

## **SUMMARY OF REVISED REGULATORY IMPACT STATEMENT**

This rulemaking is a comprehensive revision to the Department's existing solid waste management regulations, found in 6 NYCRR Part 360. The existing regulations impact every aspect of the waste process, from initial collection to reuse, recycling, processing, storage, treatment and ultimately, disposal. The overarching purpose of this rulemaking is to reorganize and subdivide the solid waste management facility regulations into groups that are similar in nature, such as facilities that recycle and recover materials. As a result of this reorganization, the current Part 360 criteria will be found in Parts 360, 361, 362, 363, 365, and 366. This rulemaking also includes revisions to regulations governing waste transportation (Part 364) and state funding of municipal waste reduction and recycling projects (Part 369). In addition to reorganizing existing regulations, the rulemaking includes many enhancements to the existing rules which reflect the Department's collective experience in regulating solid waste management since the last major rewrite of the rules.

This rulemaking also incorporates minor amendments to Parts 621, 361, 362, 363, 370, 371, 372, 373 and 374. These changes include the repeal of Parts that are no longer supported by funding (existing Parts 362 and 363), removal of rules for used oil from existing Subpart 360-14 so that used oil is addressed in Subpart 374-2, and the relocation of rules that address household hazardous waste and hazardous waste from small quantity generators into the new Subpart 362-4.

The Department's statutory authority to promulgate amendments to Part 360 and adopt new regulations is found 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.

### **NEEDS AND BENEFITS**

The last comprehensive revisions to the regulations governing solid waste management in New York State occurred 20 years ago in 1993. Many changes in law and technology have occurred in that time period that dictate the need for an overhaul of the regulations. In the last two decades the Department has gained expertise on the proper technical criteria for these facilities and this knowledge needs to be reflected in the regulations. Many new or expanded waste management facilities, particularly recycling facilities and landfills, have been constructed since the last comprehensive revision in 1993. Experience in regulating those facilities has demonstrated that many areas of the regulations would benefit from revision, clarification, or modification to allow for new, technically appropriate alternatives to the design and operation criteria for solid waste management facilities found in the existing regulations, and to streamline the regulatory process.

Although landfills may be the first solid waste facility that comes to mind when discussing solid waste management, there are many other facilities that also manage solid waste, from combustors to transfer facilities and commercial medical waste autoclaves. Some of these facility types 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. Each type of facility has its own

environmental characteristics and concerns that need to be reflected in the rules.

Reorganization of the entire set of rules provides distinct benefits to the regulated community and the Department. All definitions applicable for Parts 360-366 and 369 are located in Part 360, eliminating questions over how terms may be defined in different Parts, Subparts and Sections. By breaking Part 360 apart and creating distinct Parts and Subparts for similar facilities, and following a consistent format in each Part, the regulated community and the Department now has a more user-friendly set of rules.

The regulations include several enhancements to the existing rules, such as increased tracking requirements for construction and demolition (C&D) debris transport, a limitation on the amount of C&D debris that may be disposed without a permit, a more refined system for beneficial use determinations and a reorganized set of rules for regulated medical waste.

For landfills and other solid waste management facilities, updating the regulatory criteria does not mean more stringent criteria in all cases. If Department research and experience has found that a current regulatory requirement is too stringent or does not provide an environmental benefit, the rulemaking provides relief from that requirement. In that regard, the regulations benefit the regulated community and the general public by reflecting conditions that exist today. In all cases, the goal of the regulations is to ensure the citizens of New York State are protected by the most up to date and appropriate solid waste management regulations.

In December of 2010, the Department adopted a new State Solid Waste Management Plan, entitled *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 rulemaking addresses the issues outlined in the State Solid Waste Management Plan and includes measures to further the environmental objectives set out in that Plan.

## **COSTS**

For a number of facilities, such as mulch processing facilities and landfills, the regulations will result in some additional costs for regulated parties, including local governments. For those rules which are being re-promulgated as a result of reorganization, no significant change from the current regulatory program costs is anticipated.

### Cost to the Regulated Community:

The majority of the criteria in the rulemaking are derived from the current regulatory program in Part 360. For the majority of involved industries, the costs associated with complying will be similar or less than the costs currently incurred. However, the rulemaking includes many enhancements to the existing program, which will increase costs for some facilities. Increased costs on the regulatory community will result from requirements to:

- Install radiation detectors at MSW landfills, MSW combustion facilities, and composting and organics processing facilities (\$7,000 to \$20,000 per unit depending on model specifications, plus \$2,000-\$3,000 for maintenance);
- Obtain permits in case where rules lower permitting thresholds for existing registered facilities (recyclable handling facilities which process more than 250 tons, C&D facilities which process >500 tons per day), (\$20,000 to \$50,000 depending on complexity of proposal);
- test fill material (\$900 to \$1300 per sample);
- obtain a registration where rules lowered thresholds for currently exempt or permitted facilities (\$3,000 to \$5,000 in administrative costs);
- conduct landfill liner integrity testing (\$2,000 to \$3,000 per acre);
- install geosynthetic clay liner in the landfill's primary composite liner (\$0.54 per foot);
- improve hydraulic capacity of secondary leachate collection system (\$1.00 to \$1.25 per square foot).

#### Costs to the Department and the State:

The cost to the State lies within the Department, for implementation and administration of the regulatory program. Since this is an existing regulatory program, it is not expected to be a significant increased cost to the Department.

#### Costs to Local Governments:

These regulations will not impose any direct costs on local governments in general. However, local governments who own and operate solid waste management facilities, such as landfills, may incur additional or reduced costs associated with the regulations as described above. With respect to solid waste management planning, no additional costs are anticipated and the regulations are expected to result in a reduction of municipal expenses and staff time necessary in the preparation of Local Solid Waste Management Plans (LSWMPs) and LSWMP updates.

### **LOCAL GOVERNMENT MANDATES**

The regulations do not directly mandate the expenditure of funds by any sector of local government. 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, as discussed above. The rulemaking is not expected to negatively affect local governments.

### **PAPERWORK**

The rulemaking will impose additional paperwork requirements for the regulated community in some 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 would 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. The Department intends to develop new forms to simplify and standardize electronic reporting requirements to ease the paperwork requirements imposed by the regulations.

## **DUPLICATION**

The regulations are not intended to duplicate any other federal or State regulations or statutes. There are federal and state regulated medical waste labeling and packaging requirements promulgated by the federal Department of Transportation and the NYS Department of Health. However, the rules are consistent with those requirements and are intended to complement those programs for facilities covered under Part 365. There is no federal regulatory program covering most of the facilities governed by Parts 360-366 or 369.

## **ALTERNATIVE APPROACHES**

The Department examined the “no-action” alternative, which would be to continue the existing set of rules for solid waste management. This program consists of existing Parts 360, 364 and 369, Division guidance memoranda, program policies, and interpretation of Division memoranda on solid waste management issues and topics. Continuing this approach would provide the Department with a wide degree of administrative discretion and allow for rapid changes in management to account for recent advances in solid waste management. However, this approach may result in inconsistent application of the program across the State due to variations in the interpretation of Part 360 where other department guidance is not available. Additionally, the rulemaking is one of the key recommendations of the State Solid Waste Management Plan. For these reasons, the no-action alternative was rejected.

The rulemaking has been the subject of both extensive internal review and public review and discussion for several years. The result of this process is the subject rulemaking that the Department considers protective of environmental resources in a manner that limits the cost to the regulated community. In many cases, the cost to adhere to the regulatory criteria has been reduced without any reduction in environmental protection.

## **FEDERAL STANDARDS**

As stated above, there are no federal regulations for most of the facilities contained in the rulemaking. The regulations for landfills and biosolids recycling exceed the federal regulatory framework found in 40 CFR Part 258 and 503, respectively.

## **COMPLIANCE SCHEDULE**

For new facilities, compliance will be required upon adoption of the final rule. For existing facilities, transition provisions are specified in Section 360.4.

## **INITIAL REVIEW OF RULE**

The Department will conduct an initial review of the rule within 3 years as required by SAPA §207.