

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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FEB 12 2021

RE: Regulatory Flexibility for Certain Solid Waste Management Activities

To Whom It May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (“DEC” or “Department”) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Parts 360, 361, 362, and 365. This letter extends a prior exercise of enforcement discretion, issued on September 19, 2019, set to end on May 3, 2021, and addresses the following: (i) regulatory flexibility for recyclables handling and recovery facilities; (ii) metal recovery from municipal waste combustors; (iii) transfer of non-putrescible solid wastes on a vehicle for 10 days or less during transport; (iv) regulatory flexibility for the portion of any solid waste management facility subject to regulation under 6 NYCRR Subpart 374-2; (v) continued operation of municipal land clearing debris landfills; (vi) waste tires used to secure tarpaulins; (vii) storage requirements for regulated medical waste; and (viii) Part 365 permit requirements for facilities with federal select agent authorization.

The Department will exercise this authority regarding the provisions outlined below until either May 3, 2022, or until amendments to the present rule are promulgated, whichever is earlier. All other provisions of the Part 360 Series remain in effect and will be enforced.

I. Regulatory Flexibility for Recyclables Handling and Recovery Facilities

Due to the decrease in available recyclables commodities markets, tip fees charged by some recyclables handling and recovery facilities (“RHRFs”) are increasing. In order to decrease contamination in recyclables processed through single-stream facilities and increase the marketability of the resultant recyclables, some RHRF operators have slowed sorting lines resulting in material backlogs and increasing stockpiles of recyclables. In order to relieve regulatory impacts that have arisen due to these circumstances:

- DEC will utilize enforcement discretion and waive the 15 percent residue threshold found at 6 NYCRR § 361-1.3(a)(1) and (2) on a case-by-case basis for registered RHRFs. Requests under this provision must be directed to the appropriate DEC Regional Office.

- DEC will utilize enforcement discretion to allow, with DEC approval, storage of unprocessed or processed non-putrescible recyclables at locations owned or under the control of an owner or operator of a solid waste management facility. Requests under this provision must be directed to the appropriate DEC Regional Office.
- DEC reminds owners and operators of RHRFs that storage of unprocessed and processed non-putrescible recyclables longer than 180 calendar days is allowed with DEC approval. Requests for extensions for recyclables storage must be directed to the appropriate DEC Regional Office.

II. Metal Recovery from Municipal Waste Combustors

Efforts are in place across New York State to increase and enhance recycling collection systems and markets, including those associated with residential metal recycling. Curbside collection of recyclables is the primary means of separating metals from municipal solid waste ("MSW"), however, some recyclable metals still find their way into the disposal stream. When MSW is combusted at a municipal waste combustion ("MWC") facility, a second opportunity to recover those metals presents itself. Metal in the MSW stream is not combusted, but instead passes through the process relatively unscathed. Many MWC facilities are designed to separate metal from the combustion ash residue, further reducing the waste that must be landfilled and redirecting valuable material to recycling.

In the past, DEC had considered metal in the MSW stream received at an MWC facility to be a part of the facility's permitted throughput capacity. However, because the metal is not combusted and because it is extracted for recycling rather than disposal, this practice should be strongly encouraged. Therefore, DEC will utilize enforcement discretion to allow for metal extracted from an MWC facility subsequent to combustion to not be considered part of the facility's throughput capacity.

III. Regulatory Flexibility for the Transfer of Non-Putrescible Solid Wastes on a Vehicle for 10 Days or Less During Transport

Presently, regulation of 10-day permit exempt transfer facilities is inconsistent with the regulatory requirement for hazardous waste transporters and for solid waste transporters. Recent updates to 6 NYCRR Part 360 eliminated one inconsistency by establishing a 10-day exemption from storage for non-putrescible solid wastes to match the permitting exemption found in 6 NYCRR Part 373 for hazardous waste transporters. However, the permit exemption in 6 NYCRR Part 360 remains more stringent than that in 6 NYCRR Part 373. In order to simplify the handling of both hazardous waste and solid waste at 10-day permit exempt transfer facilities, the Department is expanding the

6 NYCRR Part 360 permit exemption to more closely match that required by the exemption in 6 NYCRR Part 373 and other specific conditions, including secondary containment and U.S. Department of Transportation packaging requirements, established in 6 NYCRR Part 372 for 10-day exempt facilities.

Specifically, DEC will utilize enforcement discretion to waive the requirements of 6 NYCRR § 360.14, provided that the management of solid wastes by transporters meets the requirements of 6 NYCRR § 372.3(a)(6) and § 372.3(a)(7)(iii).

IV. Regulatory Flexibility for the Portion of Any Solid Waste Management Facility Subject to Regulation Under 6 NYCRR Subpart 374-2

Portions of solid waste management facilities subject to 6 NYCRR Subpart 374-2, Standards for the Management of Used Oil, are exempted from meeting certain standards found in 6 NYCRR Part 360. As part of a previous rulemaking for used oil, the exclusion for 6 NYCRR Subpart 374-2 facilities meeting the standards found in 6 NYCRR § 360.14 was unintentionally removed from 6 NYCRR Part 360. The absence of this exclusion causes transporters of used oil to be subject to two separate, but conflicting, sets of requirements when storing solid wastes at 10-day transfer facilities. It is DEC's intention that only the 6 NYCRR Subpart 374-2 conditions are to be in effect for these transporters.

To resolve the inconsistency, DEC will utilize enforcement discretion by waiving the requirements of 6 NYCRR § 360.14, as long as the transporter is in compliance with the applicable provisions of 6 NYCRR § 374-2.5 and 6 NYCRR § 374-2.10.

V. Continued Operation of Municipal Land Clearing Debris Landfills

Previous Part 360 regulations allow certain registered facilities to dispose of land clearing debris, concrete, asphalt and other similar materials without a liner. In order to help ensure that groundwater is protected from unauthorized disposal of solid waste, the current Part 360 regulations removed the allowance for registration for land clearing debris landfills, requiring that those facilities obtain permits and construct landfill liners for their continued operation. However, some municipalities have raised concerns that the continued use of these facilities is provided as a public service to their communities, that the municipality charges only a nominal fee which covers the cost of operation, and that the closure of the facilities will force these materials into MSW landfills thereby reducing airspace at those facilities.

In recognition of these circumstances, DEC will utilize its enforcement discretion by allowing the continued operation of landfills which, prior to November 4, 2017, held a section 360-7.2(a) registration and which accept only tree debris, concrete, asphalt pavement, brick, rock, and soil that meets the definition of general fill or the requirements of 6 NYCRR § 360.12(c)(1)(ii).

VI. Waste Tires Used to Secure Tarpaulins

The new Part 360 Series, which addresses the use of waste tires to secure tarpaulins in common weather protection practices, requires adjustments to better suit the needs of the agricultural community. The Department will utilize its enforcement discretion with respect to the enforcement of 6 NYCRR Subpart 361-6, as long as the use of waste tires to secure tarpaulins is done in accordance with the pre-determined beneficial use found at Section 360.12(c)(2)(iv) or BUD 1137-0-00, dated December 4, 2014, which permits the use of waste tires to anchor plastic film or other cover material for corn silage, haylage or other agricultural feeds if certain conditions are met.

VII. Storage Requirements for Regulated Medical Waste ("RMW")

6 NYCRR § 365-1.2(b)(8) prohibits storage of untreated RMW as follows: "RMW, except sharps, may be held in patient care areas for a period not to exceed 24 hours and at a laboratory or other generation area for a period not to exceed 72 hours, at which time the RMW shall be moved to an RMW storage area. Notwithstanding these time frames, RMW that generates odors or other evidence of putrefaction must be moved to a storage area as soon as practicable." Additionally, 6 NYCRR § 365-1.2(b)(7) states, "sharps containers must be removed from the patient care or use areas to a room or area designated for RMW storage when: the container has reached the fill line indicated on the container; the container generates odors or other evidence of putrefaction; or within 90 days of use, whichever occurs first."

Based on concerns raised by small generators (dental offices, etc.) the Department will exercise its enforcement discretion with respect to these provisions and will require that sharps and RMW containers be removed from patient care or use areas to a room or area designated for RMW storage when the container has reached the fill line indicated on the container, is otherwise filled, or the container generates odors or other evidence of putrefaction, whichever occurs first.

VIII. Part 365 Permit Requirements for Facilities with Federal Select Agent Authorization

Part 365 of 6 NYCRR requires a facility that decontaminates its own waste generated from a biosafety level ("BSL") 3 laboratory or an animal biosafety level ("ABSL") 3 laboratory to operate under a Part 365 permit issued by the Department. Some laboratories of this type are registered under the Federal Select Agent Program ("FSAP") and utilize biosafety protocols evaluated as part of the FSAP approval.

Although FSAP inspections may evaluate waste treatment and disposal methods, their focus is on biosafety and inactivation of materials that will be used again in the laboratory, not on outgoing infectious waste. The Department provides in subdivision

365-2.3(b) for the registration of facilities with BSL-2 laboratories treating less than 500 pounds of RMW per month. This registration addresses decontamination of outgoing infectious waste at the typical generation rate of a BSL-3 laboratory.

Therefore, the Department will exercise its enforcement discretion and will not require a permit for a facility that holds a FSAP registration or utilizes biosafety protocols approved as part of a FSAP at another laboratory at the same institutional campus. In lieu of the permit, these facilities must register with the Department in accordance with subdivision 365-2.3(b). BSL-3 and ABSL-3 wastes generated at these facilities must be inactivated on-site and must be disposed of as RMW at a permitted RMW treatment facility.

Thank you for your cooperation in this matter. If you have any questions, please call Richard Clarkson of the Division of Materials Management at (518) 402-8678.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Berkman', with a long horizontal line extending to the right.

Thomas S. Berkman
Deputy Commissioner
& General Counsel