

# **REVISED REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

This rulemaking modifies the Department of Environmental Conservation's (Department) existing regulations governing a broad array of solid waste management activities including the transportation of waste, local solid waste management planning, and funding of costs associated with solid waste management, as well as the design and operation of solid waste management facilities.

## **1. EFFECT OF RULE**

The rulemaking is not expected to negatively affect small business and local governments. The rulemaking primarily updates existing regulatory criteria applicable to solid waste management facilities. If a local government or small business owns and operates a solid waste management facility, the costs associated with revisions to criteria for that facility apply.

## **2. COMPLIANCE REQUIREMENTS**

The rulemaking will impose additional paperwork requirements for the regulated community in some specific cases. Those impacted include waste transporters of C&D debris, fill material, non-exempt drilling and production waste, and commercial waste. These facilities will be required to register under Part 364 and comply with reporting requirements. In addition, some facilities will have an annual reporting requirement that is not required by the existing program. This includes facilities whose waste activities are covered under a beneficial use determination, waste transporters, and registered facilities. In addition, facilities who submit a registration application to the Department will also have to submit a site plan, which is not required under the existing rules. The regulations include criteria to reduce the burden of paperwork in some cases by reducing the quantity of information that must be submitted with permit applications and annual reports. Also, the regulations allow electronic submissions whenever possible to ease the transfer of data and information.

This rulemaking will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district, fire district or small business. This rulemaking does not directly mandate the expenditure of funds by any sector of local government.

## **3. PROFESSIONAL SERVICES**

The need for additional professional services for small businesses and local governments is not anticipated. If a local government or small business is currently operating a solid waste management facility, they may already employ professional services to facilitate the operation of that facility and compliance with the regulatory requirements. The regulations are not expected to increase the level of professional services needed by those entities.

## **4. COMPLIANCE COSTS**

The rulemaking does not impose additional paperwork requirements for most small businesses and

local governments who operate solid waste management facilities or waste transportation businesses except for commercial waste transportation in quantities greater than 2000 pounds, and construction and demolition debris in quantities greater than 10 cubic yards. These transporters will be required to register and comply with certain reporting requirements under Part 364. However, the regulations include criteria to reduce the burden of paperwork by reducing the quantity of information that must be submitted with permit applications and with annual reports. Also, the regulations allow electronic submissions whenever possible to ease the transfer of data and information. The Department intends to develop new forms to simplify and standardize electronic reporting to ease the paperwork requirements imposed by the regulations. Therefore, there will be no increase in cost for reporting.

These regulations will not impose any direct costs on small businesses or local governments. However, local governments and small businesses may own and operate solid waste management facilities or operate a waste transportation businesses. If a small business or local government owns and operates a solid waste management facility or waste transportation business, the costs associated with compliance with the rulemaking, including cost savings, are described below, organized by Part. As outlined below, in some cases the regulations will reduce cost associated with compliance. In others, the cost may increase.

#### Part 360 General Requirements:

- Clarification of criteria for beneficial use determinations, combined with the increased number of predetermined beneficial use determinations in the regulations, will help small businesses and local governments determine if their waste could be used in a beneficial manner, which could lead to cost savings through the reuse or sale of additional reused material.
- Specifying criteria for the use of dredged materials will help to facilitate the reuse of appropriate materials and reduce the significant cost associated with disposal.

#### Part 361 Material Recovery Facilities:

- An exemption for small scale food scrap composting will reduce the cost of management. An increasing the size threshold of a facility requiring registration related to food scraps will have a similar positive effect.
- New standards for the production of mulch may result in increased cost to a municipality or private firm due to the need for additional land for the quantity of material managed since pile size restrictions are included in the criteria. However, these criteria are not expected to affect most municipalities that have piles of mulch because they do not handle a significant amount of material.
- The registration criteria for used cooking oil and yellow grease will result in decreased costs to a small facility owner since they will not incur the cost of obtaining a permit.

#### Part 362 Combustion, Thermal Treatment, Transfer and Collection Facilities:

- Permitted transfer facilities from which waste is transported out-of-state and municipal solid waste processing facilities must install and operate a fixed radiation detection unit at a location

appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from \$7,000 - \$20,000 per unit depending on the level of capabilities that is desired. The cost of maintenance, including calibration is expected to be \$2,000 - \$3,000 annually.

- The registration for the combustion of limited amounts of waste tires, unadulterated wood, used cooking oil and yellow grease under prescribed conditions will result in decreased costs for a small facility owner since they will not incur the cost of obtaining a permit.

#### Part 363 Landfills:

- Elimination of the requirement to submit a site selection report for new landfill construction will result in cost savings of tens of thousands of dollars to landfill owners in preparation of this report.
- The requirement for adding electrical resistivity testing on the upper and lower liner system as part of a Construction Quality Assurance (CQA) Plan will add cost to the construction of new landfill cells. Costs associated with the requirement are expected to be between \$2,000 - \$3,000 per acre of geomembrane tested.
- The regulations require all landfills that receive municipal solid waste to install and operate a fixed radiation detection unit at a location appropriate for the monitoring of all incoming waste. The cost of purchasing this equipment ranges from \$7,000 - \$20,000 per unit depending on the level of capabilities that are desired. The cost of maintenance, including calibration is expected to be between \$2,000 - \$3,000 annually.
- The regulations require that landfills design and install an active gas collection system as part of the permit application and landfill construction. This will allow landfills to take advantage of available gas collection credit programs.

#### Part 364 Waste Transporters:

- There may be an increased cost for transporters that will be required to register and comply with recordkeeping and reporting requirements. There are no fees associated with registration, only minor costs associated with the completion of tracking forms and the completion and submission of an annual report similar to registered facilities.
- There will be a decrease in the cost of compliance for small transporters of regulated solid waste. The amount of material that can be transported without a permit will be increased from 500 to 2,000 pounds. Those transporters that range between 500 and 2,000 pounds will save the cost of permitting under the waste transporter program while improving the economic efficiency of their business with the higher weight threshold.

#### Part 365 Regulated Medical Waste and Other Infectious Wastes:

- Most generators choosing to treat RMW or other infectious wastes on-site will incur no additional costs since many, especially those based in healthcare, academic or research institutions already have autoclaves in place for processing their waste. Facilities that choose to treat waste on-site (that currently do not) may incur an initial cost increase to purchase treatment devices, but over the long term, will experience considerable cost savings over transportation and off-site processing costs.
- The regulations add provisions for other infectious wastes. Although these represent new costs for compliance, the Department has been working for a number of years with entities that generate these wastes to obtain voluntary compliance with these standards.

Part 366 Local Solid Waste Management Planning:

- A reduction in staff time and costs related to the development and reporting requirements to a local government is expected as a result of the changes in the regulations. Small businesses are not subject to the provisions of this Part.

Part 369 State Assistance Projects:

- Small businesses are not subject to the provisions of Part 369. There will be no significant change in cost to a local government located in a rural area when compared to the existing regulations.

**5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY**

The rulemaking has been in development for many years and has been subject to significant public review and comment. The Department has focused on revising the regulations in a manner that is technically sound and economical. The regulations that apply to facilities that are currently subject to regulation are not expected to significantly alter the operation or costs associated with those operations. However, changes in law and technology required the addition of new facility requirements in the regulations, such as vehicle dismantling facilities and facility types that are not currently addressed in the regulations. Addition of these facility requirements should not result in increased costs to these facilities. In some cases, the regulations include reduced regulatory oversight, through expanded exemptions, predetermined beneficial use determinations, and registration provisions, which will reduce the costs associated with some solid waste facilities and activities.

**6. MINIMIZING ADVERSE IMPACTS**

The rulemaking is not expected to have adverse impacts on local governments or small businesses in New York State. The updated regulatory criteria for solid waste facilities, such as landfills, are not expected to significantly change the cost of the operation of those facilities. Therefore, residents and businesses will not see an increase in the cost of solid waste management due to the rulemaking.

**7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION**

The rulemaking has been in development for many years. During that time period, the Department has published draft regulations, accepted and evaluated public comments, given public presentations on draft criteria in numerous venues, and met with potentially affected parties. Those solid waste facilities and other affected parties have been solicited for input on the proposed revisions. Both the regulated community and public were afforded two opportunities to review and comment on draft regulations, which resulted in significant helpful input on the regulations. The regulations have undergone significant changes based on the input received from the comments and additional stakeholder and outreach efforts undertaken with this rulemaking.

## **8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION**

Pursuant to SAPA 202-b (1-a)(a) and (b), the rulemaking includes transition provisions that provide adequate time for regulated parties to come into compliance with any new provisions. Otherwise there is no such cure period included in the rule because of the potential for adverse impacts on human health and the environment. Cure periods for the illegal management or disposal of solid waste are neither desirable nor recommended as compliance is required to ensure the general welfare of the public and the environment is protected.

## **9. INITIAL REVIEW OF RULE**

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.