

- Point of Waste Cessation and Applicability of Waste Transporter Rules:** A vehicle is exempt from Part 364 waste transporter requirements if it is transporting a material which is no longer considered a waste under a beneficial use determination (BUD) (see 6 NYCRR 364-2.1(b)(13)). The point at which the material ceases to be waste varies based on the BUD. For case-specific BUDs, that point occurs when the material is received at its point of use unless otherwise specified by DEC. For pre-determined BUDs, which are authorized in Sections 360.12 and 360.13, the point is specified in regulation. For example:

  - Some BUD materials cease being waste when they reach the location of use described in the BUD. Pre-determined BUDs of this type are located in Section 360.12(c)(2). In this case, a Part 364 waste transporter is required because the material remains a waste until it is delivered to the location of use.
  - Some BUD materials are no longer considered a waste when they meet the requirements of the intended reuse. Pre-determined BUDs of this type are located in Section 360.12(c)(3). For example, ground granulated blast-furnace slag which meets an industry standard is no longer considered a waste and therefore transport does not require a permit or registration under Part 364.
  - As specified in the EDL, processed or unprocessed material which meets the requirements of the pre-determined BUDs found at Section 360.12(c)(3)(viii), (ix), and (x) are exempt from Part 364 waste transporter requirements since they have ceased to be regulated as solid wastes pursuant to these BUDs.
  - Section 360.13(b) describes the point at which fill material ceases to be waste. Any fill material generated in New York City continues to be considered a waste until it is delivered to the site of reuse; therefore, a Part 364 waste transporter is required for transport. The same is true of restricted-use fill, limited-use fill or contaminated fill generated anywhere in the state. For general fill generated outside of New York City, once the material has been determined to be general fill in accordance with Section 360.13(f), the material is no longer considered a waste and does not require transport by a Part 364 waste transporter.
  - Similarly, any fill material generated outside of New York City which shows no evidence of historical impacts or any visual or other indication of chemical or physical contamination is not considered a waste as per Section 360.12(c)(1)(ii) and does not require transport by a Part 364 transporter.
  - As established in Section 360.13(b)(3), the pre-determined BUD for general fill generated in New York City does not attach until the material is delivered to the site of reuse. Therefore, it must be transported by a Part 364 registered or permitted transporter. However, general fill is a subset of C&D debris, so shipments of 10 cubic yards or less of general fill are exempt from Part 364 waste transporter requirements under Section 364-3.1(d).

- A Part 364 waste transporter registration is not required for transport of soil or fill material generated *outside* of New York City that has been determined to be general fill or has been determined to not have historical, visual, or other evidence of contamination.
- **Enforcement Discretion for Materials Under Control of Generator.** The February 12, 2021 Enforcement Discretion Letter (EDL), Subheading I allows the Department to utilize discretion with respect to Construction and Demolition Debris Handling and Recovery Facilities in regard to management of materials used in cement, concrete, and asphalt pavement. These materials include asphalt and asphalt millings destined for beneficial reuse under Section 360.12(c)(3)(ix) or (x), concrete, concrete products (including those that have reinforcing embedded), masonry products, brick and rock destined for reuse under Section 360.12(c)(3)(viii). These materials, if they are under the control of the generator or the person responsible for the generation and are destined for and/or managed prior to reuse in conformance with the beneficial use provisions of 360.12(c)(3)(viii), (ix), and (x), including at facilities subject to the requirements of Subpart 361-5, may be managed as a commercial product or raw material and are not subject to Part 360 or Part 361.

The EDL Subheading I provision means also that asphalt pavement or asphalt millings of any size are exempt from Part 364 waste transporter requirements.

- ***De minimis* quantities of soil in non-soil BUD products:** To qualify for the pre-determined beneficial uses set forth in Section 360.12, the material intended for reuse cannot be mixed with any other material. However, in administering the program the Department acknowledges that small amounts of soil or other solid wastes which are present within material that would otherwise meet the requirements of a beneficial use determination (BUD) (e.g., small amounts of soil in a truckload of asphalt pavement or concrete) do not cause the material to lose its BUD status; therefore, transport of these materials would not require a Part 364 waste transporter permit or registration. This allowance is made by DEC to avoid unnecessary rejection of BUD material due to small amounts of material which are unavoidably included with BUD materials as they are generated. However, transportation anywhere in the state of mixed loads of C&D debris requires Part 364 permit or registration and may require waste tracking documents if the material is determined to be limited-use fill, restricted use fill or contaminated fill. DEC expects generators of BUD materials to make efforts to reduce the presence of soil in concrete, rock, brick and asphalt- derived BUD products.
- **Subbase mixtures that may include asphalt pavement.** The February 12, 2021 Enforcement Discretion Letter allows the Department to utilize its enforcement discretion with respect to the use of recycled aggregate from bricks, concrete pavement, and/or asphalt pavement, when used in or under asphalt pavement or other paved surfaces, provided that it is separated from other waste prior to processing and subsequently processed and stored in a separate area as a discrete material stream. These materials may be managed as a commercial product or raw material and are not subject to Part 360 or Part 361 when destined for or managed prior to reuse at facilities which are subject to the requirements of 6 NYCRR Subpart 361-5. However, the transportation of this asphalt-

containing subbase is subject to waste tracking and registration or permit requirements of Part 364.

- **Grade adjustment using non-soil, recognizable materials:** The February 12, 2021 Enforcement Discretion Memo allows materials consisting of only of recognizable, uncontaminated concrete products (including those with embedded reinforcement), asphalt pavement (not including asphalt millings), brick and rock from construction and demolition activities to be used for grade adjustment outside of Nassau County, Suffolk County, and the New York City Watershed provided five conditions are met. First, the material must be received at a project which is authorized by an approved local building permit or other municipal authorization, if required. Second, the material can only be accepted during daylight hours between sunrise and sunset, except for night deliveries associated with municipal or state highway projects after a one time notification to the appropriate DEC Regional Office. Third, the material cannot include residues from a C&D debris handling and recovery facility. Fourth, the material must be placed above the seasonal high groundwater table and cannot be placed in a surface water body or wetland. Lastly, the material can contain *de minimis* amounts of soil or wood.