

Fill Material Reuse

- Reuse Notification Requirements: For the off-site reuse of any fill material generated in New York City in amounts greater than 10 cubic yards, or the off-site reuse of limited-use fill or restricted-use fill generated in locations in the state in amounts greater than 10 cubic yards, notification to DEC is required to be provided at least 5 days prior to delivery of the fill material to the site of reuse pursuant to 6 NYCRR Part 360.13(g)(2) and (3). The form to be used for this pre-notification, *Notification of Fill Material Reuse*, can be found here: <http://www.dec.ny.gov/chemical/8821.html>. This notification is required only once and identifies the location of generation, the location of reuse, and the type and estimated amount of fill material to be reused, among other information.
- Unrestricted Fill provision: As stated in Section 360.12(c)(1)(ii), fill material generated outside of New York City that exhibits no evidence of historic impacts, such as spills, or exhibits no visual or other indication of chemical or physical contamination (e.g., odors, sheen, etc.), is not subject to the requirements of Section 360.13. This type of fill may be termed “unrestricted fill”.
- Fill Material Types: “Fill material” as defined in Section 360.2 means soil and similar material excavated for the purpose of construction and maintenance, but does not include overburden generated from mining operations regulated pursuant to Part 422. Three types of fill material are identified in Section 360.13 for direct beneficial use: General Fill, Restricted-Use Fill, and Limited-Use Fill. Section 360.13(e) provides the testing requirements for these fill materials to qualify and Table 2 in Section 360.13(f) distinguishes the characteristics that are necessary for fill material to meet the three types of use.
- Similar Material in Fill Material: The definition of “fill material” contained in Part 360 references “similar material,” but does not define what constitutes this material. The February 12, 2021 Enforcement Discretion Letter states that “similar materials” can include particles of sand, gravel, rock, ceramic tile, asphalt pavement, brick, glass, crushed concrete, or other durable human-made material that contributes to the function of the material as fill, but the type of similar material that can be included in fill depends on the type of fill material. For Restricted-Use Fill and Limited-Use Fill, similar materials can include sand, gravel, or rock and particles of slag, ash, glass, ceramic tile, asphalt pavement, concrete, brick, or other granular, compactible non-soil components. General fill may contain *de minimis* amounts of particles of glass, concrete, asphalt, ceramic tile, and brick but ash, slag, or pieces of metal (pipe, etc.) may not be present in General Fill in any amounts. “Similar materials” for all categories of fill material do not

include plastic, gypsum wallboard, wood, paper, and other material that may readily degrade or produce odors, whether recognizable or not.

- Uses of Fill Material: Pursuant to 6 NYCRR Section 360.12(c)(1)(ii), unrestricted fill can be used on any site for any use. Pursuant to 6 NYCRR Section 360.13(f), general fill and restricted-use fill can be used to level building sites as long as the appropriate requirements of Section 360.13 are met. For example, restricted-use fill can be used in transportation corridors or on sites where the existing site soils exhibit the criteria for either restricted-use fill or limited-use fill. Limited-use fill can only be used under building footprints or pavement.
- Fill Material Sampling at Construction and Demolition Debris Handling and Recovery Facilities: The February 12, 2021 Enforcement Discretion Letter states in part that "...Section 361-5.4(e)... requires that facilities perform certain sampling on any fill material or residue leaving the facility for reuse. The Department will utilize its enforcement discretion with respect to this provision to delay the enforcement of this sampling requirement regardless of the timing of the registration or permit issuance to the facility." The implication of this decision is that fill material which moves through Construction and Demolition Debris Handling and Recovery Facilities (CDDHRFs) does not require analytical sampling by any party prior to reuse under Section 360.13 until May 3, 2022 or until new regulations are promulgated. However, remaining physical criteria requirements of Section 360.13, other than analytical requirements, continue to be applicable.