

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel  
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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 Part 360, Part 361, Part 364 and Part 365 of the newly enacted Part 360 Series. The DEC will exercise this authority regarding the above provisions until either May 3, 2019 or an amendment to the present rule is promulgated, whichever is earlier. All other provisions of the Part 360 Series remain in effect and will be enforced.

I. **Materials used in cement, concrete and asphalt pavement.**

On September 5, 2017, the 6 NYCRR Part 360 Solid Waste Management Facilities regulations were revised, replaced and enhanced, creating a new Part 360 Series. The revisions modified beneficial use determinations for recognizable, uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil and rock. Under the new Part 360 Series several pre-determined beneficial uses (BUDs) were created to deal with the reuse of these materials (6 NYCRR 360.12 (c)(3)(viii), (ix) and (x)). Pursuant to these BUDs these materials cease to be a solid waste when the material meets the requirements for the intended use.

The Department will utilize its enforcement discretion with respect to facilities subject to the requirements of 6 NYCRR 361-5 and for materials that are destined for and/or stored and maintained at these facilities under the control of the generator or the person responsible for the generation, prior to processing or reuse, in conformance with 6 NYCRR 360.12 (c)(3)(viii), (ix) and (x).

In addition, these materials (i.e., materials under the control of the generator or the person responsible for the generation which are destined for and/or managed prior to reuse under 6 NYCRR 360.12(c)(3)(viii), (ix) and (x)) destined for and/or managed at facilities subject to the requirements of 6 NYCRR 361-5 may be managed as a commercial product or raw material and are not subject to Part 360 or Part 361.

The transporters handling these materials (i.e., materials destined for a facility under the control of the generator or the person responsible for the generation which are destined for and/or managed prior to reuse under 6 NYCRR 360.12(c)(3)(viii), (ix) and

(x)) are also not subject to the otherwise applicable provisions of 6 NYCRR 360.4, 360.15, and Part 364.

Recognizable, uncontaminated concrete, asphalt, rock, brick and soil used for reclamation at a facility permitted pursuant to the Mined Land Reclamation Law, will not be subject to the otherwise applicable provisions of Parts 360, 361 and 364, if the material has been reviewed, approved and incorporated into the mined land reclamation permit issued to the facility. No fee or any form of consideration may be received by the operator for use of this material. Any material transported to a mine site for such reclamation purposes is subject to monitoring and enforcement by the Department to ensure no unapproved wastes are accepted or disposed of during mining and reclamation activities. The Department reserves the right to disapprove use of such materials if placement of these materials at a mine site may constitute an environmental hazard.

II. **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 Part 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.

III. **Construction and demolition facility fill material sampling requirements.**

Section 361-5.4(e) requires that all permitted construction and demolition facilities are required to 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 permit issuance to the facility.

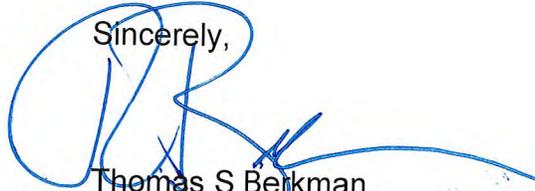
IV. **Storage Requirements for Regulated Medical Waste (RMW).**

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.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Berkman', with a large, stylized flourish extending to the right.

Thomas S Berkman  
Deputy Commissioner  
& General Counsel