

**PROPOSED**

**6 NYCRR Part 361**

**Material Recovery  
Facilities**

**PART 361**

**MATERIAL RECOVERY FACILITIES**

<b>Subpart 361-1</b>	<b>Recyclables Handling and Recovery Facilities .....</b>	<b>3</b>
<b>Subpart 361-2</b>	<b>Land Application and Associated Storage Facilities.....</b>	<b>7</b>
<b>Subpart 361-3</b>	<b>Composting and Other Organics Processing Facilities.....</b>	<b>26</b>
<b>Subpart 361-4</b>	<b>Wood Debris and Yard Trimmings Processing Facilities.....</b>	<b>55</b>
<b>Subpart 361-5</b>	<b>Construction and Demolition Debris Processing Facilities.....</b>	<b>59</b>
<b>Subpart 361-6</b>	<b>Waste Tire Handling and Recovery Facilities.....</b>	<b>64</b>
<b>Subpart 361-7</b>	<b>Metal Processing and Vehicle Dismantling Facilities.....</b>	<b>68</b>
<b>Subpart 361-8</b>	<b>Used Cooking Oil and Yellow Grease Processing Facilities.....</b>	<b>72</b>

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-1**

**RECYCLABLES HANDLING AND RECOVERY FACILITIES**

<b>361-1.1</b>	<b>Applicability</b>
<b>361-1.2</b>	<b>Exempt facilities</b>
<b>361-1.3</b>	<b>Registered facilities</b>
<b>361-1.4</b>	<b>Permit application requirements</b>
<b>361-1.5</b>	<b>Operating requirements</b>
<b>361-1.6</b>	<b>Recordkeeping and reporting requirements</b>

**Section 361-1.1 Applicability**

(a) This Subpart applies to facilities that process source-separated nonputrescible recyclables. The requirements contained in Part 360 of this Title also apply to this Subpart.

(b) This Subpart does not apply to:

(1) a facility, or a portion of a facility, that receives organic waste, which is regulated under Subpart 361-2, 361-3, or 361-4 of this Part;

(2) a facility, or portion of a facility, that receives construction and demolition debris for processing, which is regulated under Subpart 361-5 of this Part;

(3) a facility, or a portion of a facility, that receives only motor vehicles or portions of motor vehicles, which is regulated under Subpart 361-7 of this Part;

(4) a facility, or a portion of a facility, that receives waste tires, which is regulated under Subpart 361-6 of this Part;

(5) a facility, or a portion of a facility, that receives electronic waste for recovery and recycling as authorized by department registration or permit issued pursuant to Part 360 of this Title;

(6) a facility, or portion of a facility, that receives municipal solid waste for post-collection separation of recyclables. That type of facility, or a portion thereof, is regulated under Subpart 362-2 of this Part; and

(7) a facility, or a portion of a facility, that operates pursuant to the Universal Waste Rule in section 374-3 of this Title.

(8) a facility that is a redemption center regulated under Part 367 of this Title and Article 27,

## ***PROPOSED PART 361-MARCH 2016***

Title 10 of the Environmental Conservation Law (ECL), which limits its activities to the collection, sorting, and packaging of empty beverage containers from redeemers, in bags and boxes for return to the deposit initiator or agent of the deposit initiator, without further processing, except through a reverse vending machine after the deposit initiator has authorized, in writing, such processing through the reverse vending machine at the redemption center's facility.

### **Section 361-1.2 Exempt facilities**

In addition to the exemptions provided for in section 360.14 of this Part, the following facilities are exempt from this Subpart:

(a) Take back sites, which for purposes of this Subpart, means sites at a retailer or wholesaler that are used for collection of recyclables similar in nature to those sold or distributed by the retailer or wholesaler, if the materials are collected for the purpose of recycling or reuse.

(b) Sites operated by government or not for profit organizations that take back consumer goods for reuse or secondary marketing.

### **Section 361-1.3 Registered facilities**

(a) The following facilities are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria outlined in Part 360 of this Title, the operating requirements specified in section 361-1.5 of this Subpart and the recordkeeping and reporting requirements in section 361-1.6 of this Subpart.

(1) Recyclables handling and recovery facilities that accept no more than 5 tons of source-separated, nonputrescible recyclables on any day and have residue below 15 percent of their intake based on a full year of operation.

(2) Recyclables handling and recovery facilities that accept more than 5 tons, but less than 250 tons, of source-separated, nonputrescible recyclables on any day and have residue below 15 percent of their intake based on a full year of operation.

(b) Each facility subject to this section must comply with the operating requirements specified in section 361-1.5 of this Subpart, except that recyclables handling and recovery facilities that meet paragraph 361-1.3(a)(1) of this section are not required to comply with the subdivision 361-1.5(g) of this Subpart.

(c) Each facility subject to this section must comply with the recordkeeping and reporting requirements in section 361-1.6 of this Subpart.

### **Section 361-1.4 Permit application requirements**

## ***PROPOSED PART 361-MARCH 2016***

A recyclables handling and recovery facility that is not an exempt facility or subject to the registration provisions of section 361-1.3 of this Subpart must obtain a permit from the department, and must submit an application which includes the information required in section 360.16 of this Title. Such application must include a description of how the facility will comply with the operating requirements in Part 360 of this Title and section 361-1.5 of this Subpart.

### **Section 361-1.5 Operating requirements**

A recyclables handling and recovery facility required to obtain a registration or a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

- (a) A recyclables handling and recovery facility may receive only source-separated, nonputrescible recyclables for further processing.
- (b) Residues and processed recyclables must be stored separately. Recyclables must be maintained in a manner that ensures marketability is not adversely affected.
- (c) Unprocessed and processed recyclables that are intended to be recovered may be stored for a maximum of 60 calendar days, unless the following criteria are satisfied to justify a longer storage period. In no case may the storage period exceed 180 calendar days. The facility must notify the department of its intent to store processed recyclables for greater than 60 calendar days and include justification based on the requirements of this subdivision and obtain approval from the department.
  - (1) There is a demonstrated need to store for a longer period, such as a market agreement with terms of receipt based on greater than 60-day intervals or volumes that may take longer than 60 days to acquire.
  - (2) The facility has sufficient storage area for the material.
  - (3) The facility implements an inventory control system, including daily logs, to ensure that the processed recyclables do not remain at the facility for longer than the period approved.
- (d) Unprocessed recyclables that the facility does not intend to recover and that do not contain putrescible waste may be stored for a period not to exceed 14 calendar days.
- (e) Incidental putrescible waste received or putrescible residues may be stored for a period not to exceed seven calendar days after receipt or generation.
- (f) Refrigerants contained in materials being handled must be properly removed and managed prior to compaction, crushing or shredding.
- (g) All recyclables and waste delivered to or leaving the facility must be weighed and recorded.

***PROPOSED PART 361-MARCH 2016***

**Section 361-1.6 Recordkeeping and reporting requirements**

Facilities registered and permitted pursuant to this Part must:

- (a) Keep records as required by subdivision 360.19(1) of this Title.
- (b) Submit an annual report as required by paragraph 360.19(1)(3) of this Title.

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-2**

**LAND APPLICATION AND ASSOCIATED STORAGE FACILITIES**

- 361-2.1      Applicability**
- 361-2.2      Exempt facilities**
- 361-2.3      Registered facilities**
- 361-2.4      Permit application requirements for land application facilities**
- 361-2.5      Design and operating requirements for land application facilities**
- 361-2.6      Permit application requirements for storage facilities**
- 361-2.7      Design and operating requirements for storage facilities**

**Section 361-2.1    Applicability**

This Subpart applies to land application facilities for agricultural use of septage, biosolids, food processing waste, and other organic waste and to the storage of these wastes before land application. In addition to the definitions contained in Part 360 of this Title, land application is the application of waste onto or in the soil to improve soil quality and/or provide plant nutrients. The requirements contained in Part 360 of this Title also apply to this Subpart.

**Section 361-2.2    Exempt facilities**

In addition to the exemptions found in section 360.14 of this Title, the following facilities are exempt from this Subpart. Multiple exempt facilities on one site may be allowed. All facilities must be operated in a manner that minimizes odor migration and vectors, as determined by the department.

- (a) A land application or storage facility for animal manure and associated bedding material. For purposes of this exemption bedding material includes hay, straw, sawdust, wood shavings, newsprint, sand, and materials approved pursuant to a beneficial use determination under section 360.12 of this Title.
- (b) A land application facility or storage facility for food processing wastes that are visually recognizable as a part of a plant or vegetable. The waste must be applied at or below agronomic rates.
- (c) A land application facility for undigested food and fecal material emanating from a New York State-owned or licensed fish hatchery. The waste must be applied at or below agronomic rates.
- (d) A land application facility or manure storage facility located on a concentrated animal feeding operation (CAFO), permitted pursuant to Part 750 of this Title, that involves food

**PROPOSED PART 361-MARCH 2016**

processing waste or other organic waste. The land application or manure storage facility must be addressed in a comprehensive nutrient management plan (CNMP). A CNMP is a plan, in accordance with “*Natural Resources Conservation Service – Conservation Practice Standard – Waste Management System (Number) Code NY312*”, to properly manage liquid and solid waste including runoff from production areas. This subdivision does not apply to any waste that contains human fecal matter (sewage sludge, septage, etc.). Also, the amount of non-manure waste that is placed in the storage facility must not exceed 50 percent of the total volume of waste placed in the storage facility on an annual basis.

(e) A land application facility and associated storage facility for leaves and/or grass, provided:

(1) all physical contaminants (such as plastic bags and branches) are removed before application of the waste, and these contaminants are properly disposed or recycled;

(2) grass:

(i) is not shredded at the site of application;

(ii) is incorporated below the soil surface within three days of its receipt and on the same day as it is land applied;

(iii) is applied at an agronomic rate not to exceed 20 tons per acre or a depth of one inch annually, and does not exceed 40 tons per acre during any three-year period; and

(iv) is not stored at any one site in an amount exceeding 30 cubic yards;

(3) leaves:

(i) are applied at a maximum depth of four inches;

(ii) are incorporated below the soil surface within seven days after application to the soil;  
and

(iii) must not be stored for more than 30 calendar days; and

(4) measures are taken to minimize the blowing of grass and leaves away from the facility.

(f) Land application of a mixture of manure and food processing waste, as outlined in subdivision 361-2.3(a) of this Part.

**Section 361-2.3 Registered facilities**

Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Registered facilities under this section are not required to have a

***PROPOSED PART 361-MARCH 2016***

closure plan or to obtain financial assurance.

(a) A manure storage facility that also accepts unrecognizable food processing wastes. No more than 10 percent of the total volume of waste entering the facility on an annual basis may consist of unrecognizable food processing waste unless liner construction verification is provided. Up to 40 percent of the total volume of waste entering the facility on an annual basis may consist of unrecognizable food processing waste, if the storage facility was designed and built in accordance with section 2.7 of this Subpart or National Resource Conservation Service (NRCS) Code NY313. The land application of this mixture is exempt from this Subpart.

(b) A land application facility for unrecognizable food processing wastes, provided the generator registers the facility and complies with the following conditions:

(1) the operating requirements of subdivisions 361-2.5(a) and 361-2.5(b) of this Subpart are met;

(2) a minimum of one representative analysis of the waste for total Kjeldahl nitrogen, ammonia, nitrate, total phosphorus, total potassium, total solids, and chlorides is submitted annually;

(3) the volume of waste land-applied does not cause ponding, except for temporary conditions within 12 hours of rainfall events. If ponding occurs, land application must cease immediately;

(4) the application rate of salt-containing waste does not exceed the nitrogen needs of the crop or a chloride loading of 170 pounds per acre per year, whichever is more restrictive;

(5) the waste is beneficial to the crop grown and does not contain any human sanitary waste (e.g., domestic sewage, biosolids, septage) or it is demonstrated that pathogen content is below detectable levels in the waste;

(6) the facility has an odor management plan in place prior to land application and implements the plan; and

(7) if the facility is located in the New York City water supply watershed or in Nassau or Suffolk County, the application rates are based on the phosphorus needs of the crop grown, and a comprehensive nutrient management plan has been developed and is in effect for the facility involved.

(c) A land application facility for septage from one hauler using not more than two vehicles at any one time for collection related to land application, provided the owner or operator of the facility complies with the following:

(1) the requirements of subdivision 361-2.5(b) of this Subpart, except paragraphs 361-

**PROPOSED PART 361-MARCH 2016**

2.5(b)(4) and 361-2.5(b)(6);

(2) at least 15 acres are available for each vehicle;

(3) vegetation is grown at the application site that is sufficient to use all the available nitrogen provided from septage application;

(4) the application rate does not exceed 25,000 gallons per acre per year, or the rate determined by the following calculation, whichever is less. The application rate may be changed if the septage is altered (e.g., dewatered) before application;

Application Rate (gallons/acre/year) = Crop nitrogen needs (pounds nitrogen/acre) x 385;

(5) for pathogen reduction, the pH of the septage is raised to 12 or higher by alkali addition and remains at 12 or higher for 30 minutes. In addition, the following restrictions must be followed:

(i) food crops with harvested parts that touch the septage/soil mixture and are totally above the land surface must not be harvested for 14 months after land application. Food crops with harvested parts below the surface of the land must not be harvested for 38 months after land application; and

(ii) food crops grown above the soil with harvested parts that do not touch the septage/soil mixture, feed crops or fiber crops must not be harvested for at least 30 days after land application.

(6) the following records must be kept for at least five years after any application of septage to a location, must be available to the department on request, and must be provided to the department in the annual report required by paragraph 360.20(1)(3) of this Title:

(i) the location of the site of land application, including either the street address or the longitude and latitude of the area where land application occurs (available from a USGS map);

(ii) the total number of acres to which septage was applied and the total gallons of septage applied;

(iii) the date of each application, the gallons of septage applied, and the acres used;

(iv) pH data to show compliance with pathogen and vector attraction reduction criteria;

(v) the crop grown; and

(vi) the following certification statement, signed by the person responsible for land application of the septage:

**PROPOSED PART 361-MARCH 2016**

"I certify, under penalty of law, that the information that will be used to determine compliance with Subpart 361-2 of 6 NYCRR Part 361 has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that false statements made herein are punishable pursuant to section 210.45 of the penal law including the possibility of fine and imprisonment."

(d) A storage facility for septage from one hauler using no more than two vehicles for collection, provided the following conditions are satisfied:

(1) the minimum horizontal separation distances from the perimeter of the storage facility must meet the requirements found in paragraph 361-2.5(b)(1) of this Subpart, except that the minimum horizontal separation distance to a residence, place of business, or public contact area is 1,500 feet for surface impoundments;

(2) surface water must be directed away from the storage facility;

(3) surface impoundment and open tanks must be properly fenced and posted or otherwise constructed to prevent unauthorized access;

(4) the owner or operator must completely empty, clean, and inspect the storage facility at least once every 12 months, and must notify the department at least one week before the cleaning operation is complete. The owner or operator must test tanks for tightness biennially, with results sent to the office of the department for the region in which the facility is located. The owner or operator must repair any damage or deterioration revealed by the inspections before the facility again receives waste;

(5) the owner or operator must construct any surface impoundments above the 100-year flood elevation, and must construct each with a liner system that consists of either a minimum of two feet of compacted soil being able to pass through a one inch screen and having a maximum remolded coefficient of permeability of  $1 \times 10^{-7}$  centimeters per second, or a synthetic material approved by the department, and the bottom of which liner system is at least five feet above both the seasonal high groundwater table and bedrock;

(6) the owner or operator must ensure that surface impoundments maintain a minimum of two feet of freeboard and are no deeper than six feet; and

(7) storage facilities other than surface impoundments must be constructed of a material (e.g., concrete, steel, or fiberglass) that prevents leakage. The storage facility must be designed to maintain a minimum of two feet of freeboard.

**Section 361-2.4 Permit application requirements for land application facilities**

***PROPOSED PART 361-MARCH 2016***

A land application facility that is not an exempt facility or subject to the registration provisions of section 361-2.3 of this Title must obtain a permit and must submit an application, which includes the requirements identified in this section and section 360.16 of this Title. The application must include:

(a) A soil survey map from the U.S. Department of Agriculture's Soil Conservation Service, with a key to the soil survey, indicating the location of the proposed facility. Location-specific soil investigation results must be provided, if deemed necessary by the department, based on soil and hydrogeologic conditions at the facility.

(b) Information concerning the depth to bedrock and groundwater under the facility and the source of these data.

(c) A facility operation plan that must include:

(1) the amount of land that will be used and the crops to be grown;

(2) timing of planting and harvesting;

(3) timing and amount of waste application and any supplemental waste or fertilizer that will be used;

(4) provisions for waste storage or disposal when land application is restricted (e.g., due to weather or other site conditions); and

(5) a description of how the design and operating requirements in section 360.2 of this Title and section 361-2.5 of this Part will be satisfied.

(d) Calculations showing the proposed daily and annual hydraulic loading, in gallons per acre, at the facility.

(e) In addition to the requirements outlined in subdivisions 361-2.4(a) through (d) of this section, an application for a permit for a land application facility involving biosolids must contain the following information:

(1) A detailed description of the biosolids including:

(i) a description of each source including its name, annual waste production, the amount of biosolids to be land applied and a description of the federal or state pretreatment program, where applicable. Wastewater and partially treated biosolids that are generated at one facility and are treated at another wastewater treatment facility before land application are not considered waste sources. The resultant biosolids generated for land application are subject to this paragraph.

**PROPOSED PART 361-MARCH 2016**

(ii) a description of the quality of the waste, including analytical results, as identified below:

(a) the required parameters for analysis are found in Table 1 in section 361-3.7 of this Part;

(b) the minimum number of analyses, for each waste source, that must be submitted with the application is dependent upon the amount of waste that will be land applied annually, according to Table 2 in section 361-3.7 of this Part;

(c) for each analysis, the sampling date, location, and protocol used to obtain representative samples must be provided;

(d) a minimum of six months of biosolids production must be represented by the analytical results submitted. With the exception of pH and total solids, all results must be reported on a dry-weight basis;

(e) analyses for other pollutants may be required, on a case-specific basis, based on information from the pretreatment program and other sources;

(f) all analyses must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department as listed in Table 7 of section 361-3.7 of this Part, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included with the permit application;

(g) the analysis requirement may be satisfied in part or in whole by recent samples analyzed for and reported to the department;

(h) analyses performed more than one year before the date the permit application is submitted are not acceptable;

(i) all samples must be representative of the waste to be land applied; and

(j) a table summarizing the analytical results must be provided, including the mean and maximum of the results found.

(2) A detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction including:

(i) the methods that will be used for pathogen reduction and vector attraction reduction;

(ii) the monitoring and data gathering procedures that will be undertaken to demonstrate compliance including type, location, and frequency; and

**PROPOSED PART 361-MARCH 2016**

(iii) for existing systems, recent operating data and/or analytical data must be submitted to demonstrate that the system can meet the pathogen and vector attraction reduction criteria.

(3) Calculations showing the proposed nutrient loading rates, including nitrogen, phosphorus, and potassium. The loading rate calculations must be based on the waste analyses, impacts of previous waste applications, addition of supplemental nutrients, and the nutrient requirements of the crops grown.

(i) The following formulas must be used to calculate plant-available nitrogen, unless the use of an alternative formula is approved by the department.

NI = percent inorganic nitrogen = percent ammonia + percent nitrate

NO = percent organic nitrogen = percent total Kjeldahl nitrogen - percent ammonia

NH3 = percent ammonia

NO3 = percent nitrate

N = nitrogen

A = value based on treatment method employed

A values: A = 2 for composted waste

A = 4 for anaerobically digested waste

A = 6 for aerobically digested, lime stabilized and air dried waste

For waste incorporated into the soil:

Pounds available N per dry ton waste = (NI x 20)+(NO x A)

For waste surface applied:

Pounds available N per dry ton waste = (NH3 x 10)+(NO3 x 20)+(NO x A)

(ii) If the soil has received waste in the past two years, the residual nitrogen in the soil must be included in the nutrient loading calculation. The residual nitrogen must be subtracted from the nitrogen needs of the crop grown before determining the appropriate application rate. The following table must be used to determine the release rate of residual nitrogen.

**Release of Residual Nitrogen during Waste Decomposition in Soil**

Years since last

AR Values

**PROPOSED PART 361-MARCH 2016**

waste application

	A=2	A=4	A=6
1	0.90	1.60	2.10
2	0.51	0.72	0.95

AR = Residual Nitrogen Factor

Residual Available N (pounds per acre) =  
Original Application Rate (dry ton per acre) x Original NO (percent) x AR

(iii) The value(s) used for the nutrient needs of the crop(s) grown must be based on the results of a soil test and resulting nutrient recommendation, or equivalent justification for the value chosen. Copies of the nutrient recommendations must be submitted.

(iv) For phosphorus, 50 percent of the phosphorus applied with the waste must be assumed to be available for plant use. For potassium, 100 percent of the potassium applied with the waste must be assumed to be available for plant use.

(4) Information concerning the soil pH of the plow layer including the source of this information, and method for adjusting soil pH, if needed.

(5) Soil quality data including analyses for pH, arsenic, cadmium, chromium (total), copper, lead, mercury, molybdenum, nickel, selenium, and zinc.

(i) A minimum of one analysis is required for every 50 acres, or fraction thereof.

(ii) Each soil sample must be a composite of a minimum of ten randomly selected sample locations.

(iii) The sampling depth must be consistent with the depth of waste incorporation.

(iv) The criteria in clauses 361-2.4(e)(1)(ii)(f), (g), and (j) of this section must be followed.

(6) A waste monitoring, sampling, and analysis plan that outlines:

(i) the location, purpose, frequency and method for waste sampling; and

(ii) the protocol used to obtain representative samples, the preparation and preservation of samples, and the laboratory that will be used for each analysis.

(f) In addition to the requirements outlined in subdivisions 361-2.4(a) through (d) of this section, the application for a permit for a land application facility involving waste other than biosolids

**PROPOSED PART 361-MARCH 2016**

must contain the following information.

(1) A detailed description of each waste to be land applied, which must include, at a minimum, the following information:

(i) the source, process, or treatment systems from which the waste originates, including a list and the quantity of all chemicals added during these processes. Material safety data sheets or other data sources providing information specific to these chemicals must be included; and

(ii) treatment or processing techniques used before land application.

(2) Analyses of the waste in accordance with the frequency, parameters, and protocol outlined in paragraph 361-2.4(e)(1) of this section.

(3) In addition to the analyses required in paragraph 361-2.4(e)(1) of this section, the following analyses, in whole or part, may be required, as determined by the department:

(i) fecal coliform, Salmonella sp., enteric viruses, viable helminth ova, other applicable pathogens; and

(ii) any or all of the pollutants identified in Part 375 of this Title.

(4) An outline of the proposed application rates and justification for the values chosen.

(5) For waste containing any domestic sewage or septage, a detailed description of the processes to reduce pathogenic organisms and vector attraction or sufficient data to demonstrate that human pathogenic organisms are not present in the waste.

(6) A waste monitoring, sampling, and analysis plan that outlines:

(i) the location, purpose, frequency and method for waste sampling;

(ii) the analytical parameters; and

(iii) the protocol used to obtain representative samples and for the preparation and preservation of samples, and the laboratory that will be used for analyses.

**Section 361-2.5 Design and operating requirements for land application facilities**

A land application facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria. For facilities under this section, a closure plan and financial assurance are not required.

**PROPOSED PART 361-MARCH 2016**

(a) Pollutant limits.

(1) Each waste destined for land application must not exceed the pollutant concentrations found in Table 6 in section 361-3.7 of this Part.

(2) If the waste contains pollutants at concentrations greater than those set forth in this subdivision, a permit for a land application facility will not be issued unless the generator has implemented an identification and abatement program and has remained in compliance with the requirements of this subdivision for a period of at least six continuous months. At least six monthly analyses for total solids and the parameter(s) of concern must be provided to the department to demonstrate compliance.

(3) Wastewater and partially treated biosolids that are generated at one location and treated at another wastewater treatment facility before land application are not considered waste sources subject to the requirements of this subdivision. The resultant biosolids generated for land application are subject to this subdivision.

(b) Facility criteria.

(1) The minimum horizontal distance from the perimeter of the land application area must comply with the values found in the following table with respect to listed features that exist at the time the initial permit application is submitted to the department.

Feature	Minimum horizontal separation distance (in feet)
Property line	50
Potable water well	200
Surface water and State regulated wetland (waste not directly injected)	200
Surface water and State regulated wetland (waste directly injected)	100
Drainage swale	25

(2) Land application is prohibited in areas where groundwater is within 24 inches of the ground surface at the time of application. Verification of depth to groundwater prior to application may be required. If the field is tiled, the tile must be at least 24 inches below the ground surface and the discharge of the tile must be at least 200 feet from a potable well, surface water, and state-regulated wetland.

(3) Land application is prohibited in areas where bedrock lies less than 24 inches below the ground surface.

(4) The hydraulic loading must not exceed 16,000 gallons per acre in any 24-hour period.

(5) Land application is prohibited on land with a slope exceeding 15 percent. Land application of waste with a total solids content of less than 15 percent is prohibited on land with

***PROPOSED PART 361-MARCH 2016***

a slope greater than 8 percent, unless incorporated within one hour of application along paths parallel to contour lines for the land.

(6) Land application is prohibited in special flood hazard areas unless approved by the department.

(7) The land application rate must not exceed the lower of the agronomic rate or, for waste with neutralizing value, the application rate needed to achieve a soil pH value in an acceptable range for the crop grown. The department may restrict the application rate based on a nutrient other than nitrogen, such as phosphorus. The application rate must be sufficiently reduced to ensure appropriate application rates are not exceeded if supplemental fertilizer or manure will be added to the site, based on information provided by the farm owner or operator.

(8) In all cases, the waste must be incorporated into the soil within 24 hours after application, unless concerns regarding odor and runoff can be mitigated by other means approved by the department in writing. If incorporation is used for vector attraction reduction, the period before incorporation is limited to six hours or less.

(9) Land application is prohibited on water-saturated ground or during heavy rainfall. Land application is prohibited on snow-covered or frozen ground, except by direct injection below the land surface. Adequate storage or disposal facilities must be available for periods during the year when waste cannot be applied.

(10) Land application is permitted on all soil types that are capable of supporting the robust growth of the crop grown. The use of active farmland is sufficient to demonstrate compliance with this requirement. Otherwise, sufficient information must be provided to demonstrate compliance.

(11) Proper soil conservation practices and agricultural management practices must be used to minimize run-off and soil loss through erosion.

(c) Monitoring, record keeping, and reporting.

(1) The facility must obtain and retain sufficient monitoring data and other information needed to demonstrate compliance with the requirements of this Subpart. The frequency and type of monitoring necessary for pathogen and vector attraction reduction will be determined by the department on a case-specific basis and will depend on the monitoring methods employed at the facility.

(2) The annual report required by paragraph 360.20(1)(3) of this Title must include:

(i) the location of each field used for land application and the acreage used for land application;

***PROPOSED PART 361-MARCH 2016***

- (ii) the crop(s) grown on each field and the timing of planting and harvesting;
- (iii) the total quantity of waste applied, including land application dates and quantity applied during each application on each field;
- (iv) calculations showing the hydraulic loading and nutrient loading for the fields used for land application;
- (v) all analytical results required by this Subpart, including copies of all laboratory reports;
- (vi) monitoring data and information to demonstrate compliance with the pathogen and vector attraction reduction requirements of this Subpart, if required;
- (vii) for biosolids land application, the following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with Subpart 361-2 of 6 NYCRR Part 361 has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that false statements made herein are punishable pursuant to section 210.45 of the penal law including the possibility of fine and imprisonment."

This statement must be signed by the permit holder or an authorized agent and indicate the name and title of the individual signing;

- (viii) a description of any difficulties encountered during land application, any complaints arising as a result of the land application operation and the corrective measures taken; and
- (ix) a revised management plan for land application for the next year based on previous application rates and crop planting patterns for the next year. The plan must include crops to be grown, fields to be used, schedules and methods of application and harvesting, and revised nutrient and hydraulic loading rates. All calculations must be included.

(d) Biosolids application. In addition to the requirements identified in subdivisions 361-2.5(a) through (c) of this Subpart, a facility applying biosolids must comply with the following criteria.

(1) Facility criteria.

- (i) Soil pH must be adjusted to 6.5 standard units or higher before land application unless lime-stabilized waste is used. If lime-stabilized waste is used, the soil pH must be 6.5 standard units or higher after waste application.

***PROPOSED PART 361-MARCH 2016***

(ii) Land application must not adversely affect a threatened or endangered species or its designated critical habitat.

(iii) The annual cadmium application rate must not exceed 0.45 pounds per acre.

(2) Pathogen and vector attraction reduction.

(i) One of the following Class B pathogen reduction alternatives must be used.

(a) Class B - Alternative 1. The waste must be treated by one of the following processes:

(1) Aerobic digestion. Waste is agitated with air or oxygen to maintain aerobic conditions for a mean cell residence time of at least 40 days at 20 degrees Celsius or greater or at least 60 days if the temperature is less than 20 degrees Celsius but greater than or equal to 15 degrees Celsius.

(2) Air drying. Waste is dried on sand beds or on paved or unpaved basins, at a maximum depth of nine inches. The biosolids must dry for a minimum of three months. During at least two of the three months, the ambient average daily temperature must be above zero degrees Celsius.

(3) Anaerobic digestion. Waste is treated in the absence of air for a mean cell residence time of at least 15 days at 35 degrees Celsius or greater or at least 60 days at less than 35 degrees Celsius but greater than or equal to 20 degrees Celsius.

(4) Composting. Using the within-vessel, aerated static pile or windrow composting methods, the temperature of the waste is raised to 40 degrees Celsius or higher and remains at 40 degrees Celsius or higher for five consecutive days. For at least 4 consecutive hours during the five days, the temperature in the compost pile must exceed 55 degrees Celsius.

(5) Lime stabilization. Sufficient lime must be added to the waste to raise the pH of the waste to 12 standard units and maintain this pH for a period of at least two hours.

(6) Other methods. Other methods or operating conditions may be acceptable if pathogens are reduced to an extent equivalent to the reduction achieved by any of the above methods and must be approved by the department; or

(b) Class B - Alternative 2. The geometric mean of the density of fecal coliform of seven analyses representative of the waste to be land-applied must be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis). The seven samples must be taken over a 14-day period.

**PROPOSED PART 361-MARCH 2016**

(ii) The owner or operator of the land application facility must achieve one of the following vector attraction reduction requirements:

(a) the mass of volatile solids in the waste is reduced by a minimum of 38 percent;

(b) if the volatile solids reduction requirement cannot be met for anaerobically digested waste, vector attraction reduction can be demonstrated by anaerobically digesting a portion of the previously digested waste in a laboratory bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 17 percent reduction in volatile solids content;

(c) if the volatile solids reduction requirement cannot be met for aerobically digested waste, vector attraction reduction can be demonstrated by aerobically digesting a portion of the previously digested waste that has a percent solids of two percent or less in a laboratory bench-scale unit for an additional 30 days at 20 degrees Celsius. Vector attraction reduction is achieved if the bench scale digestion produces less than a 15 percent reduction in volatile solids content;

(d) the specific oxygen uptake rate (SOUR) for waste treated in an aerobic process must be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius;

(e) waste is treated by an aerobic process for a minimum of 14 consecutive days. Throughout that treatment time, the temperature of the waste must remain higher than 40 degrees Celsius and the average temperature of the waste must be higher than 45 degrees Celsius;

(f) the pH of the waste must be raised to 12 standard units or higher by alkali addition and, without the addition of more alkali, must remain at 12 standard units or higher for two hours and then remain at 11.5 standard units or higher for an additional 22 hours;

(g) for waste that does not contain untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 75 percent, before mixing with other materials, until land application;

(h) for waste that contains untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 90 percent, before mixing with other materials, until land application;

(i) waste must be incorporated within one hour of application. No significant amount of waste may be present on the land surface within one hour after the waste is applied; or

(j) waste must be incorporated into the soil within six hours after application on the land.

(iii) The following restrictions relating to the property at which land application is

**PROPOSED PART 361-MARCH 2016**

occurring must be followed:

(a) public access to land with a high potential for public exposure must be restricted during land application and for at least one year after land application. Public access to land with a low potential for public exposure must be restricted during land application and for at least 30 days after application. Access must be controlled during that period by the use of posted signs. In sensitive areas, the department may require the use of fences and gates or other appropriate means;

(b) food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface must not be harvested for 14 months after land application. Food crops with harvested parts below the surface of the land must not be harvested for 38 months after land application;

(c) food crops grown above the soil with harvested parts that do not touch the waste/soil mixture, feed crops and fiber crops must not be harvested for at least 30 days after land application;

(d) animals must not be grazed on the land for at least 30 days after land application;  
and

(e) turf grown on land where waste has been applied must not be harvested for one year after land application when the harvested turf will be placed on either land with a high potential for public exposure or a lawn.

(3) Monitoring, recordkeeping and reporting.

(i) Each waste source must be analyzed annually in accordance with the following:

(a) the parameters for analysis are found in Table 1 in section 361-3.7 of this Part;

(b) the minimum number of analyses, for each waste source, is dependent upon the amount of waste that was land applied, as indicated in Table 3 in section 361-3.7 of this Part;

(c) with the exception of pH and total solids, all results must be reported to the Department on a dry-weight basis. The analyses must comply with the criteria found in clauses 361-2.4(e)(1)(ii)(f), (g), (h), and (j) of this Subpart. After the waste has been monitored for two years at the frequency outlined in this paragraph, the department may reduce the annual number of analyses required if the quality is consistently significantly below the quality standards; and

(d) wastewater and partially treated biosolids or sludge that are generated at one facility and treated at another wastewater treatment facility before land application are not considered waste sources subject to the criteria in this paragraph. The resultant biosolids generated for land application are subject to this paragraph.

**PROPOSED PART 361-MARCH 2016**

(ii) Sufficient monitoring data and other information must be obtained and retained to demonstrate compliance with the requirements of this Subpart. The frequency and type of monitoring necessary to demonstrate compliance with pathogen and vector attraction reduction criteria will depend on the monitoring methods used at the facility, and will be determined by the department.

(iii) Annual soil sampling is required. The criteria are found in paragraph 361-2.4(e)(6) of this Subpart.

(iv) Annual groundwater monitoring may be required, as determined by the department. If a land application facility is located over an aquifer, groundwater monitoring may include viruses or indicator organisms.

(e) Land application of other waste. In addition to the requirements identified in subdivisions 361-2.5(a) through (c) of this Subpart, a facility for waste other than biosolids or septage must comply with the following criteria:

(1) Domestic sewage or septage content. If there is any domestic sewage or septage contribution to the treatment facility generating the waste, the waste treatment process must satisfy the pathogen and vector attraction reduction requirements of this Subpart unless it can be demonstrated that the sanitary waste is a minor portion of the waste stream and that *Salmonella* sp. bacteria, enteric viruses, and viable helminth ova are below detectable levels.

(2) Nutrient or lime content. The waste must contain at least 1 percent total Kjeldahl nitrogen or at least 50 percent calcium carbonate equivalence, or provide sufficient documentation to demonstrate that the material is a benefit to the soil or plant grown.

(3) Monitoring, recordkeeping, and reporting. Annual waste monitoring may be required, depending on the characteristics of the waste involved. The parameters for analysis and the frequency will be determined by the department depending on the quantity and quality of the waste involved.

**Section 361-2.6 Permit application requirements for storage facilities**

A storage facility that is not an exempt facility or subject to the registration provisions of section 361-2.3 of this Title must obtain a permit and must submit an application that includes the requirements identified in this section and section 360.16. The application must include:

(a) For surface impoundments, a construction plan for the facility including a construction quality assurance/construction quality control plan.

(b) For surface impoundments, a hydrogeologic report that is consistent with the applicable provisions of Part 363 and that identifies or characterizes the depth to groundwater and bedrock,

**PROPOSED PART 361-MARCH 2016**

the critical stratigraphic section and the direction of groundwater flow. The report must also discuss the monitorability of the facility, location of any recharge areas for primary or principal aquifers and the location of any unstable areas.

(c) A description of how the facility will comply with the operating requirements in Part 360 of this Title and section 361-2.7 of this Subpart.

**Section 361-2.7 Design and operating requirements for storage facilities**

A storage facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria.

(a) The minimum horizontal separation distances from the perimeter of the storage facility must be, at a minimum, 50 feet to the property line, 100 feet to a surface water body or potable water well, and 500 feet (1,500 feet for a surface impoundment or open tank) to a residence, place of business, or public contact area.

(b) All samples obtained from the storage facility must be representative of the waste stored. The number of samples necessary will be determined by the department based on the waste type and quantity of waste stored.

(c) All storage facilities must be completely emptied, cleaned, and inspected at least once every 12 months. The department must be notified at least one week before the cleaning operation is complete. Any damage or deterioration revealed by the inspections must be repaired before the facility again receives waste.

(d) Surface impoundments must be constructed above the 100-year flood elevation and must be constructed with a liner system to minimize percolation. The liner system must consist of either a minimum of two feet of compacted soil having a maximum remolded hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or a geomembrane material approved by the department. The soil material particles must be able to pass through a one-inch screen.

(e) For surface impoundments, the facility must be monitorable and must not be located within the recharge area of a primary or principal aquifer or in an unstable area.

(f) If soil or a geomembrane is used for a liner, the applicable criteria in sections 363-6.6 through 363-6.8 of this Title apply.

(g) Surface impoundments must maintain a minimum of two feet of freeboard. The bottom of the impoundment liner system must be a minimum of five feet above both seasonal high groundwater and bedrock.

(h) A minimum of one upgradient and two downgradient monitoring wells, or more as

***PROPOSED PART 361-MARCH 2016***

determined by the department, must be installed at a surface impoundment facility. Groundwater wells must be placed and constructed in accordance with Part 363. If multiple surface impoundments are used and are not in close proximity to each other, then each impoundment must have separate monitoring well arrays.

(i) Existing water quality must be established in accordance with Part 363 before placement of any waste in a surface impoundment.

(j) Storage facilities other than surface impoundments may be constructed of concrete, steel, or other material approved by the department. The storage facility must be designed to maintain a minimum of two feet of freeboard.

(k) Quarterly sampling of the wells at surface impoundments must be conducted for the following parameters: chloride, nitrate, ammonia, sulfate, specific conductivity, total hardness, alkalinity, total organic carbon and chemical oxygen demand. In addition, for biosolids storage facilities, annual sampling is required for the following parameters: arsenic, cadmium, copper, lead, mercury, molybdenum, nickel, selenium, zinc, boron, barium, beryllium, cyanide, turbidity and volatile organic compounds. All analyses must be performed by a laboratory certified by the Department of Health, using methods acceptable to the department, unless use of an alternate laboratory or method is authorized by the department. Copies of the original laboratory results must be included.

(1) The department may require sampling for additional parameters based on the type of waste stored and past monitoring results.

(2) Sample collection and management must comply with the criteria found in Part 363 of this Title.

(3) Sampling results reported to the department must include the laboratory results, sampling methods, sampling personnel, dates and times samples were taken, purge volumes, field parameters and other relevant information.

(4) Staff from the Division of Materials Management in the regional office of the department where the facility is located must be notified verbally or electronically at least five days before each sampling event.

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-3**

**COMPOSTING AND OTHER ORGANICS PROCESSING FACILITIES**

<b>361-3.1</b>	<b>Applicability</b>
<b>361-3.2</b>	<b>Exempt facilities</b>
<b>361-3.3</b>	<b>Registered facilities</b>
<b>361-3.4</b>	<b>Permit application requirements</b>
<b>361-3.5</b>	<b>Design and operating requirements</b>
<b>361-3.6</b>	<b>Products generated outside New York State</b>
<b>361-3.7</b>	<b>Tables</b>

**Section 361-3.1 Applicability**

This Subpart applies to composting and other organics processing facilities for municipal solid waste, source-separated organics (SSO), biosolids, septage, yard trimmings and other organic waste. An organics processing facility 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. The requirements contained in Part 360 of this Title also apply to this Subpart.

**Section 361-3.2 Exempt facilities**

The following facilities are exempt from this Subpart when operated in a manner that does not produce vectors, dust or odors that unreasonably impact neighbors of the facility, as determined by the department, and when no waste accepted remains on-site for more than 36 months.

(a) An organic waste processing facility that accepts no more than 1,000 pounds or 1 cubic yard, whichever is greater, of SSO per week. If organic waste is composted, sufficient bulking agent must be used.

(b) A composting or other organics processing facility that accepts no more than 3,000 cubic yards of yard trimmings, either processed or unprocessed, per year. This quantity does not include tree debris materials that are not intended for composting. For these facilities, precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant product is not considered leachate; however, it must be managed within the site and must not enter a surface waterbody or a conveyance to a surface waterbody, or cause a violation of water quality standards promulgated in Part 750 of this Title.

**PROPOSED PART 361-MARCH 2016**

(c) A composting facility for animal carcasses if the facility is located on a farm and accepts no more than 10 carcasses per year from off-site sources. Also, a composting facility for animal carcasses, regardless of the number of carcasses, if the facility is located on a concentrated animal feeding operation (CAFO), provided the CAFO is permitted pursuant to Part 750 of this Title and has a comprehensive nutrient management plan (CNMP). For facilities that are not permitted pursuant to Part 750, the animal carcasses must be placed within the compost pile on the day received.

(d) Organics processing facilities that accept one or more of the following wastes: animal manure and bedding, crop residues and similar farm wastes. The farm wastes do not need to be generated on the location where the facility is located. For an anaerobic digestion facility, the management of the digestate is also exempt from this Subpart regardless of location.

(e) Anaerobic digestion or other organics processing facilities located on a CAFO permitted pursuant to Part 750 of this Title that has a CNMP, provided that the waste accepted is limited to manure, food processing waste, fats, oil, grease, and other organic wastes without sanitary content (human fecal matter). The non-manure waste received must not exceed 50%, by volume, of waste placed in the anaerobic digester or other unit on an annual basis. This volume limitation does not apply to the production of animal feed on a CAFO. Anaerobic digestion facilities that are not owned by the farm must be covered by the farm's CAFO approvals. The following associated activities are also exempt facilities regardless of location:

(1) land application of the solids and/or liquid produced by an anaerobic digestion facility, provided the nutrient loading is addressed in a CNMP. Otherwise, registration under subdivision 361-2.3(b) is required;

(2) use of the dewatered solids from an anaerobic digestion facility for animal bedding;

(3) use of the blended dewatered solids from an anaerobic digestion facility as a topsoil, provided the material does not cause odors when stored or used; and

(4) a composting facility for the dewatered solids from an anaerobic digestion facility.

(f) The following facilities for the use of digestate from an anaerobic digestion facility that is subject to registration under subdivision 361-3.3(a)(3) of this Part:

(1) land application of the solids and liquid emanating from the facility requires registration under subdivision 361-2.3(b) unless land application occurs on a CAFO permitted pursuant to Part 750 of this Title and is addressed in a CNMP;

(2) use of the dewatered solids from the facility for animal bedding; and

(3) use of the blended dewatered solids from the facility as a topsoil, provided they do not cause odors when stored or used.

**PROPOSED PART 361-MARCH 2016**

(g) A composting or other organics processing facility that accepts a combination of wastes that would be exempt if operating individually for each type of waste.

**Section 361-3.3 Registered facilities**

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. Each facility must comply with the criteria in section 360.20 of this Title and the operational criteria in subdivision (b) of this section.

(1) A composting or other organics processing facility that accepts more than 3,000 cubic yards but not more than 10,000 cubic yards of yard trimmings per year, either processed or unprocessed. This quantity does not include tree debris that is not intended for processing other than size reduction. For composting, the windrow must be turned a minimum of two times per year. No more than one facility can be located on geographically contiguous land owned by the same person. For these facilities, precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant compost is not considered leachate, but must be managed in a manner acceptable to the department. The facility must have a written runoff plan that is acceptable to the department that outlines the methods that will be used to prevent runoff from entering and leaving the site and minimizing the movement of organic matter into the soil under the site.

(2) An organics processing facility, other than an anaerobic digestion facility or fermentation facility, that accepts no more than 5,000 cubic yards or 4,000 wet tons, whichever is less, of SSO per year. For composting, the facility must have at least twice as much bulking agent, by volume, as organic waste. The facility must effectively remove non-processibles that may be present within the SSO. Any storage facilities used for leachate collection must be designed in accordance with NRCS NY313 standards, as incorporated by reference in section 360.3 of this Title.

(3) Anaerobic digestion or fermentation facilities that store and treat waste in an enclosed vessel or structure and that accept less than 50 tons of waste per day. The waste must not contain sanitary content. Incoming waste must be stored in a container or other enclosed device and odors must be controlled. Pathogen reduction, either Class A or Class B, may be required by the department based on the waste accepted and the use of the resultant material. For anaerobic digestion facilities, the following activities associated with the facility are managed as follows:

(i) land application of the solids and liquid emanating from the facility requires registration under subdivision 361-2.3(b) unless land application occurs on a CAFO permitted pursuant to Part 750 of this Title and is addressed in a CNMP. Application on a CAFO permitted pursuant to Part 750 of this Title is exempt;

***PROPOSED PART 361-MARCH 2016***

(ii) use of the dewatered solids from the facility for animal bedding is exempt;

(iii) use of the blended dewatered solids from the facility as a topsoil is exempt, provided they do not cause odors when stored or used; and

(iv) a composting facility for the dewatered solids from the facility requires registration under this section.

(4) An organics processing facility for food processing waste.

(5) A composting facility for road-killed animals.

(6) An organics processing facility that accepts a combination of waste types and volumes described in this subdivision, if the facility would have been eligible for registration for each type of waste viewed separately.

(b) Operating criteria. A registered facility must be operated in compliance with section 360.20 of this Title and the following conditions:

(1) Material accepted may not remain at the facility for more than 24 months.

(2) The process must use only uncontaminated, unadulterated wood for amendments or bulking agents.

(3) Composting facilities must follow methods of composting that minimize odor generation and result in a mature product.

(4) Fermentation facilities must use the residual solids as a soil amendment, for animal feed, or in another manner acceptable to the department. Use as animal feed requires a beneficial use determination under Part 360 of this Title.

(5) Animal feed producers must obtain a beneficial use determination for the feed under Part 360 of this Title.

(6) The facility must be constructed to minimize any ponding, and run-off must be effectively controlled.

(7) The activities regulated under this section must be at least 200 feet from the nearest surface water body, potable water well and state-regulated wetland, unless provisions are implemented to prevent leachate from leaving the boundaries of the site in a manner acceptable to the department.

(8) The activities regulated under this section must be at least 200 feet from the nearest residence or place of business. This exclusion does not apply to the generating business or any

## ***PROPOSED PART 361-MARCH 2016***

residence or place of business built after the facility began operation. The buffer may be reduced by the department if means (such as enclosed vessels, etc.) acceptable to the department are used to reduce the potential for odor transmission.

(9) The facility must keep written records of all materials entering and leaving the facility and the corresponding dates.

(10) All waste received must be source-separated, with minimal (less than 1 percent by volume) non-organic material present. Material received in its original packaging (for example, off-spec drinks) that has been depackaged prior to treatment is not subject to the 1 percent restriction.

(11) All materials generated at the facility (including compost, digestate, and solids from fermentation) must be used as soil conditioner, for animal bedding, or for animal feed in a manner that does not cause negative animal health or environmental impacts. If used as a soil conditioner, agronomic rates must be followed.

(12) The facility must not produce odors that unreasonably impact sensitive receptors, as determined by the department. The department may require a reduction in the amount of waste accepted, or other actions, to address odor issues.

(13) Other than leaves or packaged products, all organic waste must be processed on the day received.

### **Section 361-3.4 Permit application requirements**

An organics processing facility that does not qualify for an exemption or a registration under this Subpart must obtain a permit and must submit an application that includes the requirements identified in this section and section 360.16 of this Title. The application must include the following:

(a) A detailed description of the source, quality, and quantity of all waste to be processed, including the source, quality, and expected quantity of any bulking agent, amendment, admixture, or seed material. The description must include the annual input and any seasonal variations in the waste type and quantity, and the appropriate quality data, as determined by the department.

(b) An operation plan that includes:

(1) a description of how the facility will comply with the operating requirements in Part 360 of this Title and section 361-3.5 of this Subpart;

(2) a description and the capacity of the storage facilities used for waste, bulking agent, admixture, and product;

***PROPOSED PART 361-MARCH 2016***

(3) a description of all pre-processing and post-processing methods and equipment used to identify and remove all nonprocessable materials and a copy of all agreements or educational activities that will be used to outline acceptable materials for the facility;

(4) a description of the separation, processing, storage, and ultimate disposal location for nonprocessable materials;

(5) a process flow diagram of the entire process, including all major equipment and flow streams. The flow streams must indicate the quantity of material on a wet weight, dry weight, and volumetric basis;

(6) an outline of the processing duration, including the time period from acceptance of waste to completion of treatment and to distribution of the product;

(7) windrow dimensions including width, length, and height, if used;

(8) a description of the air emission collection and control equipment, if used;

(9) the method used to control surface water run-off and to manage leachate, including the method for treatment or disposal of leachate generated. For uncovered facilities, calculations of the run-off and leachate that must be handled at the facility, based on a rainfall intensity of one-hour duration and a 10-year return period; and

(10) for facilities that will use a low-permeability soil to minimize leachate release, a construction quality assurance/construction quality control plan as outlined in Part 363 of this Title.

(c) An odor control and response plan. The plan must describe how odors will be monitored and how any odor problems will be addressed.

(d) For products that will be distributed to the public, a product maturity and distribution plan that includes:

(1) an outline of the method that will be used to determine product maturity, including proposed standards for maturity and the monitoring methods or other means that will be used to measure maturity;

(2) a description of the ultimate use for the finished product, including the approximate quantity of product each type of user (such as residents, landscapers, and animal feed markets) are expected to take, the frequency of distribution, the expected use of the product, and the source of this information (such as contract or phone survey);

(3) the method for removing product from the facility;

***PROPOSED PART 361-MARCH 2016***

(4) a description of the proposed use or disposal of product that cannot be used in the expected manner due to poor quality or change in market conditions; and

(5) a copy of the label or other information source for the product.

(e) Anaerobic digestion and fermentation facilities. In addition to the requirements outlined in subdivision 361-3.4 (a) through (d) of this section, a description of how the products of digestion or fermentation (both liquid and solids or combined) will be managed.

(f) Yard trimmings processing. In addition to the requirements outlined in subdivisions 361-3.5(a) through (d) of this section, an application for a permit for a composting facility for yard trimmings must include the following information:

(1) A description and identification of the surface soil characteristics for the proposed facility area and depths to the seasonal high groundwater table and bedrock.

(2) A description of the source and composition of the yard trimmings, including the anticipated quantity of each type of material and how each will be handled at the facility.

(3) A description of all activities at the facility including those portions of the facility that would otherwise qualify as an exempt facility or a registered facility under section 361-3.2 or 361-3.3 of this Subpart.

(g) Source-separated organics. In addition to the requirements outlined in subdivisions 361-3.4(a) through (d) of this section, an application for a permit for a composting or other organics processing facility for SSO must include the following information:

(1) A detailed description of the specific source, quality, and quantity of all SSO, and sources, quality, and expected quantity of any bulking agent or amendment. The description must include the annual waste input, and any seasonal variations in the waste type and quantity. For residential SSO, the description must include the service area population. For commercial and institutional SSO, the description must include a list of all types of generating facilities and the type and approximate quantity of wastes that will be collected from each type of generator.

(2) A detailed description of the source-separation program at the point of generation, including how unacceptable wastes are kept out of the SSO stream.

(i) For residential SSO, this must include a copy of all educational literature or other information provided to residents, and a description of the container(s) that will be used.

(ii) For commercial and institutional SSO, this must include a copy of any agreements or information concerning what can be accepted from the generator and the collection containers that will be used.

**PROPOSED PART 361-MARCH 2016**

(3) For processes other than anaerobic digestion, a detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction including:

(i) the methods that will be used for pathogen reduction and vector attraction reduction; and

(ii) the monitoring and data gathering that will be used to demonstrate compliance including type, location, and frequency.

(4) For SSO facilities that will operate on a soil base without a low-permeability pad, the permit application must include a description and an identification of the surface soil characteristics at the facility and the depths to the seasonal high groundwater table and bedrock, including appropriate documentation.

(h) Biosolids, municipal solid waste, septage, other sludges. In addition to the requirements outlined in subdivisions 361-3.4(a) through (d) of this section, an application for a permit for an organics processing facility for biosolids, municipal solid waste, septage, other sludges, or any waste with sanitary content must include the following information. Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before organic processing are not considered waste sources subject to the criteria in this subparagraph. The resultant biosolids or sludge generated for organic processing are subject to this subparagraph.

(1) If biosolids, septage, or other sludges are to be processed, the following information must be included:

(i) a description of each proposed source of waste including the name of the generator, the annual quantity of waste produced, the amount of waste to be processed, and any seasonal variations in the quantity or quality during the year. Also, a description of the federal or state pretreatment program, if required; and

(ii) except for municipal solid waste, a description of the quality of the waste, including analytical results, as outlined below:

(a) the required parameters for analysis are in Table 1 of section 361-3.7 of this Subpart;

(b) the minimum number of analyses for each waste source that must be submitted with the application is dependent upon the amount of waste that will be processed annually, and is in Table 2 in section 361-3.7 of this Subpart;

(c) for each analysis, the sampling date, location, and protocol used to obtain representative samples must be indicated;

**PROPOSED PART 361-MARCH 2016**

(d) a minimum of 6 months of waste production must be represented by the analytical results submitted. With the exception of pH and total solids, all results must be reported on a dry-weight basis;

(e) analyses for other pollutants may be required, on a case-specific basis, based on the characteristics of the waste and information from the pretreatment program and other sources;

(f) each analysis must be performed by a laboratory certified by the Department of Health for that type of analysis, using methods acceptable to the department, as indicated in Table 7 in section 361-3.7 of this Subpart, unless use of an alternate laboratory is authorized by the department. Copies of the original laboratory results must be included with the permit application;

(g) the analysis requirement may be satisfied in part or in whole by recent samples analyzed for and reported to the department;

(h) analyses performed more than one year before the date the permit application is submitted are not acceptable;

(i) all samples must be representative of the waste to be processed; and

(j) a table summarizing the analytical results must be provided, including the mean, median, and range of results found.

(2) Analyses of the bulking agent, amendment, or admixture (if applicable) for the parameters listed in Table 1 of section 361-3.7 of this Subpart, if deemed necessary by the department based on the type of material used.

(3) If municipal solid waste is to be processed, a description of the recyclables separation and reuse program, the management of household hazardous waste (HHW), and the radioactive waste detection program, including:

(i) the methods used for removing recyclables before treatment, at the point of generation and/or at the facility;

(ii) the processing methods used to handle recyclables and HHW;

(iii) the method and length of storage for both recyclables and HHW;

(iv) the markets for recyclables;

(v) the method used to remove HHW from the waste stream, at the point of generation

**PROPOSED PART 361-MARCH 2016**

and/or at the facility;

(vi) the ultimate management method for HHW collected; and

(vii) a radioactive waste detection plan that includes procedures for detecting prohibited radioactive material; operation and maintenance documents for radiation detectors including investigation alarm setpoint settings and calibration methods; and response procedures to be implemented when radioactive waste is detected.

(4) For municipal solid waste and waste that contains sanitary waste, a detailed description of the proposed processes to reduce pathogenic organism content and to reduce vector attraction including the following:

(i) the methods that will be used for pathogen reduction and vector attraction reduction. The use of Class A Alternative 4 as indicated in subparagraph 361-3.5(b)(1)(iv) of this Subpart must also include a detailed description of how the process will produce a product that is sufficiently stable that it can be used without creating a public nuisance;

(ii) the monitoring and data gathering procedures that will be used to demonstrate compliance with the pathogen and vector attraction reduction requirements, including type, location, and frequency; and

(iii) for existing systems, recent operating data and analytical data to demonstrate that the system can satisfy the pathogen and vector attraction reduction requirements.

**Section 361-3.5 Design and operating requirements**

An organics processing facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) Facility criteria.

(1) Unlined compost areas located on soils with a coefficient of permeability greater than six inches per hour may require installation of groundwater monitoring wells or other monitoring devices and groundwater monitoring, as determined by the department.

(2) For sites without a low-permeability pad, processing must not occur in areas where the seasonal high groundwater table is less than 24 inches from the ground surface or where bedrock lies less than 24 inches below the ground surface, unless composting occurs on a low-permeability pad.

(3) The bottom of any surface impoundment used for leachate with a capacity of 10,000 gallons or more must be a minimum of five feet above both the seasonal high groundwater table

**PROPOSED PART 361-MARCH 2016**

and the top of bedrock. Impoundments with a capacity less than 10,000 gallons must be a minimum of two feet above both the seasonal high groundwater table and the top of bedrock.

(4) Stormwater must be controlled so as to not enter the operating area.

(5) Precipitation, surface water, and groundwater that has come in contact with yard trimmings or the resultant compost is not considered leachate, but must be managed in a manner acceptable to the department. Drainage must be controlled to prevent run-off from the facility and organic matter from entering surface water or groundwater. For uncovered facilities, the design of the facility must be adequate to handle the quantity of liquid generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

(6) All leachate must be collected and disposed in a manner approved by the department. For uncovered processing facilities, the leachate collection and treatment system must be adequate to manage the quantity of leachate generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period. All leachate storage facilities must be completely emptied, cleaned, and inspected every 12 months.

(7) For municipal solid waste, septage, biosolids, other sludges, and facilities that accept 10 wet tons of SSO per day, the waste storage area, processing area, leachate storage and product storage area at the facility must be located on surfaces that minimize leachate release into the groundwater under the facility and the surrounding land surface, such as asphalt (except for leachate storage), concrete, or drying beds that have underdrains for leachate collection. All leachate storage structures must be designed in accordance with Code NRCS NY313, as incorporated by reference in section 360.3 of this Title. The following criteria also apply:

(i) If low permeability soils are used, the liner must be a minimum of two feet of compacted soil having a maximum remolded coefficient of permeability of  $1 \times 10^{-7}$  centimeters per second. The soil material particles must be able to pass through a one-inch screen. The applicable criteria in section 363-6.6 through 363-6.8 must be met.

(ii) If a geomembrane is used, the liner system must be designed and built in accordance with the applicable criteria in Part 363.

(iii) If a surface impoundment is used for leachate storage, a minimum of two feet of freeboard must be maintained. In addition, the bottom of the liner system must be a minimum of five feet above both seasonal high groundwater elevation and the top of bedrock.

(iv) For composting facilities, product storage beyond the 50-day detention time requirement is not required to occur on a low-permeability surface. For products other than compost, the department will determine when the product need no longer be stored on a pad.

(8) If the facility accepts, on average, less than 10 wet tons of SSO per day, the following requirements also apply:

***PROPOSED PART 361-MARCH 2016***

(i) if the facility is located on soils with a coefficient of permeability greater than six inches per hour, the installation of groundwater monitoring wells or other monitoring devices and groundwater monitoring may be required, as determined by the department;

(ii) the facility must be constructed and operated to minimize ponding;

(iii) processing must not occur in areas where the seasonal high groundwater table is less than 24 inches from the ground surface or where the top of bedrock lies less than 24 inches below the ground surface; and

(iv) the bottom of any surface impoundment used for leachate must be a minimum of 5 feet above both the seasonal high groundwater table and the top of bedrock.

(9) For uncovered processing facilities, the facility must be able to manage the quantity of leachate generated at the facility based on a rainfall intensity of one-hour duration and a 10-year return period.

(10) All unloading, storage and processing areas at facilities that have an average capacity of 100 wet tons per day or greater must be enclosed.

(11) If used, windrow construction, composition, and operational procedures must be sufficient to maintain aerobic conditions and to produce a compost product in the time-frame indicated in the permit application.

(12) The facility must be operated in a manner to control the generation and migration of odors to a level that is to be expected from a typical facility operated in compliance with the regulatory criteria of this Subpart, as determined by the department. For turned windrow systems, turning windrows when wind speed is below 10 miles per hour in the direction of sensitive receptors must be employed, if necessary.

(13) The minimum horizontal separation distance as measured from the facility to the nearest residence, place of business or public contact area (except turf farms and plant nurseries) is 200 feet for yard trimmings or SSO, and 500 feet for other wastes. In addition:

(i) a facility without a pad and leachate collection system must maintain a minimum separation of 200 feet to a potable water well or surface water body and 25 feet to a drainage swale;

(ii) the separation distance requirement from a public contact area may be reduced for totally enclosed facilities or other mitigating landscape features, if approved by the department;

(iii) the separation distance requirement applies at the time the permit application is submitted to the department. The facility is not required to comply with the separation

***PROPOSED PART 361-MARCH 2016***

requirement with respect to construction of nearby residences, places of business or public contact areas subsequent to the application; and

(iv) the separation distance requirement for a residence does not apply to the residence of the facility landowner or operator. For a municipal permittee, land owned by any agency or department of the municipality is considered to be owned by the municipality.

(14) The operation of the facility must follow acceptable methods of composting or treatment that results in the biochemical decomposition of the organic material received or appropriate treatment for the intended product. For yard waste composting, leaves in bags must be debagged or otherwise incorporated into the process within 60 days of receipt. Bags containing primarily grass clippings must be debagged and mixed with bulking agent within 24 hours of receipt.

(15) The facility can only accept SSO from a generator that has an active collection program designed to collect organic waste separate from other recyclables and waste materials and to remove inorganic and nonprocessable materials from the SSO generated. The facility must also have provisions for inspection and removal of nonprocessable materials received.

(16) The facility is prohibited from accepting wastes that do not positively contribute to the treatment process or the quality of the product, as determined by the department. Prohibited waste includes, but is not limited to, construction and demolition debris (other than uncontaminated and unadulterated wood) and ash from the combustion of municipal solid waste.

(17) Storage of a product at a facility must not exceed 24 months. For heat-drying facilities, the maximum storage time may be restricted to a shorter period, as determined by the department.

(18) Noncompostable or nonprocessable waste and unacceptable product must be disposed at least weekly.

(19) For facilities accepting municipal solid waste:

(i) a recyclables separation program and a HHW collection program must be in place in the generating community(ies) and at the facility and must be approved by the department before operation of the facility can begin;

(ii) recyclables must be removed from the waste stream before active composting or treatment;

(iii) a fixed radiation detection unit must be installed and operated at a location appropriate for the monitoring of all incoming waste. In addition:

(a) the investigation alarm setpoint of the radiation detector must be set at least two

**PROPOSED PART 361-MARCH 2016**

times but no greater than five times background radiation levels;

(b) the concentration of radium-226 in any waste received may not exceed 25 pCi/g;

(c) background radiation readings at the facility must be measured and recorded at least daily;

(d) field checks of the radiation detector utilizing a known radiation source must be performed and recorded at least weekly;

(e) the radiation detector must be calibrated at least annually, and documentation describing the calibration must be maintained at the facility; and

(f) each instance in which the radiation detector is triggered by a waste load must be documented. Information must include the date the waste was received, hauler name, origin of the waste, truck number or other identifying marking, detector reading, disposition of the waste, and date of disposition.

(iv) all waste storage and processing areas must be enclosed.

(20) Additional criteria for anaerobic digestion facilities that accept sanitary waste. Facilities that accept sanitary waste or mixed municipal solid waste must comply with the following criteria:

(i) All waste received must be size-reduced, if necessary, to effectively digest.

(ii) All waste entering a low-solids anaerobic digester must be source-separated, with less than 1 percent by volume of non-organic material present.

(iii) For low-solids anaerobic digestion facilities, the operating level in the digestion vessel must be maintained so that spillage or discharge into the gas collection system does not occur.

(iv) The anaerobic digester must achieve a minimum of 38 percent volatile solids reduction.

(v) Management of digestate:

(a) land application of the solids and/or liquid emanating from an anaerobic digestion facility requires a permit under Subpart 361-2, unless the Class A pathogen reduction and vector attraction reduction criteria of this Subpart can be demonstrated;

(b) use of the dewatered solids from an anaerobic digestion facility for animal bedding is prohibited unless the Class A pathogen reduction and vector attraction reduction

***PROPOSED PART 361-MARCH 2016***

criteria of this Subpart can be demonstrated;

(c) use of the dewatered solids blended with sand or other suitable material as a topsoil is prohibited unless the Class A pathogen reduction and vector attraction reduction criteria of this Subpart can be demonstrated; and

(d) a composting facility for the dewatered solids from an anaerobic digestion facility requires a permit under this Subpart.

(21) Additional criteria for anaerobic digestion facilities that accept no sanitary waste. Facilities that do not accept sanitary waste or mixed municipal waste must comply with the following criteria:

(i) All waste received must be size-reduced, if necessary, to effectively digest.

(ii) All waste entering a low-solids anaerobic digester must be source-separated, with less than 1 percent by volume of non-organic material present.

(iii) For a low-solids anaerobic digestion facility, the operating level in the digestion vessel must be maintained so that spillage or discharge into the gas collection system does not occur.

(iv) The anaerobic digester must achieve a minimum of 38 percent volatile solids reduction.

(v) Pathogen reduction, either Class A or Class B, may be required by the department, depending on the type of waste accepted and the use of the digestate.

(vi) Management of digestate:

(a) land application of the solids and/or liquid emanating from an anaerobic digestion facility requires a registration under Subpart 361-2;

(b) use of the dewatered solids from an anaerobic digestion facility for animal bedding is exempt from this Part;

(c) use of the blended dewatered solids from an anaerobic digestion facility as a topsoil is exempt from this Subpart, provided the topsoil blend does not cause odors when stored or used; and

(d) a composting facility for the dewatered solids from an anaerobic digestion facility requires a registration under this Subpart.

(b) Pathogen and vector attraction reduction. The following requirements apply to municipal solid waste and waste that contains any amount of sanitary waste. For SSO, the level of pathogen reduction required will be determined by the department based on the type of waste accepted and

**PROPOSED PART 361-MARCH 2016**

the use of the resultant material.

(1) One of the following Class A alternatives must be used to reduce pathogen content before the material leaves the facility. Alternative 2 is not applicable for composting and Alternative 3 can only be used if the process cannot produce operational data that could be used to meet another pathogen reduction (PR) alternative.

(i) Class A - Alternative 1. At the time of product use or disposal, either the density of fecal coliform in the product is less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the product is less than 3 Most Probable Number per 4 grams of total solids (dry weight basis). In addition, the waste must be treated by one of the following processes:

(a) Composting. Using the windrow composting method, the waste is maintained under aerobic conditions during the compost process. A minimum of 5 turnings is required during a period of 15 consecutive days when the temperature of the waste is not less than 55 degrees Celsius. Using the aerated static pile composting method or the within-vessel composting method, the temperature of the waste is maintained at 55 degrees Celsius or higher for at least three consecutive days.

(b) Heat drying. Waste is dried by direct or indirect contact with hot gases to reduce the moisture content of the waste to 10 percent or lower. One of the following must be achieved:

(1) either the temperature of the waste particles must exceed 80 degrees Celsius;  
or

(2) the wet bulb temperature of the gas in contact with the waste as it leaves the dryer must exceed 80 degrees Celsius.

(c) Heat treatment. Liquid waste is heated to a temperature of 180 degrees Celsius or higher for at least 30 minutes.

(d) Thermophilic aerobic digestion. Liquid waste is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the waste is at least 10 days at 55 degrees Celsius or greater.

(e) Beta ray irradiation. Waste is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20 degrees Celsius).

(f) Gamma ray irradiation. Waste is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (approximately 20 degrees Celsius).

(g) Pasteurization. The temperature of the waste is maintained at 70 degrees Celsius

**PROPOSED PART 361-MARCH 2016**

or higher for 30 minutes or longer.

(h) Other methods. Other methods or operating conditions may be approved by the department if the department determines that pathogens are reduced to an extent equivalent to the reduction achieved by the above methods.

(ii) Class A - Alternative 2. Treatment by thermophilic aerobic or anaerobic digestion. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the product must be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis). In addition, the temperature of the waste must be maintained at a specific value for a period of time, as follows:

(a) When the percent solids of the waste is 7 percent or higher, the temperature of the waste must be 50 degrees Celsius or higher, the time period must be 20 minutes or longer, and the temperature and time period must be determined using the following equation, except when small particles of waste are heated by either warmed gases or an immiscible liquid.

$$D = \frac{131,700,000}{10^{0.1400 t}}$$

Where,

D = time in days.

t = temperature in degrees Celsius.

(b) When the percent solids of the waste is 7 percent or higher and small particles of waste are heated by either warmed gases or an immiscible liquid, the temperature and time period must be determined using the equation in clause (a) of this subparagraph. The temperature of the waste must be 50 degrees Celsius or greater and the time period must be 15 seconds or longer.

(c) When the percent solids of the waste is less than 7 percent and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period must be determined using the equation in clause (a) of this subparagraph.

(d) When the percent solids of the waste is less than 7 percent, the temperature of the waste is 50 degrees Celsius or higher, and the time period is 30 minutes or longer, the temperature and time period must be determined using the following equation:

$$D = \frac{50,070,000}{10^{0.1400 t}}$$

**PROPOSED PART 361-MARCH 2016**

Where,  
D = time in days.  
t = temperature in degrees Celsius.

(iii) Class A - Alternative 3. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the product must be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis). In addition, the following conditions must be satisfied:

(a) The pH of the waste must be raised to above 12 and remain above 12 for at least 72 hours.

(b) The temperature of the waste must remain above 52 degrees Celsius for 12 hours or longer during the period that the pH of the waste is above 12.

(c) At the end of the 72-hour period during which the pH of the waste is above 12, the waste must be air dried to achieve a percent solids in the waste greater than 50 percent.

(iv) Class A - Alternative 4. At the time of product use or disposal, either the density of fecal coliform in the product must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella sp. bacteria in the product must be less than 3 Most Probable Number per 4 grams of total solids (dry weight basis). In addition, the following conditions must be satisfied:

(a) The density of enteric viruses in the product must be less than one Plaque-forming Unit per four grams of total solids (dry weight basis).

(b) The density of viable helminth ova in the product must be less than 1 per 4 grams of total solids (dry weight basis).

(2) One of the following vector attraction reduction methods must be achieved before the material leaves the facility. Vector attraction reduction methods, except the methods found in subparagraphs 361-3.5(b)(2)(vi) through (viii), must be met either after meeting the pathogen reduction requirements or at the same time the pathogen reduction requirements are met.

(i) The mass of volatile solids in the waste must be reduced by a minimum of 38 percent.

(ii) If the volatile solids reduction requirement cannot be met for an anaerobically digested waste, vector attraction reduction can be demonstrated by anaerobically digesting a portion of the previously digested waste in a laboratory bench-scale unit for 40 additional days at a temperature between 30 and 37 degrees Celsius. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 17 percent reduction in volatile solids content.

***PROPOSED PART 361-MARCH 2016***

(iii) If the volatile solids reduction requirement cannot be met for an aerobically digested waste, vector attraction reduction can be demonstrated by aerobically digesting a portion of the previously digested waste that has a percent solids of 2 percent or less in a laboratory bench-scale unit for an additional 30 days at 20 degrees Celsius. Vector attraction reduction is achieved if the bench-scale digestion produces less than a 15 percent reduction in volatile solids content.

(iv) The specific oxygen uptake rate (SOUR) for waste treated in an aerobic process must be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20 degrees Celsius.

(v) Waste must be treated by an aerobic process for a minimum of 14 days. Throughout that treatment time, the temperature of the waste must remain higher than 40 degrees Celsius and the average temperature of the waste must be higher than 45 degrees Celsius.

(vi) The pH of the waste must be raised to 12 standard units or higher by alkali addition and, without the addition of more alkali, must remain at 12 or higher for two hours, and then must remain at 11.5 or higher for an additional 22 hours.

(vii) For waste that does not contain untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 75 percent, before mixing with other materials, until use.

(viii) For waste that contains untreated solids generated in a primary wastewater treatment process, the percent solids of the waste must be equal to or greater than 90 percent, before mixing with other materials, until use.

(c) Pollutant limits and product use. Digestate from an anaerobic digestion facility may be considered a product for the purposes of this subdivision.

(1) A product that does not meet the criteria in this section is considered a waste and must be disposed.

(2) The product may be distributed for use for food crops, feed crops, and fiber crops.

(3) The product must not contain pollutant levels greater than those found in Table 6 of section 361-3.7 of this Subpart. The addition of sawdust, soil, or other materials to the process or product for dilution purposes is not allowed.

(4) The product must not contain more than two percent total gross contaminants by weight (dry weight basis).

(5) The product must be able to pass through a one-inch screen, except for wood particles derived from the use of wood chips as a bulking agent or amendment.

***PROPOSED PART 361-MARCH 2016***

(6) If distributed to the public, the product must be mature and must be used in a legitimate manner as a soil amendment. For composting, the process must have a minimum detention time (including active composting and curing) of 50 days, unless an alternate means for achieving sufficient maturity is approved by the department.

(7) Except for products derived solely from yard trimmings, an information label must be affixed to the product packaging or, for bulk, an information sheet or brochure must be provided to the user. The label or information sheet must contain, at a minimum, the following information:

- (i) the name and address of the generator of the product;
- (ii) the type of waste from which the product was derived; and
- (iii) recommended safe uses, application rates and storage practices.

(8) For facilities that accept biosolids, septage, or other sludges, each waste source must not exceed the pollutant concentrations found in Table 6 of section 361-3.7 of this Subpart, unless the waste source is a minor (less than 10% of the total dry weight of sludges accepted) component of the input to the facility and a program is developed to identify and reduce the pollutant(s) that exceed the limits for that waste source. This requirement does not apply to products used outside New York State.

(i) If a waste input, other than a minor source, contains metals at concentrations greater than those set forth in Table 6 of section 361-3.7, the waste cannot be accepted at the facility until the generator has implemented a pollutant identification and abatement program and compliance with the requirements of this paragraph has been demonstrated for a period of at least 6 continuous months. At least 6 analyses for total solids and the parameter of concern must be provided to demonstrate compliance. This requirement does not apply to products used outside New York State.

(ii) Wastewater and partially treated biosolids that are generated at one wastewater treatment facility and are further treated at another wastewater treatment facility before organic processing are not considered waste sources subject to the criteria in this paragraph. The resultant biosolids or sludge generated for organic processing are subject to this paragraph.

(9) Any material added to the process must not contain pollutants in concentrations that exceed the levels found in Table 6 of section 361-3.7. If kiln dust is used, the kiln dust must not emanate from a kiln that accepts hazardous waste.

(d) Monitoring, recordkeeping, and reporting.

(1) Annual analysis of the product, other than yard trimmings compost, is required for the parameters in Table 1 of section 361-3.7 of this Subpart. The frequency of sampling is specified

***PROPOSED PART 361-MARCH 2016***

in Tables 4 and 5 of section 360-3.7 of this Subpart. All samples must be representative of the product that will be distributed. With the exception of pH and total solids, all results must be reported on a dry weight basis. Copies of the original laboratory results must be included.

(i) Each sample must be a composite of at least 5 grab samples. With the exception of pH and total solids, all results must be reported on a dry weight basis.

(ii) After the product has been monitored for 2 years at the frequency outlined in this paragraph, the department may reduce the annual number of analyses required if the product quality consistently meets the product quality standards in Table 6 of section 361-3.7 of this Subpart.

(iii) For digestate derived from non-sanitary waste, the required analyses may be reduced depending on the use of the material, as determined by the department.

(2) Sufficient monitoring data must be obtained to demonstrate compliance with the pathogen and vector attraction reduction requirements, if applicable. The frequency and type of monitoring necessary, based on the methods employed to achieve pathogen and vector attraction reduction, must be approved by the department. At a minimum, temperature monitoring must occur on a daily basis in the coldest part of the waste mass.

(3) The department may require, on a case-specific basis, testing of the product for maturity before distribution. This may include, but is not limited to, potential for reheating, organic matter reduction, plant growth impact, or oxygen consumption.

(4) Each biosolids source or septage must be analyzed annually in accordance with the following:

(i) The required parameters for analysis are found in Table 1 of section 361-3.7 of this Subpart.

(ii) The minimum number of analyses required depends on the quantity of waste, as outlined in Table 3 of section 361-3.7 of this Subpart.

(iii) With the exception of pH and total solids, all results must be reported on a dry-weight basis. After the waste has been monitored for 2 years at the frequency outlined in this paragraph, the department may reduce the annual number of analyses required if the waste quality consistently meets the quality standards.

(iv) Wastewater and partially treated biosolids or septage that are generated at one wastewater treatment facility and treated at another wastewater treatment facility before beneficial use are not considered waste sources subject to the criteria in this subparagraph. The resultant biosolids or sludge generated for beneficial use are subject to this subparagraph.

**PROPOSED PART 361-MARCH 2016**

(5) For other sludges and wastes, annual analyses of the input waste may be required, as determined by the department, based on the characteristics of the waste. The extent and frequency of sampling will be determined by the department on a case-specific basis.

(6) The annual report must include:

(i) all information and analyses required by this Subpart;

(ii) the type and quantity of the waste, and other materials such as bulking agents, being processed, including the source of the material;

(iii) process operational information including monitoring data and significant facility operational problems and any actions taken to correct any problems;

(iv) for facilities that accept biosolids, the following certification statement must be signed by an authorized representative of the facility and indicate the name and title of the individual signing:

"I certify, under penalty of law, that the information that will be used to determine compliance with the requirements in Subpart 361-3 of 6 NYCRR Part 361 has been prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that false statements made herein are punishable pursuant to section 210.45 of the penal law including the possibility of fine and imprisonment."

(v) the quantity, by weight and volume, of product generated at the facility and the quantity of product and other waste, including unacceptable product, removed from the facility; and

(vi) a description of the end-product distribution and disposal methods.

**Section 361-3.6 Products generated outside New York State**

A product derived from sanitary waste or municipal solid waste, which is generated outside New York State, and which is offered for sale, sold, transferred, or given away within New York State, is not waste for purposes of section 360.12 of this Title if the following conditions are satisfied:

(a) Request for Product Distribution. Before distribution of the product in New York State, the distributor of the organics-derived product must submit a written request to the department to distribute an organics-derived product and corresponding written confirmation must be obtained from the department prior to distribution. The request must be submitted to the department's central office and contain, at a minimum, the following:

***PROPOSED PART 361-MARCH 2016***

(1) a description of the processing facility and all waste sources;

(2) a copy of the permits or other approvals for the processing facility and the appropriate excerpts from applicable rules and regulations from the applicable authority where the product is generated;

(3) a minimum of three analyses of the product for the parameters listed in Table 1, section 361-3.7 of this Subpart;

(4) a description of the methods to reduce pathogens and vector attraction, with appropriate monitoring data, as determined by the department;

(5) a description of how and where the product will be distributed and used in New York State and the quantity of product that will be distributed or used in New York State;

(6) for products used in bulk on a farm, a description of any storage facilities for product that are located in New York State, including location, quantity stored, storage facility construction and duration of storage; and

(7) a copy of the label or printed literature for the product.

(b) Pathogen and vector attraction reduction. The requirements outlined in subdivision 361-3.5(b) of this Part apply.

(c) Contaminant limits and product use. The product quality and product use must comply with the criteria found in subdivision 361-3.5(c) of this Part.

(d) Monitoring, recordkeeping, and reporting.

(1) A minimum of one analysis of the product is required for each 1,000 cubic yards of product distributed in New York State. The parameters and associated requirements are found in paragraph 361-3.5(d).

(2) An annual report must be submitted to the department's central office by March 1 of each year. The report must include:

(i) all information and analytical results required by this section;

(ii) the quantity of product distributed in New York State;

(iii) a description of the product storage and product use; and

(iv) an outline of all problems encountered, complaints received, actions taken to mitigate any problems, and the outcomes.

**PROPOSED PART 361-MARCH 2016**

**Section 361-3.7 Tables**

Table 1  
Parameters for Analysis - Biosolids/Sludge & Associated Products

Total Kjeldahl Nitrogen	Arsenic	Products must also analyze for:
Ammonia	Cadmium	
Nitrate	Chromium (total)	Fecal coliform or Salmonella sp. bacteria
Total Phosphorous	Copper	
Total Potassium	Lead	
pH	Mercury	
Total Solids	Molybdenum	
Total Volatile Solids	Nickel	
	Selenium	
	Zinc	

**PROPOSED PART 361-MARCH 2016**

Table 2  
Analyses Required with Permit Application

Biosolids/Sludge Used (dry tons/year)	<u>Minimum Number of Analyses</u>
>15,000	12
>1,000 to 15,000	6
200 to 1,000	3
25 to 199	2
<25	1

Table 3  
Analyses Required During Operation - Biosolids

Biosolids Used (dry tons/year)	Minimum Number of Analyses	Reduced Frequency for Low Pollutants*
>15,000	24	12
>1,000 to 15,000	12	6
200 to 1,000	6	4
25 to 199	4	2
<25	2	1

\*Applies to facilities where 2 consecutive years of biosolids pollutant levels are all at or below one-half of the limits found in Table 6.

**PROPOSED PART 361-MARCH 2016**

Table 4  
Annual Product Testing Frequency - Biosolids/Sludge/MSW

Average Product Generated (cubic yards per day)	Number of Analyses
>50	52
5-50	12
<5	6

Table 5  
Annual Product Testing Frequency - SSO

Average Product Generated (cubic yards per day)	Number of Analyses
>50	12
5-50	4
<5	2

**PROPOSED PART 361-MARCH 2016**

Table 6  
Pollutant Limits

Parameter	Maximum Concentration mg/kg, dry weight
Arsenic (As)	41
Cadmium (Cd)	10
Chromium (Cr-total)	1,000
Copper (Cu)	1,500
Lead (Pb)	300
Mercury (Hg)	10
Molybdenum (Mo)	40
Nickel (Ni)	200
Selenium (Se)	100
Zinc (Zn)	2,500

**PROPOSED PART 361-MARCH 2016**

Table 7  
ANALYTICAL METHODS and SAMPLE MANAGEMENT\*

Parameter	Analytical Methods	Maximum Holding Temperature/Time
FECAL COLIFORM	SM-9221C or SM-9222D	4C (39.2F)/6 hours**
SALMONELLA SP.	SM-9260 D.1, Kenner, EPA 1682	4C (39.2F)/6 hours
VIABLE HELMINTH OVA	Yanko	4C (39.2F)/1 month
ENTEROVIRUSES	ASTM-D4994-89	-18C (0F)/2 weeks
TOTAL/VOLATILE SOLIDS	SM-2540 G	4C (39.2F)/7 days
pH	SW-9045	
TKN	SM-4500-Norg	4C(39.2F)/28 days
NO3-N (Nitrate)	SM-4500-NO3	4C(39.2F)/28 days
TOTAL PHOSPHOROUS	SM-4500-P	4C(39.2F)/28 days
POTASSIUM	SW-6010 or 7610	4C(39.2F)/6 months
AMMONIA	SM-4500-NH3	4C(39.2F)/28 days
ARSENIC	SW-6010 or 7060 or 7061	4C(39.2F)/6 months
CADMIUM	SW-6010 or 7130 or 7131	4C(39.2F)/6 months
CHROMIUM	SW-6010 or 7190 or 7191	4C(39.2F)/6 months
COPPER	SW-6061 or 7210	4C(39.2F)/6 months
LEAD	SW-6010 OR 7420 or 7421	4C(39.2F)/6 months
MERCURY	SW-7470 or 7471	4C(39.2F)/28 days
MOLYBDENUM	SW-6010 or 7480 or 7481	4C(39.2F)/6 months
NICKEL	SW-6010 or 7520	4C(39.2F)/6 months
SELENIUM	SW-6010 or 7740 or 7741	4C(39.2F)/6 months
ZINC	SW-6010 or 7950	4C(39.2F)/6 months
VOLATILE ORGANICS	SW-8260B	4C(39.2F)/14 days
SEMIVOLATILE ORGANICS	SW-8270C	4C(39.2F)/14 days
PESTICIDES/PCBs	SW-8081/8082	4C(39.2F)/14 days

\* All samples can be placed in a plastic or glass container except:

Pesticides/PCBs: amber glass jar

Semivolatile Organics: amber glass jar with Teflon liner

***PROPOSED PART 361-MARCH 2016***

Volatile Organics: glass jar with Teflon liner

\*\*The maximum holding time for fecal coliform samples is 24 hours for Class B anaerobically or aerobically digested systems and Class A compost processes.

Analytical Methods specified by 40 CFR Part 503, as incorporated by reference in section 360.3 of this Title.

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-4**

**WOOD DEBRIS AND YARD TRIMMINGS PROCESSING FACILITIES**

<b>361-4.1</b>	<b>Applicability</b>
<b>361-4.2</b>	<b>Exempt facilities</b>
<b>361-4.3</b>	<b>Registered facilities</b>
<b>361-4.4</b>	<b>Permit application requirements</b>
<b>361-4.5</b>	<b>Design and operating requirements</b>
<b>361-4.6</b>	<b>Recordkeeping and reporting requirements</b>

**Section 361-4.1 Applicability**

This Subpart applies to facilities that process yard trimmings and unadulterated wood debris, other than construction and demolition debris, into mulch or other beneficial wood products. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to:

- (a) a facility, or a portion of one, that composts yard trimmings. That type of facility, or portion thereof, is regulated under Subpart 361-3 of this Part;
- (b) a facility, or a portion of one, for combustion or thermal treatment of wood debris and/or yard trimmings. That type of facility, or portion of one, is regulated under Subpart 362-1 of this Title; and
- (c) a facility, or a portion of one, that processes wood that is construction and demolition debris. That type of facility, or portion thereof, is regulated under Subpart 361-5 of this Part.

**Section 361-4.2 Exempt facilities**

In addition to the exemptions provided in section 360.14 of this Title, the following facilities are exempt from this Subpart.

- (a) A tree debris disposal facility defined in subdivision 363-2.1(g) of this Title.
- (b) A facility (including storage of incoming material and processed debris) that occupies no more than two acres, provided the piles adhere to the size restrictions found in paragraph 361-4.3(a)(2) of this Subpart and a 25-foot buffer to the property line is maintained. The acreage is determined by the footprint of the material on-site, excluding areas where material is not present.
- (c) A facility used for the storage and processing of wood material that is considered storm debris from an area designated as a disaster area by the governor of New York State, provided criteria specified by the department are followed.

## ***PROPOSED PART 361-MARCH 2016***

(d) A facility used for the storage of firewood in accordance with Emerald Ash Borer (EAB) and other quarantine restrictions required by the department specified within that area.

### **Section 361-4.3 Registered facilities**

Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with the operating requirements specified in this section.

(a) A wood debris or yard trimmings processing facility (including storage of incoming material and processed material) that does not qualify as an exempt facility but contains less than 30,000 cubic yards of material, provided the following criteria are followed.

(1) The maximum storage period, except for yard trimmings, for incoming material and for processed debris is 12 months. For yard trimmings, the maximum storage period for incoming trimmings and for processed trimmings is 6 months, except processed trimmings mixed with at least 50 percent sand or soil, by volume, may be stored for up to 12 months. Piles must be labeled to indicate the date material or processed material was first placed in the pile and the date(s) of restacking.

(2) All piles of material, both unprocessed and processed, cannot exceed 15 feet high and 30 feet wide at the base and piles must be triangular in cross section.

(3) All piles of material, both unprocessed and processed, must be separated by at least 25 feet.

(4) The ground surface between piles of material must be kept free of combustible materials.

(5) Piles of processed material can be stored for a maximum of 90 days before restacking.

(6) Piles of processed material must be piled loosely and not compacted in any manner. The storage of double ground wood must be limited in duration as needed to maintain pile temperatures below 140F.

(7) Processed tree debris piles cannot be layered with wet and dry materials or with materials of different sizes.

(8) The temperature in the processed piles must be monitored at least twice per week. Multiple points in the piles must be monitored with emphasis placed on areas that appear to be the hottest such as vents and areas of fungal growth. Probing must be done cautiously to avoid introducing air into a hot spot and causing a flash fire. If the temperature is above 140F or a portion of the pile shows an increasing trend in temperature, the affected material must immediately be broken down and cooled.

## ***PROPOSED PART 361-MARCH 2016***

(9) If a fire occurs, the affected portion of the pile must be dismantled and watered to douse the fire.

(10) Sufficient water must be available on-site to provide moisture to the piles or douse fires.

(11) Standing water on the storage area must be minimized. Ruts and low areas must be graded and/or filled with soil and/or rock.

(12) For the purposes of Part 360 and this Part, precipitation, surface water, and groundwater that has come in contact with debris and trimmings, both incoming and processed, is not considered leachate, but must be managed in a manner acceptable to the department. The facility must have a written runoff plan that is acceptable to the department that outlines the methods that will be used to prevent runoff from entering and leaving the site and to minimize the movement of organic matter into the soil at the site.

(13) If the facility is fenced or otherwise enclosed, gates at least 12 feet wide must be available and accessible to a public roadway.

(14) The following buffer zones from processing and storage must be followed:  
200 feet to a water well or surface water body  
25 feet to a property line  
200 feet to a residence

(15) Wood from quarantine areas must be managed under the guidelines specified within that area.

### **361-4.4 Permit application requirements**

A wood debris or yard trimmings processing facility that is not an exempt facility or subject to the registration provisions of section 361-4.3 of this Title must obtain a permit, and must submit an application that demonstrates compliance with the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title and sections 361-4.5 and 4.6 of this Subpart.

### **361-4.5 Design and operating requirements**

A wood debris or yard trimmings processing facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design and operate the facility in compliance with the design and operating requirements outlined in section 361-4.3 of this Part. Also, the facility must have stormwater controls that minimize the potential for organic matter to reach groundwater and surface water resources.

### **361-4.6 Recordkeeping and reporting requirements**

***PROPOSED PART 361-MARCH 2016***

The following criteria apply to both registered and permitted facilities:

- (a) The facility must keep records as required by subdivision 360.19(1) of this Title.
- (b) The facility must submit an annual report as required by paragraph 360.19(1)(3) of this Title.

*PROPOSED PART 361-MARCH 2016*

**SUBPART 361-5**

**CONSTRUCTION AND DEMOLITION DEBRIS PROCESSING FACILITIES**

- 361-5.1      Applicability**
- 361-5.2      Registered facilities**
- 361-5.3      Permit application requirements**
- 361-5.4      Design and operating requirements**
- 361-5.5      Recordkeeping and reporting requirements**
- 361-5.6      Final disposition of processed C&D debris and C&D debris residue**
- 361-5.7      C&D debris tracking from registered and permitted facilities**

**Section 361-5.1   Applicability**

This Subpart applies to facilities that handle and/or process construction and demolition (C&D) debris. The requirements contained in Part 360 of this Title also apply to this Subpart.

**Section 361-5.2   Registered facilities**

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In addition to the criteria in Part 360 of this Title, each facility must comply with the applicable requirements of this Subpart.

(1) Facilities that receive less than 250 tons on any day of only the following recognizable, uncontaminated wastes: concrete and other masonry materials (including steel or fiberglass reinforcing embedded in concrete), brick, soil, and rock.

(2) Facilities that receive less than 250 tons on any day of asphalt pavement.

(3) Facilities that receive less than 250 tons on any day of asphalt roofing shingles and roofing paper that do not contain asbestos-containing materials.

(4) Facilities that receive less than 250 tons on any day of uncontaminated, unadulterated gypsum wallboard.

(5) Facilities that receive less than 250 tons on any day of other source-separated recyclables from construction and demolition debris sites for use under an approved case-specific beneficial use determination in accordance with section 360.12 of this Title.

(6) Facilities that receive a combination of some or all of the wastes listed in paragraphs (1) through (5) of this subdivision provided the identified wastes under each paragraph are received,

## ***PROPOSED PART 361-MARCH 2016***

processed, and stored separately, and the total waste received is less than 250 tons of waste on any day.

### **Section 361-5.3 Permit application requirements**

A C&D debris processing facility that is not subject to the registration provisions of section 361-5.2 of this Subpart must obtain a permit, and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360.19 of this Title and this Subpart.

### **Section 361-5.4 Design and operating requirements**

A C&D debris processing facility required to obtain a registration or permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

- (a) Except for the registered facilities identified in paragraphs 361-5.2(a)(1), (2), and (5), all receiving, processing, and sorting activities must be conducted in an enclosed building unless otherwise specified in this Subpart.
- (b) All waste and recovered material delivered to and leaving the facility must be weighed or otherwise measured and recorded in cubic yards and tons.
- (c) No friable asbestos-containing waste shall be accepted at the facility. Non-friable asbestos-containing waste, if received at the facility, must not be handled or processed in any way that would cause the material to become crumbled, pulverized, or reduced to powder.
- (d) The facility shall not accept historic fill unless the generator of the historic fill can demonstrate that the fill consists of only the waste described in paragraph 361-5.2(a)(1) of this Subpart.
- (e) The facility shall not accept C&D debris, historic fill, soil, or similar material from a site being remediated pursuant to a program administered by the department or EPA unless accompanied by written approval from the department or EPA.
- (f) Storage requirements.
  - (1) Storage of processed and unprocessed C&D debris is limited as follows:
    - (i) asphalt pavement, concrete and other masonry materials (including steel or fiberglass reinforcing embedded in concrete), brick, soil, rock, or wood may be stored uncovered, but in all cases storage is limited to 180 calendar days;
    - (ii) storage of any other processed or unprocessed C&D debris must be in an enclosed or

## ***PROPOSED PART 361-MARCH 2016***

covered storage area for a period not to exceed 30 calendar days unless written approval from the the department is obtained; and

(iii) storage piles of any materials must not exceed 20 feet in height and 40 feet in width, and the volume of the storage piles must not exceed 20,000 cubic feet unless written approval from the department is obtained.

(2) Processed and unprocessed C&D debris shall not be stored in excavations or below normal grade level.

(3) A minimum separation distance of 50 feet must be maintained between adjacent storage piles of combustible material, and 25 feet must be maintained between adjacent storage piles of non-combustible materials. A minimum separation distance of 50 feet must be maintained between storage piles and property boundaries, unless otherwise approved by the department.

(4) Storage area floors must be constructed of concrete or asphalt paving material and must be equipped with adequate drainage and retention structures. However, concrete or asphalt storage area floors are not required for the separate storage of processed or unprocessed uncontaminated concrete, other masonry waste, asphalt pavement, brick, soil, or rock.

(g) The facility must maintain financial assurance in an amount sufficient to cover the cost of closure of the facility as specified by sections 360.21 and 360.22 of this Title.

### **Section 361-5.5 Recordkeeping and reporting requirements**

The following criteria apply to both registered and permitted facilities:

(a) The facility must keep records in accordance with subdivision 360.19(l) of this Title. In addition to the requirements of section 360.19 of this Title, all C&D debris processing facilities must maintain daily records of the quantity and destination of recyclables sent from the facility by material type, including the quantity and destination of material used as alternative operating cover as described in section 363-6.21 of this Title.

(b) The facility must submit an annual report as required by paragraph 360.19(l)(3) of this Title.

### **Section 361-5.6 Final disposition of processed C&D debris and C&D debris residue**

Processed and unprocessed C&D debris and C&D debris residues that cannot be used in accordance with this subdivision must be disposed of at landfills that are constructed with double composite liners and are authorized by the department to accept these wastes.

(a) Pre-determined beneficial uses of processed C&D debris. The following uses are pre-determined beneficial uses for C&D debris in accordance with subparagraph 360.12(c)(4)(iv).

## ***PROPOSED PART 361-MARCH 2016***

(1) Recycled aggregate or residues generated from uncontaminated, recognizable concrete and other masonry products, brick, soil, or rock that is separated from other C&D debris prior to processing and subsequently processed and stored in a separate area as a discrete material stream may be beneficially used as commercial aggregate. The material may also be transferred to a registered facility that accepts recognizable uncontaminated concrete, brick, soil, or stone.

(2) Recycled material or residues generated from uncontaminated asphalt pavement that is separated from other C&D debris prior to processing and subsequently processed and stored in a separate area as a discrete material stream may be beneficially used as an ingredient in asphalt pavement for roadways, parking lots, or other paved surfaces. This waste may also be transferred to a registered facility dedicated solely to the recycling of asphalt pavement.

(b) Case-specific beneficial uses of processed C&D debris. C&D debris or C&D debris residue may be reused for a specific use if a petition for a case-specific beneficial use determination pursuant to section 360.12 of this Title is granted by the department.

(c) Use of C&D debris as an alternative operating cover material at a landfill. The department may approve the use of C&D debris residue as an alternative operating cover material, if the material meets the requirements of section 363-6.21 of this Title.

### **Section 361-5.7 C&D debris tracking from registered and permitted facilities**

(a) All material leaving a registered or permitted C&D debris processing facility, and any other material if required pursuant to a department-approved remedial plan, must be accompanied by a C&D debris tracking document prescribed by the department that indicates, at a minimum:

(1) the name and address of the C&D debris processing facility that generated the waste or material transported;

(2) the name of the transporter; and

(3) the intended destination of the material.

(b) Once the waste or material has reached its destination for disposal or use, the transporter must sign the C&D debris tracking document confirming its delivery. The receiving facility must then sign the C&D debris tracking document and return it to the generating facility within two weeks. The generating facility must maintain these C&D debris tracking documents at its facility for inspection by the department and must account for all materials leaving the facility.

(c) If materials are transported to other processing facilities regulated under this Subpart, the additional processing and ultimate disposal or use must be recorded on the C&D debris tracking document or on a new tracking document.

***PROPOSED PART 361-MARCH 2016***

(d) The facility must maintain all C&D debris tracking documents for a minimum of 7 years as required by paragraph 360.19(1)(2) of this Title.

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-6**

**WASTE TIRE HANDLING AND RECOVERY FACILITIES**

<b>361-6.1</b>	<b>Applicability</b>
<b>361-6.2</b>	<b>Exempt facilities</b>
<b>361-6.3</b>	<b>Registered facilities</b>
<b>361-6.4</b>	<b>Permit application requirements</b>
<b>361-6.5</b>	<b>Design and operating requirements</b>
<b>361-6.6</b>	<b>Recordkeeping and reporting requirements</b>

**Section 361-6.1 Applicability**

This Subpart applies to facilities which store, handle and/or process waste tires. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to a facility, or a portion of a facility, that is used for combustion or thermal treatment of waste tires, which is regulated under Subpart 362-1 of this Part.

**Section 361-6.2 Exempt Facilities**

The following facilities are exempt from this Subpart.

- (a) Facilities that store less than 1,000 waste tires at any one time.
- (b) Facilities that are registered under Subpart 361-7 of this Part and that store less than 1,000 waste tires. Tires that are mounted on vehicles or that are used to support vehicles (no more than 6 tires per vehicle) are not included in the total.

**Section 361-6.3 Registered facilities**

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless otherwise exempt. In lieu of the full requirements described in Part 360 of this Title, each facility must comply with the closure requirements of section 360.21, the reporting and recordkeeping requirements of subdivision 360.19(1) of this Title, and the associated operating requirements identified in paragraphs (1), (2), and (3) of this subdivision.

- (1) A facility collecting and storing waste tires, where:
  - (i) all waste tires are stored in enclosed trailers or other enclosed portable containers;
  - (ii) each enclosed trailer or other enclosed portable container is removed from the facility

***PROPOSED PART 361-MARCH 2016***

within 72 hours of being filled to capacity;

(iii) the facility has a contractual agreement for the removal and use or proper management of the waste tires;

(iv) each enclosed trailer or other portable enclosed container is locked when the facility is closed;

(v) there are no more than 6 enclosed trailers or other enclosed portable containers at the facility at any one time whether filled or partially filled;

(vi) the facility is enclosed by a security fence if more than 2 trailers are located at the facility;

(vii) documentation is available at the facility that demonstrates that the storage of the enclosed trailers or other enclosed portable containers is in accordance with State and local building and fire codes;

(viii) waste tires are transported to and from the facility only in accordance with Part 364 of this Title; and

(ix) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

(2) A facility selling waste tires, where:

(i) waste tires are received, sorted by tire size and type, and stored on shelves or racks in an enclosed building or enclosed trailer;

(ii) stored tires are suitable for resale;

(iii) an inventory is maintained by tire size and type that identifies each waste tire;

(iv) documentation is available at the facility that demonstrates that the storage configuration and fire prevention and protection systems are in accordance with State and local building and fire codes; and

(v) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

(3) A facility with a valid registration with the U.S. Department of Transportation as a tire retreader, where:

(i) waste tires are received, sorted, and stored in an enclosed building or enclosed trailer;

## ***PROPOSED PART 361-MARCH 2016***

(ii) all tire-related waste generated as a result of facility operation is removed from the facility for appropriate management within one week after generation;

(iii) the storage of whole waste tires is no greater than the 30-day production capacity of the facility;

(iv) an inventory is maintained by tire size and type that identifies each waste tire;

(v) documentation is available at the facility demonstrating that the storage configuration and fire prevention and protection systems are in accordance with State and local building and fire codes; and

(vi) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

### **Section 361-6.4 Permit application requirements**

A waste tire handling and recovery facility that is not an exempt facility or subject to the registration provisions of section 361-6.3 of this Subpart must obtain a permit, and must submit an application which includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title and section 361-6.5 of this Subpart.

### **Section 361-6.5 Design and operating requirements**

A waste tire handling and recovery facility required to obtain a permit must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following:

(a) the storage of whole waste tires is no greater than the 30-day production capacity of the facility, and the storage of processed, cut or shredded tires is no greater than the 90-day production capacity of the facility;

(b) all tire-related waste generated as a result of facility operation is removed from the facility to an authorized solid waste management facility within one week after generation;

(c) the maximum individual waste tire storage pile size at the facility does not exceed 20 feet in height. Horizontal dimensions of individual waste tire piles must have a surface area no greater than 5,000 square feet, with the width not to exceed 40 feet;

(d) all waste tire piles have a minimum separation distance of 50 feet between piles and between the pile and facility property boundaries or any buildings or structures;

***PROPOSED PART 361-MARCH 2016***

- (e) no waste tire piles may be located in excavations or below grade;
- (f) documentation is available at the facility that the storage configuration and fire prevention and protection systems are in accordance with State and local building and fire codes;
- (g) facilities having a planned or actual storage capacity of 2,500 or more waste tires have either an active hydrant or a viable fire pond on the facility, and fully charged carbon dioxide or dry chemical fire extinguishers located in strategically placed enclosures throughout the entire facility or other fire protection and prevention equipment approved by the local fire marshal;
- (h) potential ignition sources are prohibited in the facility storage area; and
- (i) the facility maintains financial assurance in an amount sufficient to cover the cost of closure of the facility in compliance with sections 360.21 and 360.22 of this Title.

**Section 361-6.6 Recordkeeping and reporting requirements**

- (a) The facility must keep records as required by this Subpart and subdivision 360.19(1) of this Title.
- (b) The facility must submit an annual report as required by paragraph 360.19(1)(3) of this Title.

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-7**

**METAL PROCESSING AND VEHICLE DISMANTLING FACILITIES**

- 361-7.1 Applicability**
- 361-7.2 Exempt facilities**
- 361-7.3 Registered facilities**
- 361-7.4 Operating requirements**
- 361-7.5 Recordkeeping and reporting requirements**

**Section 361-7.1 Applicability**

(a) This Subpart applies to facilities that perform receiving, decommissioning, processing, dismantling, storage, and recycling of metal, discarded metal-containing products such as appliances and end of life vehicles. The requirements contained in Part 360 of this Title also apply to this Subpart.

(b) This Subpart does not apply to a facility, or a portion of a facility:

(1) that receives source-separated municipal solid waste which is regulated under Subpart 361-1 of this Part;

(2) that receives construction and demolition debris which is regulated under Subpart 361-5 of this Part;

(3) that receives waste tires which is regulated under Subpart 361-6 of this Part;

(4) that receives electronic waste for the purpose of recovery and recycling; and

(5) that receives municipal solid waste for post-collection separation of recyclables is regulated under Subpart 362-2 of this Part.

**Section 361-7.2 Exempt facilities**

The following facilities are exempt from this Subpart:

(a) Motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store no more than 25 end of life vehicles on-site at any one time.

(b) Scrap metal processors that store no more than 500 cubic yards of metal on-site at any one time.

**Section 361-7.3 Registered facilities**

**PROPOSED PART 361-MARCH 2016**

(a) Facilities of the following types are subject to the registration provision of section 360.15 of this Title unless they are otherwise exempt facilities. In lieu of the requirements of section 360.19 of this Title and the operating requirements of section 361-7.4 of this Subpart, each facility must comply with the recordkeeping and reporting requirements in section 361-7.5 of this Subpart.

(1) Motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store between 26 and 50 end of life vehicles on-site at any one time.

(2) Vehicle dismantling facilities that receive no more than 25 end of life vehicles per year and store no more than 50 end of life vehicles on-site at any one time.

(b) Scrap metal processors that store more than 500 cubic yards of metal are subject to the registration provisions of section 360.15 of this Title and the operating requirements specified in section 360.19 of this Title.

(c) The following facilities are subject to the registration provisions of section 360.15 of this Title. In addition to the criteria outlined in Part 360 of this Title, each facility must comply with the operating requirements specified in section 361-7.4 of this Subpart and the recordkeeping and reporting requirements in section 361-7.5 of this Subpart.

(1) Motor vehicle repair shops registered with the New York State Department of Motor Vehicles that store more than 50 end of life vehicles on-site at any one time.

(2) Vehicle dismantling facilities that receive more than 25 end of life vehicles per year or store more than 50 end of life vehicles on-site at any one time.

(3) Mobile vehicle crushers.

**Section 361-7.4 Operating requirements**

Except for facilities identified in subdivision 361-7.3(a) of this Subpart, a facility required to obtain a registration under this Subpart must, in addition to the requirements identified in Part 360 of this Title, design, construct, maintain, and operate the facility in compliance with the following criteria:

(a) End of life vehicles arriving at the facility must be inspected upon arrival for leaking fluids and unauthorized waste. Leaks must be remedied or contained to avoid releases of fluids to the environment.

(b) All fluids must be drained, removed, collected, and stored for appropriate use, treatment, or disposal to the maximum extent possible, utilizing best management practices. If hazardous fluids are present they must be disposed in compliance with Part 370 of this Title.

***PROPOSED PART 361-MARCH 2016***

(c) All fluid draining, removal, collection activities and all crushing activities must be conducted on a bermed, sealed asphalt or concrete surface or other permanent surface that provides equivalent protections to surface and groundwater. Surfaces must be cleaned daily when in use, and immediately using absorbent materials when a spill has occurred.

(d) End of life vehicles must be decommissioned by a facility registered under this Subpart prior to crushing or shredding by removal or deployment of the following materials in accordance with best management practices:

(1) fluids, including engine oil, transmission fluid, brake fluid, power steering fluid, coolant, and fuel;

(2) lead acid batteries;

(3) small PCB capacitors, mercury switches and other mercury-containing devices;

(4) refrigerants; and

(5) airbags.

(e) Except for lead acid batteries, any fluids or components identified in subdivision (d) of this section removed from end of life vehicles must be stored in closed, labeled containers. Containers that store fluids removed from end of life vehicles must be placed in an area with either a bermed, sealed asphalt or concrete surface or other permanent surface that provides equivalent protections to surface and groundwater. The area must either be bermed or provide secondary containment equal to the volume stored.

(f) Lead acid batteries must be stored off the ground and must be covered to prevent water from contacting the batteries. Leaking lead acid batteries must be stored separately from intact batteries.

(g) The owner or operator must notify the appropriate regional office of the department in which the facility is located at least five business days prior to any crushing activities are to be performed by a mobile vehicle crusher.

**Section 361-7.5 Recordkeeping and reporting requirements**

(a) In lieu of the full recordkeeping requirements identified in subdivision 360.19(1) of this Title, the facility must maintain the following records:

(1) The date of receipt and disposal of all end of life vehicles must be recorded and maintained on site.

***PROPOSED PART 361-MARCH 2016***

- (2) Routine inspection logs in accordance with subparagraph 360.19(1)(2)(ii) of this Title.
- (b) The facility must submit an annual report as required in paragraph 360.19(1)(3) of this Title.

**PROPOSED PART 361-MARCH 2016**

**SUBPART 361-8**

**USED COOKING OIL AND YELLOW GREASE PROCESSING FACILITIES**

- 361-8.1      **Applicability****
- 361-8.2      **Exempt facilities****
- 361-8.3      **Registered facilities****
- 361-8.4      **Permit application requirements****
- 361-8.5      **Design and operating requirements****
- 361-8.6      **Recordkeeping and reporting requirements****

**Section 361-8.1   **Applicability****

This Subpart applies to facilities that accept used cooking oil or yellow grease for processing to produce ingredients for manufactured products (such as animal feed, etc.) or biofuels, including biodiesel. This Subpart applies to facilities that are involved in processing these wastes, facilities that produce biofuel, and facilities that perform both operations. The requirements contained in Part 360 of this Title also apply to this Subpart. This Subpart does not apply to a facility solely used for combustion of used cooking oil and/or yellow grease or such a portion of a facility. That type of facility, or portion of one, is regulated under Subpart 362-1 of this Part.

**Section 361-8.2   **Exempt facilities****

Facilities receiving no more than a total of 1,000 gallons per year of source-separated used cooking oil and/or yellow grease for processing, when the resultant fuel, feedstock, or ingredient is used only on-site or in facility-owned vehicles and not offered for distribution or sale to other entities, are exempt from this Subpart.

**Section 361-8.3   **Registered facilities****

Facilities receiving no more than a total of 500,000 gallons per year of used cooking oil and/or yellow grease for processing are subject to the registration provision of section 360.15 of this Title unless they are otherwise exempt facilities. In addition to the criteria in Part 360 of this Title, each facility must comply with the following criteria.

- (a) A secondary containment system must be in place for all storage of unprocessed and processed used cooking oil and yellow grease. The secondary containment system must be at least 110 percent of the volume of the largest tank or the total volume of all interconnected tanks, whichever is greater. All storage devices must have an overfill prevention system.

## ***PROPOSED PART 361-MARCH 2016***

(b) Documentation is available at the facility that fire prevention and protection systems are in accordance with State and local building and fire codes.

(c) The facility must maintain and follow an operation and maintenance plan that includes at a minimum:

(1) procedures to ensure that no unauthorized waste, including brown grease, is received at the facility or, if received, is removed for appropriate treatment and disposal within 5 days of receipt, unless otherwise authorized by the department in writing;

(2) inventory procedures to ensure that no unprocessed oil or grease is stored at the facility for more than 30 days, no processed oil or grease is stored for more than 12 months, and no residue is stored for more than 7 days;

(3) periodic vector inspection and mitigation;

(4) procedures for spill prevention and appropriately managing spills that may occur; and

(5) procedures for the appropriate disposition of wastewater and any waste generated by processing.

### **Section 361-8.4 Permit application requirements**

A processing facility that is not an exempt facility or a facility subject to the registration provisions of section 361-8.3 of this Title must obtain a permit, and must submit an application that includes the requirements identified in section 360.16 of this Title and a description of how the facility will comply with the operating requirements in Part 360 of this Title and sections 361-8.5 and 8.6 of this Subpart.

### **Section 361-8.5 Design and operating requirements**

A processing facility required to obtain a permit must, in addition to the requirements identified in section 360.19 of this Title, design and operate the facility in compliance with the design and operating requirements in section 361-8.3 of this Part.

### **Section 361-8.6 Recordkeeping and reporting requirements**

(a) The facility must keep records as required by subdivision 360.19(1) of this Title. In addition, the facility must maintain daily records of the quantity of unprocessed used cooking oil and yellow grease received at the facility, material stored on-site by type, and processed oil, grease, and biofuel removed from the facility.

(b) The facility must submit an annual report as required by paragraph 360.19(1)(3) of this Title, which must include:

***PROPOSED PART 361-MARCH 2016***

- (1) a summary of the sources and quantities of unprocessed used cooking oil and yellow grease;
- (2) quantities of processed oil and grease and/or biofuel distributed during the previous calendar year; and
- (3) quantities of all other waste currently on-site.