, and 365, and Subpart 374-2 of this Title. The owner or operator of the facility or event or the transporter must comply with the design, operating, closure, and financial assurance criteria found in this Part and in Parts 361, 362, 363, 364 and 365 of this Title unless otherwise excluded.

(2) Registrations are ministerial actions for purposes of Part 617 of this Title and are not subject to Part 621 of this Title.

(3) If more than one registered facility or activity is located on geographically contiguous land under the control or ownership of the same person, the department may require a permit for these facilities or events to be obtained under this Part.

(4) Facilities or events that would otherwise qualify for registration and that are located at a permitted facility, or on contiguous property with the same ownership or control as the permitted facility, may be required to have the facilities or events incorporated into the permit and comply with any permit conditions placed on those activities.

(b) A registration may be denied or revoked based upon the unsuitability of the owner, operator or applicant, as set forth in this subdivision. In addition to any other available grounds, the department may, consistent with the policies of article 23-A of the Correction Law and the provisions of section 70-0115 of the ECL, deny, suspend, revoke or modify any registration after determining in writing that such action is required to protect the public health or safety. Some of the factors which the department may consider in arriving at such determination include:

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(1) the owner, operator or applicant has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL or other environmental law administered by the department, any order or determination of the commissioner, any regulation of the department, or any similar statute, regulation, order or permit condition of the federal, other state, or local government agency, on one or more occasions, and in the opinion of the department, the violation that was the basis for the action posed a potential for significant adverse impacts to human health or the environment, or represents a pattern of noncompliance;

(2) the owner, operator or applicant provides materially false or inaccurate information or statements on the registration form;

(3) the owner, operator or applicant has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact, knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department; or

(4) the owner, operator or applicant is either:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if such corporation, partnership, association or organization applied for a permit or registration pursuant to this Part; or

(ii) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if such corporation, partnership, association or organization applied for a permit or registration pursuant to this Part; or

(iii) a corporation, partnership, association or organization, or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, if such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part had such other corporation, partnership, association or organization applied for a permit or registration under this Part.

(c) Submission.

(1) The owner or operator must notify the department on a form prescribed by the department before commencement of construction or operation of any facility or activity subject to registration requirements found in this Part or Parts 361 through 365 of this Title. In addition, the owner or operator must provide information on any exempt facilities, events, or activities that will take place at the registered facility.

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- (2) The owner or operator must furnish to the department any information requested by the department to determine compliance with the registration requirements. This information must include, if appropriate, a Certificate under Seal of the Department of State.
- (d) Financial assurance. Financial assurance may be required under section 360.22 of this Part. If financial assurance is required, a closure cost estimate must be submitted as part of the registration submittal.
- (e) Validation. Commencement of construction or operations may not occur until the owner or operator receives a validated copy of the registration from the department. The validated copy of the registration must be available or posted at that facility or event. All construction and operation must be in accordance with the information provided in the registration notification and the applicable requirements of this Part, Parts 361, 362, 363, 364, and 365, and Subpart 374-2 of this Title.
- (f) Registration term. A validated registration will be effective for a maximum of five years. Applicants may renew a registration by submitting a new registration notification 60 days prior to the end date of each five-year term or otherwise specified registration term.
- (g) Registration modification. The owner or operator of a registered facility or event or transporter must submit a new registration modification to the department when there is a proposed change in any information provided on any prior registration notification submitted to the department. The modification cannot be implemented until the owner or operator receives a validated copy of the modified registration from the department.
- (h) The department may require the owner or operator of a facility or event or the transporter that may qualify for registration to apply for and obtain a permit when the department determines that the location, volume of material, or size of the project, or another aspect of the activity will negatively impact the environment. Where the department imposes such a requirement on an owner or operator, the department must do so in writing and must state the reason for imposing the requirement.
- (i) Closure. The owner or operator of a registered facility is required to close the facility in accordance with the requirements of this Part, Parts 361, 362, 363, and 365 and Subpart 374-2 of this Title as they pertain to the facility.

Section 360.16 Permit application requirements and permit provisions

- (a) Submission, signature and verification of applications. All applications for permits must be submitted in either an electronic format acceptable to the department or print. They must be signed by the applicant as follows:
- (1) corporations: by a duly authorized principal executive officer of at least the level of vice president;
 - (2) partnership or limited partnership: by a general partner;

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(3) sole proprietorship: by the proprietor; or

(4) a municipal, State, or other governmental entity: by a duly authorized principal executive officer or elected official.

(b) Level of detail. The information contained in an application must be of construction-level detail and contain sufficient detail to:

(1) allow the documents to be readily understood;

(2) allow the department to ascertain the potential environmental impacts of the proposed facility; and

(3) demonstrate that the siting, design, construction, operation, and closure of the facility will be capable of compliance with the applicable requirements of this Part and with Parts 361, 362, 363, and 365, and Subpart 374-2 of this Title.

(c) Contents of a new application for a permit. In addition to the information identified in Part 621 of this Title, an application for a new permit must include at a minimum, the following information:

(1) Contact information and written permission, including:

(i) the name and address of the owner and of the operator of the proposed facility;

(ii) the name and address of the owner of the property on which the proposed facility is to be located;

(iii) written permission from the owner(s) of land on which the proposed facility is to be located; and

(iv) a Certificate under Seal of the Department of State, if applicable.

(2) Maps and plans. A regional map, a vicinity map, and a site plan, as described in this paragraph.

(i) Regional map. A regional map (having a minimum scale of 1:62,500) that delineates the location of the proposed facility, the location of the closest population centers, communities of disproportionate impact, and transportation systems including highways.

(ii) Vicinity map. A vicinity map (having a minimum scale of 1:24,000) that delineates zoning and land use, communities of disproportionate impact, residences, principal aquifers, primary aquifers, surface waters, wetlands, access roads, and other existing and proposed features on the property and within one-half mile of the perimeter of the property.

(iii) Site plan. A site plan (having a minimum scale of 1:2,400 with five-foot contour intervals)

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that shows:

(a) the location of the proposed facility and its acreage, and the location of any wetland or special flood hazard area, including 100-year flood elevations and location of any floodways pursuant to Part 502 of this Title, on the property and within 800 feet of the perimeter of the property;

(b) the location of all public and private water wells, surface water bodies, roads, residences, public areas and buildings, including the identification of any buildings which are owned by the applicant or operator, on the property and within 800 feet of the perimeter of the property;

(c) the location of all proposed structures, appurtenances, screening, fences, gates, roads, parking areas, and areas designated for management of waste;

(d) the drainage characteristics of the proposed facility and of the property on which it is proposed to be located, identifying the direction of stormwater, ditches, and drainage swales together with any drainage controls that exist or will be implemented with facility construction;

(e) the location of any State or federally regulated wetlands;

(f) the location of soil borings, if applicable;

(g) existing and proposed elevation contours;

(h) the direction of prevailing winds; and

(i) except in the case of land application facilities, the property boundaries, certified by an individual licensed to practice land surveying in the State of New York, of the property on which the facility is proposed to be located.

(3) Engineering report. An engineering report that contains a comprehensive description of the existing site conditions, a full engineering analysis of the facility including engineering calculations and all raw data, a description of the overall process, including flow diagrams, and a functional description of all equipment to be used, including design criteria, engineering calculations and anticipated performance. Engineering drawings and specifications submitted as part of the engineering report must depict process flows, dimensions, elevations, floor plans, and cross-sectional views of the facility, including all structures, areas designated for unloading, sorting, processing, storage, and loading, and other waste management areas and equipment. Engineering drawings must contain information on known site conditions and projected use of the site.

(4) Facility manual. A facility manual, which must include the following:

(i) Waste control plan. The waste control plan describing:

(a) the facility's service area, both inside and outside New York State, including a list of all planning units or Native American tribes or nations within New York State and counties, provinces or

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tribes or nations outside of New York State;

(b) the waste that will be accepted at the facility including the type, source, quantity, and, as may be required for a particular waste stream in Parts 361, 362, 363, or 365 of this Title, analytical results. The description of the quantity must specify the expected average and maximum daily and annual amounts, on a weight and volume basis, and must be specified for each individual type of waste and for the total amount of waste accepted;

(c) authorized locations where wastes, including residues, are transported when they leave the facility and what arrangements exist or will exist (contracts, etc.) that verify receiving entities will accept the waste;

(d) inspection, education, and contractual measures to ensure that the facility receives and treats only authorized waste, including a program to identify, control, segregate, quarantine, record, store, and dispose of unauthorized waste;

(e) if friable asbestos-containing waste is accepted at the facility, a detailed waste plan specific to that waste must be included that outlines the procedures for managing the waste;

(f) if recyclables are managed at the facility, a detailed plan must be included that describes the types of recyclables that will be recovered, the procedures that will be used for recovery and storage of the recyclables and the disposition of recyclables when they leave the facility;

(g) the procedures that will be used for managing mercury-added consumer products that are separately delivered to the facility; and

(h) in the case of a landfill, a municipal waste combustor, or a transfer facility, a detailed plan must be included that:

(1) describes procedures to ensure that source-separated recyclables, source-separated yard trimmings, source-separated food scraps, and source-separated electronic waste and other product stewardship designated materials are not accepted for disposal, and describes actions to be taken if these materials are received at the facility; and

(2) describes procedures and time-frames for conducting periodic waste characterization surveys.

(ii) Operations and maintenance plan. The plan must include the following:

(a) a description of the overall operation of the facility, including procedures to be followed during start-up and scheduled and unscheduled shutdown of operations;

(b) the type, purpose, size, capacity, and associated detention times for all waste handling, storage, and processing equipment and structures, including back-up facilities and equipment;

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(c) a process flow diagram for waste during normal operation. The flow diagram must indicate the average and maximum quantity of waste handled on a weight and volume basis;

(d) a description of all machinery, equipment, and structures used in waste management operations of the facility, including the design capacity;

(e) a description of the drainage system used for the collection and storage of leachate and the method and location used for disposal of the leachate;

(f) the monitoring, maintenance and inspection procedures related to waste management;

(g) a description of the actions to be taken in response to significant interruptions to the facility's normal operations;

(h) the schedule of operation including the days and hours when the facility will be open to accept and transfer waste, and the days and hours when operations will occur within the facility;

(i) a list of all equipment and instruments requiring calibration and a schedule of proposed calibration intervals;

(j) the estimated maximum daily traffic flow to and from the facility, the type and size of vehicles, and the maximum number of vehicles that can be accommodated on site;

(k) where treatment of waste will occur at the facility, a detailed description of each treatment method and unit, including the operating parameters that will be attained to achieve the intended treatment and the frequency, location, and method for monitoring the operating parameters;

(l) a discussion of compliance with the operating requirements that are identified in section 360.19 and Parts 361, 362, 363, and 365, and Subpart 374-2 of this Title;

(m) the location of all facility records related to the permit; and

(n) a description of the operation of a convenience station, if applicable, for noncommercial vehicles to unload waste and recyclables.

(iii) Training plan. A training plan that identifies all of the facility's personnel by title and responsibilities and that describes the training program, both classroom and on-the job, that will be used to educate each individual on the procedures necessary to ensure compliance with the requirements applicable to the facility, including but not limited to the plans and procedures identified in this section and all authorizations, permits, and approvals that will be required for the facility; and that describes the training that will be provided and all procedures and equipment that will be used during emergencies, contingencies and standard operations.

(iv) Emergency Response Plan. An emergency response plan must include the following.

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(a) A description of actions that facility personnel would take in response to emergencies including fires, explosions, natural disasters, and spills that occur at the facility. The plan must identify the personnel, equipment, and protocols to be utilized in response to each type of emergency. The plan must also include contact information for designated emergency contacts.

(b) A description of the facility's ability and proposed methods to respond to a natural or manmade disaster that, although it may not have a direct impact on the facility itself, may call for expanded or non-standard services to be provided by the facility (for example, longer operating hours) if department approval is granted for those services.

(v) Closure plan. A closure plan that specifically identifies how the facility will comply with the requirements for closure in section 360.21 of this Part and any closure requirements in Parts 361, 362, 363, and 365, and Subpart 374-2 of this Title.

(5) State and Local Plan Consistency. A demonstration that the facility is consistent with the goals and objectives of:

(i) the New York State solid waste management policy identified under subdivision (1) of ECL section 27-0106, with an emphasis on diversion from thermal treatment and disposal;

(ii) the New York State solid waste management plan; and

(iii) the department-approved Local Solid Waste Management Plan (LSWMP) in effect for the municipalities in the facility's service area.

(6) If the owner or operator of a facility with a permit proposes to include a component that would otherwise qualify as an exempt or registered facility or event, the facility or event must be incorporated into the permit application.

(d) New applications submitted by or on behalf of a municipality for a permit under Part 362 or 363 of this Title shall not be complete until a LSWMP is in effect for the municipality.

(e) In addition to the criteria outlined in subdivision 621.3(e) of this Title, a permit may be denied or revoked based upon the unsuitability of the owner, operator or applicant, as set forth in this subdivision. In addition to any other available grounds, the department may, consistent with the policies of article 23-A of the Correction Law, and the provisions of section 70-0115 of the ECL, deny, suspend, revoke or modify any permit, renewal or modification after determining in writing that such action is required to protect the public health or safety. Some of the factors the department may consider in arriving at such determination include:

(1) the owner or operator has been determined in an administrative, civil or criminal proceeding to have violated any provision of the ECL or other environmental law administered by the department, any order or determination of the commissioner, any regulation of the department, or any similar statute, regulation, order or permit condition of the federal, other state, or local government agency, on one or more occasions, and in the opinion of the department, the violation that was the basis for the action

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posed a potential for significant adverse impacts to human health or the environment, or represents a pattern of noncompliance;

(2) the owner or operator provides materially false or inaccurate information or statements in the permit application;

(3) the owner, operator or applicant has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact, knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department;

(4) the owner, operator or applicant is either:

(i) an individual who had a substantial interest in or acted as a high managerial agent or director for any corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if such corporation, partnership, association or organization applied for a permit pursuant to this Part;

(ii) a corporation, partnership, association, organization, or any principal thereof, or any person holding a substantial interest therein, which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part, if such corporation, partnership, association or organization applied for a permit pursuant to this Part;

(iii) a corporation, partnership, association or organization or any high managerial agent or director thereof, or any person holding a substantial interest therein, acting as high managerial agent or director for or holding a substantial interest in another corporation, partnership, association or organization which committed an act or failed to act, and such act or failure to act could be the basis for the denial of a permit or registration pursuant to this Part had such other corporation, partnership, association or organization applied for a permit under this Part; or

(5) for a Part 364 transporter of hazardous waste or regulated medical waste (RMW):

(i) the owner, operator, or applicant has been found in a civil proceeding to have committed a negligent or intentionally tortious act, or has been convicted in a criminal proceeding of a criminal act involving the handling, storing, treating, disposing or transporting of solid waste;

(ii) the owner, operator or applicant has been convicted of a criminal offense, under the laws of any state or of the United States, which involves a violent felony offense, fraud, bribery, perjury, theft or an offense against public administration as that term is used in article 195 of the Penal Law; or

(iii) the owner, operator or applicant has in any matter within the jurisdiction of the department knowingly falsified or concealed a material fact, knowingly submitted a false statement or made use of or made a false statement on or in connection with any document or application submitted to the department.

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(f) Permit modifications. An application to modify a permit must include a description of the proposed modification, a description of the impacts of the proposed modification on the facility, and a demonstration that, under the modified permit, the facility will comply with applicable parts of this Title.

(1) For the purposes of Part 621 of this Title, the department will treat an application to modify a permit for a facility as a new application if, in addition to the reasons described in section 621.11(h) of this Title, any of the following conditions are met:

(i) a horizontal or vertical increase in size of a landfill beyond the limits approved in the permit;
or

(ii) in the absence of a minor project designation under paragraph 621.4(m)(2) of this Title, an expansion or acceptance rate increase at any facility.

(2) A permit modification is required if the owner or operator of a facility with a permit proposes to include a facility component on the site that would otherwise qualify as an exempt or registered facility or event.

(g) Permit renewals

(1) Submission deadline. A complete application for renewal of a permit must be submitted at least 180 days before the existing permit expires in order to be considered timely for the purposes of the State Administrative Procedure Act. An application for renewal of the permit must be made on forms authorized by the department.

(2) Renewal application contents. An application for renewal of a permit must include the following:

(i) a demonstration that the facility will be capable of compliance with all applicable requirements of the ECL and this Title and with all permit conditions and a description of how compliance with the requirements and conditions will be ensured; and

(ii) a demonstration that the facility is consistent with the state solid waste management policy identified under subdivision (1) of ECL section 27-0106 and the goals and objectives of the New York State solid waste management plan, with an emphasis on diversion from thermal treatment and disposal.

(iii) for a renewal application submitted by or on behalf of a municipality for a facility subject to Part 362 or 363 of this Title, a comprehensive recycling analysis in accordance with section 360.11 of this Part.

(3) An application for renewal that includes physical or operational changes to the facility will also be considered a permit modification request.

(h) Facilities at or near sites undergoing a remedial program.

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(1) If a facility permitted under this Part is proposed to be located at or within 150 feet of the boundary of a site undergoing a remedial program, the applicant must submit an engineering report that discusses the potential impacts of the facility on the remedial program or that site. For the purposes of this subdivision, a remedial program is any activity defined in 6 NYCRR 375-1.2 and subject to ECL Article 27 Title 13 (Inactive Hazardous Waste Disposal Sites), ECL Article 27 Title 14 (Brownfields Cleanup Program sites), ECL Article 56 Title 5 (Environmental Restoration Project sites), ECL Article 52 Title 3 (Hazardous Waste Site Remediation Projects), ECL Article 27 Title 9 (RCRA Corrective Action Program) or the department's Voluntary Cleanup Program, or in Navigation Law Section 176 (Spill Response Program for the cleanup of petroleum discharges). The proposed facility must not interfere significantly with any potential, ongoing or completed remedial program.

(2) If a new facility or an expansion of an existing facility is proposed to be located at an inactive hazardous waste site classified as a P site by the department, the applicant must submit as part of a complete application, sufficient information to enable the department to classify the site in question as Class 1, 2, 3, 4 or 5 or to delete the site from the Registry of Inactive Hazardous Waste Disposal Sites.

(i) Duration of permits. A permit issued pursuant to this Part will be issued for a period not to exceed ten years.

(j) Supervision and certification of construction. The construction of a facility and each stage of construction of a facility must be undertaken under the supervision of an individual licensed to practice engineering in the State of New York. Upon completion of construction, that individual must certify in writing that the construction is in accordance with the terms of the department-issued permit. Operation of the facility and any stage in the operation of a facility may not commence until approval from the department is received.

Section 360.17 Nonspecific facilities

The owner or operator of a facility that is not specified in this Part or in Parts 361, 362, 363, or 365 of this Title must obtain a permit under this section prior to construction and operation. The department may require information in addition to what is required under section 360.16 of this Part, and the facility's design and operation will be subject to the applicable requirements identified in section 360.19 of this Part as well as to any additional requirements that the department may determine to be appropriate.

Section 360.18 Research, development, and demonstration registrations and permits

The department may issue a research, development and demonstration (RD&D) registration or permit for any project that involves an innovative, experimental or unproven process or technology for solid waste management at a facility.

(a) Registration for small-scale RD&D projects. The department may issue a registration pursuant to this Part for a project that involves 0.5 tons of waste per day or less. The project must protect public health and the environment. A registration issued pursuant to this subdivision will have a specified

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term, not to exceed two years and will not be renewed.

(b) Permit application contents in lieu of the requirements of section 360.16 of this Part. A permit application for an RD&D project which includes construction of buildings or structures must be prepared by a professional engineer. A permit for any other RD&D project must be prepared by a professional engineer or a research scientist affiliated with an accredited university or research institution. An application for a RD&D permit must:

(1) include a detailed discussion of:

- (i) the project's objectives, schedule, location and characteristics;
- (ii) the equipment to be used in carrying out the project;
- (iii) the waste that is to be managed;
- (iv) the methods to be used to monitor environmental impacts; and
- (v) qualitative and quantitative methods for evaluating project performance;

(2) discuss the effects that the proposed technology or process could have on human health and the environment and demonstrate that adequate protection of public health and the environment will be maintained during all phases of the RD&D project;

(3) identify all personnel involved, their backgrounds and qualifications to conduct the project and their responsibilities;

(4) contain any information the department determines to be necessary, including, but not limited to, monitoring, operating conditions, financial assurance, and testing protocols;

(5) include written permission of all landowners to use the land for the project if the applicant does not own the land on which the RD&D project is proposed to be performed; and

(6) demonstrate that the quantity and types of waste proposed for use in the project are no more than those needed to satisfy the project's objectives.

(c) Prohibited projects. The department will not issue an RD&D permit under this section that would authorize:

- (1) disposal of waste at a facility that would require a permit for a disposal facility regulated under Part 363 of this Title; or
- (2) an activity whose primary purpose is to process commercial quantities of waste.

(d) Design and operating requirements.

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(1) RD&D projects which include construction of buildings or structures must be performed under the direction of a professional engineer. All other RD&D projects must be performed under the direction of a professional engineer or a research scientist affiliated with an accredited university or research institution.

(2) Compliance with the 40 CFR Part 258 Criteria for Municipal Solid Waste Landfills, as incorporated by reference in section 360.3 of this Title, must be maintained for landfills subject to those requirements.

(3) The quantity and types of waste subject to the RD&D permit must not exceed those needed to effectively address the research objectives. After completion of the RD&D project, all waste must be removed from the project site unless the department authorizes the waste to remain on the project site.

(4) The department may require the permittee to comply with one or more of the design and operating requirements under this Part and Parts 361, 362, 363, and 365 of this Title.

(5) Within 90 days after the expiration date of the RD&D permit, the permittee must submit to the department a project summary report that includes, at a minimum, the following information:

(i) a summary of the project objectives, information gathered, analyses conducted, and project results, including all monitoring and testing results; and

(ii) a description of any operating problems and the status of their resolution, any other limitations encountered, and areas of further study to be considered.

(e) Permit duration and renewal. RD&D permits issued under this section will have a specified permit term not to exceed one year. Permits issued under this section will not be renewed more than three times.

Section 360.19 Operating requirements

(a) Applicability. Except as otherwise provided in this Part or in Parts 361, 362, 363, 364, or 365, or Subpart 374-2 of this Title, the owner or operator of a facility that requires a permit or registration must comply with the requirements of this section.

(b) Water protection.

(1) The owner or operator of a facility must prevent waste from being deposited in or entering surface waters or groundwater.

(2) The owner or operator of a facility must operate the facility in a manner that minimizes the generation of leachate and that does not allow any leachate to enter surface waters or groundwater except under authority of a State Pollutant Discharge Elimination System permit.

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(c) Waste acceptance and control.

(1) The owner or operator of a facility must institute, maintain, and enforce a waste control plan. Components of this plan must include, but not be limited to, the following measures to ensure that only authorized waste is accepted at the facility:

(i) posting clearly legible signs at all public access points indicating hours of operation and the types of waste accepted and not accepted;

(ii) inspecting incoming loads of waste; and

(iii) specifying which types of waste are authorized to be accepted in contracts with waste suppliers.

(iv) in addition, landfills, combustion facilities, thermal treatment facilities, municipal solid waste processing facilities and transfer facilities must:

(a) educate users of their facilities on the proper methods for the management of electronic waste. Such education should include providing written information to users of the facility on the proper methods of recycling electronic waste and posting, in conspicuous locations at the facility, signs stating that electronic waste may not be disposed of at the facility; and

(b) post a sign stating that mercury-added thermostats are not accepted at the facility.

(2) Except for facilities regulated under section 360.17 and section 360.18 of this Part or Part 361, Part 365, or Subpart 362-4 of this Title, a facility may not accept waste that is generated within a municipality that is not included in a department-approved comprehensive recycling analysis (CRA) or a department-approved local solid waste management plan (LSWMP).

(3) The owner or operator of a facility must develop and implement a program to train facility staff to implement the waste control plan.

(4) If unauthorized waste is delivered to the facility it must be adequately segregated, secured, and contained in order to prevent leakage or contamination of the environment and must be removed within 7 days after receipt, unless a different period is authorized by the department in the waste control plan. Transportation must be performed by a person authorized to transport the waste, and disposition must be to a facility authorized to receive the waste for management.

(i) If the owner or operator accepts unauthorized waste, the owner or operator must maintain at the facility a record of each incident identifying the type of waste and its final disposition. The owner or operator must include this information in the facility annual report. For each incident, the owner or operator must record:

(a) the date and time;

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(b) a description of the incident;

(c) contact and vehicle information for the waste transporter that delivered the unauthorized waste;

(d) contact information for the generator of the unauthorized waste; and

(e) a description of the response to the incident and the disposition of the waste.

(5) The owner or operator of a facility must not accept waste unless the vehicle transporting the waste is adequately covered or the waste is containerized. When leaving the facility, all vehicles containing waste must utilize a cover which prevents waste and leachate from escaping the vehicle, or the waste must be containerized.

(6) The owner or operator of a facility which is authorized to manage mercury-containing devices or mercury-added consumer products may not place any of those materials in a combustor or landfill, or direct the material to a combustor or landfill.

(7) If a facility provides a residential drop-off area, the owner or operator must provide a separate, designated area for that activity and must provide for collection of source-separated recyclables.

(8) The owner or operator of a facility must ensure that all waste leaving the facility is managed at a facility authorized by the department if located in this state, or authorized by the appropriate governmental agency or agencies if located in another state, territory, or nation.

(9) The owner or operator of a facility must ensure that all unloading and loading areas are adequate in size and designed to facilitate efficient movement of waste to and from the collection vehicles and to facilitate the unobstructed movement of vehicles.

(10) The owner or operator of a facility must ensure that all areas containing waste are strictly and continuously secured to prevent unauthorized access by use of fencing, gates, signs, natural barriers, or other suitable means as determined by the department. Waste may not be used as a barrier.

(11) An attendant must be on duty at a facility which has permanent operating mechanical equipment whenever the facility is open.

(d) Operation and maintenance. The owner or operator of a facility must ensure that the following criteria are satisfied:

(1) All maintenance and operating activities at the facility are performed in accordance with the facility manual required by 360.16(d)(4) of this Part.

(2) The facility accommodates expected traffic flow in a safe and efficient manner. Facility roadways are passable in all weather conditions.

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(3) Tracking of soil, waste, leachate and other materials from the facility onto off-site roadways is prevented.

(4) All equipment, storage containers, and storage areas are sufficient for the quantity and type of waste managed at the facility. Adequate numbers, types, and sizes of properly maintained equipment and spare parts are available during all hours of operation.

(5) All floors and working areas are adequately drained, properly maintained, and continuously free from standing water. All drainage and wash waters are collected and handled in a manner acceptable to the department.

(6) The facility is properly graded to prevent soil erosion and to minimize ponding.

(7) Equipment and systems required to manage waste at the facility are properly operated, calibrated, and maintained at all times.

(8) Prior to leaving the facility, any vehicle containing waste must be covered with, at a minimum, a mesh or fabric cover acceptable to the department.

(9) If an unscheduled total facility shutdown exceeds 24 hours, the facility will immediately notify the regional materials management supervisor in the departmental region in which the facility is located describing the incident and the proposed waste management activities.

(e) Routine inspection. The owner or operator of a facility must monitor and inspect the facility for malfunctions, deteriorations, operator errors, and incidents no less frequently than on a daily basis when the facility is open. The facility owner or operator must promptly remedy problems revealed by the inspections. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(f) Confinement of waste. The owner or operator of a facility must ensure that waste at the facility is confined to an area that can be effectively maintained, operated, and controlled; and that blowing litter is confined to waste holding and operating areas by fencing or other suitable means. Any litter outside the waste holding area must be controlled.

(g) Dust control. The owner or operator of a facility must ensure that dust is effectively controlled so that it does not constitute a nuisance as determined by the department; and must undertake any and all measures as required by the department to maintain and control dust at and emanating from the facility.

(h) Vector control. The owner or operator of a facility must effectively control on-site populations of vectors.

(i) Odor control. The owner or operator of a facility must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by the department.

(j) Noise levels. Except as may be authorized under a noise easement, the owner or operator of a

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facility must ensure that noise (other than that occurring during construction of the facility) resulting from equipment or operations at the facility does not exceed the following energy equivalent sound levels at the property line of the facility:

Character of Community within a one-mile radius of facility	Leq Energy Equivalent Sound Levels	
	7 a.m. to 10 p.m.	10 p.m. to 7 a.m.
Rural	57 decibels (A)	47 decibels (A)
Suburban	62 decibels (A)	52 decibels (A)
Urban	67 decibels (A)	57 decibels (A)

The Leq is the equivalent steady-state sound level which contains the same acoustic energy as the time varying sound level during a one-hour period. It is not necessary that the measurements be taken over a full one-hour time interval, but sufficient measurements must be available to allow a valid extrapolation to a one-hour time interval.

(1) If the Leq sound level measured at the facility property line in the absence of sound produced by equipment operated at the facility exceeds these limits, the facility must not produce an Leq that is more than 3 decibels (A) exceeding that background.

(2) The sound level must be the weighted sound pressure level measured with the slow metering characteristic and A-weighted.

(3) Measuring instruments must be Type 1 general purpose sound level meters, Type 2, or corresponding special sound level meters Type S1A or S2A.

(4) Mufflers are required on all internal combustion-powered equipment used at the facility.

(k) Violation response. The owner or operator of a facility must immediately undertake any and all measures needed to eliminate any violation of an operational, closure, or post-closure care requirement of this Part and of Part 361, 362, 363, and 365 of this Title. Measures taken do not preclude the department from exercising its enforcement powers.

(l) Recordkeeping and reporting.

(1) Application documents. The owner or operator of a facility must maintain at the facility or other approved location, and make readily available for inspection throughout the life of the facility including the post-closure care period and the custodial care period, a copy of all information and data required as part of the application for the permit or submittal for registration, as well as construction certification and closure construction certification documents.

(2) Operating records. The owner or operator of a facility must maintain at the facility or other approved location, and make readily available for inspection for a period of no less than seven years from the date a particular record was created, the following operating records:

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(i) A daily log of wastes received that identifies the waste type, quantity, date received, and planning unit where the waste was generated, and the quantity and destination of any waste, products or recyclables that are removed from the facility.

(ii) Routine inspection logs that must include, at a minimum, the following information: the date and time of the inspection, the name of the inspector, a description of the inspection including the identity of specific equipment and structures inspected, the observations recorded, and the date and nature of any remedial actions implemented or repairs made as a result of the inspection.

(iii) All monitoring information necessary for compliance with the requirements of this Part and Parts 361, 362, 363, and 365 of this Title.

(iv) Records documenting training programs, schedules, and certifications as required.

(v) Any other information required in a permit or registration under this Part or that the department may require be created and maintained as part of the daily operating records.

(3) Annual report.

(i) The owner or operator of a facility must submit a completed annual report in an electronic format acceptable to the department to the department's central office and a signed and certified original to the department's regional office in which the facility is located no later than March 1 of each year for the previous calendar year, on forms prescribed by the department.

(ii) The owner or operator of a facility required to report to the department related to the facility's compliance under this Part or Parts 361, 362, 363, or 365 of this Title, or under the terms of any permit issued under this Part, must make, sign, and submit with the report the following certification:

I certify, under penalty of law, that the data and other information identified in this report have been prepared under my direction and supervision in compliance with the system designed to ensure that qualified personnel properly and accurately gather and evaluate this information. I am aware that any false statement I make in such report is punishable pursuant to section 71-2703(2) of the Environmental Conservation Law and section 210.45 of the Penal Law.

(m) Personnel training. The owner or operator of a facility must ensure sufficient and appropriately trained staff are available to manage the quantity and type of waste that will be handled at the facility.

(n) Emergency Response. The owner or operator of a facility must adequately respond to emergencies such as fires, explosions, natural disasters, and spills that occur at the facility.

(o) Tank Requirements. The owner or operator of a facility that includes tanks for waste storage must comply with the following requirements:

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(1) All tanks must:

- (i) be chemically compatible with the waste being stored;
- (ii) be equipped with an overflow prevention system in good working order; and
- (iii) have double-walled construction with leak detection, if deemed necessary by the department.

(2) If required by the department, above ground tanks must:

- (i) have and maintain a secondary containment system that is compatible with the waste being stored;
- (ii) have a secondary containment system designed and built to contain 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater;
- (iii) be located on a stable surface which prevents movement, rolling, or settling;
- (iv) have a system to remove stormwater from the secondary containment area. Precipitation removal (rain, snow, or ice) must be initiated before 10 percent of the storage capacity is reached; and
- (iv) have a minimum of two feet of freeboard if open on the top.

(3) Self inspection requirements for tanks and related equipment:

- (i) tanks must be inspected on no less than a weekly basis when waste is present in the tank, and the interior inspected whenever emptied;
- (ii) if the inspection reveals a leak or any other deficiency that would result in failure of the tank, remedial measures must be taken immediately to eliminate the leak or correct the deficiency; and
- (iii) the overflow protection system must be inspected weekly when waste is present in the tank.

Section 360.20 Environmental monitoring services

(a) The department may require environmental monitoring services at any facility anytime during the construction, operation, closure, and post-closure of the facility to be paid for by the facility where:

- (i) environmental monitoring services are required by law;
- (ii) the compliance history or past practices of the owner or operator over the past five years reveals an inability or unwillingness to comply with environmental laws and regulations or has included a conviction of an environmental crime or other criminal environmental violation, execution of an order

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on consent or consent decree, or the issuance of a Commissioner's decision or judgment finding one or more violations;

(iii) the past or current practices at the facility have resulted in conditions which pose a significant threat to public health or the environment, or indicate that significant adverse environmental or health impacts may be likely to occur; or

(iv) the department determines the regulated facility, site or regulated activity needs additional oversight due to exceptional circumstances related to its size, throughput, materials handled or location (such as proximity to human use or habitation, to drinking water supplies, to critical or sole source aquifers, to endangered species, to other sensitive receptors or to environmental justice areas) or relating to the nature of its operations.

(b) If the owner or operator of a facility required to make environmental monitoring payments to the department fails to submit payment by the required submission date, the owner or operator must immediately cease acceptance of any and all waste at the facility and must commence closure of the facility in accordance with the requirements of this Part and any permit or order to which the owner or operator is subject.

Section 360.21 Closure requirements

(a) Except as otherwise provided in this Part or in Part 361, 362, 363, 365 or Subpart 374-2 of this Title, the owner or operator of a facility that requires a permit or registration must comply with the following requirements:

(1) Notify the department in writing 30 days prior to the anticipated final receipt of waste and within 7 days of completion of all closure activities.

(2) Within 30 days after receiving the final quantity of waste, remove and deliver any remaining waste to a facility authorized to accept the waste.

(3) Within 60 days after receiving the final quantity of waste, complete all closure activities, including removal of all products resulting from the processing of waste and decontamination of all equipment and structures involved in any aspect of waste management, in a manner acceptable to the department.

Section 360.22 Financial assurance

(a) Applicability. The owner or operator of a facility required to obtain financial assurance must submit financial assurance acceptable to the department to secure closure, and, where applicable, post-closure care including custodial care, and implementation of corrective measures pertaining to the facility. Each owner or operator of a facility required to obtain financial assurance must provide continuous coverage beginning no later than 60 days prior to the initial receipt of waste and until released by the department from financial assurance requirements by demonstrating compliance with the applicable closure, post-closure care, custodial care, and corrective measures requirements pertaining to the facility, and

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demonstrating that the facility and any waste remaining at the facility do not pose a threat to public health or the environment.

(b) Closure, post-closure care, custodial care, and corrective measures cost estimates.

(1) The owner or operator of any facility required to obtain financial assurance, other than a landfill, must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform closure in compliance with the requirements in this Part and Parts 361, 362, or 365, or Subpart 374-2 of this Title.

(i) At a minimum, the closure cost estimate must include the cost to dispose of the maximum permitted storage capacity at that facility. Cost estimates must also include or reflect the design, materials, equipment, labor, administration, and quality assurance for closure in accordance with the facility-specific closure plan.

(ii) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of materials, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(2) The owner or operator of a landfill must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform closure, post-closure care, custodial care, and, if necessary, corrective measures in compliance with the requirements in this Part, Part 363 of this Title, and a department-approved closure plan, post-closure care plan, custodial care assurance plan and corrective measures plan.

(i) At a minimum, the closure cost estimate must equal the cost to close the greatest number of landfill cells which, at any given point during the lifetime of the facility, have received waste but have not undergone final closure, as indicated by the closure plan.

(a) The closure cost estimates must include or reflect the design, materials, equipment, labor, administration, and quality assurance for closure in accordance with the facility-specific closure plan.

(b) The closure cost estimate for a landfill's preliminary closure plan must include the costs of developing final closure, post closure care and custodial care plans as well as the costs to prepare engineering drawings and specifications, bidding documents, and other construction-related documents.

(c) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of materials, facility structures or equipment, land, or other assets associated with the facility at the time of closure.

(ii) At a minimum, the post-closure care cost estimate must be based on the number of landfill cells that are actively receiving waste and those that have undergone final closure, as indicated by the post-closure care plan. The post-closure care cost estimate must account for the total costs of conducting post-closure care, including annual and periodic costs, as well as replacement costs related to the predicted service life of landfill components as described in the post-closure care plan, over a

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minimum 30-year post-closure care period.

(iii) At a minimum, the custodial care cost estimate must be based on the number of landfill cells that are actively receiving waste and those that have undergone final closure, as indicated by the custodial care assurance plan. The custodial care cost estimate must account for the total costs of conducting custodial care after the landfill concludes post-closure care activities, including annual and periodic costs, as well as replacement costs related to the predicted service life of landfill components as described in the custodial care plan.

(iv) The corrective measures cost estimate must account for the total costs of corrective measures as described in the corrective measures work plan for the entire corrective measures period as described in Subpart 363-11 of this Title.

(v) The total cost estimate must be increased by a contingency factor of at least 15 percent.

(vi) The supporting documentation used to substantiate the cost estimates must be submitted to the department for review with the cost estimates.

(vii) The department must approve closure, post-closure care, custodial care, and corrective measures cost estimates.

(3) Annual cost estimate adjustments.

(i) During the active life of a facility, other than a landfill that requires financial assurance, the owner or operator must annually submit to the department for review and approval adjusted closure cost estimates, including supporting justification to account for inflation and changes in facility conditions.

(ii) During the active life of a landfill and during its closure, post-closure care, and custodial care periods, the owner or operator must annually submit to the department for review and approval adjusted closure, post-closure care, custodial care, and corrective measures cost estimates including supporting justification to account for inflation and changes in facility conditions.

(iii) The adjusted cost estimates may be made by:

(a) recalculating the maximum costs estimates in current dollars, or

(b) using an inflation factor described in 6 NYCRR 373-2.8(c)(2).

(iv) Each annual adjustment to the post-closure care cost estimate and the custodial care cost estimate must reflect the cost for a 30 year post-closure care period from the date of each annual adjustment.

(v) For owners and operators that use a local government financial test or guarantee, the cost estimates must be updated for inflation within 60 days after the close of the municipality's fiscal year.

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(4) Discounting. The department may approve discounted estimates of post-closure care, custodial care costs and/or of corrective measures costs up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

(i) the department determines that the cost estimates are complete and accurate and the owner or operator of the facility that is the subject of the cost estimates has submitted a certification from a professional engineer that the estimates are complete and accurate;

(ii) the department finds the facility that is the subject of the cost estimates is in compliance with applicable permit or other department conditions, this Part, and with Parts 361, 362, 363, or 365, or Subpart 374-2 of this Title as they pertain to the facility;

(iii) the department determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of the remaining active life of the facility; and

(iv) discounted cost estimates must be adjusted annually to reflect inflation and years of remaining active life and/or years remaining in the period covered by the estimate.

(5) Submission. The owner or operator must include the cost estimates in the facility annual report submitted to the department and keep a copy at the facility or other approved location.

(c) Financial assurance requirements.

(1) The terms of any financial assurance mechanisms provided to the department to satisfy compliance with any financial security obligation imposed by this Part or Parts 361 to 365 of this Title must ensure that:

(i) The amount of funds assured is sufficient to cover the costs of closure, post-closure care, custodial care, and corrective measures for known releases when needed. The amount of coverage must be revised whenever necessary to cover a revised cost estimate.

(ii) The funds will be available when needed.

(iii) Mechanisms for closure, post-closure care, and custodial care must be effective no later than 60 days before the initial receipt of waste.

(iv) Mechanisms for corrective measures must be effective no later than 120 days after the department's approval of the corrective measures remedy.

(v) The mechanisms must be legally valid, binding, and enforceable under state and federal law.

(vi) For a privately owned facility, a trust fund must be established for post-closure care and custodial care at the time of closure. For a revenue-oriented municipal facility, a trust fund, a solid waste management facility reserve fund, or a capital reserve fund must be established for post-closure

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care and custodial care at the time of closure.

(vii) If the financial assurance mechanism is provided by the private operator of a municipally owned landfill, the post-closure mechanism must be one that is transferrable and the fully funded post-closure mechanism must be transferred to the municipality upon closure of the landfill.

(d) Allowable financial assurance mechanisms. Except where otherwise indicated in subparagraph 360.22(c)(1)(vi), owners and operators must choose from the options specified in paragraphs (1) through (9) of this subdivision for closure.

(1) Trust fund.

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by establishing an irrevocable trust fund that conforms to the requirements of this paragraph. The trustee must be an entity with the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. An original, signed duplicate of the trust agreement must be submitted to the department along with evidence or a certification by the trustee that the trustee meets the requirements of this paragraph.

(ii) Pay-in period.

(a) For a trust fund used to demonstrate financial assurance for closure at a facility required to provide financial assurance, other than a landfill, the pay-in period may be no more than one year.

(b) The owner or operator of a landfill constructed on or after the effective date of this section must make payments into the trust fund at least annually over the term of ten years after the initial permit is issued.

(L) Closure. For a trust fund used to demonstrate financial assurance for closure, the first payment into the fund must be at least equal to the current cost estimate for closure, except as provided in paragraph (9) of this subdivision, divided by the number of years of remaining operating life of the facility if less than ten years or by ten if the remaining operating life is more than ten years. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{CE} - \text{CV}) / Y$$

where CE is the cost estimate for closure (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period. For pay-in periods less than one year, the amounts of each payment into the trust fund must be approved by the department. The initial payment into the trust fund for closure must be made no later than 60 days before the initial receipt of waste.

(2) Post-closure and custodial care. For a trust fund used to demonstrate financial assurance for post-closure and custodial care, the first payment into the fund must be at least equal to the current cost estimate for post-closure care and custodial care, except as provided in paragraph (9) of this

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subdivision, divided by the number of years of remaining operating life of the facility if less than ten years or by ten if the remaining operating life is more than ten years. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{PCE} - \text{CV}) / Y$$

where PCE is the cost estimate for post-closure care and custodial care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period. For pay-in periods less than one year, the amounts of each payment into the trust fund must be approved by the department. The initial payment into the trust fund for post-closure care and custodial care must be made no later than 60 days before the initial receipt of waste.

(3) Corrective measures. For a trust fund used to demonstrate financial assurance for corrective measures at a landfill, the owner or operator must make payments into the trust fund at least annually over one-half of the estimated length of the corrective measures program. The first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective measures, except as provided in paragraph (9) of this subdivision, divided by the number of years in the corrective measures pay-in period. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = (\text{RB} - \text{CV}) / Y$$

where RB is the most recent estimate of the required trust fund balance for corrective measures (i.e., the total costs that will be incurred during the second half of the corrective measures period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period. For pay-in periods less than one year, the amounts of each payment into the trust fund must be approved by the department. The initial payment into the trust fund for corrective measures must be made no later than 120 days after the department's approval of the corrective measures remedy.

(c) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and payments made according to the specifications of this paragraph and paragraph (9) of this subdivision, as applicable.

(d) The owner or operator, or other person authorized to conduct closure, post-closure care, custodial care, or corrective measures activities, may request reimbursement from the trustee for these expenditures by submitting itemized bills and supporting documentation to the department for review and approval. If approved, the department will instruct the trustee to make reimbursements in those amounts the department specifies in writing. Requests for reimbursement will be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, custodial care or corrective measures. The owner or operator or other person authorized must notify the department that reimbursement has been received.

(e) The owner or operator may terminate the trust fund only if:

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(1) the department authorizes termination in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(2) the owner or operator is no longer required to demonstrate financial assurance.

(2) Surety bond guaranteeing payment.

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by obtaining a payment surety bond that conforms to the requirements of this paragraph. The bond for closure and in the case of a landfill, post-closure care, and custodial care must be effective no later than 60 days before the initial receipt of waste; and, the bond for corrective measures at a landfill must be effective no later than 120 days after the department's approval of the corrective measures remedy. The surety company issuing the bonds described in this subparagraph must, at a minimum, be among those listed as acceptable sureties on Federal bonds by the U.S. Department of the Treasury as described in 6 NYCRR Part 373-2.8(d)(2)(i). The original bond must be submitted to the department along with evidence or a certification by the surety company that the surety company meets the requirements of this subparagraph.

(ii) The penal sum of the bond must be an amount at least equal to the current cost estimate for closure, post-closure care, custodial care, or corrective measures, if applicable, except as provided in paragraph (9) of this subdivision.

(iii) Under the terms of the bond, the surety will become liable on the bond obligation if the owner or operator fails to perform as guaranteed by the bond, or fails to provide alternate financial assurance as specified in this section and obtain the department's written approval of the assurance provided within 90 days after the owner or operator and the department receive a notice of cancellation of the bond from the surety.

(iv) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph (1) of this subdivision except the requirements for initial payment and subsequent payments specified in subparagraph (ii) of paragraph (1) of this subdivision. The provisions in the trust agreement, as specified in paragraph (1) of this subdivision, for submitting annual valuations and notices of nonpayment also do not apply to a standby trust agreement established pursuant to this subparagraph until payments from the bond or other sources are deposited into the trust fund.

(v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund, or as otherwise directed by the department. Payments from the standby trust fund must be approved in advance by the department in writing.

(vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial

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assurance as specified in this section. Any notice of cancellation, reinstatement, or renewal of the bond, or any other notice relating to the bond, must clearly identify the owner or operator and each facility for which the bond provides financial assurance, including the name and address of the owner or operator, and the name, address and amount guaranteed for each facility.

(vii) The owner or operator may cancel the bond only if:

(a) the department authorizes cancellation in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(b) the owner or operator is no longer required to demonstrate financial assurance.

(3) Letter of Credit.

(i) An owner or operator of a facility required to provide financial assurance may satisfy the requirements of subdivision (c) of this section by obtaining an irrevocable letter of credit that conforms to the requirements of this paragraph. The letter of credit for closure, post-closure care and custodial care must be effective no later than 60 days before the initial receipt of waste, and the letter of credit for corrective measures at a landfill must be effective no later than 120 days after the department's approval of the corrective measures remedy. The issuing institution must be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency. The original letter of credit must be submitted to the department for review and approval along with evidence or a certification by the institution issuing the letter of credit that the institution meets the requirements of this subparagraph.

(ii) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name and address of the facility and the amount of funds assured.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care, custodial care, or corrective measures, if applicable, except as provided in paragraph (9) of this subdivision. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance. Any notice of cancellation, reinstatement, or any other changes to the letter of credit must clearly identify each owner or operator and facility for which the letter of credit provides financial assurance, including the name and address of the owner or operator, and the name, address and amount guaranteed for each facility.

(iv) The owner or operator who uses a letter of credit to satisfy the requirements of this paragraph must also establish a standby trust fund. Under the terms of the letter of credit, all amounts

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paid pursuant to a draft by the department will be made in compliance with instructions from the department. The standby trust fund must meet the requirements of paragraph (1) of this subdivision, except for initial payment and subsequent annual payments specified in subparagraph (ii) of paragraph (1) of this subdivision. The provisions in the trust agreement, as specified in paragraph (1) of this subdivision, for submitting annual valuations and notices of nonpayment also do not apply to a standby trust agreement established pursuant to this paragraph unless and until payments from the letter of credit or other sources are actually deposited into the trust fund.

(v) The owner or operator may request cancellation of the letter of credit. The letter of credit may only be cancelled under the following conditions:

(a) the department authorizes that cancellation in advance and in writing and the owner or operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(b) the owner or operator is no longer required to demonstrate financial assurance.

(vi) Following a department determination that the owner or operator has failed to perform closure, post-closure care, custodial care, or corrective measures, the department may draw on the letter of credit.

(vii) If the owner or operator does not establish alternate financial assurance as specified in this subdivision and does not obtain written approval of alternate assurance from the department within 90 days after both the owner or operator and the department receive a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the department will draw on the letter of credit. The department may delay the drawing if the issuing institution grants an extension of the term of credit. During the last 30 days of any extension the department will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subdivision and obtain written approval of the assurance from the department.

(viii) Payments made under the terms of the letter of credit will be deposited by the surety directly into the standby trust fund, or as otherwise directed by the department. Payments from the standby trust fund must be approved in advance by the department in writing.

(4) Local government financial test.

(i) A municipality that is an owner or operator of a facility required to provide financial assurance that satisfies the requirements of subparagraph (ii) through (iv) of this section may demonstrate financial assurance up to the amount specified in subparagraph (v) of this section.

(ii) Financial component.

(a) The municipality must satisfy subclause (1) or (2) of this clause as applicable:

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(1) if the municipality has outstanding rated general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all general obligation bonds; or

(2) the municipality must satisfy each of the following financial ratios based on the municipality's most recent audited annual financial statement:

(i) a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and

(ii) a ratio of annual debt service to total expenditures less than or equal to 0.20.

(b) The municipality must prepare its financial statements in conformity with generally accepted accounting principles for governments and have its financial statements audited by an independent certified public accountant.

(c) The municipality is not eligible to assure its obligations under this subparagraph if it:

(1) is currently in default on any outstanding general obligation bonds; or

(2) has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or

(3) operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or

(4) receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant auditing its financial statement as required under clause (b) of this subparagraph. However, the department may evaluate qualified opinions on a case-specific basis and allow use of the financial test in cases where the department deems the qualification insufficient to warrant disallowance of use of the test.

(iii) Public notice component. The municipality must place a reference to any closure costs, post-closure care costs, or custodial care costs that may apply and that are assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this section or before the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure, post-closure care and custodial care requirements, the reported liability at the balance sheet date, the estimated total closure, post-closure care, and custodial care cost remaining to be recognized, and, in the case of a landfill, the percentage of landfill capacity used to date and the estimated remaining landfill life in years. In the instance where the local government financial test is used to satisfy the requirements of any corrective measures required at a landfill, a reference to corrective measures costs must be placed in the CAFR no later than 120 days after the corrective measures have been approved in compliance with the requirements of Part 363 of this Title. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed

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in the operating record until issuance of the next available CAFR, if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget.

(iv) Recordkeeping and reporting requirements.

(a) Within 270 days following the close of the municipality's fiscal year, the municipality must submit the following items to the department and must place the following items in the facility's operating record.

(1) A letter signed by the municipality's chief financial officer that:

(i) lists all the current cost estimates covered by the local government financial test, as described in subdivision (b) of this section;

(ii) provides evidence and certifies that the municipality meets the conditions of clauses (ii) (a - c) of this paragraph; and

(iii) certifies that the municipality meets the conditions of subparagraphs (4)(iii) and (4)(v) of this subdivision.

(2) The municipality's independently audited year-end financial statements for the latest fiscal year (except for municipalities where audits are required every two years and where unaudited statements are allowed to be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant that conducts equivalent comprehensive audits.

(3) A report to the municipality from the municipality's independent certified public accountant (CPA) based on performing an agreed upon procedures engagement relative to the financial ratios required by subclause (ii)(a)(2) of this subparagraph, if applicable, and the requirements of clause (ii)(b) and subclauses (ii)(c)(3) and (ii)(c)(4) of this subparagraph. The CPA or state agency's report should describe the procedures performed and the CPA or state agency's findings and state that the chief financial officer's letter required by subclause (1) of this clause was reviewed and the data in the letter derived from the financial statements for the latest completed fiscal year were compared with the amounts in the financial statements.

(4) A copy of the CAFR used to comply with subparagraph (iii) of this paragraph.

(b) The items required in clause (a) of this subparagraph covering closure, post-closure care and custodial care must be placed in the facility's operating record no later than 60 days before the initial receipt of waste; and the items required in clause (a) of this subparagraph covering corrective measures must be placed in the facility's operating record no later than 120 days after the department's approval of the corrective measures remedy.

(c) After the initial placement of the items in the facility's operating record, the municipality must update the information and submit it to the department and place the updated information in the

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operating record within 270 days following the close of the municipality's fiscal year.

(d) The municipality is no longer required to meet the requirements of subparagraph (iv) of this paragraph when:

(1) the department authorizes termination in advance and in writing and the municipality substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the municipality is no longer required to demonstrate financial assurance; or

(2) the municipality is no longer required to demonstrate financial assurance.

(e) A municipality must satisfy the requirements of the local government financial test at the close of each fiscal year. If the municipality no longer meets the requirements of the local government financial test it must, within 300 days following the close of the municipality's fiscal year, establish alternative financial assurance that meets the requirements of this section, place the required submissions for that assurance in the operating record, and notify the department that the municipality no longer satisfies the requirements of the local government financial test and that alternate financial assurance has been obtained. If the alternative financial assurance is a trust fund or reserve fund, the municipality may consider the facility to have been constructed on or after the effective date of this Part for purposes of the pay-in period calculations of subparagraph 360.22(d)(1)(ii) of this section.

(f) The department, based on a reasonable belief that the municipality may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the municipality at any time. If the department finds, on the basis of these reports or other information, that the municipality no longer meets the requirements of the local government financial test, the municipality must provide alternate financial assurance in compliance with this section.

(v) Calculation of costs to be assured. The portion of the closure, post-closure, custodial care, and corrective measures costs for which a municipality can assure under this paragraph is determined as follows.

(a) If the municipality does not assure other environmental obligations through a local government financial test and provides no other financial assurance instrument, it may assure closure, post-closure, custodial care and corrective measures costs that equal up to 43 percent of the municipality's total annual revenue.

(b) If the municipality assures other environmental obligations through a local government financial test, including those associated with Underground Injection Control (UIC) facilities under 40 CFR section 144.62 or 6 NYCRR Part 750, petroleum underground storage tank facilities under 40 CFR Part 280 or 6 NYCRR Part 612, PCB storage facilities under 40 CFR Part 761 or 6 NYCRR Subpart 373-2, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265 or 6 NYCRR Subparts 373-2 or 373-3, as incorporated by reference in section 360.3 of this Title, it must add those costs to the closure, post-closure, custodial care and corrective measures costs it seeks to

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assure under this paragraph. The total that may be assured in the absence of a financial assurance instrument must not exceed 43 percent of the municipality's total annual revenue.

(c) The municipality must obtain an alternate financial assurance instrument for those costs that exceed the limits set in clauses (a) and (b) of this subparagraph.

(5) Local government guarantee.

(i) An owner or operator required to provide financial assurance may demonstrate financial assurance for closure, post-closure, custodial care, and corrective measures, as required by this Part, by obtaining a written guarantee provided by a municipality. The guarantor must meet the requirements of the local government financial test in paragraph (d)(4) of this subdivision, and must comply with the terms of a written guarantee.

(ii) Terms of a local government guarantee. The guarantee covering closure, post-closure care, and custodial care, whichever is applicable, must be placed in the facility's operating record no later than 60 days before the initial receipt of waste; and the guarantee covering corrective measures must be placed in the facility's operating record no later than 120 days after the department's approval of the corrective measures remedy. The guarantee must provide that:

(a) if the owner or operator fails to perform closure, post-closure care, custodial care and/or corrective measures of a facility covered by the guarantee, the guarantor will:

(1) perform, or pay a third party to perform, closure, post-closure care, custodial care and/or corrective measures as required; or

(2) establish a fully funded trust fund as identified in paragraph (d)(1) of this subdivision in the name of the owner or operator.

(b) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the first 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(c) If the guarantor seeks to cancel the guarantee, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the department. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the department.

(d) The owner or operator may cancel the guarantee only if:

(1) the department authorizes cancellation in advance and in writing and the owner or

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operator substitutes alternate financial assurance as identified in this section that provides for continuous financial assurance being in effect until the owner or operator is no longer required to demonstrate financial assurance; or

(2) the owner or operator is no longer required to demonstrate financial assurance.

(iii) Recordkeeping and reporting.

(a) In the case of closure, post-closure care, and custodial care, the owner or operator must submit to the department and place into the facility's operating record, no later than 60 days before the initial receipt of waste, a certified copy of the guarantee covering closure, post-closure care, and custodial care and the items required under subparagraph (d)(4)(iv) of this paragraph. In the case of corrective measures at a landfill, the owner or operator must submit to the department and place into the facility's operating record, no later than 120 days after the department's approval of the corrective measures remedy for a landfill, a certified copy of the guarantee covering the corrective measures and the items required under subparagraph (d)(4)(iv) of this paragraph.

(b) If a local government guarantor no longer meets the requirements of paragraph (d)(4) of this subdivision, the owner or operator must, within 90 days, establish alternate financial assurance, place evidence of the alternate assurance in the facility's operating record, and notify the department. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate financial assurance within the next 30 days. If the alternative financial assurance is a trust fund or reserve fund, the municipality may consider the facility to have been constructed on or after the effective date of this Part for purposes of the pay-in period calculations of subparagraph 360.22(d)(1)(ii) of this section.

(6) Reserve fund. A capital reserve fund or a solid waste management facility reserve fund established and funded pursuant to the General Municipal Law satisfies these requirements provided the pay-in period is consistent with paragraph (1) of this subdivision.

(7) The full faith and credit of New York State or the Federal government shall be used for facilities owned or operated by New York State or the Federal government.

(8) Use of multiple financial mechanisms. An owner or operator required to provide financial assurance may satisfy the requirements of this subdivision by establishing more than one financial assurance mechanism per facility. The mechanisms must be as identified in paragraphs (1) through (6) of this subdivision, except that it is a combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, custodial care or corrective measures, whichever is applicable. If the owner or operator uses a trust fund in combination with a surety bond or a letter of credit, the trust fund may be used as the standby trust fund for the other mechanisms. A single standby trust fund, if required, may be established for two or more mechanisms. The department may allow the use of any or all of the mechanisms to provide for closure, post-closure care, custodial care or corrective measures of the facility.

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(9) Use of a financial mechanism for multiple facilities. An owner or operator required to provide financial assurance may use a financial assurance mechanism identified in subdivision (d) of this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the department must include a list showing, for each facility, the name, address, and the amount of funds assured by the mechanism. The amount of funds available through the mechanisms must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanisms for closure, post-closure care, custodial care or corrective measures of any of the facilities covered by the mechanism, the department may direct only the amount of funds designated for the facility, unless its owner or operator agrees to the use of additional funds available under the mechanism.

(e) Wording of instruments.

(1) For instruments covering one or more facilities required to provide financial assurance located entirely within one administrative region of the department, the owner or operator of the facility or facilities must submit each original instrument to the director of the administrative region of the department in which the facility or facilities are located, and submit a copy to the director of the Division of Materials Management or successor administrative unit.

(2) For instruments covering one or more facilities required to provide financial assurance located in more than one administrative region of the department, the owner or operator of the facility or facilities must submit each original instrument to the director of the Division of Materials Management or successor administrative unit, and submit a copy to each director of the administrative regions of the department in which the facility or facilities are located:

(3) A trust agreement for a trust fund, as identified in paragraph (1) of subdivision (d) of this section, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

[or insert STANDBY TRUST AGREEMENT if established as a standby trust to receive funds from a letter of credit, surety bond or other instrument]

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," partnership," "association," or "proprietorship"], the "Settlor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

WHEREAS, the New York State Department of Environmental Conservation (hereinafter referred to as "Department") has established certain regulations applicable to the Settlor, requiring that an owner or operator of a solid waste management facility shall provide financial assurance that funds will be available when needed [insert "for facility closure, and/or post-closure monitoring and maintenance, and/or custodial care monitoring and maintenance, and/or corrective measures, if necessary" or other language upon written approval of the commissioner of Department which limits or reduces the extent

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of the activities funded by this trust] [hereinafter referred to as [insert "Closure, Post Closure, Custodial Care and Corrective Measures"], and

WHEREAS, the Settlor has elected to establish a trust to provide all or part of such financial assurance for the [facility or facilities] identified herein, and

WHEREAS, the Settlor acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee is willing to act as trustee,

NOW, THEREFORE, the Settlor and the Trustee agree as follows:

Section 1. *Definitions.* As used in this Agreement:

(a) The term "*Settlor*" means the owner or operator who enters into this Agreement and any successors or assigns of the Settlor.

(b) The term "*Trustee*" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "*Commissioner*" means the Commissioner of Environmental Conservation, or the Commissioner's duly appointed designee.

Section 2. *Identification of Facilities and Cost Estimates.* This Agreement pertains to the [facility or facilities] and cost estimates identified on attached Schedule A [on Schedule A, for each facility, list the Department identification numbers, names, addresses, and the costs, as established or approved by the Commissioner, per facility for Closure, Post-Closure, Custodial Care and Corrective Measures, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. *Establishment of Fund.* The Settlor and the Trustee hereby establish a trust fund (hereinafter referred to as the "Fund") for the sole benefit of the Department. The Settlor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B annexed hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Settlor, any payments necessary to discharge any liabilities of the Settlor established by the Department.

Section 4. *Payment for Closure, Post-closure, Custodial Care and Corrective Measures.* The Trustee shall make payment from the Fund as the Commissioner shall direct, in writing, to provide for the payment of the costs of Closure, Post-closure, Custodial Care and/or Corrective Measures of the facilities covered by this Agreement. The Trustee shall reimburse the Settlor or other persons as identified by the Commissioner from the Fund for the expenditures of such covered activities in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Settlers

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such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. *Trustee Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in compliance with general investment policies and guidelines which the Settlor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Settlor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, 15 USCA 80a-2(a), incorporated by reference in Section 360.3 of this Part, shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USCA 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the

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purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government;

(e) To accept additions to the Fund from sources other than the Settlor of the Trust; and

(f) To contest, compromise, or otherwise settle any claim in favor of the Fund or Trustee, or in favor of third persons and against the Fund or Trustee.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the trustee to the extent not paid directly by the Settlor, and all of the proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. *Annual Valuation.* The Trustee shall annually, at least 30 days before the anniversary date of establishment of the Fund, furnish to the Settlor and to the Commissioner, a statement confirming the value of the Trust. Any securities in the fund shall be valued at market value as of no more than 60 days before the anniversary date of the establishment of the Fund. The failure of the Settlor to object in writing to the Trustee within 90 days after the statement has been furnished to the Settlor and to the Commissioner shall constitute a conclusively binding assent by the Settlor, barring the Settlor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement. [For a standby trust agreement, insert "This provision does not apply to a standby trust fund until payments have been made to the Fund"]

Section 11. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Settlor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

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Section 12. *Trustee Compensation.* The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Settlor.

Section 13. *Successor Trustee.* The Trustee may resign or the Settlor may replace the Trustee, but such resignation or replacement shall not be effective until the Settlor has appointed a Successor Trustee and this successor accepts the appointment. The Successor Trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the Successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the Successor Trustee the funds and properties then constituting the Fund. If for any reason the Settlor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a Successor Trustee or for instruction. The Successor Trustee shall specify the date on which it assumes administration of the trust in writing sent to the Settlor, the Commissioner, and the present Trustee by certified mail, return receipt requested, 30 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in section 9.

Section 14. *Instructions to the Trustee.* All orders, requests, and instructions by the Settlor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule C or such other designees as the Settlor may designate by amendment to Schedule C. The Trustee shall be fully protected in acting without inquiry in compliance with the Settlor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in compliance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Settlor or Department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Settlor and/or Department except as provided for herein.

Section 15. *Notice of Nonpayment.* The Trustee shall notify the Settlor and the Commissioner, by certified mail, return receipt requested, [if annual payments are to be made to the Fund insert "within 30 days after each anniversary of the establishment of the Trust" or if payments are to be made on a different basis, such as monthly or quarterly, then insert other language approved by the Department], if no payment is received from the Settlor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment. [For a standby trust agreement, insert "This provision does not apply to a standby trust fund unless and until payments have been made to the Fund."]

Section 16. *Amendment of Agreement.* This Agreement may be amended by an instrument in writing executed by the Settlor, the Trustee, and the Commissioner or by the Trustee and the Commissioner if the Settlor ceases to exist.

Section 17. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Settlor, the Trustee, and the Commissioner, or by the Trustee and the

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Commissioner if the Settlor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Settlor.

Section 18. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in the carrying out of any directions by the Settlor or the Commissioner issued in compliance with this Agreement. The Trustee shall be indemnified and saved harmless by the Settlor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Settlor fails to provide such defense.

Section 19. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of New York.

Section 20. *Fund Not an Asset of Settlor in Bankruptcy.* It is the Settlor's legal and equitable obligation under the permit and other applicable law, which obligation is not limited to the value of the Fund, to provide for the payment of the costs of Closure, Post-closure, Custodial Care, and/or Corrective Measures of the [facility or facilities], inter alia, in accordance with the terms of the permit, any subsequent modifications thereof, and 6 NYCRR Parts 360, 361, 362, 363, and 365. This trust is irrevocable and created for the sole benefit of the Department. The parties agree that normal principles of trust law apply, and that legal Title to the Fund shall be in the trustee and the Department, to ensure, inter alia, Proper Closure, Post-Closure, Custodial Care and/or Corrective Measures are carried out at the [facility or facilities] without adverse environmental or health impacts. The Settlor shall have no property interest in the Fund except a contingent remainder interest which shall entitle it to receive, upon the completion of Closure, Post-Closure, Custodial Care and/or Corrective Measures to the satisfaction of the Department, any funds remaining in the trust in excess of such costs and the final administrative costs of the trustee and the Fund. The interest of any beneficiary, including any contingent remainder interest, of any trust created hereunder, either as to income or principal, shall not be anticipated, alienated or in any manner assigned by such beneficiary or contingent remainder interest holder, and shall not be subject to any legal process, bankruptcy proceedings or the interference or control of creditors or others.

Section 21. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first written below. The parties below certify that the wording of this Agreement is identical to the wording identified in 6 NYCRR 360.22(e)(3) as such regulations were constituted on the date first written below.

Settlor

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Title

Company Name

Trustee

Title

Banking Institution or Trust Company

(ACKNOWLEDGMENT BY TRUSTEE) within New York

State of New York }
 } ss.:
County of }

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(ACKNOWLEDGMENT BY TRUSTEE) outside New York

[Insert State, District of Columbia, Territory, Possession or Foreign Country] } ss.

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their

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capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the [Insert the City or other political subdivision and the state or country or other place the acknowledgement was taken].

Signature: _____

Name: _____

Office: _____

(ACKNOWLEDGMENT BY SETTLOR) within New York

State of New York }
 } ss.:
County of }

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(ACKNOWLEDGMENT BY SETTLOR) outside New York

[Insert State, District of Columbia, Territory, Possession or Foreign Country] } ss.

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the [Insert the City or other political subdivision and the state or country or other place the acknowledgement was taken].

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Signature: _____

Name: _____

Office: _____

**Schedule A
Identification of Facility(ies) and Cost Estimates**

[Provide the following information for each facility covered under the Trust Agreement.]

Name and Address of Facility(ies) _____

NYS DEC Identification Number(s): _____

Cost estimate(s):

Closure _____

Post-Closure Care _____

Custodial Care _____

Corrective Measures _____

Total _____

**Schedule B
Identification of Property**

The fund is established initially as consisting of the following:

Amount: \$ _____

Type of property: [identify the type of property used to establish the fund (e.g., cash, check, etc.)]

Source: [identify the name of the source of the funds (e.g., bank, facility owner or operator, etc.)]

Date: [insert date].

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[For a Standby Trust Agreement insert “This agreement will be funded by the following:
Type of property and number: [Letter of Credit and #, Surety Bond and #, cash, etc.]
Issued by: [identify the name of the source of the funds (e.g., bank, facility owner or operator, etc.)]
Date: [insert date] in accordance with the terms of [(e.g., Letter of Credit, Surety Bond, etc.).”]

**Schedule C
Identification of Authorized Personnel**

Any orders, requests or instructions by the Settlor to the Trustee may be signed by any one of the following persons:

[Provide the following contact information for each person authorized to give orders, requests or instructions.]

Title:

Name:

Address:

Phone Number:

(4) A surety bond, as identified in paragraph (d)(2) of this section, must be worded exactly as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**SURETY BOND
(Financial Guarantee Bond)**

Bond Number:

Date bond executed:

[If more than one Surety, identify bond number with respective Surety]

Effective date:

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Principal:

[Legal name and business address of owner or operator]

Type of organization:

[Insert "individual," "joint venture," "partnership," or "corporation"]

State of Incorporation:

Surety(ies):

[Name(s) and business address(es) of Surety(ies)]

Obligee: New York State Department of Environmental Conservation (hereinafter referred to as "Department")

Department identification numbers, name, address, and closure, post-closure, custodial care, and/or corrective measures amount(s) for each facility guaranteed by this bond [indicate facility and closure, post-closure, custodial care and corrective measures amounts separately]:

Total penal sum of bond: \$ _____ (payable in good and lawful money of the United States of America)

NOW, THEREFORE, Know All Persons By These Presents, that we, the Principal and Surety(ies) hereto are held and firmly bound to the Department in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS said Principal is required, under Environmental Conservation Law (ECL) Article 27, to have a permit in order to operate each solid waste management facility identified above; and

WHEREAS said Principal is required to provide financial assurance for closure, post-closure care, custodial care and/or corrective measures as referred to above, as a condition of the permit(s); and

WHEREAS said Principal shall establish a standby trust fund as is required when a surety bond is

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used to provide such financial assurance;

NOW, THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully perform and complete [insert “closure”, “post-closure care”, “custodial care” “and/or corrective measures”] whenever required to do so at each facility for which this bond guarantees payment for [“closure”, “post-closure care”, “custodial care” “and/or corrective measures”] in compliance with the [“closure plan”, “post-closure care plan”, “custodial care plan” “and/or corrective measures plan”] and other requirements of the permit, applicable rules, regulations, and orders of the department, and applicable provisions of the laws of the State of New York,

OR, if the Principal shall faithfully, before the beginning of final closure of each facility for which this bond guarantees payment, fund the standby trust fund in the amount(s) identified above for each facility,

OR, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin closure is issued by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner’s duly appointed designee (hereinafter referred to as the “Commissioner”) or a United States district court or other court of competent jurisdiction,

OR, if the Principal shall provide alternate financial assurance, as identified in 6 NYCRR Section 360.22(d), as applicable, and obtain the Commissioner’s written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Commissioner that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall provide funds up to the amount guaranteed for the facility(ies) into the standby trust fund or as otherwise directed by the Commissioner.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) hereby waive(s) notifications of amendments to closure, post-closure, custodial care and/or corrective measures plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate the Surety’s obligation on this bond.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail, return receipt requested, to the Principal and the Commissioner, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Commissioner, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization

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for termination of the bond by the Commissioner.

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees the current closure, post-closure and/or corrective measures amount, provided that no decrease in the penal sum takes place without the written permission of the Commissioner.

IN WITNESS WHEREOF, the Principal and Surety(ies) have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording identified in 6 NYCRR Section 360.22(e)(4), as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s)) _____

(Name(s)) _____

(Title(s)) _____

(Corporate Seal) _____

CORPORATE SURETY(IES)

[Name and Address]

State of Incorporation:

Liability Limit: (For each facility, and in the aggregate)

\$ _____

(Signature(s)) _____

(Name(s) and Title(s))

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(Corporate Seal)

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond Premium: \$_____

(ACKNOWLEDGMENT BY TRUSTEE) within New York

State of New York }
 } ss.:
County of }

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(ACKNOWLEDGMENT BY TRUSTEE) outside New York

[Insert State, District of Columbia, Territory, Possession or Foreign Country] } ss.

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the [Insert the City or other political subdivision and the state or country or other place the acknowledgement was taken].

Signature:_____

Name:_____

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Office: _____

(ACKNOWLEDGMENT BY SETTLOR) within New York

State of New York }
 } ss.:
County of }

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

(ACKNOWLEDGMENT BY SETTLOR) outside New York

[Insert State, District of Columbia, Territory, Possession or Foreign Country] } ss.

On the _____ day of _____, in the year 2_____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in the [Insert the City or other political subdivision and the state or country or other place the acknowledgement was taken].

Signature: _____

Name: _____

Office: _____

(5) A letter of credit, as identified in paragraph (d)(3) of this section, must be worded exactly as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

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Irrevocable Letter of Credit

[Name and address of banking establishment] [Date]

[See instruction at 6 NYCRR 360.22(e)(1) and (2) of this Part for addressing]

Regional Director

Region [Number of the appropriate Department of Environmental Conservation Regional Office in which the facility is located, (*i.e.*, 1 – 9)]

New York State Department of Environmental Conservation

[Address of the appropriate Regional Office]

OR

Commissioner

New York State Department of Environmental Conservation

Attn: Division of Materials Management [or successor administrative unit]

625 Broadway

Albany, New York 12233-7260

Re: Letter of Credit No. _____

Dear [insert “Commissioner” or “Regional Director”]:

We hereby establish and open our Irrevocable Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [insert amount of dollars in words] U.S. dollars (\$ _____), available upon presentation of:

(1) your sight draft, bearing reference to this Letter of Credit No. _____, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the New York State Environmental Conservation Law."

This letter of credit covers [insert “closure”, “post-closure care”, “custodial care”, and/or “corrective measures”, whichever apply] at the following [facility or facilities]: [identify each of the owner's or operator's facilities by name, address and Department of Environmental Conservation identification number, and the amounts for each].

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date thereafter, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail, return receipt requested, that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so

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notified, any unused portion of the credit shall be available upon presentation of your sight draft and the above-referred-to signed statement for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

The [insert name of bank issuing letter of credit] agrees that whenever this letter of credit is drawn on, under and in compliance with the terms of this letter of credit, that [insert name of bank issuing letter of credit] shall duly honor such draft upon presentation to [insert name of bank issuing letter of credit] and the [insert name of bank issuing letter of credit] shall deposit the amount of the draft into the standby trust fund of [owner's or operator's name] or the amount will be otherwise disbursed in compliance with the ["Commissioner's" or "Regional Director's"] instructions.

We certify that the wording of this letter of credit is identical to the wording identified in 6 NYCRR 360.22(e)(5), as such regulations were constituted on the date shown immediately below.

Very truly yours,

[Insert name of bank issuing credit]

By: _____
[insert name and Title of authorized employee or officer of bank issuing letter of credit.]

Date: _____

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," as described in 6 NYCRR Part 373-2.8(j)(3), or "the Uniform Commercial Code of the State of New York"].