

**Final
Generic Environmental Impact Statement (GEIS)
on the Proposed Amendments to**

6 NYCRR Part 360 Solid Waste Management Facilities
6 NYCRR Part 364 Waste Transporter Permits
6 NYCRR Part 369 Municipal Waste Reduction and Recycling Projects

With minor amendments to:

6 NYCRR Part 621 Uniform Procedures
6 NYCRR Part 361 Siting of Industrial Hazardous Waste Facilities
6 NYCRR Part 362 State Aid to Municipalities for Planning the Construction
or Improvement of Solid Waste Disposal Facilities
6 NYCRR Part 363 State Aid for Planning for Collection, Treatment and
Disposal of Refuse
6 NYCRR Part 370 Hazardous Waste Management System-General
6 NYCRR Part 371 Identification and Listing of Hazardous Wastes
6 NYCRR Part 372 Hazardous Waste Manifest System and Related
Standards for Generators, Transporters and Facilities
6 NYCRR Part 373 Hazardous Waste Management Facilities
6 NYCRR Part 374 Management of Specific Hazardous Waste

-STATEWIDE ACTION-

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The final GEIS includes the revised draft GEIS, in conjunction with the Assessment of Public Comment.

Draft Revised GEIS:

EXECUTIVE SUMMARY

This revised draft generic environmental impact statement (DGEIS) has been prepared by the New York State Department of Environmental Conservation (DEC or Department), Division of Materials Management for revisions to Part 360 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York and related regulations as set out below. Specifically, this rulemaking includes revisions to 6 NYCRR Part 360 Solid Waste Management Facilities, 6 NYCRR Part 364 Waste Transporter Permits, and 6 NYCRR Part 369 Municipal Waste Reduction and Recycling Projects. These are the implementing regulations for the solid waste program. These revisions incorporate statutory changes, address advancements in solid waste technology, clarify and streamline the current regulations, and address issues raised by the regulated community since the last major revision of Part 360 in 1993.

This DGEIS represents an update to the draft generic environmental impact statement (DGEIS) issued for this rulemaking in the spring of 2016 with comments received until September 13, 2016. After review of the public comments received relative to the draft regulations, the Department made significant revisions to the draft regulations that warranted another opportunity for public comment on the draft terms. Therefore, revised draft regulations were issued for public comment and this revised draft generic environmental impact statement was developed. This revised DGEIS represents a discussion and evaluation of changes to the regulations from the regulations currently in effect to the revised draft regulations, not simply the revisions since the first draft in 2016. As outlined in the draft revised regulations, the most significant modifications to the draft regulations relate to the management of fill material and the management of construction and demolition debris. Other revisions were added to provide clarity and consistency.

The proposal includes significant reorganization and subdivision of requirements contained in the existing 6 NYCRR Part 360 into a Part 360 series. To facilitate the reorganization, the existing Part 361 Siting of Industrial Hazardous Waste Facilities would be renumbered as Part 377. The reorganization would also repeal existing Parts 362 and 363 which are antiquated state aid regulations that are no longer funded or needed. In addition to amendments to Part 360, Part 364, and Part 369, minor revisions will be made to 6 NYCRR Part 621, Uniform Procedures, and minor revisions to numbering will be made to existing Parts 370, 371, 372, 373, and 374 to ensure appropriate cross references.

The Department has not identified any significant adverse environmental impacts that may result from adoption of the proposed regulations. As mentioned, the draft

regulations have already been subject to public review and comment in 2016 in 2017. Although comments received helped the Department to develop a revised draft that is more appropriate and clear, the comments did not reveal significant potential negative environmental impacts from the rulemaking. To the contrary, the Department believes that the proposed regulations would, if adopted, improve the management of solid waste in New York and therefore have a positive impact on the environment. However, since the proposed changes significantly modify the existing regulations, the Department has chosen to use the GEIS format, as it has done in the past, as the means to describe the changes, facilitate a public discussion as to the impacts of each of the changes and to examine alternatives. Through the GEIS, the Department: 1) discusses the objectives and the rationale for the proposed amendments; 2) presents why alternative measures were not chosen; and 3) provides the maximum opportunity for public participation.

In developing the revisions to Part 360, the Department has evaluated and identified solid waste management facilities, activities, and waste streams that are not clearly addressed in the current Part 360. These include navigational dredged materials, oil and gas brine, excavated soil and other materials defined in these revisions as fill material, end-of-life vehicle dismantlers, mulch, used cooking oil, and infectious wastes. The revisions have also relaxed or eliminated Part 360 requirements that have proven to be burdensome to the regulated community and have provided little or no incremental benefit of environmental protection, such as landfill siting study requirements, certain out-dated construction quality assurance/construction quality control testing requirements, and the extent of groundwater monitoring. For other facilities, the applicable technical criteria have been updated to current standards.

The regulations also contain enhanced requirements for facilities or waste streams which have proven to be problematic in the past. The addition of requirements may be perceived as burdensome to those affected by the enhanced requirements, due to potential increased cost in complying with the regulation. One type of facility that will be subject to enhanced regulation in this rulemaking is mulch processing facilities. These facilities, which shred or grind wood debris and yard trimmings into mulch, have become more prevalent in the state, and some of the larger facilities have caused problems associated with odors, dust, runoff and fires. The addition of regulatory restrictions on pile size and other criteria to control odor and fire is necessary to protect human health and the environment. Another example of enhanced regulation is for waste tire storage facilities. The proposed regulations eliminate permitting provisions for waste tire storage facilities, thereby limiting management of waste tires to processing and recovery.

Another waste stream that has been problematic is material excavated during construction projects that is in excess to the needs of the project and must be used or disposed of. In some parts of the state, this material is "historic fill," a mixture of soil, dredged materials, municipal or residential incinerator ash, and ash from wood or coal stoves, with other debris that historically was dumped and compacted to create new usable land by filling water bodies, wetlands, and topographical depressions. These

materials are most closely associated with urban areas, most prominently the greater New York City metropolitan area. As these areas have been redeveloped, excavated historic fill has illegally been delivered to registered construction and demolition (C&D) debris processing facilities, where it ends up in the fines fraction of the processed material. This fines fraction containing historic fill has at times been marketed as topsoil and placed in new development projects, especially in suburban areas of the state. Historic fill has also been delivered directly from construction projects to unauthorized disposal locations; with most historic fill coming from the New York City area, these sites tend to be north and east of the City. Historic fill is a solid waste and its use and placement needs to be more closely regulated due to the contaminants contained in it. Elsewhere, excess construction spoils may not be “historic fill,” but due to various impacts from development or historical land use are potentially contaminated and require scrutiny.

In recognition that fill from urban areas may consist of many different materials that may or may not constitute “historic fill” as described in the previous paragraph, and also that the movement of potentially contaminated fill occurs statewide, the proposed regulations have been revised to consider all “fill material”, and have established criteria within Section 360.13 for the on-site use, off-site use, and disposal of fill material. The proposed regulations prescribe sampling and analysis, where necessary, and documentation to allow contractors to self-evaluate excavated fill material for reuse or disposal where appropriate, without the need for Department review or approval. Department review of case-specific BUDs is an alternative when Section 360.13 protocols create a hardship or unique circumstances exist. Proposed amendments to Part 364 include requirements for registration for the transport of most commercially generated C&D debris including fill material in quantities greater than 10 cubic yards, and also include requirements for waste tracking forms for C&D debris. The addition of these new provisions for management and transport of fill material should result in appropriate and consistent management of this material which has created problem disposal sites, especially in Long Island and the Lower Hudson Valley.

There have also been a number of issues related to the improper management of construction and demolition (C&D) debris including instances of environmental harm, adverse impacts to residents and communities in the State, resulting in significant costs for clean-up of illegal disposal. The Department has evaluated these sensitive issues many times over the last two decades and has implemented several targeted enforcement strategies with limited long-term success. The impediments encountered in these efforts are addressed by a number of revisions related to C&D debris management in the proposed solid waste management regulations. New provisions have been added for C&D debris including fill material as discussed above which will provide additional enforcement tools for managing these activities for use by field staff, legal staff and law enforcement personnel. The proposed regulations also place size limitations on exempt C&D debris disposal facilities, restrict storage based on site characteristics identified in the facility’s permit or registration, and require separate processing of asphalt pavement to enhance the recycling opportunities for both asphalt and the remaining C&D debris streams. The proposed regulations also expand the

beneficial use determinations for select types of C&D debris, which will provide environmentally safe avenues of reuse of certain materials. The proposed revisions are expected to reduce the number of illegal C&D disposal cases and improve the Department's enforcement capacity.

This action sets forth a set of solid waste regulations which reflects current knowledge and technology, as well as the experiences gained over the last twenty years in implementing the current Part 360, Part 364, and Part 369. The proposed regulations help to implement the Department's December 2010 Solid Waste Management Plan titled, *Beyond Waste: A Sustainable Materials Management Strategy for New York*, which sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling.

The organization of the document is described below:

Section I serves as its introduction, which describes the action; outlines the legal authority for the revisions; describes the environmental setting in which the action is undertaken; and describes the reorganization of Part 360 into a series format.

Section II outlines the proposed revisions and evaluates the alternatives to the action.

Section III discusses the general environmental, coastal, economic, and other impacts of the action.

I. INTRODUCTION

A. Description of Action

The DEC proposes to amend the regulations that implement the solid waste program in New York State. This includes amendments to existing regulations on Solid Waste Management Facilities (6 NYCRR Part 360), Waste Transporters (6 NYCRR Part 364) and Waste Reduction and Recycling Projects (6 NYCRR Part 369). In December of 2010, the Department adopted a new State Solid Waste Management Plan, titled *Beyond Waste: A Sustainable Materials Management Strategy for New York State* (<http://www.dec.ny.gov/chemical/41831.html>). The Plan was supported by a generic environmental impact statement that was accepted on December 15, 2010. *Beyond Waste* sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling. One of the means to satisfy the recommendations of the Plan is to update the regulations governing solid waste management. The revisions to regulations will promote the goals of *Beyond Waste* by reducing the regulatory burden on organics recycling facilities where justified, encouraging planning units to consider organics recycling, adding organics as a potential separate category for funding, and prohibiting the disposal of source separated organics.

In addition to the amendments to existing Parts 360, 364, and 369, this rulemaking will incorporate amendments to the regulations that implement the Uniform Procedures Act (6 NYCRR Part 621). These amendments specifically address paragraph 621.4(m)(2), which sets forth a list solid waste management facility projects classified as “minor.” This list has been revised to reflect the criteria in the proposed revisions concerning permitting thresholds for certain facilities and includes a new provision that will foster the development of anaerobic digestion facilities proposed to be located at the site of an existing solid waste landfill.

Due to significant reorganization of the existing Part 360 into the series format described below, minor revisions addressing renumbering will be made to existing Parts 370, 371, 372, 373, and 374 to ensure appropriate cross references. Additionally, proposed revisions to existing Part 360 include the removal of existing Subpart 360-14, the regulatory criteria for used oil. The regulatory criteria for used oil will now be contained solely in Subpart 374-2, Standards for the Management of Used Oil. However, permits for used oil handling facilities will still be issued pursuant to Part 360. Revisions to Subpart 374-2 will be included in this rulemaking to address this change. Used oil collection center requirements are amended to more closely parallel federal requirements. There are no other proposed changes to the technical standards associated with this revision.

This rulemaking will also include specific amendments to 6 NYCRR Subpart 373-4, Facility Standards for the Collection of Household Hazardous Waste and Hazardous Waste from Conditionally Exempt Small Quantity Generators. Currently, household hazardous waste collection facilities and events are regulated as Part 360

non-specific facilities, using the requirements of 6 NYCRR Subpart 373-4, though no permits are issued under Subpart 373-4. Under this action, existing Subpart 373-4 is proposed to be repealed and the requirements of that subpart are proposed to be incorporated into the new Subpart 362-4.

B. Organization of Document

This document is intended to address the environmental significance of the action by means of a discussion and evaluation of the changes made to existing regulations. Section I serves as its introduction, which describes the action and describes the legal authority for the revisions. Section II outlines the proposed revisions and evaluates the alternatives to the action. Section III discusses the general environmental, coastal, economic, and other impacts of the action.

C. Legal Authority

Environmental Conservation Law (ECL) Section 27-0703, allows the Department to:

“Adopt and promulgate, amend and repeal rules and regulations governing the operation of solid waste management facilities. Such rules and regulations shall be directed at the prevention or reduction of (a) water pollution, (b) air pollution, (c) noise pollution, (d) obnoxious odors, (e) unsightly conditions, caused by uncontrolled release of litter, and (f) infestation of flies and vermin, and other conditions inimical to the public health, safety, and welfare. In promulgating such rules and regulations, the department shall give due regard to the economic and technological feasibility of compliance therewith. Any rule or regulation promulgated pursuant hereto may differ in its terms and provisions as between particular types of solid waste management facilities and as between particular areas of the state.”

ECL Section 27-0301 outlines the intent and purpose as it relates specifically to the transport of waste:

“... to protect the environment from mishandling and mismanagement of all regulated wastes transported from the site of generation to the site of ultimate treatment, storage or disposal and to prevent a discharge of wastes into the environment, whether accidental or intentional, except at a site approved for the treatment, storage or disposal of such wastes.”

Revision of these regulations falls under the Department’s authority and is needed periodically to ensure the ECL mandates are met. In addition, changes to the ECL addressing waste tires, mercury-added consumer products, and vehicle dismantlers have been incorporated into these regulations.

The Department’s statutory authority to undertake amendments to Part 360 is set out in Environmental Conservation Law Sections: 1-0101, 3-0301, 8-0113, Titles 3, 5, 7 and 8

of Article 17, 19-0301, 19-0303, 19-0306, Title 23 of Article 23, Titles 1, 3, 5, 7, 9, 10, 13, 15, 18, 21, 23, 25, 26, 27, 29 of Article 27, 27-1901, 27-1903, 27-1911, 54-0103, Titles 5 and 7 of Article 54, Title 1 of Article 70, 71-2201, Titles 27, 35, 40 and 44 of Article 71, and 72-0502.

D. Environmental Setting

The Department has chosen to discuss the subject of environmental setting through the prism of the regulatory landscape as the action involves a statewide rulemaking.

The last major, comprehensive revisions to the regulations governing solid waste management in New York State occurred over 20 years ago. Many changes in law and technology have occurred in that period that dictate the need for a comprehensive revision to the regulations at this time. The Department has gained significant knowledge and expertise regarding the proper technical criteria for the construction and operation of landfills. The landfill as an open pit, a dump, where garbage is piled, is a distant memory. Today's landfills are complex engineered facilities, with complex double-lined containment systems that prevent leachate from reaching groundwater and must provide means to collect and remove that leachate effectively. In addition to leachate, landfills also generate gas, primarily methane, which must be effectively collected and managed, both during and after their active life. There are also the routine issues during operation that are constant – odor, dust, litter, and traffic which also require proper controls and management. Once a landfill is full, it must be appropriately capped with a final cover system that is designed to minimize any additional leachate generation and facilitate the capture and removal of gas. In the last two decades the Department has gained significant knowledge on the proper design and construction of these facilities and this knowledge needs to be reflected in the regulations to ensure these modern waste disposal facilities benefit from the latest evolution of improved design, construction materials and methods to best provide long-term protection of groundwater resources and the environment.

Although landfills may be the most obvious solid waste management facility to the public when the subject of solid waste management is broached, there are many other facilities that also manage solid waste, from combustors to transfer facilities and commercial medical waste autoclaves. Some of these facilities did not even exist 20 years ago when the regulations were last revised or were much different than they are today. Therefore, new or revised regulations are needed at this time. The types of facilities regulated include: recyclables handling and recovery; land application; composting and other organics processing; mulch processing; construction and demolition debris handling and recovery; waste tire handling and recovery; metal processing and vehicle dismantling; used cooking oil and yellow grease processing; combustion and other thermal treatment; municipal solid waste processing; transfer; household hazardous waste collection; landfills; regulated medical waste and other infectious waste management. Each type of facility has its own environmental characteristics and concerns that need to be addressed.

For both landfills and other solid waste management facilities, updating the regulatory criteria does not necessarily mean more stringent criteria in all cases. If Department research and experience has found that the current regulatory requirement is too stringent or provided no environmental benefit, the proposed revision will justifiably lessen the burden on the regulated community. In all cases, the goal of the revisions is to ensure that the citizens of New York State are protected by the most up to date and appropriate solid waste management regulations.

To complete the regulatory package, the Department is proposing updates to three related regulations – those governing State assistance grants to municipalities, local solid waste management planning, and waste transporters.

Since they were promulgated in 1988, the Part 360 regulations have been modified no less than 11 times. Each of those modifications added necessary and useful language to the regulations. However, none of those modifications involved a wholesale review and modification of the regulation in its entirety. Because of this, internal inconsistencies and ambiguities have developed. Unlike previous revisions, the current draft has been modified in its entirety to eliminate those inconsistencies and ambiguities. The revision was developed and structured around four central principles: organization; precision; consistency; and necessity.

- Organization involved ensuring that language was included in the appropriate portion of the regulation. For example, definitions for all the subsequent parts of the series have been centralized in Part 360 itself, and operating requirements have been separated from permit application requirements to the extent possible. Organization also included minimizing repetition between the standard facility application and operating requirements now located in the new Part 360 and the requirements specific to types of facilities located in the various new parts.
- Precision involved restricting the language in the new regulation to direct requirements and obligations and requirements of the facility. Explanatory or guidance language was intentionally kept to a minimum.
- Consistency involved keeping similar requirements standard to the extent practical and necessary across various facility types. Examples include facility siting requirements and waste pile size restrictions.
- Necessity involved a critical evaluation of the requirements and language currently in the regulation. By reducing unnecessary requirements and language, the Department has reduced regulatory burdens on the regulated community while maintaining protection of public health and the environment.

Currently, municipalities in New York State are meeting their solid waste management needs through a combination of reuse and recycling (including composting), combustion, landfilling, and exporting solid waste to out-of-state facilities. The methods for managing solid waste in New York State have changed significantly

since 1990. This can be attributed to a stronger emphasis being placed on waste reduction/reuse/recycling, including significant investment in recycling-related capital costs and municipal recycling education staff; a major investment in local solid waste management planning and a concerted effort made to close unlined landfills which posed a threat to the environment. In December of 2010, the Department adopted a new State Solid Waste Management Plan, titled *Beyond Waste: A Sustainable Materials Management Strategy for New York State* (<http://www.dec.ny.gov/chemical/41831.html>). This Plan sets forth multiple strategies to reduce the reliance on disposal facilities and increase waste reduction and recycling. The proposed rulemaking incorporates the pertinent recommendations outlined in the State Solid Waste Management Plan as well as other relevant issues.

The proposed changes include the addition of solid waste management facilities, activities, and waste streams that are not currently addressed within the existing Part 360, to institute a level of control necessary to ensure protection of public health, safety, natural resources and the environment. Likewise, the amendments have relaxed or eliminated existing Part 360 requirements that have proven to be burdensome to the regulated community and have provided little or no benefit of environmental protection or are just outdated and no longer applicable based on the current state of practice. The amendments incorporate recommendations of task forces that were convened to analyze specific solid waste issues encountered by the Department and found to be problematic.

E. Reorganization of Part 360

The Department proposes to revise/enhance Part 360 - Solid Waste Management Facilities, Part 364 - Waste Transporter Permits, and Part 369 - Municipal Waste Reduction and Recycling Projects to incorporate legal, technological, and policy developments and experiences gained since the last major revision of these regulations in 1993. In making these revisions, the Department proposes to repeal existing Part 360 - Solid Waste Management Facilities, Part 362 - State Aid to Municipalities for Planning the Construction or Improvement of Solid Waste Disposal Facilities, Part 363 - State Aid for Planning for Collection, Treatment and Disposal of Refuse, Part 364 - Waste Transporter Permits, and Part 369 - Municipal Waste Reduction and Recycling Projects.

An intended component of this proposed rulemaking is to divide solid waste facilities into groups that are similar in nature, such as facilities that recycle and recover materials. Therefore, the current Part 360 criteria will be found in Parts 360, 361, 362, 363, 365, 366, and 369 reorganized as:

- Part 360 General Requirements
- Part 361 Material Recovery Facilities
- Part 362 Combustion, Thermal Treatment, Transfer, and Collection Facilities
- Part 363 Landfills
- Part 365 Regulated Medical Waste and Other Infectious Wastes
- Part 366 Local Solid Waste Management Planning
- Part 369 State Assistance Projects

Existing Parts 362 and 363 are antiquated state aid regulations which are no longer funded or needed. Existing Part 361, Siting of Industrial Hazardous Waste Facilities, will be renumbered Part 377.

In addition, the proposal also repeals and replaces existing Part 364 - Waste Transporter Permits regulations with a revised Part 364 - Waste Transporters to incorporate legal and policy developments and experiences gained since the last major revision of these regulations. The definitions from Part 364 were also incorporated into the comprehensive definition section of new Part 360 to eliminate duplication and inconsistencies. Provisions related to the packaging of regulated medical waste have been moved from current Part 364 to the proposed Part 365. Existing Part 369 - Municipal Waste Reduction and Recycling Projects Regulation is proposed to be repealed and replaced with Part 369 State Assistance Projects which will include the waste reduction and recycling programs addressed in current Part 369 but also include other State Assistance programs for municipal landfill closure currently included in existing Part 360 and for household hazardous waste collection currently included in Subpart 373-4.

II. PROPOSED REVISIONS, EVALUATION OF ALTERNATIVES TO THE ACTION, AND POTENTIAL ENVIRONMENTAL IMPACTS

The following is a discussion of the proposed revisions to Part 360, Part 364 and Part 369. Each change is organized by proposed section or subpart, and may include:

- 1) an identification of the issue that is the basis for each substantive proposed amendment;
- 2) a summary of the proposed amendment;
- 3) a discussion of the implications of the proposed amendment; and
- 4) a description of the alternatives which were considered, where applicable. In some instances, there is no discussion of alternatives, as none, other than the no action alternative, have been identified.

Due to the significant reorganization of the regulations, the numbering system assigned to the proposed provisions will in most cases not correlate to existing regulations. The summary of amendments provided below correlates to the newly assigned numbering system.

PART 360 SOLID WASTE MANAGEMENT FACILITIES - GENERAL REQUIREMENTS

Section 360.2 Definitions

Issue: Definitions contained in the regulations need to be updated for clarification, to improve implementation of the regulations, and to reduce ambiguity.

Proposed revision: Definitions have been updated as necessary. All definitions for

Parts 361-366 and 369 are now contained in Part 360 instead of the individual Parts or Subparts.

Discussion: Clarification of existing definitions, the addition of new definitions, and removal of outdated definitions will provide for consistent implementation of the solid waste management regulations. Existing definitions that describe a specific type of facility, such as the definitions of transfer station and recyclables handling and recovery facility, have been removed. Instead, the applicability section of each Subpart will address the types of activities and facilities that will fall under the jurisdiction of that Subpart. As a result of the public comment process, select definitions which were originally removed have been reconsidered, clarified and returned to the regulations for improved clarity and understanding.

Alternatives considered: The Department considered placing definitions that only relate to a particular Part or Subpart within that Part or Subpart, similar to the existing regulations. However, it was determined that all definitions relating to the Part 360 series should be contained in Part 360, General Requirements. The previous format has led to inconsistency in both the interpretation and the regulations themselves over time. Having all the definitions contained in Part 360 will make it easier for the regulated community to quickly locate a specific definition and will ensure consistency throughout the Parts.

Environmental Impact: Clarification of the definitions will result in enhanced implementation of the solid waste program, thereby reducing potential environmental harm due to misinterpretation.

Section 360.4 Transition

Issue: Transition requirements need to be modified to address facilities which may be regulated under a different mechanism in the revised regulations. For example, certain facilities that may now operate by registering with the Department will need to have a permit to operate under the revised regulations.

Proposed revision: Transition requirements have been modified to facilitate the existing changeover from Parts 360, 364, and 369.

Discussion: The proposed transition requirements provide reasonable, clear timeframes for facilities currently subject to existing Part 360 and those facilities currently not subject to existing Part 360, but subject to the proposed Part 360, to come into full compliance with the proposal's requirements.

Alternatives considered: The transition requirements needed to be modified to address facilities which may be regulated under a different mechanism in the proposed regulations. A no action alternative was therefore rejected.

Environmental Impact: The transition requirements will ensure that all solid waste facilities will continue to be regulated via an appropriate regulatory mechanism and all will move to compliance with the proposed regulations in a timely manner.

Section 360.11 Comprehensive recycling analyses

Issue: For the last 27 years, applications submitted by or on behalf of municipalities for initial permits to construct and operate, or to renew a permit for most types of solid

waste management facilities needed to include a comprehensive recycling analysis (CRA), or be covered under a previously approved CRA or Local Solid Waste Management Plan (LSWMP). In addition, Part 360 has required that most facility permits contain a condition that precluded the permittee from accepting waste from a municipality that had not completed a CRA (or been included in another municipality's CRA) and had not implemented the recyclables recovery program determined feasible by the analysis. A CRA has also been a required component in a LSWMP.

Proposed revision: The requirements for a CRA have been revised to more closely reflect the recycling related components of the revised LSWMP requirements in Part 366 in this rulemaking. Additionally, several unneeded references to incinerators and some requirements related to market information aggregation were removed, and an annual reporting requirement and approval procedures were added. While a LSWMP meeting the requirements of Part 366 will be considered to meet the requirements of a CRA, a clarification has been made between the requirements in a CRA and those of a LSWMP. Additionally, the vehicle for the requirement precluding acceptance of waste from municipalities that have not completed CRAs or LSWMPs will be a direct regulatory requirement in 360.19, rather than a permit condition in each permit. The revised CRA regulations also implement a new metric for measuring reductions in waste and increases in recycling, i.e. the amount of waste generated, as opposed to a recycling rate.

Discussion: The CRA requirements have been a mainstay in the regulations since 1988 and have helped drive the development of local recycling programs across the State. The CRA requirements were incorporated by reference in the requirements for the contents of LSWMPs in Subpart 360-15 in 1989 when that Subpart was added to the regulations to ensure these important elements were included in each LSWMP. The incorporation by reference has led to confusion over the years as to the requirements for formatting and whether or not the CRA was required to be a stand-alone document incorporated into the LSWMP or if the elements of the CRA could be embedded in the LSWMP. The Department's direction to planning units has been to directly incorporate the components of the CRA in the base LSWMP as opposed to a stand-alone document. An independent CRA can still be developed by those municipalities that are not included in a LSWMP. Additionally, the proposed CRA regulations implement the recommendation of *Beyond Waste* to change the way the Department measures reductions in waste by focusing on the amount of waste generated. This will improve the Department's ability to assess the impact of waste prevention and reuse.

Alternatives considered: There was consideration given to eliminating the stand-alone CRA component, and replacing the requirement of a CRA with a requirement for an LSWMP. The overall requirements of a CRA have been directly incorporated in the LSWMP requirements of Part 366 to make a more cohesive LSWMP document and to avoid the previous confusion of the required components of an LSWMP. The thought was that it might make a simpler regulatory landscape if all municipalities in the State were operating under LSWMPs; however, since not all municipalities are required to have an LSWMP,

it was ultimately decided to leave separate CRA requirements in the regulations to ensure recycling planning remains in place for all municipalities. The no action alternative was also considered but rejected because it would continue the inconsistency between the CRA and the LSWMP and would continue to require unnecessary information.

Environmental Impact: No environmental impacts are associated with the revision. Proper planning for solid waste management by localities continues to be a part of the regulations, with revisions that will provide less burdensome procedures for the municipalities.

Section 360.12 Beneficial use

Issue: A beneficial use determination (BUD) is a mechanism for the Department to determine that a material is no longer a solid waste when used in a specified beneficial manner. The approval of a case-specific BUD petition depends on a demonstration that the material does not contain pollutants that will cause environmental harm when used in compliance with the petition and that the material has the properties to be an effective substitute for a material already in commerce. The current regulations contain both “pre-determined” BUDs that do not require approval, such as the use of woodchips for mulch, and a process to obtain a case-specific BUD for other wastes and uses. *Beyond Waste* recommends that the BUD program regulations be revised and updated to remove certain pre-determined BUDs and establish additional predetermined BUDs. New pre-determined BUDs need to be added to the regulations to address common, acceptable uses. The regulations also need to address waste material and uses that are not eligible for beneficial use. The duration of the approval of a case-specific BUD also needs to be addressed in regulations.

Proposed revision: New pre-determined BUDs have been added to address common, acceptable uses including: wood pallets reused as pallets; use of street sweepings as fill; materials approved by the Department for remedial projects; the use of tires to hold down tarps; the use of up to 150 tires as planters, sandy dredged materials as aggregate, etc.; and materials emanating from facilities regulated by Part 361 (recyclables, compost, etc.). The proposed revision to the BUD section also includes a list of materials and uses that are not eligible for a BUD such as the use of large quantities of flowable fill. The proposed terms will codify the long-standing practice to require annual reporting for all case-specific BUDs. All case-specific BUDs will now be required to be renewed every 5 years. Under the transition provisions in the proposed 360.4, old BUDs (those without an expiration date) will expire if a petition to renew the BUD is not received by the Department.

Discussion: The Department has implemented the BUD provisions for many years and the proposed revisions will clarify some of the pre-determined BUDs and will add new pre-determined BUDs. The proposed revisions will establish a regular pattern of reporting, renewal and Department evaluation of active case-specific BUDs, with elimination of those that are non-compliant, no longer valid, or no longer active. The revisions will exclude uses that are considered “sham recycling”

or disposal.

Alternatives considered: The revised criteria include a 5-year term on BUD approvals. An alternative considered was to leave the BUD approvals without a term. This would be less of a workload for the Department and for the regulated community since the BUD would not expire. However, this alternative was rejected because a 5-year term allows the Department to remove inactive BUDs from the database and allows the Department another look at BUD petitions every 5 years to determine if any modifications are warranted. This renewal process will give the Department an opportunity to re-evaluate BUD's for compliance with potentially revised standards. The revisions to the pre-determined BUDs were based on a review of the existing BUD records. Other alternatives that were considered were to adopt additional pre-determined BUDs such as the use of water treatment residuals as a component in topsoil, but only those included in the proposed revisions were deemed appropriate based on the information currently available to the Department. Other uses may also be appropriate for a BUD but the need to evaluate the quality and use of the material dictates the need for a case-specific BUD. A no action alternative was also rejected as it did not provide updated criteria that are more appropriate and consistent with Department experience.

Environmental Impact: Enhancement of the BUD program will provide more consistent and uniform procedures and regulatory criteria which will reduce the potential for materials to be mismanaged through the BUD program. These changes will also increase recycling and beneficial use of materials, a recommendation found in *Beyond Waste*.

Issue: To assist those entities seeking to use navigational dredged material (NDM), specific provisions are needed in the regulations to address the requirements for the upland use of NDM. *Beyond Waste* included a recommendation to revise and update the BUD program, specifically with respect to the use of clean dredged materials as aggregate. Also, there has been interest in the New York City area in clarification of the requirements due to significant amounts of NDM routinely generated in the area. Under the current regulations, the use of NDM may be authorized under the BUD program.

Proposed revision: Specific provisions have been included in Section 360.12 to address the beneficial use of NDM, including the testing protocol required to determine if the NDM is acceptable for use as fill. Provisions for both pre-determined BUDs and case-specific BUDs for the use of NDM have been added.

Discussion: Providing clear, concise criteria for the use of NDM will result in more effective management of this material.

Alternatives considered: NDM could continue to be handled under the general case-specific BUD criteria. However, this is not the preferred alternative since additional criteria in regulation that outline the Department's standards and expectations for the beneficial use of NDM material lead to more consistent implementation of the program and a better understanding by the regulated community of the requirements that must be met. A no action alternative was considered but was not chosen because it would continue the current confusion concerning approval of NDM without specific regulatory criteria.

Environmental Impact: Addition of BUD provisions for NDM will provide uniform standards that apply to the reuse of this material thereby reducing the potential for misuse. Navigational dredging is considered critical to commerce and national security through the maintenance of shipping channels, but concerns have increased over the potential environmental harm from use of ocean and other submerged, or shoreline, disposal sites. These provisions will facilitate more upland use of NDM, reducing the need for in-water and shoreline (riparian) disposal.

Issue: Specific provisions, including maximum pollutant levels, are needed for the use of oil and gas brine for dust control on unpaved roads and for snow and ice control in winter conditions. Under the current regulations, a case-specific BUD is required for brine use but the specific criteria for approval and use are not specified in the regulations.

Proposed revision: Specific criteria have been included in Section 360.12 to address the beneficial use of oil and gas brine for road application, including application criteria and pollutant limits.

Discussion: Providing clear criteria on the beneficial use of brine will result in more uniform, acceptable use of the material.

Alternatives considered: Brine could continue to be handled under the general case-specific BUD criteria. However, this is not the preferred alternative since additional criteria in regulation that outline the Department's standards and expectations for the beneficial use of brine leads to more consistent implementation of the program and a better understanding by the regulated community of the requirements that must be met.

Environmental Impact: Addition of BUD provisions for brine, including operational criteria and pollutant standards, will reduce the potential of environmental harm due to poor road spreading practices.

Issue: The regulations should provide acceptable beneficial uses of C&D debris and C&D debris residues in order to reduce illegal disposal.

Proposed revision: The proposed revisions establish acceptable pre-determined BUDs for C&D debris and C&D debris residues, which can be used without additional department approval. The proposed pre-determined BUD has been adjusted to apply to uses which meet a specification established by a governmental authority, and has been moved from Part 361 to Part 360 to clarify that the material need not be handled by a C&D debris handling and recovery facility in order to qualify for the determination.

Discussion: Establishing explicit acceptable uses for C&D debris and C&D debris residues will foster proper management of these materials and reduce illegal disposal.

Alternatives considered: Restricting use of C&D debris residues to landfill applications such as alternative operating cover was considered but found to be overly restrictive.

Environmental Impact: The provision will promote proper management of certain C&D materials and reduce the negative impacts of illegal disposal.

Section 360.13 Special requirements for beneficial use of fill material

Issue: *Beyond Waste* included a recommendation for adding new requirements for the management of historic fill, including additional operational conditions for its use that protect neighboring areas, particularly in communities of disproportionate impact. Excavated material from construction projects in areas where many years of human habitation, commerce and industry have taken place often contain physical and chemical contamination that may adversely affect public health and the environment when these materials are used as fill in residential developments or disposed on agricultural or undeveloped land. This excavated material, termed in the proposed regulation as “fill material,” includes but is not limited to historic fill. Fill material is a waste and its management requires closer regulation due to the contaminants which may be contained in it.

Proposed revision: This new section establishes criteria for the on-site use, off-site use, and disposal of fill material. These criteria allow for the self-evaluation of material and they exempt the reuse of fill material known to be clean by site history and observable characteristics for areas outside New York City. Sampling and analysis procedures for suspect contaminated fill material allow for self-implementation, wherein contractors can follow the protocol in the proposed regulation and reuse material without case-specific Department approval. Previously in the March 2016 revision to the regulations, this section addressed only historic fill; it now addresses all material excavated during construction or maintenance projects.

Discussion: The addition of these new provisions for management of fill material should result in appropriate and consistent management of this material which has created problem disposal sites, especially in Long Island and the Lower Hudson Valley.

Alternatives considered: Since there are currently no specific requirements in the existing regulations addressing management of historic fill and other potentially contaminated fill materials, a no action alternative was rejected. The addition of these regulatory requirements for management of fill material is the only acceptable option for furthering the goal of its proper management.

Environmental Impact: The addition of criteria for the management and use or disposal of fill material will reduce the potential for using this material in a manner which could negatively impact to surface and groundwater resources. These revisions can also increase recycling and beneficial use of materials as recommended in *Beyond Waste*.

Section 360.14 Exempt facilities

Issue: Exemptions identified in existing regulation, which describe facilities that are not subject to regulation under Part 360, need to be updated.

Proposed revision: Exemptions which address disposal have been moved to Part 363, Landfills. The proposed exemption for on-site transfer, storage, treatment,

processing or combustion at the site of waste generation expands the current exemption to include locations statewide under the same ownership or control as the site of waste generation, rather than only within a single region of the Department as authorized under the current regulations. This exemption has also been modified to exclude on-site regulated medical waste treatment facilities, composting facilities for animal mortalities and parts from a slaughterhouse or butcher, and composting facilities for municipal solid waste, sewage sludge or other sludges. A new exemption has been added for State highway and municipally owned transportation corridor generated construction and demolition debris disposal to ease burdens on government agencies and communities when rebuilding our critical infrastructure systems. A new exemption was added for rendering facilities which process animal or food-derived fats, oil, grease and animal parts. An exemption has also been added to relieve the regulatory burden on those entities approved by the United States Drug Enforcement Administration as authorized collectors, and by Federal, State, tribal or local law enforcement agencies, who provide household pharmaceutical collection opportunities that achieve compliance with the October 9, 2014 Disposal Act regulations.

Discussion: The proposed revisions will ensure that facilities that pose no significant environmental impact will be exempt from regulation under Part 360 and the waste streams managed at the exempt facilities will not consume capacity in registered and permitted solid waste management facilities. In the case of existing exemptions which have been broadened, such as the exemption for on-site transfer, storage, treatment, processing, or combustion at the site of waste generation, no negative impacts to the environment are expected as a result of the revisions. For example, the generator will no longer be restricted to storage in one DEC region. DEC regional staff across the state routinely work together on facility issues, so limiting activities to one DEC region is not necessary or appropriate.

Alternatives considered: The Department considered each of the current exemptions and whether or not each should be made more restrictive or more lenient. Also, the addition of new exemptions based on issues that have arisen in the past were considered. The proposal represents the results of that evaluation and determination of what exemptions are appropriate to represent facilities or activities that have little potential for negative environmental impact.

Environmental Impact: Exempt facilities are limited in scope and therefore not expected to result in any negative environmental impact.

Section 360.15 Registered facilities, transporters, and events

Issue: Existing registration provisions need to be updated to address registration duration. The current Part 360 places no expiration on registrations, which has been problematic in certain circumstances in trying to ascertain the operational status of a registered facility. Additionally, the registration provisions need to be revised to allow the Department to determine the whether the impacts of having one or more registered facilities on a site warrants further evaluation and environmental control via the Part 360 permitting process. The registration provisions also need to be revised to allow the Department to

determine an applicant's compliance history when reviewing a registration application.

Proposed revision: The registration provisions have been modified to restrict the duration of registrations to a maximum of 5 years in most cases. This section also has been modified to add a provision that limits the number of registrations under Parts 361 and 362 on one site. A provision has also been added to allow the Department to evaluate an applicant's compliance history when reviewing a registration application for the purpose of determining the validity of a registration. The addition of these provisions is intended to address any potential adverse impacts from these registered facilities.

Discussion: The proposed revisions which limit the duration of registration to 5 years will assist the Department in ascertaining the operational status of registered facilities. The revision will allow the Department to evaluate an applicant's compliance history when reviewing a registration application.

Alternatives considered: The Department evaluated the current registration provisions which have been problematic in certain circumstances. It was determined that making the proposed changes is necessary to reduce the chance of any potential adverse impacts from registered facilities. A no action alternative was therefore rejected.

Environmental Impact: The revisions to the registration provisions will have a positive impact to the environment by giving the Department greater authority to restrict operations at registered facilities by enhancing our ability to evaluate an applicant's compliance history when reviewing a registration application.

Section 360.16 Permit application requirements and permit provisions

Issue: Revisions are required to concisely set forth the requirements for new permit applications, modifications, or renewals of existing permits.

Proposed revision: The required elements for an application for a new permit will include the submission of a facility manual, which must include a waste control plan, operations and maintenance plan, training plan, emergency response plan, and a closure plan. This is not a significant change, as these plans are generally required for all permitted facilities under the current regulations, but rather more of a restructuring that consolidates all of these plans into a single facility manual. The requirements for each of these plans are set forth in this section. This section will also require a noise assessment to demonstrate compliance with the noise limits established in 360.19, and a noise monitoring and control plan to be included in the facility manual to mitigate noise if the assessment shows exceedances of the 360.19 requirements. This section also requires that all (both private and municipal) facility permit applications demonstrate consistency with goals and objectives of the department-approved CRA or LSWMP in effect for the municipalities in the proposed facility's service area. The existing Part 360 regulations require a consistency demonstration in municipal facility applications but only require private facility applications to describe the *impact* on LSWMPs of the planning unit in which the facility is located and the planning units from which solid waste is expected to be received. The proposed changes will also treat most

expansions as new applications under Part 621. These include all horizontal or vertical expansions of landfills and all other expansion or acceptance rate increases not specifically designated as minor projects under Part 621.

Discussion: The proposed changes should assist in streamlining the permitting process by providing concise requirements for permit applications. The clearly specified application requirements will ensure that an accurate assessment of probable impacts the facility will have on the environment can be made before a permit is granted. The revisions support local solid waste management planning efforts by expanding the requirement for the demonstration of consistency with the goals and objectives of existing LSWMPs or CRAs to all permit applications for new facilities instead of just those submitted by a municipality.

Alternatives considered: Maintaining the current permit application requirements would not result in a streamlining of the permit process. Revisions of the existing permit application requirements are needed to ensure an accurate assessment of the probable impacts of a permitted facility is made before a permit is issued. A no action alternative was therefore rejected.

Environmental Impact: The amendments to the permit application and permit provisions will result in a positive impact to the environment by providing additional oversight by the Department and more input from the public regarding expansions to existing facilities.

Section 360.19 Operating requirements

Issue: As recommended in *Beyond Waste*, general operating requirements for all facilities, both registered and permitted, should be revised to reflect current and best practice.

Proposed revision: The existing requirement that sound levels from on-site equipment not exceed 80 decibels at a distance of 50 feet from that equipment has been removed from the regulations. Mufflers will still be required on all internal combustion powered equipment used at the facility, and maximum noise levels must still be adhered to at the property line of the facility. A second change will add tank requirements for solid waste management facilities that store liquid waste. The proposed changes require that overfill prevention and secondary containment equipment be utilized for all aboveground tank systems and double-wall construction with leak detection be utilized for all storage tanks, and establishes minimum self-inspection criteria for the tanks and associated equipment. Currently, the Department requires these safeguards through special permit conditions.

Discussion: Facilities have expressed difficulty in finding and purchasing equipment that conforms to the current 80 decibel requirement, and consequently the Department has previously issued variances from the requirement. This change will reduce the cost of operating a solid waste management facility without any negative effect on the facility, the surrounding community, or the environment. The sound level requirements must still be met at the property line. The addition of tank requirements in the regulations will codify current practice.

Alternatives considered: Removal of all sound level requirements associated with on-site equipment was considered. However, it was determined that mufflers should remain a requirement for all internal combustion powered equipment used at the facility along with sound level requirements at the property line. A no action alternative was rejected since, as discussed above, the availability of equipment that conforms to the current 80 decibel requirement is limited.

Environmental Impact: Updated operating requirement will ensure that facilities are operated to the most current standards, thereby reducing the potential for any releases to surface or groundwater resources. No anticipated change to noise impacts in light of the muffler requirements and the continued application of sound level requirements at the property line.

Section 360.20 Environmental monitoring services

Issue: The current on-site environmental monitor provisions are outdated and should be revised to reflect current practice and policy.

Proposed revision: The provisions related to on-site environmental monitors have been updated to reflect a more refined set of circumstances and limitations for environmental monitoring services. The term “on-site environmental monitor” has also been changed to “environmental monitoring services”.

Discussion: The current regulations authorize the Department to require the imposition of an on-site environmental monitor to be funded by the facility. The provisions in the current regulations pertain primarily to the funding requirements and mechanisms but are outdated. A Commissioner’s Policy concerning Environmental Monitoring Services has been developed and the proposed revisions are consistent with that Policy.

Alternatives considered: Since the current provisions are inconsistent with the Department’s Policy and the language related to funding is no longer accurate, a no action alternative was rejected. The addition of these updated regulatory requirements consistent with the Department Policy is the only acceptable option for describing environmental monitoring services requirements.

Environmental Impact: No environmental impacts are anticipated because the revisions incorporate Department Policy that is already in place and being used.

Section 360.22 Financial assurance

Issue: Financial assurance regulations ensure that sufficient funds are available for the Department to hire a third party to perform closure activities at a facility, or closure, post-closure, or corrective measures activities at a landfill, if the owner or operator fails to perform those required activities. Under current regulations, financial assurance requirements are located in sections 360-1.12, 360-2.19, and 373-2.8. These requirements have been consolidated in one location in the regulations with the intent to aid in the understanding of and improve compliance with the requirements as well as to better ensure that funds will be available for closure, post-closure care, and/or custodial

care activities. In addition to the consolidation of financial assurance language, there are certain circumstances where the requirements have been eased and certain areas where the requirements have been strengthened.

Proposed revision and discussion: One proposed change allows a municipality that no longer meets the standards for a local government financial test to begin a 10-year payment period toward another acceptable financial assurance mechanism. Under current regulations, a municipality in such a condition is required to fully fund another mechanism immediately. This revision will provide regulatory relief to a municipality in difficult financial circumstances while helping ensure that sufficient financial assurance funds would be available, if required.

Another proposed change which will provide support for municipally-owned facilities requires that, if a financial assurance mechanism is provided by the private operator of a municipally-owned facility, the fully funded financial assurance mechanism must be transferred to the municipality upon return of the facility to municipal operation or control. This change will help ensure that municipalities are not left with the requirement to generate the full cost of post-closure care and custodial care at the end of the active life of a landfill previously operated on their behalf by a private entity.

The proposed revisions also clarify that closure cost estimates must include the cost to close the greatest number of landfill cells which, at any given point during the lifetime of the facility, have received waste but have not undergone final closure. This is substantially the same requirement as currently exists, but it has been reworded to lessen confusion that has existed within the regulated community.

The proposed revised section also will include the specific acceptable language that must be used in financial assurance instruments. Previously, portions of this language were incorporated by reference from Part 373-2.8.

An additional proposed change clarifies that the owner or operator of a landfill must include a custodial care cost estimate as part of its financial assurance calculations upon closure of the facility, a custodial care financial assurance mechanism must be in effect after the post-closure care period is complete. This change builds on the current requirement that landfills must calculate post-closure cost estimates for at least 30 years, and each subsequent year's estimates must be for 30 years until the owner or operator can demonstrate that the landfill no longer poses a threat to human health or the environment. The requirements relating to custodial care in the proposed Part 363 are a clarification of the current post-closure requirements for long-term care of the landfill.

The proposed regulations restricted the allowable financial assurance mechanisms for post-closure and custodial care of a municipally-owned landfill which operates as a revenue-oriented municipal facility to a trust fund, a capital reserve fund, or a solid waste management facility reserve fund. The proposed regulations have been revised to remove the restriction on landfill owners.

The proposed regulations have been further modified to allow financial assurance mechanisms provided under other municipal requirements to take the place of mechanisms required under Part 360 regulations. This change was

implemented to reduce duplicate financial assurance requirements associated with the same solid waste management activity.

Solid waste management facilities have described great difficulty in obtaining standby trust agreements associated with letters or credit or bonds which have a value of less than \$50,000. Therefore, the proposed regulations have been revised to exclude those letters or credit or bonds from the standby trust agreement requirements. Alternative methods to maintaining and allocating those funds will be used.

The final proposed change will eliminate surety bonds guaranteeing performance, insurance policies, corporate guarantees, and corporate financial tests as acceptable financial assurance mechanisms. The Department has concluded that these mechanisms do not assure that the basic requirements for financial assurance mechanisms will be met, which include: that funds must be sufficient to cover the costs of closure, post-closure, custodial care, or corrective measures; that funds must be available when needed; and that mechanisms must be legally valid, binding, and enforceable under state and federal law. The department is confident that the remaining mechanisms, which include trust funds, surety bonds guaranteeing payment, letters of credit with standby trust funds, local government financial tests, local government guarantees, and reserve funds meet these requirements and will provide statewide consistency regarding acceptable financial assurance mechanisms. While we acknowledge that the remaining mechanisms may marginally increase costs for facilities that must change mechanisms, currently 237 facilities, more than three quarters of the facilities that are required to maintain financial assurance, utilize one of the remaining mechanisms. Further, transition requirements will provide registered facilities that must change mechanisms five years to obtain an approved mechanism. Permitted facilities which have valid financial assurance mechanisms in place but must change mechanisms under this revision will have until their permit renewal date to obtain an approved mechanism.

Alternatives considered: The Department considered continuing existing requirements that municipalities which no longer qualify for the local government financial test must immediately fund an alternative mechanism. This alternative was rejected as burdensome on municipal finances and detrimental to the proper funding of post-closure care and custodial care activities. The Department considered requiring custodial care financial assurance to be required in addition to post-closure care financial assurance. This alternative was rejected as burdensome and unnecessary. The Department considered continuing to require standby trust agreements for instruments less than \$50,000 in value. This alternative was rejected as burdensome, and availability of those agreements are minimal in the industry.

Environmental Impact: No new environmental benefits are expected from the revisions since financial assurance is currently required in the existing Part 360.

PART 361 MATERIAL RECOVERY FACILITIES

Subpart 361-1 Recyclables Handling and Recovery Facilities

Issue: A permitting throughput threshold should be added to the regulations for recyclables handling and recovery facilities (RHRFs) to appropriately evaluate and address the potential for impacts to the surrounding community and environment. Current regulations do not require permitting for any RHRFs.

Proposed revision: The proposed revisions require a permit rather than a registration for a RHRF that receives more than 250 tons per day of recyclables, based on a weekly average. This threshold was chosen based on the amounts of recyclables received at RHRFs under the current regulations. The Department concluded that facilities which receive greater than 250 tons per day on a weekly average may impact the surrounding community by increased truck traffic. Recyclables are typically lighter than other types of solid waste, which would lead to more truck traffic per ton than for other types of solid wastes. The Part 360 registration process does not include a SEQR evaluation of impacts such as truck traffic, but the Part 360 permitting process does include such an evaluation.

Discussion: This revision was made to address concerns related to noise, truck traffic, and other nuisance impacts resulting from RHRFs that are currently operating and receiving more than 250 tons per day of recyclables based on a weekly average. Requiring permitting of these facilities will allow these environmental issues to be addressed on a site-specific basis through the permitting process. Based on annual reports from RHRFs, this change is likely to affect 11 of the 86 facilities (13%) operating in the State. These 11 facilities managed approximately 44% of the recyclables stream. They are primarily located in DEC Region 2, with several others in DEC Regions 1 and 3.

Alternatives considered: Staff evaluated other throughput rates prior to choosing the 250 tons per day threshold. Facilities with high waste-acceptance rates are more likely to cause impacts to the surrounding community and the environment. Staff estimates that a RHRF which receives 250 tons per day of recyclables will receive 32 or more trucks per day, which could cause an adverse impact to the surrounding community and environment.

Environmental Impact: The addition of permitting standards for large RHRFs is expected to reduce environmental impacts due to greater Department oversight of these facilities.

Issue: Clearer delineation of the exemptions identified in current paragraphs 360-12.1(b)(2) and (5), for “manufacturing facilities” and “intermediate processors,” respectively, is needed. The original intent of these provisions was to remove manufacturing facilities from the requirements of existing Subpart 360-12 if they utilized recyclables as a feedstock. Identifying a legitimate manufacturing facility or intermediate processor under these criteria has proven difficult.

Proposed revision: The exemptions for manufacturing facilities and intermediate processors have been deleted and replaced with a pre-determined BUD in section 360.12 for materials processed by an RHRF for use as an ingredient in a manufacturing process or other acceptable use.

Discussion: This BUD provision is intended to provide the same result as the exemptions for “manufacturing facilities” and “intermediate processors” that is in

the existing regulation, but clearly delineates regulated and unregulated activities.

Alternatives considered: Revisions to the exemption language related to these facilities in order to more effectively define “marketable product” were considered. Requiring registration for these currently exempt facilities was also considered. The chosen alternative will be easier to understand and implement.

Environmental Impact: This clarification should not result in any environmental impact.

Subpart 361-2 Land Application and Associated Storage Facilities

Issue: Minor changes are needed to this subpart to address current practices in land application and septage management.

Proposed revision: Two minor changes include the elimination of the ability to use lagoons for septage disposal and the elimination of the cumulative loading limits for heavy metals.

Discussion: Septage disposal lagoons have been essentially eliminated in the State due to potential for groundwater impacts. The revisions will codify this practice. The tracking of cumulative metal loading for biosolids is a vestige of the 1980s and is not required by federal regulations or necessary for environmental protection. The pollutant standards that apply in Subpart 361-2 are low enough that the material can be applied without a build-up of concern of metals over time.

Alternatives considered: Continuing to allow the disposal of septage in lagoons was deemed to be an unacceptable alternative due to the potential for groundwater impacts. The continued tracking of cumulative metal loading was considered but is inconsistent with federal regulations.

Environmental Impact: The elimination of septage disposal lagoons will result in a positive environmental impact due to the reduction in the potential for groundwater contamination from these facilities. No significant environmental impact is anticipated in connection with the elimination of cumulative loading limits for heavy metals.

Subpart 361-3 Composting and Other Organics Processing Facilities

Issue: *Beyond Waste* recommends reviewing existing regulations to remove or address contradictory regulatory requirements that limit the creation or expansion of composting and other organics recycling facilities. To that end, the regulations need to be revised to facilitate composting at small-scale facilities.

Proposed revision: The subpart adds a new exemption for small-scale composting facilities to facilitate small-scale composting operations, such as those found at community gardens. The registration provision for food scraps has also been increased from 1000 cubic yards to 5000 cubic yards per year.

Discussion: Under the current regulations, the addition of any amount of food scraps to a community garden that are generated by a resident requires a registration. This is burdensome to small-scale composting operations and not

needed. The revised criteria allow a small amount (1000 pounds per week) of food scraps to be composted under an exemption. Also, the registration provisions have been modified to allow up to 5000 cubic yards of food scraps to be composted each year. The registration allows the Department to provide limited oversight of these operations but promotes this small-scale composting by dispensing with the requirement to obtain a permit.

Alternatives considered: The Department promotes the recycling of organic waste through composting and other means but recognizes that environmental impacts can occur if the operations are not managed properly. The alternatives considered relate to the size and character of the facilities that will be allowed under an exemption or under a registration. The chosen alternatives are based on the Department's experience with these operations over the last two decades.

Environmental Impact: No environmental impacts are anticipated since the revisions exclude very small composting facilities that have a low potential for runoff and other impacts, and increasing the registration requirement from 1000 cubic yards to 5000 cubic yards maintains the operating condition requirements for these facilities.

Issue: The existing regulations prohibit certain radioactive waste from being accepted at a facility which receives municipal solid waste (MSW). However, there is no current requirement for installation and operation of fixed radiation detectors to be installed at these facilities.

Proposed revision: The proposed revisions require facilities that compost mixed MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g may not be accepted at the facility. No regulated radioactive wastes, including naturally occurring radioactive material (NORM) which has been processed and concentrated (i.e., technologically enhanced naturally occurring radioactive materials or TENORM) may be accepted at the facility.

Discussion: Radiation detectors will ensure that radioactive waste is detected and evaluated prior to disposal at an MSW composting facility.

Alternatives considered: Continuing with only administrative prohibition of radioactive waste was considered but rejected.

Environmental Impact: The addition of monitoring equipment for the detection of radioactive waste at compost facilities will result in a positive environmental impact by ensuring that these wastes are not processed at these facilities.

Subpart 361-4 Mulch Processing Facilities

Issue: Under the current regulations, the production of mulch from the grinding and storage of clean wood is exempt from regulation. With the increase in popularity of the use of mulch, especially in urban and suburban areas, the number of facilities producing mulch has grown, and in some cases, the facilities are very large. Odor problems, leachate concerns, and fires have become a common problem at some of these facilities.

Proposed revision: A new subpart has been established to address mulch processing facilities. This subpart contains an exemption for small facilities (containing less than 10,000 cubic yards) that process wood debris and yard trimmings, provided specific pile size restrictions are followed. For facilities between 10,000 and 30,000 cubic yards, a registration will be required, and those larger than 30,000 cubic yards will require a permit. For both registered and permitted facilities, criteria relating to pile size, temperature monitoring, and other management methods to minimize environmental concerns have been specified in the regulations.

Discussion: There is no guarantee that a pile of wood will not catch fire. However, the proper management of the pile required by the proposed regulation will reduce the potential for adverse environmental impacts such as fire, dust, and odor concerns. Proper site management will also facilitate emergency personnel access and response, if needed.

Alternatives considered: Due to the significant concerns that have been raised related to these facilities including odors, leachate and fire, the no action alternative was rejected. The proposed revisions include restrictions on pile size, buffers between piles, and other criteria to control environmental concerns. There is no universally accepted pile size requirement. The Department considered various pile sizes and, based on the research currently available, decided to use the size restrictions in the proposal.

Environmental Impact: Enhanced regulatory requirements will reduce the potential for negative environmental impacts including dust, fires and groundwater impacts that have plagued many of these larger facilities that are currently unregulated.

Subpart 361-5 Construction and Demolition Debris Handling and Recovery Facilities

Issue: Many areas of the State, especially DEC Regions 1 and 3, have experienced significant illegal disposal of C&D debris. Additional criteria are needed in the regulation to specify proper C&D debris management.

Proposed revision: The proposed revisions expand the existing tracking form requirements for fill material, processing residue, or other material that does not qualify for a beneficial use determination leaving permitted C&D debris processing facilities to also include material leaving registered C&D debris processing facilities.

Discussion: Expanding C&D debris tracking requirements will enable the Department to more easily investigate and enforce against those who illegally dispose of C&D debris.

Alternatives considered: Due to the significant concerns with groundwater impacts, etc. that have been raised related to management of C&D debris, the no action alternative was rejected.

Environmental Impact: Expanded tracking requirements for C&D will result in reduced illegal dumping of this material, especially in large urban areas.

Issue: The permitting thresholds for facilities that receive only recognizable uncontaminated concrete, asphalt, rock, brick, and soil (CARBS) in the current regulations needed to be reevaluated. Current regulations require these facilities to register and do not designate a throughput threshold at which a permit is required for processing these types of waste.

Proposed revision: The proposed revisions require asphalt to be handled separately from concrete, brick, rock and soils (CRBS). The proposed revisions will require a registration for a facility that receives less than 500 tons per day based on a weekly average of only CRBS, only asphalt, only asphalt roofing shingles or only uncontaminated gypsum wallboard. A facility may receive more than one of the waste types so long as they are processed, received, and stored separately, and the total amount of material received is less than 500 tons per day. A permit will be required for the receipt of 500 tons per day or greater of these materials. The proposed regulations originally set the threshold for a permit at 250 tons per day. Comments received by the Department argued that the limit was inappropriately low and that an averaging period should be used to allow occasional large loads of material, a circumstance which is typical in the industry. The final proposed revision have been adjusted based on those comments.

Discussion: Processing of C&D debris can generate noise, dust, and odors. It was concluded that processing of more than 500 tons per day of any C&D debris is likely to have some adverse impact on surrounding community and the environment. In addition, larger facilities are typically located in urban areas which increases the potential for impacts to surrounding communities related to truck traffic, noise, etc.

Based on annual reports from this portion of the current C&D debris processing industry, the change is likely to affect 22 of the 143 facilities operating in the State. Sixteen of these facilities are located in DEC Regions 1 and 2, with the remainder located in various other DEC Regions.

Alternatives considered: Various throughput thresholds, both greater than and less than 500 tons per day, were considered, but the proposal is expected to address potential adverse environmental impacts adequately.

Environmental Impact: The additional requirements should result in reduced processing of petroleum based asphalt materials in sensitive environmental settings. It also will reduce the potential negative impacts from processing of painted or otherwise contaminated wallboard. The Department will have greater control over facilities that process more than 500 tons per day based on a weekly average and can create permit conditions on case-by-case basis to minimize environmental impacts of larger operations.

Issue: Based on concern relating to odor and noise impacts to surrounding communities, the operational requirements for receiving, processing, and sorting mixed C&D debris need to be revisited in the regulations.

Proposed revision: The proposed revisions will require the receiving, processing, and sorting of mixed C&D debris to be performed within an enclosed building in order to minimize potential impacts on the surrounding community.

Discussion: The transition provisions of Part 360 will not require retrofitting of existing facilities which do not meet this enclosure requirement. However, many C&D debris processing facilities that currently handle mixed C&D debris already comply with this requirement through special permit conditions. Newly constructed facilities which process mixed C&D debris will have to meet the enclosure requirement.

Alternatives considered: Enclosure for facilities that accept any C&D debris, including CRBS, was considered but determined to be unnecessary.

Environmental Impact: The addition of an enclosure requirement will reduce the potential for negative environmental impacts on surrounding neighborhoods such as dust, odors, and noise.

Issue: Current Part 360 regulations for C&D debris processing facilities that handle only CARBS or similar material have no restriction on the storage of unprocessed or processed material. This has led to facilities storing vast quantities of processed C&D debris for extended periods of time, which may adversely impact surrounding communities.

Proposed revision: The proposed revisions will restrict the allowable storage period and storage volume for unprocessed or processed C&D debris to a reasonable storage volume based on the characteristics of the facility.

Discussion: Under the proposed regulations, each facility in its permit application or registration submission must identify the daily tonnage it intends to receive as well as the maximum storage volume to be utilized at the facility. As part of the submissions, the facility must also submit a site plan which shows storage and waste processing locations. Storage restrictions are expected to significantly reduce the potential for adverse impacts that surrounding communities have experienced from C&D debris processing facilities.

Alternatives considered: Various size, volume, and dimensional limits were considered, and a specific state-wide storage limit was initially proposed, but it was determined that the storage limits based on the reasonable storage volumes and capacity available at each facility will adequately address potential adverse environmental impacts.

Environmental Impact: New storage limitation requirements will reduce negative environmental impacts including odors and dust.

Issue: The current exemption in 360-16.1(b) for land clearing debris (LCD) processing facilities needed to be revisited based on the fact that facilities of this type have created significant impacts, including fire odor and groundwater impacts, on their surrounding communities and the environment, especially in highly populated areas of the State.

Proposed revision: Facilities that process wood wastes and similar materials will now be regulated under new Subpart 361-4 Mulch Processing Facilities, where they will be required to adhere to storage pile restrictions and facility size restrictions among other operational requirements.

Discussion: The proposed revisions will more effectively control storage and operating practices for wood processors, thereby reducing the potential for adverse impacts on surrounding communities.

Alternatives considered: The exemption could have been maintained in the regulations but this alternative would not have addressed fire, odor, and runoff concerns associated with large piles of wood debris. Under new Subpart 361-4, various exemptions, registrations, and permit thresholds were considered and criteria were selected that provide environmental protection without undue impact on the regulated community.

Environmental Impact: Enhanced regulatory requirements will reduce the potential for negative environmental impacts including dust, fires and groundwater impacts that have plagued many of these larger facilities that are currently unregulated.

Issue: Mulch produced by C&D debris processing facilities is often contaminated with compounds found in adulterated wood. These compounds can then be introduced to settings where mulch is typically used, including residential neighborhoods and playgrounds.

Proposed revision: The proposed revisions will remove the ability of C&D debris processing facilities to produce mulch without being granted a case-specific BUD.

Discussion: The proposed revisions codify the standard best management practices in the mulch manufacturing industry.

Alternatives considered: Negative sorting procedures (removing only contaminated wood from the mass of wood, which can result in significant amounts of contaminated material remaining in the wood that will be processed) were considered but did not meet best management practices.

Environmental Impact: This provision will ensure that only good quality mulch is being produced at C&D processing facilities, reducing the potential for groundwater impacts or potential uptake of pollutants into vegetables in a home garden.

Issue: Fill material can be received, processed, and stored by C&D debris handling and recovery facilities. However, if that material contains contaminants it should only be used at locations which comply with the requirements of Section 360.13 of these regulations.

Proposed revision: The proposed revisions will require that fill material or residues leaving a C&D debris handling and recovery facility must be analyzed for contaminants identified in Section 360.13. If the fill material cannot meet the standards it must be handled appropriately as a solid or hazardous waste, as applicable.

Alternatives considered: Restricting any fill material from being managed at a C&D debris handling and recovery facility was considered. However, large construction projects often require large quantities for fill material as part of the project. The Department concluded that these facilities should be allowed to manage the material in order for sufficient volumes of material to meet the needs of those large projects.

Environmental Impact: The provisions will allow for large quantities of fill material which has been screened for contaminants to be utilized for construction projects

in place of virgin material. The provisions also reduce the potential for contaminated fill material being placed in locations that are not appropriate (playgrounds, etc.).

Subpart 361-6 Waste Tire Handling and Recovery Facilities

Issue: The significant investment by the State in abating waste tire stockpiles and developing markets for waste tire recycling since 2003 through the administration of the Waste Tire Management and Recycling Act has necessitated a change in the focus of the regulations from storage of waste tires to handling and recycling of waste tires.

Proposed revision: The proposed revisions will require facilities that process tires into products, feedstocks, etc. to obtain a permit. The revisions will also limit the storage of waste tires at tire services or tire recovery facilities and will provide an exemption for the storage of less than 1000 waste tires at any one time.

Discussion: The current regulations allow a facility to process waste tires into a product, feedstock, or fuel under a registration. Many of these facilities have experienced significant operational issues, including fires and marketing difficulties. Proposed amendments will address these issues and potential adverse impacts, including fire and vector issues, through the permit process.

Alternatives considered: Maintaining registration requirements for waste tire processors was considered but found to be insufficiently protective of human health and the environment. Facility types such as tire services were considered to be identified as exempt facilities under this Part; however, it was determined that the exemption should be limited to the storage of less than 1000 waste tires at any one time.

Environmental Impact: The provision will eliminate the generation of new waste tire stockpiles in the state and reduce the significant adverse environmental impacts associated with stockpiling waste tires, including fire and vector issues.

Subpart 361-7 Metal Processing and Vehicle Dismantling Facilities

Issue: The regulations should incorporate the requirements of Article 27, Title 23 Vehicle Dismantling Facilities, which was promulgated and went into effect in 2006, establishing operating and annual reporting requirements for vehicle dismantling facilities.

Proposed revision: The proposed revisions incorporate the requirements of the Vehicle Dismantling Facilities Law within this subpart. Because of issues related to potential release of petroleum products to the environment associated with mobile vehicle crushers and the need to tie operating requirements to mobile vehicle crushing operations which will reduce impacts to the environment, operations which crush vehicles using mobile vehicle crushing equipment will be required to register with the Department.

Discussion: Article 27, Title 23 created explicit reporting and operating requirements for vehicle dismantling facilities. The requirements protect groundwater and surface waters by requiring waste fluid removal prior to

crushing or shredding of vehicles and proper waste fluid storage. Air emissions are also addressed through requirements to remove mercury switches prior to crushing or shredding of vehicles and subsequent recycling at steel furnaces. These facilities are most appropriately included as registered facilities under Part 361.

Alternatives considered: Requiring full registration of facilities which handle end of life vehicles of any number was considered. Instead, facilities which store less than 50 end of life vehicles are either exempt or will be allowed to operate under minimal registration requirements.

Environmental Impact: Incorporation of the requirements of Article 27, Title 23 Vehicle Dismantling Facilities into Part 361 requirements will help clarify the requirements of vehicle dismantling for the regulated community.

Issue: Because operations at large scrap metal processors may have potential adverse environmental impacts on the surrounding community, the current exemption for all scrap metal processing facilities is untenable. The regulations should place operating requirements on those facilities to address potential adverse impacts.

Proposed revision: The proposed revisions require registration for scrap metal processors that store more than 500 cubic yards of metal, but the proposed regulations have been amended to exclude indoor storage from this volume.

This change will not alter the impact analysis, since indoor storage is not anticipated to have any additional dust, noise, or similar environmental impacts.

Discussion: Scrap metal processors can generate significant amounts of waste and can create dust and noise impacts on surrounding communities. Requiring these facilities to be registered will reduce their potential environmental impact and their impact on surrounding communities.

Alternatives considered: No exemption threshold from the registration requirement for scrap metal processors was considered but it was determined to be unduly burdensome on facilities with small potential impacts.

Environmental Impact: These new registration provisions will reduce the potential impact that these facilities can have on surrounding communities including dust and noise issues.

Subpart 361-8 Used Cooking Oil and Yellow Grease Processing Facilities

Issue: Used cooking oil and yellow grease is a potential alternative fuel. In order to produce a higher grade fuel, the oil must be processed to remove food particles, water, and other contaminants. While facilities that perform such processing are not explicitly addressed under the current regulations, the Department routinely requires them to obtain a permit as a non-specific facility under the current regulations. A permit is not appropriate for some of the facilities that are smaller in scale.

Proposed revision: A new subpart has been added to specifically address the processing of used cooking oil and yellow grease. Under the proposed criteria, small operations (no more than 1,000 gallons per year) are exempt, those greater than 500,000 gallons per year will be subject to permit, and those falling between those thresholds will be required to register and will be subject to basic

operating requirements. The proposed criteria address the proper storage and processing of these putrescent liquid wastes.

Discussion: The use of alternate fuels is growing in importance in the State. The proper management of this potential fuel is necessary to limit the potential for environmental harm from spills or leaks.

Alternatives considered: The alternative evaluated by the Department was to continue to require a permit for all used cooking oil and yellow grease processing facilities. This approach is overly restrictive. Many of these operations are limited in size and can be appropriately managed under registration provisions.

Environmental Impact: These provisions will improve the management of used cooking oil and yellow grease to prevent potential spills and no adverse environmental impacts are anticipated.

Subpart 361-9 Navigational Dredged Material Handling and Recovery Facilities

Issue: Under current regulations, a facility which received navigational dredge material (NDM) for solidification or dewatering must operate under a Part 360 non-specific facility permit, which may hamper the reuse of NDM. Reuse is also hampered by restrictions on storage of NDM to permitted facilities. A more flexible system is needed in order to allow the full reuse of NDM and avoid unnecessary disposal.

Proposed revision: In order to respond to these issues, the proposed regulations have been revised to include a new Subpart 361.9 "Navigational Dredged Material Handling and Recovery Facilities". The new subpart allows facilities which receive NDM for amendment with Portland cement or for dewatering to operate under a Part 360 registration rather than a permit. This provision will create more flexibility and allow for increased ease in siting and operating these facilities while maintaining sufficient regulatory oversight through the registration.

Discussion: One of the Department's objectives is to increase the appropriate recycling and reuse of materials that would otherwise be disposed as outlined in *Beyond Waste*. In many cases, NDM is appropriate for reuse but is restricted by regulatory requirements which make it difficult to solidify or dewater the material sufficiently for reuse.

Alternatives considered: Allowing the amendment or dewatering of NDM under an exemptions was considered. However, it was concluded that a Part 360 registration was a preferably alternative as the registration provides annual reporting, operating, and recordkeeping requirements which increase the likelihood that the activity will be conducted in an environmentally safe matter.

Environmental Impact: These provisions will improve the management of NDM and will allow for increased reuse of the material, avoiding unnecessary disposal and providing an environmental benefit. The standards will ensure the facilities do not cause groundwater impacts or nuisance impacts (dust, etc.).

PART 362 COMBUSTION, THERMAL TREATMENT, TRANSFER, AND COLLECTION FACILITIES

Subpart 362-1 Combustion Facilities and Thermal Treatment Facilities

Issue: The regulations should enhance or add requirements for emerging thermal treatment technologies such as gasification and pyrolysis.

Proposed revision: The proposed revisions clarify that emerging thermal treatment technologies are regulated under the proposed 362-1.

Discussion: Many types of thermal treatment processes have been developed in recent years. It is important to clarify that those facilities are regulated in a similar fashion to municipal waste combustors and must meet the same regulatory requirements.

Alternatives considered: A separate subpart for thermal treatment facilities was considered.

Environmental Impact: No adverse environmental impacts are anticipated since the revision just clarify current practice for the regulation of these technologies.

Issue: Under current regulations, refuse-derived fuel (RDF) processing facilities are regulated under Subpart 360-3 along with municipal waste combustors and pyrolysis units. Since RDF processing facilities are not combustion facilities or thermal treatment facilities, the requirements for these facilities should be relocated to a more appropriate subpart in the regulations.

Proposed revision: The proposed revisions relocate RDF processing facility requirements to a new facility type termed MSW Processing Facilities under new Subpart 362-2. There are no significant changes to the requirements that currently apply to these facilities.

Discussion: RDF processing facilities are not combustion facilities or thermal treatment facilities. Their operations more closely resemble post-collection processing facilities, which are currently regulated under the transfer station regulations found at Subpart 360-11. Both of these facility types have been relocated to a more appropriate subpart in the revised regulations.

Alternatives considered: Maintaining the current structure was considered; however, since no RDF processing facility is currently operating in combination with a combustion facility, the proposed revision was determined to be more appropriate and provide more clarity and consistency to the public.

Environmental Impact: The revision provides addition clarity concerning the regulation of these facilities and no adverse environmental impact is anticipated since no reduction in environmental controls is a proposed.

Issue: Under current regulations, with the exception of one pre-determined BUD for whole tires or tire chips when used for energy recovery, combustion of all other waste requires a permit, unless it fits a narrow opportunity to qualify for a case-specific BUD. An opportunity for combustion of limited amounts of wastes with minimal potential pollutant content should be considered for regulatory relief provided all Division of Air Resources requirements are met.

Proposed revision: The proposed revisions add a registration provision for limited amounts of three material types: waste tires, unadulterated wood and

used cooking oil and yellow grease with applicable limiting conditions, and alternative fuels authorized by the department under Division of Air regulations.

Discussion: With rare exception, a solid waste management facility permit is required for the combustion all wastes. There are a number of instances where combustion of a limited amount of certain wastes with minimal potential pollutant content does not warrant the need for a solid waste management facility permit. Limited amounts of certain waste streams such as waste tires, used cooking oil or yellow grease, unadulterated wood and authorized alternative fuel, if managed on-site under specific conditions, should be allowed regulatory relief from full permitting under new Subpart 362-1. Regardless of the regulation under Part 362, all combustion units must comply with the applicable Division of Air Resources regulations. Accordingly, a registration mechanism was created for these waste streams to more appropriately regulate the combustion of these wastes.

Alternatives considered: Full permitting of combustion of all wastes was considered but, understanding that the Division of Air Resources regulates emissions from these activities, it was determined that additional permitting under these regulations would be overly restrictive. Treating fuel use under BUD provisions of the regulations was considered but rejected as being inconsistent with the intent of the BUD program, and all combustion-related wastes and activities were included in new Subpart 362-1.

Environmental Impact: The addition of this provision gives the Department additional oversight to ensure that these activities do not result in spills and fires and their associated negative impacts. Negative environmental impacts are not anticipated since the materials have low pollutant content and the facility must still comply with air emissions standards.

Issue: Current regulations require that combustor ash residue be analyzed for unburned waste, referred to as volatile matter, and that volatile matter be limited to less than 10% of the ash residue stream. The Department's Division of Air Resources regulations are sufficient to control combustion efficiency. Combustor operators are expected to continue to seek to maximize combustion efficiency in order to minimize ash residue disposal costs. Current regulations require semi-annual testing of residue ash for leaching potential and total metals content. This frequency of testing has been routinely reduced through variance approvals by the Department since the ash has routinely been found to be below standards for disposal.

Proposed revision: The proposed revisions remove the requirement to test for volatile matter in combustor ash residue. Additionally, the proposed revisions allow for the reduction in testing frequency of combustor ash residue, but require confirmation testing to be performed no less than once every 5 years.

Discussion: The removal of the volatile matter test will eliminate an unnecessary and burdensome requirement. The inclusion of an explicit allowance for reduced testing frequency will reduce the regulatory burden on combustors while establishing a regular confirmation test to ensure that residues have not changed significantly.

Alternatives considered: Omitting the 5-year confirmatory ash testing requirement was considered but rejected in order to account for changes in waste stream content over time. No revision to the current regulations was also considered but was not chosen since it does not reflect the routine variances that have been issued by the Department.

Environmental Impact: No adverse environmental impact is envisioned because the revision reflects what the Department currently allows through variance approvals, with no evident detriment.

Issue: A list of source-separated waste streams which are restricted from being processed at a combustion or thermal treatment facility should be added to the regulations to reflect recycling and product stewardship efforts and to further the goals outlined in *Beyond Waste* to increase recycling these waste streams.

Proposed revision: The regulations add a list of source-separated materials that cannot be processed at a combustor or thermal treatment facility. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs.

Discussion: Materials which have been diverted from the MSW stream for reuse, recovery or other proper management should not be returned to the waste stream for combustion.

Alternatives considered: Broad restriction of these source-separated waste streams from processing at any solid waste management facility was considered and rejected as being too restrictive.

Environmental Impact: This provision will ensure that materials not suited for thermal treatment are prohibited from acceptance, thereby increasing recycling of these materials. This will reduce potential air pollutants and improve ash quality.

Issue: The existing regulations prohibit certain radioactive waste from being treated at a combustion facility. However, there is no current requirement for installation and operation of fixed radiation detectors to be installed at these facilities.

Proposed revision: The proposed revisions require municipal waste combustors and thermal treatment facilities that process MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads. Waste loads which exhibit radioactivity above 25 pCi/g may not be accepted at the facility. No regulated radioactive wastes, including naturally occurring radioactive material (NORM) which has been processed and concentrated (i.e., technologically enhanced naturally occurring radioactive materials or TENORM) may be accepted at the facility.

Discussion: Radiation detectors will ensure that radioactive waste is detected and evaluated prior to acceptance at a combustion facility.

Alternatives considered: Continuing with only administrative prohibition of radioactive waste was considered but rejected.

Environmental Impact: The addition of monitoring equipment for the detection of radioactive waste at combustion facilities will result in a positive environmental impact by ensuring that these wastes are not processed at these facilities which could end up in the resultant ash and/or air emissions.

Issue: The current regulations incorporate requirements for submission of information related to non-waste portions of the municipal waste combustion system, such as steaming rates, to be included as part of a solid waste management permit application.

Proposed revision: The proposed revisions remove non-waste-related elements from permit application requirements.

Discussion: These changes streamline the regulations to focus on waste-related issues at the combustion facility.

Alternatives considered: No change to the current regulations was considered but rejected because the information required in the current regulations has no bearing on the solid waste management aspects of the operation, which are governed by these regulations..

Environmental Impact: The proposed revision eliminates the need to submit information that is not used to determine compliance with the solid waste requirements and therefore will have no negative environmental impact.

Issue: Definitions related to combustion should be revisited to better clarify their meaning.

Proposed revision: Under current regulations, 'nonprocessable waste' is defined as waste that cannot be incinerated due to legal, technical, or environmental limitations. The proposed revisions replace this term with the term 'excluded waste.' Also, the term 'untreatable waste' is redefined to describe waste that cannot be physically treated by a combustion system due to its size or composition, and the term 'bypass waste' is added to describe material that is destined for treatment but cannot be treated due to facility downtime or capacity issues. For clarity, all definitions have been moved to 360.2.

Discussion: These definitions more clearly identify the various types of waste streams that are dealt with at combustion facilities.

Alternatives considered: No revision to the terminology was considered but rejected because the current definition has led to confusion and inconsistent interpretation.

Environmental Impact: The proposed revision involves clarifying existing definition and will have no negative environmental impact.

Subpart 362-2 Municipal Solid Waste Processing Facilities

Issue: Municipal Solid Waste Processing Facilities include both RDF processing facilities and post-collection recyclables recovery facilities. These facilities process MSW in order to recover recyclables or to convert the waste into a municipal waste combustor feedstock. Currently there are no RDF processing facilities or post-collection

recyclables recovery facilities operating in the State. RDF facilities currently fall under the combustion facility regulations.

Proposed revision: The proposed revisions create a new subpart for RDF processing facilities and post-collection recyclables recovery facilities. The proposed revisions require MSW processing facilities to install and utilize fixed radiation detectors to monitor all incoming waste loads. The proposed regulations for MSW processing facilities restrict several source-separated waste streams from being processed at these facilities. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs. These materials have been diverted from the MSW stream for reuse, recovery or other proper management and should not be returned to the waste stream.

Discussion: The revision addresses two similar facility types, post-collection processing facilities and RDF processing facilities, in the same subpart of the regulations. The change will provide consistency in program implementation as new facilities are permitted and begin operation.

Alternatives considered: The alternative of leaving the RDF facilities under the combustion facility regulations was considered but rejected because they are fundamentally different types of facilities..

Environmental Impact: The proposed revisions will ensure that these facilities are producing material which can be combusted without potential concerns related to radioactive substances or other problematic pollutants.

Subpart 362-3 Transfer Facilities

Issue: Current Part 360 exemptions for transfer facilities need to be revisited to address current practices in the industry.

Proposed revision: The proposed revisions provide relief from current regulations by expanding exemptions for three specific transfer facility types, including vehicle to vehicle transfer, small municipally-owned transfer facilities, and small source-separated organic waste transfer facilities. All permitted transfer facilities that transport waste out-of-state will also be required to install and utilize fixed radiation detectors to monitor all incoming waste loads. Additionally, as recommended in *Beyond Waste*, source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs accepted at a transfer facility will not be allowed to be transferred to a combustor, thermal treatment facility, or landfill.

Discussion: Small-scale collection of food scraps and other organic wastes increases the ability of the public to recycle household organic waste. Therefore, in order to ease the authorization process, it was made subject to registration rather than permitting requirements. Materials which have been diverted from

the MSW stream for reuse, recovery or other proper management should not be returned to the waste stream for combustion.

Alternatives considered: The Department considered requiring all permitted transfer facilities to install and utilize fixed radiation detectors. However, since the fixed radiation detectors are also being required to be installed at all MSW landfills and municipal waste combustors in the State, it was determined that it would not be necessary to require detectors at transfer facilities that were sending all their waste to in-state facilities. Registration of some types of privately owned transfer stations was considered but rejected in favor of permitted for any private transfer facilities. Fixed radiation detectors were considered for all permitted transfer stations, but this was rejected to avoid unnecessary duplication of monitoring.

Environmental Impact: These provisions will ensure that materials which should be diverted from the MSW stream are properly managed through recycling or other means. It also eliminates the issue of radioactive waste being transferred from transfer facilities to other solid waste management facilities for further processing or disposal.

Subpart 362-4 Household Hazardous Waste Collection Facilities and Events

Issue: Currently, household hazardous waste collection facilities and events are regulated as Part 360 non-specific facilities using the requirements of Subpart 373-4 though no permits are issued under Subpart 373-4.

Proposed revision: Existing Subpart 373-4 is proposed to be repealed and the requirements of that subpart will be incorporated into the new Subpart 362-4. Registration and permit criteria, operational requirements, and recordkeeping and reporting requirements are contained in this subpart.

Discussion: This revision moves regulatory requirements into the solid waste regulations and management program, where the waste is regulated and where the program is administered.

Alternatives considered: Continuing the current regulatory scheme was considered but was rejected since it has led to confusion for the regulated community because multiple regulation are used to govern one facility.

Environmental Impact: No negative environmental impacts will occur since the revision is simply a formatting change for increased clarity.

Issue: Currently, household hazardous waste collection events require submittal of a collection day plan 60 days prior to each collection event and approval by the Department prior to holding the event. This has created significant work for municipalities sponsoring events as well as Department staff for activities that have become quite routine and held multiple times a year by many municipalities across the State.

Proposed revision: The current individual collection event approval process in Part 360 will be replaced by a registration program.

Discussion: This revision will streamline the application and approval process for municipalities, especially for those that sponsor frequent and ongoing programs.

Alternatives considered: The current collection day approval process was considered but a change is needed because it has evolved into a cumbersome process for both municipalities and the Department with little or no additional environmental protection. Requiring municipalities to seek full permits for all activities related to household hazardous waste collection was considered but rejected as overly restrictive and unnecessary. The registration process was determined to be a good fit for the circumstances to relieve some of the burden on management of household hazardous waste by municipalities through collection events.

Environmental Impact: Registration of these activities will allow these worthwhile events to occur in a more efficient manner with no reduction in environmental controls.

PART 363 LANDFILLS

Subpart 363-2 Exempt Facilities

Issue: Exemptions related to disposal currently located in the general provisions of Part 360 should be relocated to Part 363, Landfills.

Proposed revision: Exemptions related to disposal have been moved into Section 363-2, Exempt Facilities. The exemption for on-site disposal by a homeowner has been modified to exclude manufactured homes that are not the owner's primary residence, friable asbestos-containing waste, pesticides, pesticide containers, waste tires, septage, raw sewage, used oil, mercury-added consumer products, e-waste and syringes. Similarly, the proposed exemption for on-site disposal of solid waste generated by a farm will exclude C&D debris and the same materials identified above. The exemption for burial of animal mortalities at pet cemeteries has been modified to address the burial of animal cremains as well. Several new exemptions have been added, including disposal of overburden, tailings, drill cuttings generated by air- or water-based drilling methods, and other similar mining waste when generation and disposal occur at the same mine location subject to regulation under 6 NYCRR Parts 421-425, and disposal facilities for the burial of religious items.

Discussion: Proposed revisions will ensure that certain on-site disposal activities and facilities that pose no significant adverse environmental impact will be exempt from regulation under Part 360 and the waste streams managed at the exempt facilities will not consume capacity in registered and permitted solid waste management facilities. Revisions to existing exemptions which narrow an exemption, such as the on-site disposal exemption for homeowners, have been made to be more protective of the environment.

Alternatives considered: The Department considered each of the current exemptions and whether or not each should be made more restrictive, more expansive or remain the same. Also, the addition of new exemptions based on issues that have arisen in the past was considered. The proposal represents the results of that evaluation and determination of what exemptions are appropriate to represent facilities or activities that have little potential environmental impact.

Environmental Impact: No adverse environmental impacts is anticipated since the revisions only exempt those materials that have been proven to have limited potential for groundwater impacts and other negative impacts (dust, etc.).

Issue: Current regulations exempt land clearing debris (LCD) disposal when the material originates on properties with the same ownership or control, and require registration rather than permitting for LCD landfills of less than 3 acres in size.

Proposed revision: The proposed revisions remove the current registration and exemption, and replace them with an exemption for facilities no more than one acre in size for the disposal of tree debris. This exemption will not be available inside Nassau and Suffolk counties due to additional statutory disposal restrictions that apply in those areas.

Discussion: Land clearing debris should be recycled whenever possible. LCD landfills can lead to potential fires, rodent problems, and other nuisance conditions. Reducing the allowable size will reduce these potential issues.

Alternatives considered: Registration of disposal facilities of any type or size was considered to be inappropriate and was rejected. Disposal, except for small-volume disposal of CARBS and tree debris, was determined to be best reserved to permitted facilities.

Environmental Impact: The proposed revision will eliminate high-volume disposal of wood wastes without proper Department oversight, a practice which has led to fire, odor, dust, and runoff impacts. With department oversight, these impacts are expected to be reduced. The proposed revision will also encourage wood wastes to be directed toward recycling rather than disposal.

Issue: Current regulations exempt disposal of certain materials such as concrete, asphalt, rock, brick, soil, and glass, collectively known as CARBS. There are no volume or size restrictions associated with this exemption, and several DEC regions, especially DEC Regions 1, 2 and 3, have experienced problems with large-volume exempt disposal sites which have adversely impacted surrounding communities. In addition, non-exempt wastes such as C&D debris processing facility residues have been found at exempt sites.

Proposed revision: The proposed revisions prohibit disposal of C&D debris processing residues at an exempt site, and restrict disposal at exempt sites to no more than 5000 cubic yards of CARBS. A separate exemption will allow disposal of CARBS generated by state or municipal highway projects when disposal takes place in highway right-of-ways or municipally owned properties. The exemptions will not be available at all inside Nassau and Suffolk counties due to additional statutory disposal restrictions that apply in those areas.

Discussion: This revision will reduce the potential adverse impacts of improper disposal on surrounding communities. In addition, the revisions will increase the Department's ability to enforce against illegal disposal of C&D debris and fill material.

Alternatives considered: Various exemption threshold volumes were considered for this provision. The chosen volume was considered to be a reasonable volume for small-scale disposal, taking into account that the chosen waste

stream is a material that is unlikely to adversely impact the environment in small volumes. The exemption for CARBS from highway projects was not included in the initial proposed revisions, but comments received from municipal and state transportation officials argued that an exemption should be allowed for municipal projects, and that the incentive for improper disposal was reduced in these projects.

Environmental Impact: This provision will eliminate the potential negative environmental impacts caused by illegal disposal of CARBS, including fires, odors and dust.

Subpart 363-3 Inactive Disposal Facilities

Issue: Under current regulations, solid wastes excavated from inactive landfills as part of a construction project must be handled, relocated, and disposed by practices approved in writing by the Department. This language currently exists under exempt facility requirements.

Proposed revision: Inactive disposal facilities which are encroached upon or which exhibit environmental impacts are subject to the requirements of the current regulations, and the owners of these facilities must provide notice to the Department of intent to alter the facility end use or upon discovery of a disturbance or upon discovery of environmental impacts.

Discussion: The handling of solid wastes should only be performed in a manner which is protective of human health and the environment. These requirements will provide the Department oversight for the handling of solid wastes which have previously been disposed and will require action at disposal sites where environmental impacts are evident.

Alternatives considered: Many variations on these requirements were considered, including requiring registration for inactive facilities which are disturbed or encroached upon. The chosen requirements were determined to be most protective of the environment with the least regulatory burden. Under the chosen alternative, old landfills will be handled in an appropriate manner and local municipalities and other owners will not have to complete unnecessary paperwork.

Environmental Impact: This proposed revision clarifies that old landfills that are disturbed or that exhibit negative environmental attributes (exposed waste, etc.) must comply with the criteria specified by the Department. This further clarifies current practice and does not represent a negative environmental impact.

Subpart 363-4 Permit Application Requirements

Issue: All solid waste management activities, including landfill operations, should be conducted in a manner that minimizes adverse impacts on the environment and that conserve and sustain natural resources. In order for the department to be able to ascertain that no adverse impacts will occur, the landfill application must include the key supporting documents that the proposed regulations address, including a hydrogeologic investigation report and an environmental monitoring plan.

Proposed revision: The proposed revisions require that a sustainability plan be included as a part of all landfill permit applications as part of the facility manual to address how the landfill will be run on daily basis to help conserve resources, reduce greenhouse gas emissions and maximize the landfill's disposal capacity. In the revised proposed regulations, the Department has determined that a hydrogeologic investigation report and environmental monitoring plan are two essential elements of the supporting documents needed in a permit application and as such were moved from their existing locations in different subparts of 363.

Discussion: The sustainability plan will require a description of operations that will conserve landfill airspace, reduce receipt of organic wastes, utilize alternative operating cover materials, enhance waste mass stabilization, include landfill reclamation techniques, and utilize other sustainable landfill management techniques. Based on input from the original proposed rule-making this plan requires that plan be updated and submitted to the Department at least every 5 years instead of the 3 years as originally proposed. The hydrogeologic investigation report and environmental monitoring plan were moved without significant changes to their content because they fit more appropriately within the permit application section of the regulations.

Alternatives considered: The Department considered making no changes to the sustainability plan requirements and retaining the hydrogeologic investigation report and environmental monitoring plan in their existing locations. Neither of these alternatives was chosen. This alternative was not chosen because it would not clarify the regulations and relocate the environmental monitoring plan and hydrogeologic investigation report to its appropriate location in the permitting application requirements.

Environmental Impact: The requirement for submission of a sustainability plan will increase recycling of organic waste and result in the conservation of natural resources.

Issue: The hydrogeologic investigation, sampling and monitoring requirements of the current regulations need to be adjusted to improve data gathering and analysis in a number of circumstances. These adjustments remain in the proposed rulemaking, but the language has been moved to the permit application section as discussed above.

Proposed revision and discussion: Instead of the current requirement of an interwell statistical database, the proposed revisions will allow both an interwell subset and intrawell subset, as warranted. While the interwell method compares data from a given groundwater well against a statistical database composed of data from upgradient wells, the intrawell method compares each well's data against a database composed of its own historical data. This change will result in more representative and accurate operational monitoring. The proposed revisions will also allow a landfill owner or operator to demonstrate that a significant increase in groundwater monitoring data is not attributable to a problem with the landfill by allowing collection of verification samples and a demonstration to be included in quarterly monitoring reports. In practice, false positives are a regular occurrence at most landfills due to temporal or spatial variability, or changes in groundwater

quality related to site operations unrelated to waste disposal. The revision will streamline the demonstration process for these situations.

Current language requires parameter concentrations at or below existing groundwater quality values to return from contingency monitoring, which requires increased numbers of samples and analytical parameters to track exceedances, to more standard operational monitoring. Since existing water quality is by definition an average, this is not practical. The proposed revisions will instead require that parameter concentrations be below applicable trigger values for two consecutive sampling events in order for a landfill to return from contingency monitoring to operational monitoring.

The proposed revisions will require quarterly analyses for baseline parameters in secondary leachate collection systems rather than semi-annual analyses. A better definition of secondary leachate character will allow the source of ALR exceedances to be more effectively evaluated, and will allow better comparisons between any apparent groundwater impacts and secondary leachate character. The proposed revisions will allow semi-annual sampling of monitoring wells and other sampling points for baseline parameters. This is a reduction of the current requirement of quarterly sampling with one round of baseline parameters and three rounds of routine parameters, upon approval by the Department after five years of acceptable quarterly monitoring data which has proven to be warranted based on the Department's evaluation of monitoring results.

The proposed revisions will allow baseline sampling to be conducted at the same time each year instead of the current requirement that baseline sampling rotate from quarter to quarter. This change will reduce seasonal variability in the baseline results and will allow for better year-to-year comparisons.

The proposed revisions will include arsenic as an analytical parameter on the baseline parameters list. Arsenic is one of the most commonly identified components of contamination plumes at MSW landfills and is of particular concern. Inclusion of arsenic in the baseline parameters list will be more protective of human health and the environment.

The proposed revisions will change statistical methods for calculating groundwater monitoring trigger values to more effectively accommodate non-normally distributed data. The change will provide a more statistically valid method of dealing with non-detects and will reduce excessively large standard deviations and unrealistically high trigger values.

Alternatives considered: The only alternative considered was no action which was determined to be inappropriate since in most instances the reduce requirements are not necessary and update the requirements where additional safeguard to the environment is warranted.

Environmental Impact: No adverse environmental impacts anticipated. The revisions will provide additional groundwater safeguards by updating the standards applicable to groundwater monitoring techniques.

Subpart 363-5 Siting Requirements

Issue: Current Subpart 360-2 describes the minimum siting criteria for the siting of a landfill. The subpart also describes the actions that must be taken in order to site a landfill in an area that does not meet all siting requirements. Under this scenario, the applicant must complete a site selection study which identifies a range of alternative sites, and describes the process used to select the proposed site. While this process may be useful for a municipality which has multiple available parcels from which to choose, a private applicant usually will find the process unworkable. Beyond this municipal application, the site selection study was found to merely duplicate the discussion of alternate sites that is done under SEQR for each landfill application. As a result, it was determined that the revised regulations should focus on site selection criteria which must be met for all landfills and that the site selection study could be removed without any impact to the environment.

Proposed revision: The proposed regulations provide relief to applicants by removing the requirement for having to provide a site selection study under Part 360 when a discussion of alternative sites is also required under the provisions SEQR during the permitting process while still maintaining minimum siting criteria for landfills.

Discussion: The siting criteria that are included in the proposed revisions are sufficient to ensure that a proposed site is appropriate for disposal of solid wastes and that potential impacts will be adequately addressed. It is unnecessary to require an additional comparison of various proposed sites.

Alternatives considered: Continuation of the site selection study requirements was considered and rejected.

Environmental Impact: No adverse environmental impact anticipated since the SEQR criteria already require alternative site assessment.

Subpart 363-6 Design, Construction and Certification Requirements

Issue: Under current regulations, the quality of the landfill liner is evaluated after construction by measurement of the allowable leakage rate (ALR) into the secondary leachate collection system. ALRs below 20 gallons/acre/day are considered to be acceptable. However, since the development of the current regulations, technologies known as liner integrity testing have been developed which can pinpoint defects in geomembranes immediately after installation. These tests have been used successfully during the construction of many landfill cells in the State over the past decade.

Proposed revision: The proposed revisions require that liner integrity testing be conducted on both geomembrane liners of a double-composite liner system.

Discussion: Most defects in landfill liner geomembranes are caused during construction activities. Liner integrity testing will help pinpoint defects before construction is completed. This will reduce defects overall and will reduce the cost of defect repairs and overall reduce potential adverse impacts.

Alternatives considered: No revision to the current regulations was considered but was rejected since it does not represent the current technology available to find leaks in liner systems and reduce potential groundwater impacts.

Environmental Impact: The requirement for liner integrity testing on both geomembrane liners of a double-composite liner will ensure that all potential

defects are located, thereby minimizing the potential for leakage through the liner and potential impacts to groundwater.

Issue: Current Part 360 construction requirements for a double-composite liner system allow the use of either 6 inches of compacted clay or a geosynthetic clay liner (GCL) in the construction of the primary composite liner system. However, compacting a primary clay layer is often difficult, time consuming and costly, and the clay layer can be less effective than a GCL.

Proposed revision: The proposed revisions will require that the primary composite liner be constructed of a GCL as a standard construction requirement.

Discussion: GCLs are expected to reduce costs and increase performance of landfill liner systems. This change will clarify that GCLs are required in liner construction.

Alternatives considered: GCLs are standard construction media in modern landfill designs. Allowing the continued use of clay was considered and rejected.

Environmental Impact: The requirement for use of a GCL in the primary composite liner will minimize the potential for leakage through the liner and potential impacts to groundwater.

Issue: In order to assure that leaks in the primary composite liner are detected quickly, the secondary leachate collection and removal system must be designed with a high hydraulic conductivity which will transport leachate rapidly to the secondary leachate observation point.

Proposed revision: In order to ensure this rapid detection, the proposed revisions require that the secondary leachate collection and removal system be designed to a minimum capacity of 1000 gallons per acre per day.

Discussion: The requirement for a highly conductive secondary leachate collection and removal system will ensure rapid detection of leaks in the primary liner.

Alternatives considered: The design requirements of the existing regulations were considered and rejected.

Environmental Impact: This provision will result in rapid detection of any leaks in the primary liner thereby reducing potential impacts to groundwater.

Issue: Current regulations require that destructive testing of geomembrane liner seams be conducted at least every 500 feet of seam length.

Proposed revision: To reduce the cost associated with this testing, the proposed revisions reduce destructive testing requirements for geomembrane liner seams from one sample every 500 feet of seam length to one sample every 1000 feet of seam length.

Discussion: Improved installation techniques and equipment have significantly reduced the failure rate observed in these tests. The Department concludes that this change in testing frequency will still be protective of human health and the environment.

Alternatives considered: The testing requirement of the existing regulations were considered and rejected.

Environmental Impact: This change in testing frequency will still be protective of human health and the environment based on the Department's experience with landfill construction.

Issue: A 24-inch barrier protection layer is currently required immediately above the geocomposite liner of a landfill cover system. The Department has issued several variances to this requirement dependent on the type of vegetation chosen to be grown on the cover.

Proposed revision: The proposed revisions reduce the required thickness of the barrier protection layer of the final cover system from 24 inches to either 12 or 18 inches depending on the vegetation selected and its average root length.

Discussion: This reduction in barrier protection layer thickness is expected to reduce the cost of landfill cover construction while maintaining the effectiveness of the final cover system.

Alternatives considered: A standard 18-inch barrier protection layer was considered, but rejected because certain plant species exhibit shorter root length which would allow for layers as thin as 12 inches.

Environmental Impact: No environmental impacts are anticipated since the Department has already allowed this practice through variance approvals and it has worked without impact.

Issue: Under current regulations, external slopes of final cover systems may not be constructed at slopes which exceed 33 percent. This requirement is intended to maintain the stability of the slope and reduce the chance for slope and cover failures. However, as waste degrades these slopes are often reduced to angles significantly below regulatory limits. This recovered airspace can be of significant value. Another current requirement is that final cover systems be installed within 210 days following the last receipt of waste in the landfill cell. Waste degradation and the associated airspace recovery may take much longer than 210 days to come to completion.

Proposed revision: In order to allow landfill operators to take advantage of the recovered airspace and avoid the cost to install and subsequently remove a final cover system to access that airspace, the proposed revisions allow the external slopes of a landfill cell to be constructed initially at a greater than 33 percent slope upon demonstration by the owner or operator of the stability of that slope, as long as slopes are not greater than 33 percent upon final closure of the landfill. In addition, the proposed regulations allow up to 5 years after a landfill cell has reached final grade before construction of the final cover system is required.

Discussion: These changes are expected to greatly increase the opportunity for the owner or operator of a landfill to use the full airspace of a given landfill cell. This added airspace will allow for a longer lifespan of the landfill and increased efficiency of existing landfill airspace, reducing the need for new landfills in the future.

Alternatives considered: Allowance of greater than 33 percent slopes upon final closure was considered, but rejected in order to help ensure that slopes remain stable during post-closure care and custodial care.

Environmental Impact: This provision will not result in any added impact to either air or water quality as the interred waste remains subject to the same operational and liner requirements since the footprint of the landfill will not be expanded. This provision will help to facilitate longer lifespans for landfills and thereby increasing the efficiency of existing landfill airspace, reducing the need for additional landfill space, which will reduce the amount of land used for disposal.

Issue: Long Island landfills are currently regulated differently from standard MSW landfills, in a different subpart of the regulations.

Proposed revision: The proposed revisions incorporate the specific requirements associated with Long Island landfills required by the ECL into the general landfill requirements found in proposed Part 363.

Discussion: These revisions do not change the requirements for Long Island landfills.

Alternatives considered: None.

Environmental Impact: None

Subpart 363-7 Operating Requirements

Issue: Current regulations allow the use of surface impoundments for the management of landfill leachate.

Proposed revision: The proposed revisions require aboveground or on-ground leachate storage tanks to be used at any new landfills or subsequent development at existing landfills. Existing surface impoundments may continue to be used.

Discussion: Though most surface impoundments appear to perform satisfactorily, it is difficult to identify leaks that may develop. Aboveground or on-ground storage tanks allow greater scrutiny of the integrity of the storage vessel.

Alternatives considered: Requiring the replacement of existing surface impoundments with leachate storage tanks was considered and rejected because the facility must demonstrate compliance with impoundment liner performance standards in Part 360. Replacing a surface impoundment before its service life is demonstrated to be over would not result in any environmental benefit.

Environmental Impact: The elimination of surface impoundments for the storage of landfill leachate should reduce the potential for groundwater impacts from leaking storage impoundments.

Issue: Thresholds for alternative daily cover material acceptance need to be established in regulation.

Proposed revision: In order to minimize the misuse of alternative daily cover provisions by landfill operators that accept far greater amounts of waste than envisioned under their permit, the original proposed revisions required that alternative operating cover used in excess of 20 percent of the landfill's annual tonnage be counted toward the facility's annual tonnage established in their permit. Commenters argued that the amount of daily cover used was a facility specific decision, and the establishment of a 20 percent limit would reduce their

ability to utilize alternative operating cover in place of raw material. Based on these comments, the proposed revisions have been adjusted to remove the 20 percent limit and instead to require that the amount of alternative operating cover be identified in application documents and that a separate annual tonnage limit for alternative operating cover be included in the landfill's permit.

Discussion: Cover material is required to be applied to the working face of a landfill cell at the end of each working day in order to minimize odors, vector impacts, fire potential, and blowing litter. Current regulations allow waste materials such as petroleum-contaminated soil, municipal waste combustor ash, automobile shredder residue or C&D debris processing residues to be used as alternative daily cover materials. Although landfill owners or operators often charge tipping fees for acceptance of these materials, they have not been counted against a landfill's daily or annual waste acceptance limit established through permit because they are used in place of raw materials such as virgin sand. While many of the MSW landfills are currently within the previously proposed 20% threshold, there have been some significant anomalies. The proposed revision will provide clear volumes of alternative operating cover that will be used at each landfill and will include limits associated with those volumes on a landfill-specific basis in each landfill permit. This adjustment will provide transparency to the public regarding the volumes of alternative operating cover utilized at landfills.

Alternatives considered: Setting a general limit of 20 percent or greater was considered but were determined to be inappropriate and inconsistent with industry standards and practice.

Environmental Impact: No adverse environmental impact is anticipated because the revision addresses the method used to account for cover used but does not alter the requirement that the cover control dust, etc.

Issue: Landfill leachate collection and removal systems may clog during normal facility operations.

Proposed revision: To ensure that the primary and secondary leachate collection and removal systems remain in a free-flowing condition, the proposed revisions require annual cleaning of the primary leachate collection and removal system, and biennial video inspection of any primary or secondary leachate collection and removal system constructed in accordance with Part 363.

Discussion: These are activities that will properly maintain leachate collection systems and promote proper drainage and overall landfill liner performance.

Alternatives considered: No revision to the regulations was considered but was not chosen because clogging of leachate collection lines has been a problem and could lead to other potential environmental problems. Maintenance of leachate collection systems in a free-flowing condition is critical to long-term environmental protectiveness of the landfill liner.

Environmental Impact: This provision will ensure that leachate collection and removal systems are properly functioning, thereby reducing the potential for groundwater impacts.

Issue: While existing regulations prohibit certain radioactive waste from being disposed of at a landfill, there are no specific operating requirements to monitor incoming loads for radioactivity.

Proposed revision: The proposed revisions require all landfills that accept MSW to install and utilize fixed radiation detectors to monitor all incoming waste loads.

Discussion: Operating requirements associated with the fixed radiation detectors include concentration limits for the acceptance of naturally occurring radioactive material (NORM), daily background radiation readings, weekly field checks utilizing a known radiation source, annual detector calibration and staff training, required investigation alarm set point levels, and documentation requirements.

Alternatives considered: The department considered maintaining the current regulatory language that restricted disposal of regulated radioactive waste. However, given the availability and relatively small expense of radiation detection equipment, it was determined that use of radiation detectors was a prudent requirement.

Environmental Impact: The addition of monitoring equipment for the detection of radioactive waste at landfills will result in a positive environmental impact by ensuring that these wastes are not disposed at these facilities.

Issue: In accordance with the recommendation of *Beyond Waste* to restrict the disposal of source-separated recyclables in solid waste management facilities, disposal of source-separated recyclables should be specifically prohibited in landfills.

Proposed revision: The proposed regulations restrict several source-separated waste streams from being disposed in a landfill. These materials include source-separated recyclables, source-separated household hazardous waste, source-separated electronics, source-separated rechargeable batteries, source-separated mercury-containing products, and other source-separated items that are subject to legislatively enacted product stewardship programs. These materials have been diverted from the MSW stream for reuse, recovery or other proper management and should not be returned to the waste stream for disposal. In addition, the proposed revisions prohibit the disposal of mercury-added consumer products and any other products or materials that are prohibited by law from disposal.

Discussion: Materials which have been diverted from the MSW stream for reuse or recovery should not be returned to the waste stream for disposal in landfills.

Alternatives considered: Prohibition of source-separated recyclables was considered for all solid waste management facilities, but was restricted to particular facilities including landfills.

Environmental Impact: This provision will promote recycling of source-separated recyclables and extend landfill life.

Issue: Under the current solid waste regulations, landfill gas, which contains significant percentages of methane, can be passively emitted from landfills without treatment. Division of Air Resources regulations limit gas emissions from landfills but are not applicable to the smaller MSW landfills in the State. A Commissioner's Policy requires reduction of greenhouse gas emissions, including methane, by integrating climate

change mitigation into all program areas. Currently almost all active municipal solid waste landfills conduct active collection and destruction of landfill gas, and some are able to market carbon offset credits and renewable energy credits associated with that activity.

Proposed revision: The proposed revisions initially required active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills. Commenters argued that setting this requirement would remove their ability to market carbon offset and renewable energy credits while not significantly decreasing the amount of greenhouse gases emitted. Based on these comments, the proposed revisions were adjusted to remove the proposed requirement. In its place, the proposed revisions require that horizontal collection systems be installed in landfill waste mass at regular intervals to increase efficiency of gas removal. In addition, as discussed above a new greenhouse gas reductions plan will be required as part of the landfill's permit application.

Discussion: The generation of odors is inherent in solid waste disposal and landfill management. Current solid waste management facility regulations require odors from landfills to be controlled but do not specify any specific mechanism to accomplish that control. The new requirement for horizontal collection systems will increase the efficiency of gas removal from the landfill, which will likely decrease both greenhouse gas emissions and nuisance odors. Active collection and destruction of landfill gas is no longer considered cutting edge, but instead is standard practice for a modern landfill. This is supported by the fact that 22 of 26 MSW landfills accepting biodegradable waste in New York State currently conduct active collection and destruction of landfill gas. The proposed revisions will allow flexibility in the way landfills reduce their greenhouse gas emissions, in that landfill may choose methods other than or in addition to landfill gas collection and destruction.

Alternatives considered: The Department considered several alternatives to the proposed regulation. As discussed above, requiring active gas collection and destruction at all new landfills or new cells at existing landfills waste considered and rejected based on public comments. Continuing the current requirements of passive gas venting was not pursued, given that the clear majority of active landfills in the state already perform some variety of active gas collection and destruction. Another alternative included requiring active gas collection at all closed cells at active landfills. This requirement would reduce even further the greenhouse gas footprint associated with landfills, but it was rejected given that active gas collection systems function most efficiently if they are included in the design and the construction of the landfill cell, and that most closed landfills release decreasing amounts of landfill gas over their lifetimes.

Environmental Impact: Requiring horizontal gas collection systems and greenhouse gas reduction plans is expected to reduce greenhouse gas emissions.

Subpart 363-9 Closure Activities

Issue: Under the current regulations, landfills are required to conduct post-closure care monitoring and maintenance after landfill closure, including leachate collection and treatment, gas monitoring, and groundwater monitoring for a minimum of 30 years until the landfill is no longer capable of adversely impacting the environment. Some landfill owners have misinterpreted this requirement to mean that the post-closure period ends 30 years from the date of closure.

Proposed revision: The proposed revisions include new language to clarify the responsibilities of landfill owners after landfill closure by introducing the concept of landfill custodial care. Under the proposed revisions, post-closure care activities including leachate collection and treatment; landfill cover inspection, maintenance and repair; and regular landfill gas, groundwater, and surface water monitoring must be conducted until the owner or operator can demonstrate to the Department that the landfill's threat to public health or the environment has been reduced to a level where environmental monitoring and maintenance can be reduced. At that point, custodial care activities including: landfill cap and vegetative cover maintenance; sampling of groundwater, surface water, and leachate at least every five years; maintenance of landfill gas venting system; and periodic inspections must commence and continue while waste remains on-site. In keeping with these requirements, the facility manual for a landfill will include a requirement for a custodial care plan. Throughout both the post-closure and custodial care periods, the owner or operator must maintain financial assurance to ensure that post-closure and custodial care activities will continue.

Discussion: The proposal will ensure that landfills will not become a threat to public health or the environment during post-closure and custodial care.

Alternatives considered: Variations on custodial care operating requirements such as verification sampling frequency and reporting requirements were considered.

Environmental Impact: These provisions will ensure that landfills will not pose a threat to groundwater, air quality, etc. over the post-closure and custodial care period.

PART 364 WASTE TRANSPORTERS

Issue: Part 364 governs the transportation of regulated waste such as industrial-commercial waste and other select waste streams. The regulations have not been comprehensively revised in over 25 years and revision will help clarify what wastes require a permit to transport, will add a new registration requirement for the transportation of certain wastes, and will allow better tracking of some waste streams that have been problematic. Further, *Beyond Waste* recommends an expansion of the Waste Transporter Program to place specific requirements on transporters of construction and demolition (C&D) debris and historic fill.

Proposed revision: The exemptions for small loads will be increased from 500 pounds to 2,000 pounds. For the first time, Part 364 will include requirements for registration in addition to its permitting requirements. The registration criteria will apply to the self-transport of regulated medical waste (RMW) and other infectious wastes in quantities less than 50 pounds per month; the transport of less than 50

pounds of source-separated household hazardous waste; the transport of commercial solid waste in quantities greater than 2,000 pounds; the transport of C&D debris, which includes general, restricted-use, limited-use and contaminated fill material, in quantities greater than 10 cubic yards; and the transport of sharps from a household medical waste collection facility. For commercial solid waste and C&D debris, this will be the first time the transport of these waste streams will be subject to Part 364. The revisions to Part 364 will also include the requirement for waste tracking documentation for RMW, other infectious wastes, non-exempt drilling and production waste, and restricted-use, limited-use and contaminated fill material generated statewide, as well as for all those wastes and C&D debris, including general fill material, generated within New York City. In addition, the RMW generator standards have been removed from this Part and are now incorporated in Part 365 Regulated Medical Waste and Other Infectious Waste.

Discussion: Part 364 needs to be revised to recognize the limited potential impact from small loads of solid waste. The exemption for small loads has been increased from 500 pounds to 2,000 pounds. There is also a need to track certain waste materials that have not previously been permitted or tracked under Part 364. Because a permit and associated fees are too burdensome for these waste streams, registration provisions have been added to Part 364. These registration provisions will govern limited amounts of RMW and other infectious wastes, household hazardous waste, more than 2,000 pounds of commercial solid waste, and more than 10 cubic yards of C&D debris. To help ensure proper management and prevent illegal disposal, Part 364 has also been enhanced to require tracking of RMW and other infectious wastes, C&D debris, and non-exempt drilling and production waste.

Alternatives considered: The types of wastes regulated by the transporter regulations are specified in the ECL. The alternatives evaluated relate to the quantities of regulated waste that should qualify for exemption, registration, or permit. The alternative of retaining the small load exemption at 500 pounds was evaluated but rejected because up to 2,000 pounds can be carried in a pickup truck, which poses limited potential concern. For some waste, such as C&D debris, an evaluation of the appropriate mechanism for regulation led to the development of registration criteria in Part 364.

Environmental Impact: New tracking requirements for certain commercial waste transporters will reduce the potential for illegal disposal of waste.

PART 365 REGULATED MEDICAL WASTE AND OTHER INFECTIOUS WASTES

Subpart 365-1 RMW Generators

Issue: There are approximately 36,000 generators of RMW in New York State that produce 250,000 tons of RMW each year. Generators include healthcare facilities such as nursing homes, hospitals, and clinical laboratories, blood establishments (those that collect, manufacture, store, or process blood and blood products), colleges and universities, veterinarian and dental offices, funeral homes, research laboratories, and

pharmaceutical and biotechnology facilities. In accordance with state laws and regulations, the New York State Department of Health (DOH) and the Department jointly administer New York State's RMW Program. In accordance with Parts 360 and 364, the Department has oversight authority for: all storage, treatment and destruction processes located at facilities not under DOH jurisdiction; all off-site storage, transfer, treatment and disposal facilities; off-site transport of RMW; tracking of RMW; and response to illegal disposal incidents. Most RMW is treated at a facility that is not located at the site of generation. In accordance with both federal and state requirements, untreated RMW must be appropriately packaged and labeled prior to transport. Treated RMW may be disposed at a landfill or combustor authorized to accept the waste. Additionally, under the current regulations in Part 360, the treatment and management criteria apply only to RMW, as defined by statute. There are other waste streams (e.g., bioterrorism waste, etc.) that pose similar concerns due to biological contamination. These regulations need to be updated to reflect changes in federal and state regulations.

Proposed revision and discussion: The proposed revision updates and enhances the existing requirements in the form of a single set of regulations titled "Regulated Medical Waste and Other Infectious Wastes". Under the current regulations in Part 360, the treatment and management criteria apply only to RMW, as defined by statute. There are other waste streams (e.g., bioterrorism waste, etc.) that pose similar concerns due to biological contamination. The term "other infectious wastes" has been developed to clarify that all wastes must be appropriately managed, not just RMW. New definitions and exclusions have been added to identify, classify and enhance an understanding of the waste stream based on the potential risk to human health or the environment as well as new RMW treatment technologies and associated treatment standards. Requirements for on-site storage, use of both primary and secondary containers and management procedures have been updated to ensure that RMW or RMW mixed with or containing hazardous waste; pharmaceutical waste; and radioisotopes resulting from medical procedures are separated and accurately labeled. The revisions underscore the generator's responsibility to document standard operating procedures for management of RMW or other infectious wastes generated and treated on-site or transported for off-site treatment. Descriptive limitations are proposed for waste management activities involving segregation of wastes that require incineration from those that are suitable for treatment and those that can be landfilled. The proposal also rescinds the requirement for submission of an annual report to the Department describing the quantity of RMW produced by each generator.

Alternatives considered: The overarching alternative considered was to limit the regulation to the current definition of RMW. The current definition of RMW is specific to treatment and research and does not address other waste streams with similar biological threats, such as bioterrorism waste. Therefore, the alternative to continue with the limited RMW definition was rejected. Within the proposed regulations there were many alternatives considered regarding storage standards and treatment criteria (such as number of bioindicators used for

treatment verification). The criteria proposed were based on extensive discussions with DOH and other experts in the field.

Environmental Impact: The new provisions will ensure that in the instance of a biohazard incident, all waste that could contain infectious agents will be properly managed and disposed.

Subpart 365-2 RMW Treatment, Storage, and Transfer Facilities

Issue: Since 1995, RMW generators and solid waste management facility installations have relied on regulations, and supplemental guidance documents issued by the Department and DOH to inform affected facilities as to the Department's interpretation of changes brought about by Chapter 438 of the Laws of 1993 which amended both the Public Health Law (PHL) and ECL to revise definitions for RMW, standards for infectious agents and waste treatment, and waste container labeling requirements. The regulations need to be revised to incorporate these amendments.

Proposed revision: The proposed revisions ensure that the Department requirements are consistent with the changes to PHL and ECL, the DOH 2006 amendments to 10 NYCRR Part 70, and consideration of regulatory changes brought about by federal legislation pertaining to high risk waste; medical device recovery, reprocessing and recycling; and waste packaging, labeling and transportation. Small quantity generators of less than 220 pounds per month, radiopharmacies which are currently required to have a Part 360 permit, and on-site treatment facilities of less than 50 pounds per month employing single use container treatment systems will be required to have a registration rather than a permit. Proposed amendments for commercial facility installations include waste pre-acceptance procedures that include waste audits, quality assurance of treatment efficacy and emissions monitoring as necessary. The proposal allows for residence time, temperature or pressure parameters beyond the parameters codified in current regulations, provided the user facility demonstrates to the Department the effectiveness of treatment. The amendment further clarifies that time/temperature indicators must be used in treatment devices at all times and requires the use of operation and treatment logs for each treatment device. The proposal also eliminates the requirement for submission of quarterly reports for permitted facilities requiring only an annual report.

Discussion: Proposed revisions will assist regulated entities who manage RMW by incorporating requirements of law and guidance into the regulations.

Alternatives considered: The proposed revisions update the technical standards that apply to the treatment and management of RMW. These updates are needed for consistency with DOH standards and current practices. No other alternatives were considered.

Environmental Impact: No adverse impacts anticipated. Additional public health protections will be provided by updating standards for the management of regulated medical waste.

Subpart 365-3 Other Infectious Wastes

Issue: Incidents of bioterrorism in NYC and other locations in the fall of 2001 involving preparations of *Bacillus anthracis* mailed to public and private institutions, as well as an accidental release of the agent in 2006 required extensive building decontamination at significant costs. Decisions had to be made about which sites required cleanup, what method to use, how to determine the effectiveness of the cleanup and how to handle, store, treat and dispose of tons of decontamination debris. In addition, the concerns associated with foreign animal disease outbreaks such as Foot and Mouth Disease that may involve numerous animal mortalities, contaminated food supply incidents and the 2014 Ebola incident in New York City have made it clear that available knowledge and current regulations would make it difficult to process contaminated materials within a reasonable period, address the social aspect of decontamination, and satisfy stakeholder and waste disposal concerns. Current Parts 360 and 364 requirements do not address these waste streams effectively.

Proposed revision: The amendment sets stringent but broad requirements for handling and treating infectious waste and provides flexible standards on a case-by-case basis to streamline the waste storage, treatment, transport and disposal process.

Discussion: The proposed regulations address waste generated from emerging pathogens or to protect public health and the environment from events involving the potential release of pathogens associated with natural disasters, foreign animal diseases, pandemics or bioterrorism.

Alternatives considered: The Department determined that the alternative of continuing to handle incidents on a case-by-case basis was not prudent. During an incident, having criteria in place concerning the proper handling and management of the waste, is critical to environmental protection and returning the incident location to its previous state and safe conditions as rapidly as possible.

Environmental Impact: The addition of requirements for the management of other infectious wastes will ensure that any waste containing infectious agents will be properly managed and disposed. Improper management of infectious waste can lead to human health concerns due to disease transmission.

PART 366 LOCAL SOLID WASTE MANAGEMENT PLANNING (LSWMP)

Issue: LSWMP requirements are currently found in Subpart 15 of Part 360, and were promulgated in accordance with sections 27-0107 and 27-0109 of the ECL. Much of current Subpart 360-15, the first eight of twelve sections, addresses the former planning grant program which has long been concluded and is out-of-date. The plan contents section is also dated and currently incorporates by reference the current CRA requirements of 360-1.9(f). The cross-reference has led to confusion over the years as to the requirements for formatting. The Department's direction planning units has been to incorporate the components of the CRA in the base LSWMP as opposed to a stand-alone document. Additionally, public involvement in the local planning process has been implemented inconsistently across the planning units due to the limited discussion in the current regulations.

Proposed revision: Part 366 will replace and revise the requirements for preparing and implementing Local Solid Waste Management Plans (LSWMPs). ECL 27-0109 outlines the process for administering the program for state assistance to planning units for the development of LSWMPs. In 1988, through the Solid Waste Management Act, the legislature appropriated \$7.5 million for a grant program to assist local governments in developing solid waste management plans. These LSWMPs were expected to foster the implementation of the state solid waste management hierarchy and ensure environmentally sound and integrated programs that include robust waste reduction, reuse and recycling components. The department received 50 applications requesting a total of \$14.9 million, and was able to fund 36 projects before funds were exhausted in November 1992. Because no additional funds were ever appropriated, \$7.4 million in eligible applications were never funded. With this grant program inactive for 20 years, the state assistance portion of the existing planning regulations is no longer necessary and has been eliminated from Part 366.

ECL 27-0107 lays out the general requirements for LSWMPs, and directed the department to promulgate rules and regulations for implementation of section 27-0107. In developing Part 366, the department has made a concerted effort using the experience gained over the last 25 years in implementing the LSWMP program to update and streamline the requirements found in the current 360-15 to provide a more comprehensive, unified and logical, yet simplified format for LSWMP development and implementation. An example of this is the direct incorporation of the CRA requirements into all aspects and sections of the LSWMP allowing for easier preparation, understanding and implementation while continuing to satisfy all basic elements contained in the CRA. Part 366 will also replace the current requirements regarding updates, modifications and biennial compliance reports with an annual planning unit report, accompanied every other year with a biennial update. These updates will allow for evaluation and adjustment of the LSWMP, taking into account changes that will occur on a routine basis following initial approval and also allow for an optional two-year planning period extension as part of the biennial update. Part 366 also clarifies the process in which the public is to be involved in the preparation of an LSWMP to ensure consistent application across the state.

Discussion: The streamlining and reorganization of the LSWMP development and approval process is intended to make the preparation and implementation of LSWMPs less complicated for municipalities, yet at the same time assist them in reducing the amount of waste they are managing through thermal treatment or disposal. These changes are expected to make it easier for municipalities to understand the LSWMP requirements and develop and implement compliant plans.

Alternatives considered: Leaving the current regulations in place with only the requisite reference adjustments was considered but rejected due to the outdated nature of the current regulations and the confusing reporting requirements. The possibility of completely eliminating the CRA as a stand-alone document from the

regulations was considered, thus requiring all municipalities to develop LSWMPs; however, it was decided to leave a separate CRA portion in Section 360.11 for those municipalities who choose not to develop an LSWMP or are unable to act as a planning unit.

Environmental Impact: No adverse environmental impacts are expected. Planning for solid waste management on the local level helps to provide positive environmental outcomes and the revisions facilitate proper planning.

PART 369 STATE ASSISTANCE PROJECTS

Issue: Current Part 369 sets forth the application, review, and contracting procedures for the state assistance grant programs for municipal waste reduction and recycling; current section 373-4.6 sets forth the application, review, and contracting procedures for the state assistance grant programs for municipal household hazardous waste collection and disposal; and current Subpart 360-9 sets forth the application, review, and contracting procedures for the state assistance grant programs for municipal landfill closure, with a program policy containing the guidance for the municipal landfill gas management program. The regulations and guidance documents for these programs are currently in disjointed locations with many application and contracting provisions out-of-date, making them difficult for municipalities to easily locate, understand and use.

Proposed revision: Proposed Part 369 combines regulations for all solid waste management-related state assistance programs in one location. This new subpart both updates and sets forth the application, review, and contracting procedures for each of the state assistance grant programs for municipal waste reduction and recycling, municipal household hazardous waste collection and disposal, municipal landfill closure, municipal landfill gas management, beverage container assistance, and new, innovative and/or targeted priority area municipal waste reduction and recycling projects pursuant to the requirements set forth in the ECL.

Beyond Waste recommended establishing separate tracks and waiting lists for EPF funding for recycling coordinators, educational activities, reuse programs, and other high-priority projects. The proposed revisions include establishment of separate funding categories for capital waste reduction, recycling and household hazardous waste projects, waste reduction and recycling education and coordination projects, household hazardous waste collection and disposal. The capital funding category will continue to be managed through a waiting list program based on the order an application is received. An annual application process for education/coordination and household hazardous waste collection and disposal programs will be established to better assist municipalities to receive reimbursement for these recurring costs more quickly and on a routine basis and schedule.

As recommended in Beyond Waste, the revisions also set forth a targeted priority area assistance program, such as organics projects or inter-municipal projects, which will allow the Department to help advance certain waste reduction and recycling activities and projects in the state. The proposed revisions will limit the awarding of state assistance grants to municipalities covered by an approved

LSWMP or CRA to ensure consistency with the waste reduction and recycling plans, requirements and initiatives. The provisions for the landfill closure grant program have been revised to allow funding only for landfills that stopped receiving waste prior to April 9, 1997. Any landfill operating after this date has been required to have a completely funded surety mechanism in place to pay for closure and post-closure care.

Provisions for landfill gas management projects were developed in regulation for the first time in a manner consistent with the currently administered program.

Discussion: The regulations and guidance documents for these programs are currently in disjointed locations with many application and contracting provisions out-of-date making them difficult for municipalities to easily locate, understand and use. Relocating all of the solid waste management-related state assistance in a separate subpart will make their accessibility and use much easier.

Additionally, over the years of implementation of these programs, a number of changes have occurred with the basic administration of state assistance programs and contracts in the State that need to be reflected in the regulations. The need for funding of these programs by municipalities has continued to grow over the past 20 years as well and the available annual resources have decreased necessitating revision in the administration of the various programs in order to maximize available resources to the largest number of municipalities and priority project areas on an annual basis. Additionally, a change to the landfill closure program was needed to recognize the adjustment in landfill management regulation in 1993 requiring landfills that stopped receiving waste prior to April 9, 1997 have established financial assurance mechanisms in place to address all closure and post-closure costs.

Alternatives considered: The Department considered leaving the capital projects and the education and coordination projects grouped together in one application waiting list pool but rejected that alternative in favor of dividing those programs to address municipalities' requests to develop a structure that could more routinely and readily fund routine recurring municipal costs such as education, coordination and household hazardous waste collection. The Department considered the elimination of funding for landfill gas projects for any landfill operating after April 9, 1997 under the assumption that any landfill operating beyond that date already had an active gas collection system, or had the means through tip fees received to install such a system if needed. That alternative was rejected to ensure that all municipalities that still operate landfills had the opportunity to apply for assistance to install landfill gas management systems on their landfill regardless of their funding and planning circumstances.

Environmental Impact: No adverse environmental impacts are anticipated. The regulations govern grant funding for projects that improve the environment through increased recycling and proper landfill closure.

III. OTHER IMPACTS ASSOCIATED WITH THE ACTION

A. Environmental Impacts

Pursuant to §27-0703(3) of Environmental Conservation Law, the Draft Generic Impact Statement must state the extent by which the regulations will prevent or reduce the following environmental impacts:

1. Water Pollution

The operating requirements of Section 360.19 of Part 360, which applies to all solid waste management facilities, requires that owners and operators of facilities prevent waste from being deposited in or entering surface waters or groundwater. Additionally, owners and operators of facilities must operate facilities in a manner that minimizes the generation of leachate and that does not allow any leachate to enter surface or groundwaters except under authority of a State Pollutant Discharge Elimination System permit.

2. Air Pollution

For solid waste landfills, the proposed regulations have been revised to remove the active gas requirement and instead require the installation of horizontal gas collection pathways at regular intervals in the waste mass. In addition, as part of their permit applications, landfills will be required to submit greenhouse gas reduction plans. These plans will not be restricted to gas collection and destruction but instead will provide wider options for reduction of greenhouse gas emissions from the landfills.

3. Noise Pollution

A noise assessment which evaluates a solid waste management facility in comparison to noise requirements in Section 360.19 of Part 360 have been added to the revised draft regulations, if the assessment indicates levels which exceed regulatory limits, the facility must develop a plan to mitigate impacts to surrounding residential properties.

4. Obnoxious Odors

The owner or operator of a facility must ensure that odors are effectively controlled so that they do not constitute a nuisance as determined by the department.

5. Unsightly Conditions caused by the uncontrolled release of litter

The operating requirements of section 360.19 of Part 360 address the uncontrolled release of litter at solid waste management facilities. The owner

or operator of a facility must ensure that waste at the facility is confined to an area that can be effectively maintained, operated, and controlled; and that blowing litter is confined to waste holding and operating areas by fencing or other suitable means. Any litter outside the waste holding area must be controlled. Prior to leaving the facility, any vehicle containing waste must be covered with, at a minimum, a mesh or fabric cover acceptable to the department.

6. Infestation of flies and vermin

The operating requirements of Section 360.19 of Part 360 addresses vector control. The provisions of this Section state that the owner or operator of a facility must effectively control on-site populations of vectors.

The proposed revisions eliminate the current allowance for storage of vast quantities of waste tires unassociated with the production of a marketable product under Subpart 361-6. Elimination of these waste tire landfills will resolve many operational issues associated with these facilities, including infestations of mosquitoes and fire hazards.

Another issue that many commenters raised concern with was the pre-determined beneficial use of waste tires in agricultural practices. Many farmers, particularly dairy farmers, commented that no limit should be set on the number of tires that can be utilized per bunker on a farm, and that setting the limit on the number of tires to 1000 per bunker would result in negative consequences on agricultural operations. The rules have been revised to require that the number of passenger tire equivalents used to secure tarps does not exceed .25 passenger tire equivalents per square foot of cover of bunker area, and whole tires are cut in half or have sufficient number of holes drilled in them to prevent retention of water, and from becoming a breeding area for mosquitoes.

7. Other conditions inimical to the public health, safety, and welfare

The proposed revisions require that a sustainability plan be included as part of all landfill applications. The plan will require a description of all operations at the landfill that will minimize impacts on the environment and that conserve and sustain natural resources.

There was large public objection to the receipt of drill cuttings or other drilling and production waste from natural gas well development in landfills, with concern about the potential radioactivity of such wastes. Many commenters also continued to object to the disposal of liquid wastes from oil and gas production wells even though landfills are not currently allowed to accept bulk liquids for disposal. To strengthen and clarify the Department's position on

this topic, a provision was added in the operating requirements for landfills that would prohibit landfill disposal of fluids produced from an oil or gas production well, including flowback water and production brine.

Numerous changes to proposed Part 364, Waste Transporters were made as a result of public comment. In response to public comment, substantial revisions were made requiring enhanced waste tracking documents for fill material leaving New York City, creating an exemption for institutional waste and medical devices intended to be reprocessed or remanufactured, enhancing the exemption for waste transporter by public utilities to include waste incidentally transported by such entities and clarifying changes to avoid overlap in part 360. Commenters also requested that registered transporters be subject to the vehicle identification requirements that apply to permitted transporters and that waste generators have no authority over choosing an alternative receiving location. These revisions have been made in Part 364. Additionally, commenters questioned why the exception for on-site transport was limited to generators and why transporters would be required to obtain a registration and a separate permit. This limitation was eliminated for the on-site transport exception and the language in Part 365 has been revised to allow registrations to become riders to permits.

B. Coastal Consistency

1. Development Policies

Five development policies are listed in 19 NYCRR 600, Section 600.5, pertaining to restoration and revitalization of existing waterfront facilities, siting of water-dependent uses and facilities, development and strengthening of both major and small ports, and locating development near adequate services.

The proposal would continue to allow most solid waste management facilities upon coastal floodplains, if adequate environmental protection measures have been taken. Thus, there is no change to existing regulations or policies regarding location of solid waste facilities in coastal floodplains. This could allow development of port facilities. This does not represent a change from the existing regulations, and the proposed regulatory change will have no major impact.

2. Fish and Wildlife Policies

Four fish and wildlife policies are discussed in 19 NYCRR Part 600 that address protection of habitat, expansion of recreational use and development of commercial fisheries.

The proposal would increase the level of protection of habitat at nearly all regulated solid waste management facilities. For those which are located at coastal

areas, the ultimate impact of the proposal will be to provide additional protection of the fish and wildlife resources. The overall impact, therefore, is one of enhanced environmental protection and consistency with the Fish and Wildlife coastal policies.

3. Agricultural Lands Policy

The intent of this policy is to help protect important agricultural lands in coastal areas. This rulemaking leaves unchanged any restrictions to development on agricultural lands. Therefore, there is no inconsistency with the agricultural lands policy.

4. Scenic Quality Policies

Two policies address preventing degradation to, or enhancing, the scenic quality of coastal areas. This proposal neither encourages nor discourages the development of solid waste management facilities in scenic coastal areas and does not change any existing law or regulations that would serve to protect the scenic quality of coastal areas. With the intense public scrutiny solid waste management facilities receive, development in a scenic area is highly unlikely without urgent, overriding public need. Therefore, there is no inconsistency with the scenic quality coastal policies.

5. Public Access Policies

Two policies are listed to enhance or increase access to water-related recreation resources or facilities. The discussion in 4, Scenic Quality Policies, above, also applies to public access policies. The proposed changes would not change the existing law or regulations with regard to public access to water related resources or facilities.

6. Recreation Policies

Three policies address encouraging water-related recreation providing for multiple use in other coastal developments, and enhancing cultural facilities. The discussion in 4, Scenic Quality Policies, above, also applies to recreation policies. The proposal is consistent with the recreation policies.

7. Flooding and Erosion Hazard Policies

Six specific policies address flood and erosion control.

The proposal contains no change to the provisions for construction of solid waste management facilities upon floodplains and wetlands with the exception of a siting prohibition for landfills. Therefore, the proposed regulations are consistent with the flooding and erosion hazard policies.

8. Water Resources Policies

Five policies are presented to protect water quality through alternate discharge of chemical or sanitary wastes.

Since the proposal has a goal of reducing the discharge of all pollutants from solid waste management facilities through proper management of solid waste, this is consistent with these policies. The overall impact therefore will be positive.

C. Unavoidable Adverse Environmental Effects

The proposal should not result in unavoidable adverse environmental effects since its goal is environmentally sound management of solid waste.

D. Mitigation Measures

Since no direct adverse environmental impacts have been identified, no mitigation measures are given.

E. Growth Inducement

The Department has not identified any potential for growth inducement because of this action. It is possible that the increase in organics recycling could lead to more facilities and employment.

F. Irreversible and Irrecoverable Commitment of Resources

There are no known irreversible and irretrievable commitment of resources

G. Use and Conservation of Energy

The regulations would have a positive impact on the use and conservation of energy since they promote the increased use of anaerobic digesters, which generate methane for conversion to energy (which may otherwise remain in the land fill or be vented as greenhouse gases). The energy generated can be used to run other operations at the facility (such as running the pumps at a wastewater treatment plant) or sold back to the electrical company. The energy produced can be used to offset energy use from out-of-state facilities.

IV. SUMMARY OF PUBLIC COMMENTS AND DEC RESPONSES

Public comments on the DGEIS and the draft regulations were solicited in both the summer of 2016 and 2017. The response to comments for both public comment periods are provided in separate documents, are incorporated into this FGEIS by reference and are available upon request.