



Analysis of Proposed Revisions to the 360 Regulations
Closing Loops City Program
Urban Resource Recovery (URR) Working Group in Town+Gown: NYC
New York City's Department of Design and Construction
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I. Introduction

In 2021, a team of Brooklyn Law School (BLS) students prepared a memorandum for the Town+Gown:NYC Urban Resource Recovery Working Group (2021 BLS Memo) analyzing the New York State Department of Environmental Conservation (NYS DEC) Part 360 regulations in order to understand how they would support the Working Group's Closing Loops City Program Initiative (CLCPI).¹ The CLCPI is a pilot initiative, aimed at promoting the reuse of construction and demolition debris produced by New York City (City) capital projects on other city capital projects.² By recovering construction wastes and promoting reuse, the CLCPI expects to decrease the City's carbon footprint, reduce its greenhouse gas emissions, and produce budget savings.³

Today's Part 360 regulations are the product of more than 50 years of New York State environmental legislation, beginning with the 1970 Environmental Conservation Law (ECL). It was the ECL that established the NYS DEC, the agency tasked with carrying out the ECL's mandate to protect and conserve the State's natural resources. In 1977, NYS DEC's first regulations of New York State landfills were enacted.⁴ Since then, the State has continued to revise the way it regulates solid waste, first with The Solid Waste Management Act of 1988, and then in 1993 with the Part 360 revisions, last revised in the 2017 overhaul of the Part 360

¹ *Memorandum: Analysis of 360 Regulations* (2021), New York City Department of Design and Construction, <https://www1.nyc.gov/assets/ddc/downloads/town-and-gown/AnalysisofPart360RegulationsBrooklynLawSchool.pdf>

² *Id.* at 5.

³ *Pushing the Urban Resource Recovery and Re-use Envelope*, New York City Department of Design and Construction, <https://www1.nyc.gov/assets/ddc/downloads/town-and-gown/AgendaandPrecis.Final10-12-21.pdf> at 11.

⁴ *Analysis of 360* (2021) at 10.

regulations, which the 2021 BLS memo analyzed.⁵ In 2022, the NYS DEC gave notice of its Proposed 2022 Part 360 Revisions.⁶ This memo analyzes the Proposed 2022 Part 360 Revisions generally (Sections II and III). Additional sections analyze the impact of the Proposed Revisions on the CLCPI initiative (Section IV) as well as their effect on the regulation of solid waste facilities (Section V).

II. Overview of the Proposed 2022 Part 360 Revisions

The Proposed 2022 Part 360 Revisions include several new predetermined beneficial use designations (BUDs). To address the reuse of construction and demolition debris (C&D), a new BUD has been added for excavated materials used on-site as grade adjustment or backfill. Other pre-determined BUDs have been added for recycled aggregate, concrete slurry, unsold fruits and vegetables, as well as scrap metal.⁷

Many of the Proposed Revisions have been made in response to statutory changes to the ECL.⁸ In response to one such change, Part 360 will require additional groundwater monitoring requirements for facilities operating in Nassau and Suffolk Counties. These requirements will apply to C&D facilities, mulch processors and composting facilities.⁹ Other revisions have been proposed to ensure compliance with the Food Donation and Food Scraps Recycling Law. These changes impose requirements on transfer facilities, landfills, and municipal waste combustors to divert food scraps from solid waste disposal.¹⁰

⁵ *Id.* at 11.

⁶ *Proposed Parts 360-369,371,377*, NYS Dept. of Environmental Conservation, <https://www.dec.ny.gov/regulations/125274.html> (last visited August 15, 2022).

⁷ *Supporting Documents* (PDF), NYS Dept. of Environmental Conservation, https://www.dec.ny.gov/docs/materials_minerals_pdf/part360propsapadocs.pdf at 18 (last visited August 15, 2022).

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.*

The NYS DEC has proposed added sections and subparts where appropriate to address the reuse and recycling of a broader range of reusable materials. Section 361-7.5 has been added to give operating instructions for scrap metal processors,¹¹ while Subpart 362-5 has been added to regulate sites that collect and store postconsumer architectural paint.¹²

Lastly, many proposed revisions have been made to sections throughout the Part 360 regulations, including: new and amended definitions, amendments to sections on exempt facilities, changes to the requirements for permitted and registered facilities, as well as regulations regarding financial assurance.

III. Analysis of Proposed 2022 Part 360 Revisions.

A. BUD Analysis: Predetermined Beneficial Use. A Predetermined Beneficial Use allows materials that would otherwise be considered “solid waste” by the NYS DEC to be beneficially reused. In order to be eligible for this ‘safe harbor’, the material or materials being reused must be “effective substitutes for commercial products” or “raw materials” as determined by the NYS DEC.”¹³ Additionally, all beneficial uses must comply with the use restrictions of the specific BUD in question, as well as the applicability criteria for the BUDs in general.¹⁴

The 2022 Part 360 Revisions alter the BUD requirements for some materials, while increasing the number of Predetermined BUDs from 28 to 37.¹⁵ The Proposed Revisions do not change the BUD requirements related to the following materials: Certain Excluded Hazardous

¹¹ *Id.* at 29.

¹² *Id.* at 33.

¹³ *Analysis of 360 Regulations*, (2021) pdf. at 24.

¹⁴ *Id.* at 23-24.

¹⁵ § 360.12(c). *Proposed Parts 360-366, 369, 371, 377; Full Text of Parts 360-366 and 369* (PDF), NYS Dept. of Environmental Conservation, <https://www.dec.ny.gov/regulations/125274.html> (last visited August 15, 2022).

Wastes;¹⁶ and Dredged Sand and Gravel.¹⁷ The Proposed Revisions do, however, affect the BUD requirements related to the following materials, as described below:

1. Untested Clean Soil. Currently, fill material generated outside New York City with no evidence of historical impacts or other visual indications of chemical or physical contamination, is not solid waste.¹⁸ The Proposed Revisions retain this determination but remove the term “fill material” and replace it with “Fill Type 1.” Fill Type 1 has no restrictions on its end use. It may be made of soil, sand, gravel, or rock, with no history or appearance of contamination and no non-soil constituents, as well as no objectionable odors. This fill type can only be applied to material generated outside New York City. No testing is required for contaminants.¹⁹

Under the Proposed Revisions, the New York City Clean Soil Bank²⁰ and other similar programs will continue to operate under a new Pre-Determined Beneficial Use for excavated materials managed under a municipally administered soil reuse program.²¹ This new term “excavated material” “means excess soil, rock or other material excavated during construction or maintenance activities” which is not needed by the project for backfill.²² This is to be distinguished from the new term

¹⁶ 6 NYCRR § 371.1.

¹⁷ For pre-existing BUD for NDM See 6 NYCRR § 360.12(c)(1)(iv). For case-specific BUD for NDM See 6 NYCRR § 360.12(e).

¹⁸ *Analysis of 360 Regulations*, (2021) pdf. at 26.

¹⁹ § 360.13(f) *Proposed Parts 360-366, 369, 371, 377*.

²⁰ *Supporting Documents* (Pdf.) at 18.

²¹ § 360.12(c)(3)(xiii) *Proposed Parts 360-366, 369, 371, 377*. (The soil reuse program must be approved by the NYS DEC and administered by the municipality under an agreement with the NYS DEC.)

²² § 360.2(b)(99) *Proposed Parts 360-366, 369, 371, 377*.

“Fill” which is now a subset of excavated material, and consists only of compactible, granular material.²³

2. All Tested Soils. The Proposed Revisions affect several terms relating to tested soils.

- The current designations for fill, General Use fill, Restricted-Use fill, and Limited Use Fill, have been removed and replaced with new numbered Fill Types 1 through 5. (See table below) These new Fill Types do not change the regulations pertaining to tested soils.
- While the current regulations exclude “General fill generated within New York City, once it is delivered to the site of reuse” from the definition of “solid waste,”²⁴ the Proposed Revisions substitute “Fill Type 2” for “General fill” and the “New York Metropolitan Area Waste Impact Zone” for “New York City”.²⁵ New York City Metropolitan Area Waste Impact Zone “means the area encompassing Nassau County, Suffolk County, the City of New York, Westchester County, and the New York City Watershed.”²⁶
- Currently, fill material used as backfill for the same excavation is exempt from regulation under Part 360.13.²⁷ The Proposed Revisions eliminate the exemption under 360.13 and make it a pre-determined beneficial use

²³ § 360.12(b)(110) *Proposed Parts 360-366, 369, 371, 377*. (Fill is material used as authorized under § 360.13 but “does not include overburden generated from mining operations regulated pursuant to Parts 420 through 425 of this Title.”)

²⁴ *Analysis of 360 Regulations* (2021) pdf. at 26.

²⁵ § 360.13(b)(2)(ii) *Proposed Parts 360-366, 369, 371, 377*.

²⁶ § 360.2(b)(190) *Proposed Parts 360-366, 369, 371, 377*.

²⁷ *Analysis of 360 Regulations*, (2021) pdf. at 26.

under section 360.12 while expanding this use to include grade adjustment.²⁸

- The Proposed Revisions remove the requirement that fill material must be sampled and analyzed if “the fill material originates from a site with industrial land use as defined in section 375-1.8(g)(2)(iv) of this Title.”²⁹ Industrial land use is a restricted land use with imposed restrictions applying only to land used “for the primary purpose of manufacturing, production, fabrication or assembly processes or ancillary services. Industrial land use does not include any recreational component.”³⁰
- **New Fill Types.** The current fill material types have been removed and replaced by new numbered Fill Types 1 through 5.³¹ Fill Type 1 is uncontaminated “soil, sand, gravel, or rock which is generated outside of New York City.” This fill type requires no testing.³² Fill Type 2 is equivalent to the current “General Fill.” Fill Type 3 is similar to Fill Type 2, except that unlike Fill Type 2, it may include de minimis amounts of asphalt or concrete.³³ Fill Type 4 is equivalent to the current “Restricted-

²⁸ § 360.12(1)(iv)(a) *Proposed Parts 360-366, 369, 371, 377*. (“Excavated material [ceases to be solid waste when] used to backfill the same excavation or as grade adjustment in areas of similar physical characteristics on the same property. If the material exhibits visual or historical evidence of contamination (including odors) and will be used in an area with public access, the excavated material must be covered with pavement, foundation, or with a minimum of 12 inches of soil or fill that meets the criteria to be used as Fill Type 1 and Fill Type 2 in Section 360.13 of this Part.”)

²⁹ *Analysis of 360 Regulations*, (2021) pdf. at 27.

³⁰ 6 NYCRR § 375-1.8(g)(2)(iv).

³¹ *Supporting Documents* (Pdf.) at 15.

³² § 360.13(f) *Proposed Parts 360-366, 369, 371, 377*.

³³ *Supporting Documents* (Pdf.) at 20.

Use Fill”, while Fill Type 5 is equivalent to “Limited-Use Fill”.³⁴ (For more information on Fill Types 1-5, see Table 1 below)

- Soil Testing and Maximum Concentration Levels.** Fill Types 2 through 5 must be tested. The maximum concentration levels allowable for each fill type can be found in Table Part 375-6.8(b): Restricted Use Soil Cleanup Objectives. For Fill Type 2 through Fill Type 5, the maximum allowable concentration levels can be found in the column titled “Residential” and in the column titled “Protections of Ground Water.” The lower of the two limits found in these two columns establishes the maximum allowable concentration level. For further restrictions to maximum concentration levels by fill type, see below TABLE 1: Fill Beneficial Use.

Table 1: Fill Beneficial Use³⁵			
Fill Type	Fill End Use	Physical Criteria	Maximum Concentration Levels
Fill Type 1 (F1)	Any end use.	Only soil, sand, gravel, or rock which is generated outside of New York City with no evidence of historical contamination based on site use, reported spill events, or visual or other indication	No testing required.

³⁴ *Id.*

³⁵ § 360.13(f) Table 2. *Proposed Parts 360-366, 369, 371, 377.*

		(odors, etc.) of chemical or physical contamination; no non-soil constituents. Must not produce objectionable petroleum or other odors.	
Fill Type 2 (F2)	Any setting where the fill meets the engineering criteria for use, except: agricultural land used for raising livestock or producing animal products for human consumption. Fill Type 2 may also be used in the same manner as Fill Type 3, Fill Type 4 and Fill Type 5.	Only soil, sand, gravel or rock; no non-soil constituents. Must not produce objectionable petroleum or other odors.	Lower level between Protection of Public Health-Residential Land Use and Protection of Groundwater Soil Cleanup Objectives in section 375-6.8(b) of this Title.
Fill Type 3 (F3)	Any setting where the fill meets the engineering criteria, for use, except : 1. Undeveloped land; and 2. Agricultural crop on land used for raising livestock or producing animal products for human consumption. If used on residential property, material must be under impermeable surface or under a minimum three inches of Fill Type 1, Fill Type 2 or commercial soil. Fill Type 3 may also be used in the same	Only soil, sand, gravel, and de minimis amounts of brick, concrete or asphalt; no other non-soil constituents. Must not produce objectionable petroleum or other odors.	Lower level between Protection of Public Health-Residential Land Use and Protection of Groundwater Soil Cleanup Objectives in section 375-6.8(b) of this Title.

	manner as Fill Type 4 and Fill Type 5.		
Fill Type 4 (F4)	Engineered use for embankments in subgrade: A) In transportation corridors, or B) on sites where in-situ material contain higher levels of contaminants than Fill Type 4 or Fill Type 5 criteria. Must be placed above the seasonal high water table. May also be used in the same manner as Fill Type 5.	No volume limit for granular, compactible non-soil constituents. ³⁶	Same levels as Fill Type 2, except that polycyclic aromatic hydrocarbons must not exceed 3mg/kg (dry weight) total benzo(a)pyrene (BAP) equivalent. No greater than one percent by weight for any single suspect asbestos-containing material. In Nassau or Suffolk County, individual polycyclic aromatic hydrocarbons must not exceed Protection of Groundwater Soil Cleanup Objectives in the table in section 375-6.8(b) of this Title. (BAP) equivalent does not apply.
Fill Type 5 (F5)	Engineered use under foundations and pavements above the seasonal highwater table. ³	No volume limit for granular, compactible non-soil constituents. ¹	Same levels as Fill Type 2, except metals must not exceed Protection of Public Health-Commercial Soil Cleanup Objectives in the table in section 375-6.8(b) of this Title; and BAP equivalent must not exceed 3 mg/kg (dry weight). ² No greater than one percent by weight for any single suspect

³⁶ § 360.13 Footnotes 1. *Proposed Parts 360-366, 369, 371, 377.* (“Granular, compactible non-soil constituents exclude plastic, gypsum wallboard, wood, paper, or other material that may readily degrade or produce odors.”)

			asbestos-containing material.
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Other Restrictions on Fill Use.

- Fill Type 4 cannot be placed in the New York City Watershed, Westchester County, Nassau County and Suffolk County, unless it is reused in the same locality where it was generated.³⁷
- Fill Type 5 cannot be placed in the New York City Watershed, Westchester County, Nassau County and Suffolk County, regardless of where it was generated.³⁸
- Fill Type 4 or Fill Type 5 can only be used on projects that have an “approved local building permit or other municipal authorization, if required.” The material must be used within 30 days of its arrival at the project site.³⁹

3. Concrete and Concrete Products. A new BUD has been added for concrete products. Recognizable and uncontaminated concrete or concrete products (including those that have embedded reinforcement), asphalt pavement or

³⁷ § 360.13(g)(1). *Proposed Parts 360-366, 369, 371, 377.*

³⁸ § 360.13(g)(2). *Proposed Parts 360-366, 369, 371, 377.*

³⁹ § 360.13(g)(3). *Proposed Parts 360-366, 369, 371, 377.*

millings, and brick from demolition of on-site structures can be reused for grade adjustment on the site of generation. This does not apply to waste that was illegally disposed of, or to sites subject to a department approved remedial program. Also excluded are sites containing asbestos or any other wastes identified in section 363-2.1(a).⁴⁰

B. No Longer Considered Solid Waste When Received at Location of Use.

The Proposed Revisions do not change the BUD requirements related to the following materials: Uncontaminated Newsprint; Uncontaminated Used Wood Pallets; Street Sweepings, Car Wash Grit, or Water System Catch Basin Material; Bread, Bakery Products, and Spent Brewery Grains; and Unprocessed Source-Separated Recyclables. The Proposed Revisions do, however, affect the BUD requirements related to the following materials, as described below:

1. Whole or Cut Waste tires. The requirement that the number of passenger tire equivalents not exceed “0.25 passenger tire equivalents per square foot of cover or bunker area” has been removed.⁴¹ Currently, “[w]hole tires must be cut in half or have a sufficient number of holes in them to prevent retention of water.”⁴²

Added to the current regulation will be the option to “have one side wall removed and placed with the cut side facing down,”⁴³ and “if whole tires are used, the tires must be covered, arranged on the tread in close alignment, or otherwise stored in a

⁴⁰ § 360.12(c)(1)(iv)-(iv)(b). *Proposed Parts 360-366, 369, 371, 377.*

⁴¹ *Memorandum: Analysis of 360 Regulations* (2021), New York City Department of Design and Construction, <https://www1.nyc.gov/assets/ddc/downloads/town-and-gown/AnalysisofPart360RegulationsBrooklynLawSchool.pdf> at 33.

⁴² *Id.*

⁴³ § 360.12(c)(2)(iv) *Proposed Parts 360-366, 369, 371, 377.*

manner to prevent retention of water unless they are being used to secure tarpaulins.”⁴⁴

2. Fruits and Vegetables. A BUD has been added for fruits and vegetables.

Fruits and vegetables can be beneficially used as animal feed if taken from a single location, in quantities of less than 500 pounds per week. The fruits and vegetables can be kept for no more than seven days prior to use and must be stored in a container or in an enclosed area. If spoilage or malodors occur, the fruits and vegetables must be removed.⁴⁵

3. Concrete or Concrete Products, Asphalt Pavement, Brick, Rock, Fill.

The following materials as well as a combination of these materials can now be beneficially used provided the materials are recognizable and uncontaminated:

“concrete or concrete products (including those that have embedded reinforcement), asphalt pavement or millings, brick, rock, Fill Type 1, Fill Type 2, Fill Type 3”⁴⁶ These materials cannot be beneficially used in Nassau County, Suffolk County, Westchester County or the New York City Watershed.

To be beneficially used, the above materials must be used in one of three ways: (1) for grade adjustment; (2) “to raise the surface elevation for site development”; or (3) “to meet requirements of a department-approved mined land-use plan[.]”⁴⁷ The use of these materials must also comply with five conditions:

⁴⁴ § 360.12(c)(2)(iv)(4) *Proposed Parts 360-366, 369, 371, 377.*

⁴⁵ § 360.12(c)(2)(vii) *Proposed Parts 360-366, 369, 371, 377.*

⁴⁶ § 360.12(c)(2)(ix) *Proposed Parts 360-366, 369, 371, 377.*

⁴⁷ § 360.12(c)(2)(ix)(a)(2) *Proposed Parts 360-366, 369, 371, 377.*

- the material must be received at a site with an authorized local building permit and cannot be used at a site subject to regulation under title 23 of article 27 of the ECL, unless authorized by an approved Mined Land Use Plan;⁴⁸
- the material can only be received during daytime hours;
- the material must be placed above the seasonal high groundwater table. It cannot be placed in wetlands or a surface water body;
- the material cannot contain residues from C&D handling and recovery facilities; however, de minimis amounts of wood can be mixed in with these materials; and
- if the use is greater than 2500 cubic yards, the user must notify the department regional office.⁴⁹

4. Recycled Aggregate. Two new BUDs have been added for recycled aggregate. Recycled aggregate made from bricks, concrete pavement and/or asphalt pavement can be reused if placed in or under asphalt pavement or other impermeable surfaces. The aggregate must be stored separately before use and de minimis amounts of soil or wood may be mixed with the material⁵⁰

Recycled aggregate using the above mentioned materials can also be used as a commercial aggregate if distributed by a C&D debris handling and recovery facility authorized under Subpart 361-5. This commercial aggregate can be used

⁴⁸ § 360.12(c)(2)(ix)(b)(1) *Proposed Parts 360-366, 369, 371, 377.*

⁴⁹ § 360.12(c)(2)(ix)(b)(2) *Proposed Parts 360-366, 369, 371, 377.*

⁵⁰ § 360.12(c)(2)(x) *Proposed Parts 360-366, 369, 371, 377.*

for subsurface applications of at least 3 inches in depth or beneath an impermeable surface. The material must be stored separately prior to use.⁵¹

C. No Longer Considered Solid Waste When Meeting Requirements for Use.

The Proposed Revisions do not change the BUD requirements related to the following materials: Ground Granulated Blast-furnace Slag; Unadulterated Wood Ash; Industrial Waste; Fats, Oil, Grease, and Rendered Animal Parts; Coal Combination Fly Ash; Flue-Gas Desulfurization or other Gas-Scrubbing byproducts; Coal Combustion Bottom Ash; Clay, Till, or Rock Excavated as part of Navigational Dredging.

The Proposed Revisions do, however, affect the BUD requirements related to the following materials, as described below:

1. Fats, Oil, Grease, and Rendered Animal Parts. Currently, “Fats, oil, grease, and rendered animal parts, except for use as or in production of fuels are not considered solid waste.”⁵² The Proposed Revisions clarify that the materials must be used “in products” and that the use must meet an applicable industry or government standard.⁵³

2. Coal Combustion Bottom Ash. The Proposed Revisions no longer allow coal combustion bottom ash to be used as an aggregate in portland cement.⁵⁴

3. Crushed Concrete, Brick, and/or Rock. Under the Proposed Revisions, crushed concrete, brick, and/or rock must be processed at an authorized facility.

De minimis amounts of soil or wood can be included with these materials. The

⁵¹ § 360.12(c)(2)(xi) *Proposed Parts 360-366, 369, 371, 377.*

⁵² 6 NYCRR § 360.12(c)(3)(iv).

⁵³ § 360.12(c)(3)(iv) *Proposed Parts 360-366, 369, 371, 377.*

⁵⁴ § 360.12(c)(3)(vii) *Proposed Parts 360-366, 369, 371, 377.*

requirement that the aggregate “meet a municipal or State specification” has been removed.⁵⁵

4. Ground or Milled Asphalt Pavement. Asphalt pavement and asphalt millings used as an ingredient in asphalt pavement or other paved surface construction is no longer required to “meet a municipal or State specification or standard” but must be processed at an authorized facility. In addition, de minimis amounts of soil or wood can be included with these materials.⁵⁶

5. Asphalt Pavement Chunks or Millings. These materials must be processed at an authorized facility. De minimis amounts of soil or wood are acceptable.⁵⁷

6. Concrete and Other Masonry Products. A new BUD has been added. Concrete and other masonry products are no longer waste when received at a ready-mix plant for incorporation into a concrete product. De minimis amounts of soil or wood are acceptable.⁵⁸

7. Soil. A new BUD has been added. Excavated material is not waste when it meets the specifications of a soil reuse program which has been approved by NYS DEC and is administered by the municipality under an agreement with NYS DEC.⁵⁹

⁵⁵ § 360.12(c)(3)(viii) *Proposed Parts 360-366, 369, 371, 377.*

⁵⁶ § 360.12(c)(3)(ix) *Proposed Parts 360-366, 369, 371, 377.*

⁵⁷ § 360.12(c)(3)(ix) *Proposed Parts 360-366, 369, 371, 377.*

⁵⁸ § 360.12(c)(3)(xi) *Proposed Parts 360-366, 369, 371, 377.*

⁵⁹ § 360.12(c)(3)(xiii) *Proposed Parts 360-366, 369, 371, 377.*

8. Scrap Metal. A new BUD has been added. Scrap metal, including processed scrap metal,⁶⁰ prompt scrap metal⁶¹ and home scrap metal,⁶² is no longer solid waste when it “meets a commercial commodity specification for use in an industrial or manufacturing process.”⁶³

9. Concrete Grinding Slurry. Two new BUDs have been added for Concrete Grinding Slurry. Dewatered solids from concrete grinding slurry, as well as wet concrete slurry, cease to be solid waste when they are generated from road construction and maintenance, provided they are reused in the following ways: dewatered solids from concrete grinding slurry must be reused as either a component in commercial aggregate or as an “ingredient in flowable fill, asphalt pavement and other construction materials.”⁶⁴ Wet concrete grinding slurry must be reused in a way that “meet[s] industry specifications for use as an ingredient in manufactured products or building materials including, but not limited to, concrete products, brick, asphalt pavement, shingles, and grout.”⁶⁵

D. Materials Processed at Solid Waste Management Facilities.

⁶⁰ § 360.2(b)(213) *Proposed Parts 360-366, 369, 371, 377.* (“Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated.”)

⁶¹ § 360.2(b)(219). *Proposed Parts 360-366, 369, 371, 377.* (“Prompt scrap metal means metal generated by metal working or metal fabrication industries. It includes turnings, cuttings, punchings and borings.”)

⁶² § 360.2(b)(143). *Proposed Parts 360-366, 369, 371, 377.* (“Home scrap metal means scrap metal generated by steel mills, foundries, and refineries, and includes but is not limited to turnings, cuttings, punchings, and borings.”)

⁶³ § 360.12(c)(3)(xiv) *Proposed Parts 360-366, 369, 371, 377.*

⁶⁴ § 360.12(c)(3)(xv) *Proposed Parts 360-366, 369, 371, 377.*

⁶⁵ § 360.12(c)(3)(xvi) *Proposed Parts 360-366, 369, 371, 377.*

The 2022 Proposed Revisions add new requirements to Ground Tree Debris, Wood Debris, Yard Trimmings. These materials will need to conform to an industry standard and have a legitimate market.⁶⁶

E. Case-Specific BUDS.

The Proposed Revisions do not affect the Case-Specific BUDs for Gas Storage Brine or Production Brine but do make a few small changes to Navigational Dredge Materials; and Process for Unspecified Materials.

1. Navigational Dredge Materials. All references to general fill have been changed to Fill Type 2 and Fill Type 3. All references to Restricted-Use or Limited-Use Fill have been changed to Fill Type 4 or Fill Type 5, respectively.⁶⁷ In addition, the Proposed Revisions remove a de minimus compliance level by deleting “[i]f the pollutant limit for beneficial use is lower than the required detection limit, an analytical result less than the required detection limit will be considered to comply with the pollutant limit” in Section 360.12(e)(4)(iv).⁶⁸⁶⁹

2. Process for Unspecified Materials. The Proposed Revisions make a change to renewal requests made when requesting a case-specific BUD for an unspecified material: “A renewal is not required for case-specific beneficial use determination of a time-limited or quantity-limited nature wherein work is completed and no additional waste is proposed or approved for beneficial use.”⁷⁰

⁶⁶ § 360.12(c)(4)(iii) *Proposed Parts 360-366, 369, 371, 377.*

⁶⁷ § 360.12(e)(3)(i) *Proposed Parts 360-366, 369, 371, 377.*

⁶⁸ 6 NYCRR § 360.12(e)(4)(iv).

⁶⁹ § 360.12(e)(4)(iv) *Proposed Parts 360-366, 369, 371, 377.*

⁷⁰ § 360.12(d)(7) *Proposed Parts 360-366, 369, 371, 377.*

F. Exemption in Anticipation of a Beneficial Use. The Proposed Revisions create an exemption for the temporary storage of waste created during construction projects when that waste is under the control and responsibility of contractors.⁷¹ It “allows the storage of Fill Type 2, Fill Type 3, or recognizable uncontaminated concrete, asphalt, brick or rock that are anticipated to be reused under a beneficial use determination.” The maximum amount of waste exempt from regulation is 500 cubic yards within the New York City Metropolitan Area Waste Impact Zone⁷² and 10,000 cubic yards elsewhere in New York State.⁷³ This exemption is also extended to “site[s] authorized by the City of New York to temporarily stage C&D debris.”⁷⁴

IV. Closing Loops City Program Initiative Analysis.

A. Direct Project to Project Reuse. The Proposed Revisions do not affect the direct reuse of the following materials: Non-renewable Building CDW; Grit from City WRRF Facilities; Near Shore Dredge; and Window Glass. The Proposed Revisions do affect direct reuse of the following materials, listed below:

1. Soil. The Proposed Revisions will expand the onsite reuse of soil on construction projects by broadening their predetermined beneficial use to include grade adjustment.⁷⁵ (See Section III. A. 1-2. for more information on soil, including new fill types.) The Proposed Revisions will also make a change to the way Fill Type 2 is regulated. Currently, “general fill” (renamed “Fill Type 2” in

⁷¹ *Supporting Documents* (Pdf.) at 25.

⁷² § 360.2(b)(190) *Proposed Parts 360-366, 369, 371, 377*. (The New York City Metropolitan Area Waste Impact Zone “means the area encompassing Nassau County, Suffolk County, the City of New York, Westchester County, and the New York City Watershed.”)

⁷³ *Supporting Documents* (Pdf.) at 25. *Proposed Parts 360-366, 369, 371, 377*. § 361-5.2(a)-(c).

⁷⁴ § 361-5.2(c) *Proposed Parts 360-366, 369, 371, 377*. See also § 361-5.2(b) *Proposed Parts 360-366, 369, 371, 377*. (Annual notification of the NYS DEC is required for storage greater than 2500 cubic yards.)

⁷⁵ § 360.12(1)(iv)(a) *Proposed Parts 360-366, 369, 371, 377*.

the Proposed Regulations) generated within New York City ceases to be solid waste once it is delivered to the site of reuse. The Proposed Revisions expand this geographic zone to include not only New York City but Nassau County, Suffolk County, and the New York City Watershed.⁷⁶ This will have the effect of increasing the State’s regulation of Fill Type 2 beyond New York City. (See Section III. A. 2.).

2. Recycled Concrete Aggregate (RCA).

Two new BUDs have been introduced for RCA. Recycled aggregate made from bricks, concrete pavement and/or asphalt pavement will not be considered waste when it is “used in or under asphalt pavement or other impermeable surface.”⁷⁷ Additionally, recycled aggregate now ceases to be waste when distributed by a C&D processing facility authorized under Section 361-5 for use as a commercial aggregate. This aggregate must be used for subsurface applications at a depth of at least 3 inches or under impermeable surfaces.^{78 79} The Proposed Revisions should have the effect of making this type of aggregate more marketable,⁸⁰ while further promoting the direct reuse of RCA by the City and private developers.

3. Scrap Metal.

⁷⁶ § 360.13(b)(2)(ii) *Proposed Parts 360-366, 369, 371, 377.*

⁷⁷ § 360.12(c)(x) *Proposed Parts 360-366, 369, 371, 377.* (The aggregate must be separated from other materials and stored separately. “De minimis amounts of soil and wood included with these materials are acceptable under this determination.”)

⁷⁸ § 360.12(c)(xi) *Proposed Parts 360-366, 369, 371, 377.* (The aggregate must be stored separately from other material.)

⁷⁹ *Supporting Documents* (Pdf.) at 18. (These two new BUDS are intended to promote the reuse of “R2” also called “contractors blend”, a type of concrete aggregate frequently produced in and around New York City.)

⁸⁰ *Id.*

Under the current regulations, scrap metal only “ceases to be waste if it leaves a facility subject to Part 361 or Part 362 and is ultimately recycled or reused.”⁸¹ The facilities subject to Part 361 and Part 362 are material recovery facilities, combustion facilities, thermal treatment facilities, transfer facilities, and collection facilities.⁸² The Proposed Revisions add a second BUD for scrap metal. “Scrap metal, including processed scrap metal, prompt scrap metal and home scrap metal, which meets a commercial commodity specification for use in an industrial manufacturing process.”⁸³ Thus, scrap metal meeting the specifications of the new BUD, will cease to be waste irrespective of whether it has left a facility subject to Part 361 or 362.

B. Indirect Reuse. The Proposed 2022 Revisions to the Part 360 do not affect indirect reuse for the following materials:

- Curtain Wall and Window Glass;
- Gypsum; and
- Wood Pallets.

However, the Proposed Revisions do affect indirect reuse of RCA (defined above)

1. RCA Two new BUDs will make it easier to reuse concrete from road construction and maintenance operations for use as commercial aggregate. The first of these BUDs will allow “dewatered solids from concrete grinding slurry” to

⁸¹ *Memorandum: Analysis of 360 Regulations* (2021), New York City Department of Design and Construction, <https://www1.nyc.gov/assets/ddc/downloads/town-and-gown/AnalysisofPart360RegulationsBrooklynLawSchool.pdf> at 39.

⁸² 6 NYCRR §§ 361 and 362. (Part 361 regulates material recovery facilities, while Part 362 regulates combustion, thermal treatment, transfer, and collection facilities.)

⁸³ § 360.12(c)(3)(xiv) *Proposed Parts 360-366, 369, 371, 377*. (See *supra* notes 60-62 in Section III C. 8. for definitions of processed scrap metal, prompt scrap metal, and home scrap metal.)

be used as a component in commercial aggregate.⁸⁴ The second BUD will allow the use of “wet concrete grinding slurry” to be used as an ingredient in a number of products, including concrete products.⁸⁵

Additionally, the 2021 BLS Memo suggested that one way the State could incentivize the beneficial reuse of RCA was to incentivize the storage of waste concrete.⁸⁶ The Proposed Revisions now create an exemption for the temporary storage of concrete waste from construction projects in anticipation of a beneficial use. (See Section III. F.)⁸⁷ This will encourage private contractors as well as City⁸⁸ authorized sites to temporarily store limited amounts of concrete, as well as fill, brick, rock, and asphalt, before it is applied to a beneficial use.⁸⁹ Lastly, the new BUD allowing concrete and masonry products to no longer be considered waste when received at a ready-mix (see below) plant for reuse in concrete products should also encourage the indirect reuse of RCA.

C. Other. The Proposed Revisions do not affect the analysis for Decommissioned Wind Turbine Blades; and Rubber Crumb from Old Playground/Athletic Fields.

D. Interim Processing Facilities and Transfer Stations. The Proposed Revisions do not affect the analysis for Transfer Stations, but they do affect the analysis for Interim Processing Facilities. Under the Proposed Revisions, concrete and other masonry

⁸⁴ § 360.12(c)(3)(x). *Proposed Parts 360-366, 369, 371, 377.* (This can also be used as an “ingredient in flowable fill, asphalt pavement and other construction materials.”)

⁸⁵ § 360.12(c)(3)(xi). *Proposed Parts 360-366, 369, 371, 377.* (This can be used as an ingredient in “manufactured products or building materials including, but not limited to, concrete products, brick, asphalt pavement, shingles, and grout.”)

⁸⁶ *Memorandum: Analysis of 360 Regulations* (2021), New York City Department of Design and Construction, <https://www1.nyc.gov/assets/ddc/downloads/town-and-gown/AnalysisofPart360RegulationsBrooklynLawSchool.pdf> at 67.

⁸⁷ § 361-5.2(c). *Proposed Parts 360-366, 369, 371, 377.*

⁸⁸ “City” means the five boroughs of New York City.

⁸⁹ *Supporting Documents* (Pdf.) at 25.

products will no longer be considered waste when received at a ready-mix plant for incorporation into a concrete product. (See Section III. C. 4.) This new Pre-Determined BUD will encourage the reuse of these concrete materials in interim processing facilities.⁹⁰

V. Criteria for Exempt, Registered and Permitted Facilities.

The NYS DEC imposes different levels of regulation on facilities that process, store, or transfer solid waste. Generally, facilities fall into one of three categories: they are either exempt from regulation,⁹¹ eligible for registration,⁹² or required to obtain a permit.⁹³ Additionally, each of these categories can pertain to a specific activity within a facility.⁹⁴ Exempt facilities are ones that the NYS DEC has determined do not need to be regulated. Exemptions can be general, those which apply to more than one facility type,⁹⁵ or they may be specific to one particular type of facility.⁹⁶ Facilities that are not eligible for an exemption are either subject to registration or must obtain a permit. Facilities eligible for registration must submit a registration form in which they must demonstrate that they are compliant with “design, operating, closure, [and in some cases] financial assurance criteria.”⁹⁷ Currently, registrations are valid for a maximum of 5 years, after which they must be renewed.⁹⁸

Permit applications vary somewhat by facility type, but generally, the application must include an operations and maintenance plan, an emergency response plan, as well as an

⁹⁰ § 360.12(c)(3)(xi). *Proposed Parts 360-366, 369, 371, 377.*

⁹¹ 6 NYCRR § 360.14(a).

⁹² § 360.15(a).

⁹³ § 360.16(a).

⁹⁴ § 360.14(a).

⁹⁵ § 360.14(b).

⁹⁶ 6 NYCRR §§ 361-365. (These exemptions can be found under the appropriate facility type subsection in these parts.)

⁹⁷ 6 NYCRR § 360.15(a)-(f).

⁹⁸ § 360.15(f).

engineering report.⁹⁹ Some facility types, such as transfer facilities, must also include a plan for detecting hazardous waste.¹⁰⁰ Some types of facilities are either exempt or registered but never permitted, for example, metal processing and vehicle dismantling facilities. Alternatively, some facilities, such as hazardous waste management facilities, must always acquire a permit.

A. General Rules for Exemptions, Registrations, and Permits.

1. General Exemptions.

The following exemptions can be applied to multiple facility types. If a facility satisfies one of the following criteria, it will be exempt; although, if the facility conducts more than one kind of solid waste management activity it may still be regulated for those other activities.¹⁰¹

- When a “transfer, storage, treatment, processing, or combustion facility [is] located at the site of waste generation or at a location in the State under the same ownership or control as the site of waste generation” it is exempt, provided it does not fall under one of the exceptions discussed in the footnote below.¹⁰²
- Transfer, storage, treatment, or combustion facilities are eligible for an exemption if located at a publicly owned treatment works or other sewage treatment plant.¹⁰³

⁹⁹ § 360.16(c).

¹⁰⁰ § 362-3.4(b).

¹⁰¹ § 360.14(a).

¹⁰² § 360.14(b)(1). (The exemption does not apply to “(i) a facility subject to regulation under Part 365 of this title; (ii) a composting facility for animal carcasses and parts from a slaughterhouse; (iii) a composting or other facility subject to Subpart 361-3 of this Title for municipal solid waste, sewage sludge (or other sanitary waste), or other sludges; (v) a person who deconstructs manufactured homes; (vi) storage of petroleum-contaminated soils for more than 60 days, unless a longer time period is approved by the department; (vii) a surface impoundment for handling of coal ash or coal combustion residuals.”)

¹⁰³ 6 NYCRR § 360.14(b)(2) (provided the facility is not “used exclusively for grit, screenings, sewage sludge, septage, or leachate.”).

- Non-Putrescible waste is exempt when stored on a vehicle for no more than 10 days, provided the specified conditions are met.¹⁰⁴
- Putrescible waste is exempt if stored on a vehicle overnight provided the specified conditions are met.¹⁰⁵
- Waste is exempt while stored on a vehicle during routine transportation, which includes meal breaks, rest periods, and fuel stops.¹⁰⁶
- Facilities that treat wastewater and are subject to regulation under Part 750 are exempt.¹⁰⁷ These facilities are already regulated under a State pollutant discharge elimination system permit.¹⁰⁸
- “A rendering facility for animal or food-derived fats, oil, grease, and animal parts.”¹⁰⁹
- “Collection of pharmaceutical waste generated by a household or ultimate user, including controlled substances,” produced by the following entities is exempt provided all conditions are met:¹¹⁰ manufacturers, distributors, reverse distributors, narcotic treatment programs, hospitals/clinics with an on-site pharmacy, and retail pharmacies that collect pharmaceutical waste from ultimate users.¹¹¹

¹⁰⁴ § 360.14(b)(3).

¹⁰⁵ § 360.14(b)(4).

¹⁰⁶ § 360.14(b)(5).

¹⁰⁷ § 360.14(b)(6).

¹⁰⁸ See 6 NYCRR § 750., NYS DEC Part 750: State Pollutant Discharge Elimination System Permits.

¹⁰⁹ 6 NYCRR § 360.14(b)(7).

¹¹⁰ 6 NYCRR § 360.14(b)(8). (Provided there is “compliance under the requirements of 21 CFR Parts 1300, 1301, 1304, 1305, 1307, and 1317.)

¹¹¹ § 360.14(b)(8). (This waste may include controlled substances. Also applies to law enforcement agencies that conduct take back events for household pharmaceuticals or partner with community groups for these take back events.)

- “Facilities that store less than 1000 waste tires at any one time” are exempt.¹¹²

2. General Criteria for Registration. Unless specified otherwise, all facilities subject to registration must comply with section 360.15.¹¹³ The NYS DEC reserves the right to deny a registration for the following reasons:

- The NYS DEC reserves the right to deny a registration if in its determination, doing so would “protect the public health or safety.”¹¹⁴ Reasons for doing so include: the owner, operator, or applicant has a proven history of violating the ECL or other NYS DEC regulations;¹¹⁵ has provided materially false information on the registration form;¹¹⁶ or knowingly concealed a material fact.¹¹⁷
- A registered facility is prohibited from having “on-site operation of more than one registered facility engaged in the same solid waste management activity.”¹¹⁸
- Multiple registered facilities. NYS DEC may require a permit instead of a registration when two or more solid waste management activities occur at the same registered facility or at a facility that would otherwise be eligible for a registration, but only if NYS DEC determines that there is the potential for an adverse environmental impact.¹¹⁹

¹¹² § 360.14(b)(9).

¹¹³ § 360.15(a)(1). (Registered facilities must comply with § 360.15: Registered facilities, Transporters, and Collection events.)

¹¹⁴ § 360.15(b). *Proposed Parts 360-366, 369, 371, 377.*

¹¹⁵ § 360.15(b)(1). *Proposed Parts 360-366, 369, 371, 377.*

¹¹⁶ § 360.15(b)(2). *Proposed Parts 360-366, 369, 371, 377.*

¹¹⁷ § 360.15(b)(3). *Proposed Parts 360-366, 369, 371, 377.*

¹¹⁸ § 360.15(a)(3)(i). *Proposed Parts 360-366, 369, 371, 377.*

¹¹⁹ § 360.15(a)(3)(ii). *Proposed Parts 360-366, 369, 371, 377.*

- If a facility that would otherwise be eligible for a registration is located in a permitted facility or shares the same property or the same ownership and control as the permitted facility, the otherwise registered facility may be required to comply with the same permitting conditions as the permitted facility.¹²⁰

B. Exemptions, Registrations and Permits: By Facility Type. In addition to the general exemptions and conditions for registration eligibility, the NYS DEC applies criteria specific to facility type in order to determine what level of regulation should be imposed. In this way, a facility that was not deemed eligible for a general exemption, may still be eligible for an exemption. These regulations also provide criteria for determining when a facility is eligible for a registration, or in some cases multiple registrations, and when it is required to obtain a permit. Lastly, an explanation is given where the Proposed Revisions differ from the current regulations.

1. Recyclables Handling and Recovery Facilities are facilities that process source-separated nonputrescible recyclables.¹²¹ It does not include facilities that receive “municipal solid waste for post-collection separation of recyclables.”¹²² Recyclables Handling and Recovery Facilities may be exempt, subject to registration, or required to obtain a permit.¹²³

Under the current regulations, take back sites,¹²⁴ whether operated at the site of a retailer or wholesaler, or operated by the government or a not for profit

¹²⁰ § 360.15(a)(4). *Proposed Parts 360-366, 369, 371, 377.*

¹²¹ 6 NYCRR § 361-1.1.

¹²² § 361-1.1(b).

¹²³ § 361-1.

¹²⁴ § 361-1.2 (Take back sites operated by a retailer or wholesaler are those which collect recyclables similar to the items they sell or distribute, while take back sites operated by the government or a not for profit “take back consumer goods for reuse or secondary marketing.”)

organization, are exempt. The Proposed Revisions add an exemption for Recyclables Handling and Recovery Facilities owned, operated by, contracted by or on behalf of a municipality that accept “less than 20 cubic yards of source separated nonputrescible recyclables per day”, provided a number of criteria are met.¹²⁵

Facilities that do not qualify for an exemption are subject to a registration if the facility “accept[s] more than 5 tons per day, but less than 250 tons per day of source-separated, nonputrescible recyclables based on a weekly average and have residue below 15 percent of their intake based on a full year of operation.”

¹²⁶ The Proposed Revisions maintain the 15 percent limit on residue but eliminate the daily cap on tonnage .¹²⁷

Facilities that are not eligible for an exemption or subject to a registration must obtain a permit.¹²⁸ The permit application must include a description of how the facility will comply with the operating requirements found in Part 360 as well as the operating requirements specific to recyclables handling and recovery facilities found in section 361-1.5.¹²⁹

¹²⁵ §361-1.2(c). *Proposed Parts 360-366, 369, 371, 377.* (7 Criteria must be met: (1) the facility can only accept residential source-separated nonputrescible recyclables; (2) “the facility must be owned or leased by the municipality or a contractor working on behalf of the municipality;” (3) “all source-separated nonputrescible recyclables must be transferred manually from incoming vehicles to the containers;” (4) only when an attendant is on duty can the facility accept source-separated nonputrescible recyclables; (5) during operation of the facility all source-separated nonputrescible recyclables must be placed in containers; (6) at the end of the operating day all source-separated nonputrescible recyclables must be placed in rigid leak-proof containers; (7) source-separated recyclables may be stored for up to 90 days but must be stored separately by waste type.

¹²⁶ 6 NYCRR § 361-1.3(a)(1)-(2).

¹²⁷ § 361-1.3(a)(1). *Proposed Parts 360-366, 369, 371, 377.*

¹²⁸ 6 NYCRR § 361-1.4.

¹²⁹ § 361-1.4. *Proposed Parts 360-366, 369, 371, 377.*

2. Mulch Processing Facilities “are facilit[ies] that process yard trimmings (other than grass trimmings), tree debris, or wood debris into mulch.”¹³⁰ Under the Proposed Revisions, the definition of mulch processing facilities is extended in Nassau and Suffolk Counties to include facilities that only store, but do not process mulch.¹³¹

Mulch Processing facilities may be exempt, subject to registration, or required to obtain a permit.¹³²

Tree debris disposal facilities are exempt provided they are not located in Nassau or Suffolk County and four criteria are met.¹³³ Facilities that can store no more than 10,000 cubic yards of material, “including storage of incoming material and processed material” are exempt, provided 10 feet is maintained between piles and size restrictions of piles are adhered to.¹³⁴ An exemption is also available for “[a] facility used for the storage and processing of yard trimmings or wood debris that is considered storm debris from an area designated as a disaster area by the Governor of New York State, provided criteria specified by the department are followed.”¹³⁵ There is also an exemption for the “management of materials subject to Emerald Ash Borer (EAB) or other disease organism regulations.”¹³⁶

¹³⁰ 6 NYCRR § 361-4.1.

¹³¹ § 361-4.1. *Proposed Parts 360-366, 369, 371, 377.*

¹³² 6 NYCRR § 361-4.

¹³³ 6 NYCRR § 361-4.2 (The criteria are listed in § 363-2.1(g). They are: “(1) no fee or other form of consideration is obtained for using the facility or for acceptance or placement of tree debris; (2) the tree debris is only accepted during daylight hours between sunrise and sunset; (3) no more than one acre of the facility is utilized for tree debris disposal during the lifetime of the facility; and (4) tree debris is placed above the seasonal high groundwater table and no waste is placed in a surface water body;”)

¹³⁴ 6 NYCRR § 361-4.2. (See § 361-4.3(a)(4)-(5) for size restrictions. See § 361-4.3(b)(4) and (6) of *Proposed Parts 360-366, 369, 371, 377.* for revised size and spacing restrictions.)

¹³⁵ 6 NYCRR § 361-4.2(c).

¹³⁶ 6 NYCRR § 361-4.2(d) (The Proposed Revision corresponding to this is § 361-4.2(d) *Proposed Parts 360-366, 369, 371, 377.* This has been left incomplete in the Proposed Revisions and may be a misprint.)

Facilities with “more than 10,000 cubic yards but less than 25,000 cubic yards of material onsite, including storage of incoming material and processed material” are subject to registration.¹³⁷ These facilities must comply with an extensive list of design and operating requirements specific to this section.¹³⁸ The Proposed Revisions add that facilities in Suffolk and Nassau counties must also comply with the requirements of section 361-4.6, which covers groundwater protection requirements for facilities in Nassau and Suffolk counties.¹³⁹

All mulch processing facilities “with 25,000 cubic yards or more onsite, including storage of incoming material and processed material, must obtain a permit.”¹⁴⁰ These facilities must comply with the permit application requirements in section 360.16; the operating requirements in section 360.19; the design and operating requirements in sections 361-4.3(b) and 361-4.6, as well as recordkeeping and reporting requirements in section 361-4.7.¹⁴¹

3. Construction and Demolition Debris Handling and Recovery Facilities

are “facilities that process and/or store construction and demolition (C&D) debris in order to extract recyclable or reusable materials.” They are also facilities that engage in any combination of these activities.¹⁴² There are no exempt facilities under the current regulations but three exemptions have been introduced under the Proposed Revisions.

¹³⁷ 6 NYCRR 361-4.3(a).

¹³⁸ 6 NYCRR § 361-4.3(a). (The current regulations list 14 criteria. These criteria are lengthy and difficult to summarize.)

¹³⁹ § 361-4.6 *Proposed Parts 360-366, 369, 371, 377*. (This is a new section in the Proposed Revisions.)

¹⁴⁰ § 361-4.4 *Proposed Parts 360-366, 369, 371, 377*.

¹⁴¹ § 361-4.4 *Proposed Parts 360-366, 369, 371, 377*.

¹⁴² 6 NYCRR § 361-5.1.

The first exemption applies to the storage of Fill Type 2, Fill Type 3, and “recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings or mixtures of only these materials.” in the New York City Metropolitan Area Waste Impact Zone (NYCMAWIZ) in anticipation of a beneficial use.¹⁴³ (See Section III. F.) The second exemption applies to the storage of Fill Type 3, and other materials¹⁴⁴ outside of the NYCMAWIZ, provided the materials to be reused are stored separately and no more than 10,000 cubic yards of the material is stored on-site at one time.¹⁴⁵ The third exemption applies to “a site authorized by the City of New York to temporarily stage C&D debris.”¹⁴⁶

Facilities that are not exempt are subject to registration if they fulfill any of the following criteria:¹⁴⁷

- Currently, “[f]acilities that receive less than 500 tons per day based on a weekly average of the following recognizable, uncontaminated wastes: concrete and other masonry materials (including steel or fiberglass reinforcing embedded in concrete), brick, and rock,” asphalt pavement or

¹⁴³ § 361-5.2(a) *Proposed Parts 360-366, 369, 371, 377*. (The materials must be under the “control of the generator or the person designated by the generator to be responsible for the generation of the material which is anticipated to be reused.” Also, the materials to be reused must be stored separately and no more than 500 cubic yards can be stored on-site at one time.)

¹⁴⁴ § 361-5.2(b) *Proposed Parts 360-366, 369, 371, 377*. (These materials are “recognizable, uncontaminated concrete or concrete products (including those that have embedded reinforcement), brick, rock, asphalt pavement, asphalt millings” or mixtures of these materials).

¹⁴⁵ *Id.* (“Storage of greater than 2,500 cubic yards requires notification to the department on an annual basis. Also, once these materials receive a beneficial use determination there is no limit on storage quantity.)

¹⁴⁶ § 361-5.2(c) *Proposed Parts 360-366, 369, 371, 377*.

¹⁴⁷ § 361-4.3 *Proposed Parts 360-366, 369, 371, 377*.

asphalt millings, are subject to registration.¹⁴⁸ Under the Proposed Revisions, the 500 tons per day limit has been removed.¹⁴⁹

- Currently, “[f]acilities that receive less than 500 tons per day based on a weekly average of uncontaminated asphalt roofing shingles and roofing paper that do not contain asbestos-containing materials” are subject to registration.¹⁵⁰ Under the Proposed Revisions the tonnage limit has been removed.¹⁵¹
- Currently, “facilities that receive less than 500 tons per day based on a weekly average of uncontaminated, unadulterated gypsum wallboard,” or wood are subject to registration.¹⁵² The Proposed Revisions remove this tonnage limit.¹⁵³
- Currently, if a facility receives “less than 500 tons per day based on a weekly average of soil, sand, gravel, or rock” and the soil received has no evidence of contamination, either chemical or physical, the facility is subject to registration.¹⁵⁴ The Proposed Revisions remove the tonnage limit and add that the materials received must come “directly from the site of excavation.” Additionally, the soil can no longer originate from New York City, “unless the facility is owned or controlled by the City of New York.”¹⁵⁵ If the facility is not owned or controlled by the City of New

¹⁴⁸ 6 NYCRR § 361-5.2(a)(1)-(2).

¹⁴⁹ § 361-5.3(a)(1). *Proposed Parts 360-366, 369, 371, 377.*

¹⁵⁰ 6 NYCRR § 361-5.2(a)(3).

¹⁵¹ § 361-5.3(a)(2) *Proposed Parts 360-366, 369, 371, 377.*

¹⁵² 6 NYCRR § 361-5.2(a)(4)-(5).

¹⁵³ § 361-5.3(a)(3)-(4) *Proposed Parts 360-366, 369, 371, 377.*

¹⁵⁴ 6 NYCRR § 361-5.2(a)(6).

¹⁵⁵ § 361-5.3(5) *Proposed Parts 360-366, 369, 371, 377.*

York then the excavated material will need to be taken to a permitted C&D facility.¹⁵⁶

- Currently, facilities receiving less than 500 tons per day based on a weekly average of restricted-use fill, and limited-use fill are eligible for a registration.¹⁵⁷ This registration has been removed under the Proposed Revisions.
- Under the current regulations “[f]acilities that receive less than 500 tons per day based on a weekly average of other uncontaminated, source-separated recyclables generated from C&D debris for use under an approved case-specific beneficial use determination in accordance with section 360.12” are subject to registration.¹⁵⁸ The Proposed Revisions maintain this regulation but remove the tonnage limit on daily waste received.¹⁵⁹
- Under the current regulations, any facility that receives any combination of the wastes listed above (in this subsection) is subject to registration provided those wastes are “received, processed, and stored separately.”¹⁶⁰ This regulation is unchanged in the Proposed Revisions.¹⁶¹
- Lastly, the Proposed Revisions have made an addition, allowing registered facilities to accept “mixed loads.”¹⁶² A facility will be subject to a

¹⁵⁶ *Supporting Documents* (Pdf.) at 26.

¹⁵⁷ 6 NYCRR § 361-5.2(a)(7).

¹⁵⁸ 6 NYCRR § 361-5.2(a)(8).

¹⁵⁹ § 361-5.3(a)(7) *Proposed Parts 360-366, 369, 371, 377*.

¹⁶⁰ 6 NYCRR § 361-5.2(a)(9).

¹⁶¹ § 361-5.3(a) *Proposed Parts 360-366, 369, 371, 377*. (The proposed regulations retain this rule by inserting clarifying language throughout this subpart.)

¹⁶² *Supporting Documents* (Pdf.) at 26.

registration if it stores “only the following uncontaminated material: concrete and other masonry materials (including reinforcing embedded in concrete); brick, rock; asphalt pavement; or mixtures of these materials. Processing at this facility is prohibited.”¹⁶³

Facilities that are not subject to a registration must obtain a permit. The permit application must include “a description of how the facility will comply with the operating requirements in section 360.19”, as well as the design and operating requirements specific to C&D facilities in section 361-5.5.¹⁶⁴

4. Metal Processing and Vehicle Dismantling Facilities are “facilities that receive, decommission, process, dismantle, store, and recycle metal, discarded metal-containing products (e.g., appliances) and end of life vehicles.¹⁶⁵ They are also any combination of these materials or activities.¹⁶⁶ The following does not apply to facilities that receive metals which are source separated from municipal solid waste.¹⁶⁷ Metal Processing and Vehicle Dismantling Facilities may be eligible for an exemption or subject to registration. Under the current regulations an exemption is available to “[m]otor vehicle repair shops registered with the New York State Department of Motor Vehicles that store no more than 25 end of life vehicles on-site at any one time.”¹⁶⁸ The proposed revisions increase the number of vehicles to 50.¹⁶⁹ There is a second exemption for “[s]crap metal

¹⁶³ § 361-5.3(b)(1). *Proposed Parts 360-366, 369, 371, 377.*

¹⁶⁴ § 361-5.4 *Proposed Parts 360-366, 369, 371, 377.*

¹⁶⁵ 6 NYCRR § 361-7.1(a).

¹⁶⁶ § 361-7.1(a) *Proposed Parts 360-366, 369, 371, 377.*

¹⁶⁷ § 361-7.1(b)(1) *Proposed Parts 360-366, 369, 371, 377.*

¹⁶⁸ 6 NYCRR §361-7.2(a).

¹⁶⁹ § 361-7.2(a) *Proposed Parts 360-366, 369, 371, 377.*

processors that store no more than 1,000 cubic yards of metal on-site at any one time.”¹⁷⁰ This is unchanged under the Proposed Revisions. Lastly, the Proposed Revisions a third exemption for “[v]ehicle dismantling facilities that receive no more than 25 end-of-life vehicles per year and store no more than 50 end-of-life vehicles on-site at any one time.”

Facilities that are not eligible for an exemption may be subject to registration.¹⁷¹

Facilities subject to registration are not required to comply with the operating requirements of section 360.19. Vehicle dismantling facilities must comply with the operating requirements of 361-7.4, while scrap metal processors must comply with the operating requirements of 361-7.5. All registered facilities must comply with the recordkeeping and reporting requirements in section 361-7.6.¹⁷²

Facilities are subject to registration if:

- Currently, “[s]crap metal processors that store more than 1,000 cubic yards of metal” are subject to registration. The Proposed Revisions clarify that this refers to on-site storage of metal.¹⁷³
- Currently, motor vehicle repair shops that store at least 26 end-of-life vehicles on-site at any one time are subject to registration.¹⁷⁴ The Proposed Revisions change this to “more than 50 end-of-life vehicles on-site at any one time.”¹⁷⁵

¹⁷⁰ 6 NYCRR § 361-7.2(b). (This limit does not include metal stored inside of a building.)

¹⁷¹ § 361-7.3 *Proposed Parts 360-366, 369, 371, 377.*

¹⁷² § 361-7.3 *Proposed Parts 360-366, 369, 371, 377.*

¹⁷³ § 361-7.3(a)(1) *Proposed Parts 360-366, 369, 371, 377.*

¹⁷⁴ 6 NYCRR § 361-7.3(a)(1), (b)(1).

¹⁷⁵ § 361-7.3(b)(1) *Proposed Parts 360-366, 369, 371, 377.*

- Currently, “vehicle dismantling facilities that receive more than 25 end-of-life vehicles per year or store more than 50 end-of-life vehicles on-site at any one time,” are subject to registration. This is unchanged under the Proposed Revisions.

5. Navigational Dredged Material Handling and Recovery Facilities

are “any facility that handles, stores or processes navigational dredged material (NDM).”¹⁷⁶ There are no exemptions for these facilities. To be subject to a registration, an NDM facility must “receive NDM for the purpose of amending the NDM with portland cement or for the purpose of dewatering on pads or in enclosed geotextile tubes.”¹⁷⁷ [Relates to pneumatic tube tech thing.](#) Note that NDM facilities located at “active mined land reclamation sites or C&D debris handling and recovery facilities are ineligible for registrations.”¹⁷⁸ [This is important for CLCPI](#) This is unchanged in the Proposed Revisions.¹⁷⁹

Facilities that are not subject to a registration must obtain a permit. The application must include “a description of how the facility will comply with the operating requirements in Part 360.19.”¹⁸⁰

6. Combustion Facilities and Thermal Treatment Facilities are facilities “that use combustion or thermal treatment to treat solid waste.”¹⁸¹¹⁸² These facilities may be exempt, subject to registration, or required to obtain a permit. A facility is

¹⁷⁶ 6 NYCRR § 361-9.1.

¹⁷⁷ 6 NYCRR § 361-9.2(a)(1).

¹⁷⁸ § 361-9.2(a) *Proposed Parts 360-366, 369, 371, 377.*

¹⁷⁹ § 361-9.2(a)(1) *Proposed Parts 360-366, 369, 371, 377.*

¹⁸⁰ § 361-9.3(a) *Proposed Parts 360-366, 369, 371, 377.*

¹⁸¹ § 362-1.1(a) *Proposed Parts 360-366, 369, 371, 377.* (This includes “mass burn, modular, and fluidized bed combustors; thermal treatment facilities that utilize plasma arc, pyrolysis and gasification; low-temperature thermal desorption units such as thermal strippers and soil roasters; and facilities that combust refuse-derived fuel.”)

¹⁸² Proposed regs 362-1.1(b) (It does not include facilities “that receive organic wastes for anaerobic digestion.”)

exempt if it is “located at and operated by staff of a hospital, residential health care facility, diagnostic treatment center, or clinical laboratory regulated under 10 NYCRR Part 70 that treats regulated medical waste on-site.”¹⁸³ ¹⁸⁴ These exempt facilities “can also accept regulated medical waste from a small quantity generator” if all conditions are met.¹⁸⁵ Other exempt facilities include animal crematories, “except those that accept regulated medical waste”¹⁸⁶ and facilities that combust alternative fuels.¹⁸⁷ The Proposed Revisions expand this exemption to include traditional fuel, but the exemption is disallowed if either the traditional fuel or the alternative fuel “is stored at the facility prior to combustion.”¹⁸⁸ An additional exemption is included under the Proposed Revisions for “[a] facility or activity that combust[s] solid wastes that are authorized under 6 NYCRR Section 215.3.”¹⁸⁹

Facilities that are not eligible for an exemption but meet the criteria for a registration are subject to additional operating requirements specific to their facility type and the activity that is being conducted.¹⁹⁰ The current regulations include registrations for: a facility that combusts or thermally treats waste tires,

¹⁸³ 6 NYCRR § 362-1.2(a).

¹⁸⁴ 10 NYCRR Part 70-1.1 (Part 70 regulates medical waste and applies to hospitals, residential health care facilities, and diagnostic treatment centers.)

¹⁸⁵ 6 NYCRR § 362-1.2(a)(1)-(2). (The small quantity generator must self-transport the waste to the facility in accordance with Parts 364 and 365, and there must be a written agreement between the small quantity generator and the combustion facility “prior to receipt of waste.” Copies of this agreement must be submitted to the NYS DEC.)

¹⁸⁶ 6 NYCRR § 362-1.2(b). (These wastes are regulated under 6 NYCRR Part 219-4, which regulates emissions from human and animal crematories.)

¹⁸⁷ 6 NYCRR § 362-1.2(c).

¹⁸⁸ § 362-1.2(c) *Proposed Parts 360-366, 369, 371, 377.*

¹⁸⁹ § 362-1.2(d) *Proposed Parts 360-366, 369, 371, 377.* (NYCRR Section 215.3 regulates when burning in an open fire is allowed.)

¹⁹⁰ 6 NYCRR § 362-1.3.

provided the operational requirements are met,¹⁹¹ “a facility that combusts or thermally treats used cooking oil or yellow grease”, provided the required criteria are met,¹⁹² and a registration for facilities that store alternative fuel authorized by the department, prior to combustion. The alternative fuel must be “stored in an enclosed building, enclosed trailers, or other enclosed portable containers.”¹⁹³ An additional registration for “a facility that combusts or thermally treats uncontaminated, unadulterated wood, has been removed from the Proposed Revisions.¹⁹⁴

Facilities that are not exempt or subject to a registration must obtain a permit.¹⁹⁵ The permit application must include the general permit application requirements found in section 360.16, as well as a description of how the facility will comply with design and operating requirements and recordkeeping and reporting

¹⁹¹ 6 NYCRR § 362-1.3(a). (There are six operational requirements: “(1) the process federate does not exceed ten tons per day; (2) the amount of waste tires stored at the facility does not exceed 100 tons at any time; (3) waste tires are stored in an enclosed building, enclosed trailers, or other enclosed portable containers; (4) sufficient water is available on-site to provide moisture to the piles or douse fires; (5) documentation is available at the facility that demonstrates that storage configuration and fire prevention and protection systems comply with State and local building and fire codes; and (6) the facility maintains financial assurance in an amount sufficient to cover the costs of closure of the facility in compliance with sections 360.21 [closure requirements] and 360.22 [financial assurance] of this Title;”.

¹⁹² 6 NYCRR § 362-1.3(c). (The criteria are: “(1) the process federate does not exceed 1,000 gallons per day; (2) on-site storage of used cooking oil and yellow grease does not exceed 500,000 gallons;” (3) a secondary containment system to store “unprocessed and processed used cooking oil and yellow grease. The secondary containment system must be at least 110 percent of the volume of the largest tank or the total volume of all interconnected tanks, whichever is greater. All storage devices must have an overfill prevention system; (4) documentation is available at the facility that fire prevention and protection systems comply with State and local building and fire codes; and (5) the facility maintains and follows an operation and maintenance plan that includes at a minimum: (i) procedures to ensure that no unauthorized waste, including brown grease, is received at the facility, or, if received, is removed for appropriate treatment and disposal within five days of receipt, unless otherwise authorized by the department in writing; (ii) inventory procedures to ensure that no unprocessed oil or grease is stored at the facility for more than 30 days, no processed oil or grease is stored longer than 12 months, and no residue is stored longer than 7 days; (iii) monthly vector inspection and appropriate mitigation; (iv) procedures for spill prevention and for appropriate management of spills that may occur; and (v) procedures for the appropriate disposition of wastewater and any waste generated by processing;”)

¹⁹³ 6 NYCRR § 362-1.3(d).

¹⁹⁴ 6 NYCRR § 362-1.3(b).

¹⁹⁵ 6 NYCRR § 362-1.4.

requirements specific to Combustion Facilities and Thermal Treatment Facilities.¹⁹⁶ The application also requires: an engineering report,¹⁹⁷ a waste control plan, a residue management plan, and a radioactive waste detection plan.¹⁹⁸

7. Municipal Solid Waste Processing Facilities are facilities that “perform post-collection separation and/or processing of municipal solid waste to recover recyclables or to produce a refuse-derived fuel.”¹⁹⁹ These facilities must obtain a permit. The application must include: a waste control plan, a radioactive waste detection plan, and a plan for the “disposition of materials generated from the facility[.]”²⁰⁰ The Proposed Revisions leave these requirements unchanged.²⁰¹

8. Transfer Facilities.

Transfer facilities “receive solid waste for the purpose of subsequent transfer to another facility for further processing, treatment, transfer, or disposal.” These facilities may be exempt, subject to registration, or required to obtain a permit.²⁰² Under the current regulations, exempt facilities include vehicles that transfer waste from vehicle to vehicle,²⁰³ a facility owned or operated by a municipality

¹⁹⁶ 6 NYCRR § 362-1.4.

¹⁹⁷ 6 NYCRR § 362-1.4(a) *Proposed Parts 360-366, 369, 371, 377*. (The Proposed Revisions simplify the engineering report requirement. Instead of the four criteria currently listed, the Proposed Revisions state only that the report must include “the total electric power to be consumed and generated at the facility in kilowatt-hours.”)

¹⁹⁸ § 362-1.4(a)-(d) *Proposed Parts 360-366, 369, 371, 377*.

¹⁹⁹ 6 NYCRR § 362-2.1.

²⁰⁰ 6 NYCRR § 362-2.2.

²⁰¹ § 362-2.2. *Proposed Parts 360-366, 369, 371, 377*.

²⁰² 6 NYCRR § 362-(3.2)-(3.4).

²⁰³ 6 NYCRR § 362-3.2(a). (This includes “truck to train and truck to barge, for shipment to another authorized facility provided the following criteria are met: (1) the transfer facility only accepts waste from transporters that are under its ownership or control; (2) the waste is in rigid, leak-proof, closed containers; (3) the containers are not placed on the ground at any time during transfer; and (4) the contents of each container remain in the closed container during all operations.”)

“that accepts no more than 20 cubic yards of waste per day”.²⁰⁴ ²⁰⁵ or a facility that accepts “no more than five cubic yards of source-separated organic waste per day.”²⁰⁶ Take back sites located at a retailer or wholesaler that take back products similar to those that are sold, are also exempt.²⁰⁷

The Proposed Regulations add three more exemptions: Transfer facilities that are owned or operated by a municipality and accept no more than 3,000 tons per year of yard trimmings,²⁰⁸ facilities that accept “no more than five cubic yards of source-separated waste per day,²⁰⁹ and facilities that accept waste no more than 5 days per year.²¹⁰

²⁰⁴ 6 NYCRR § 362-3.2(b). (The waste must be shipped to an authorized facility and must meet the following criteria: “(1) only residential waste is accepted at the facility; (2) the transfer location and all vehicles are owned or leased by the municipality or a contractor working on behalf of the municipality; (3) the waste is not placed on the ground at any time during the transfer; (4) all putrescible waste is removed from the facility once a container is full or at least once every seven days, whichever occurs first; (5) the waste is stored in rigid leak-proof containers and covered at the end of the operating day; (6) the municipality provides for the collection of source-separated recyclables at the facility; (7) waste received separately for recycling must be stored separately by waste type. Nonputrescible recyclables can be stored for up to 90 calendar days; (8) all waste is transferred manually from incoming vehicles to the waste containers; and (9) the facility accepts waste only when an attendant is on duty.”)

²⁰⁵ § 362-3.2(b). *Proposed Parts 360-366, 369, 371, 377.* (Amended in the Proposed Revisions to include “no more than 20 cubic yards of source-separated recyclables per day.”)

²⁰⁶ 6 NYCRR § 362-3.2(c). The waste must be shipped to an authorized facility and the following criteria must be met: “(1) the organic waste is not placed on the ground at any time during the transfer; (2) all organic waste is removed from the facility on the day accepted or by the end of the next business day; and (3) the organic waste is stored in rigid, leak-proof containers and covered at the end of the operating day.”

²⁰⁷ 6 NYCRR § 362-3.2(d).

²⁰⁸ § 362-3.2(c). *Proposed Parts 360-366, 369, 371, 377.* (Must be for the purpose of shipping to another authorized facility and meet the following criteria: “(1) only yard trimmings are accepted at the facility; (2) the transfer location and all vehicles are owned or leased by the municipality or a contractor working on behalf of the municipality; (3) the waste is not stored at the facility for more than five calendar days; (4) no more than 500 cubic yards of yard trimmings are on site at any time; (5) measures are taken to minimize the blowing of bags, grass, and leaves; (6) dust and odors are effectively controlled so that they do not constitute a nuisance, as determined by the department; (7) precipitation, surface water, and groundwater that has come in contact with yard trimmings must be managed within the site and must not enter a surface bodywater or a conveyance to a surface bodywater, or cause a violation of water quality standards promulgated in Part 750 of this Title; and (8) other activities regulated under Parts 360 through 365 of this Title are not conducted at the facility.”)

²⁰⁹ § 362-3.2(d) *Proposed Parts 360-366, 369, 371, 377.* (The waste must be for shipment to an authorized transfer or treatment facility. In addition, the following criteria must be met: “(1) the organic waste is not placed on the ground at any time during the transfer; (2) all organic waste is removed from the facility within five business days; and (3) the organic waste is stored in rigid, leak-proof containers and covered at the end of the operating day.”)

²¹⁰ § 362-3.2(f). *Proposed Parts 360-366, 369, 371, 377.* (The facility must be “owned or operated by a municipality, or contracted by or on behalf of a municipality” and the facility must ship the waste to another authorized facility. In addition, 9 criteria must be met. *See* footnote 162 above.)

Facilities that are not eligible for an exemption ²¹¹ are subject to registration if the facility “is owned or operated by a municipality” and “receives less than 50 tons of waste per day”²¹¹ and all conditions are met.²¹² The Proposed Revisions add two more facilities subject to registration: a facility used for the transfer of septage,²¹³ and “[a] facility that receives source-separated recyclables for transfer to another facility or point of reuse” provided all conditions are met.²¹⁴

Facilities that are not exempt or subject to a registration must obtain a permit.²¹⁵ The permit application must contain a radioactive waste detection plan²¹⁶ and a program for detecting and preventing the receipt of hazardous wastes at the facility.²¹⁷

²¹¹ 6 NYCRR § 362-3.3(a). (The facility can also be “contracted by or on behalf of a municipality.”)

²¹² 6 NYCRR § 362-3.3(a). (The 4 conditions are: (1) No more than “250 tons or 1,000 cubic yards of waste, excluding source-separated recyclables, is located at the facility at any given time; (2) all putrescible waste is removed from the facility once a container is full or at least once every seven days, whichever occurs first, and all nonputrescible non-recyclable waste is removed within 30 calendar days of receipt; (3) the facility accepts waste only when an attendant is on duty; and (4) the municipality provides for the collection of source-separated recyclables at the facility and is authorized as a recyclables handling and recovery facility to accept source-separated recyclables under Subpart 361-1 of this Title. Waste received separately for recycling must be stored separately by type. Nonputrescible recyclables can be stored for up to 180 days.)

²¹³ § 362-3.3(b). *Proposed Parts 360-366, 369, 371, 377.* (the transfer must be from only one transporter, “who uses no more than two of the transporter’s vehicles to collect residuals from a composting toilet (liquids and solids), provided the conditions of section 362-3.5h of this Subpart are met.)

²¹⁴ § 362-3.3(c). *Proposed Parts 360-366, 369, 371, 377.*

²¹⁵ § 362-3.4. *Proposed Parts 360-366, 369, 371, 377.*

²¹⁶ § 362-3.4(a). *Proposed Parts 360-366, 369, 371, 377.*

²¹⁷ § 362-3.4(b). *Proposed Parts 360-366, 369, 371, 377.*