

## STATE ENVIRONMENTAL REGULATION

## Expert Analysis

# Proposed Revisions to Regulations On Solid Waste Management Facilities

The New York State Department of Environmental Conservation (NYSDEC) has proposed comprehensive revisions<sup>1</sup> to its existing regulations governing solid waste management facilities that, when adopted, likely will affect every municipality across the state as well as businesses ranging from contractors, landscapers, and mulch facilities to hospitals and pharmacies, in addition, of course, to every aspect of the solid waste management industry. Landfills are probably the most well-known solid waste facility, but others, including combustion facilities, transfer facilities, and commercial medical waste autoclaves, also manage solid waste and are among the entities that will see their methods of operating considerably changed when the NYSDEC concludes the regulatory process.

This column highlights certain of the more significant proposed changes. The NYSDEC is accepting comments on its proposal until 5 p.m. on July 15, 2016. Entities that will see increased costs and requirements undoubtedly will want to provide their thoughts and suggestions by that deadline.

By  
Charlotte A.  
Biblow



### Background

As the first significant revision to the regulations since 1993, the proposed regulations fill hundreds of pages. Indeed, the draft generic environmental impact statement (GEIS) on the proposed amendments prepared by the NYSDEC under the New

Landfills are probably the most well-known solid waste facility among the entities that will see their methods of operating considerably changed when the NYSDEC concludes the regulatory process.

York State Environmental Quality Review Act (SEQRA) alone runs to 57 pages. The agency has said that it believes that “changes in law and technology” since 1993 require it to “overhaul” the current rules. Its proposal addresses, among other things, issues it outlined in the solid

waste management plan it adopted in December 2010<sup>2</sup> and facilities, activities, and waste streams—including navigational dredged materials, oil and gas brine, historic fill, end-of-life vehicle dismantlers, wood debris, used cooking oil, and biohazard incident waste—that are not now addressed in the existing regulations.

The existing regulations for solid waste management facilities currently are found in 6 NYCRR Part 360, with regulations governing waste transportation in Part 364 and state assistance grants to municipalities related to solid waste management in Part 369. The NYSDEC is proposing to subdivide and reorganize the solid waste management facility regulations into separate parts covering groups similar in nature, such as facilities that recycle and recover materials. Under its proposal, these regulations will be divided as follows: (i) Part 360—general requirements; (ii) Part 361—materials recovery facilities; (iii) Part 362—combustion, thermal treatment, transfer, and collection facilities; (iv) Part 363—landfills; (v) Part 365—biohazard waste management facilities; and (vi) Part 366—local solid waste management planning. The NYSDEC also is proposing to replace Part 364 with revised regulations covering waste transporters.

CHARLOTTE A. BIBLOW is a partner at Farrell Fritz and can be reached at [cbiblow@farrellfritz.com](mailto:cbiblow@farrellfritz.com).

Part 369 will contain all of the state assistance programs for solid waste in this one regulation.<sup>3</sup>

### General Requirements

The proposed new Part 360 provides general requirements for all solid waste management facilities. These include definitions, general exemptions, variance criteria, financial assurance criteria, general permit application and operation standards, and provisions to petition the NYSDEC for a determination that a material is not a solid waste through a beneficial use determination (BUD).

A noteworthy new section (proposed Section 360.13) addresses special requirements for the management of "historic fill," which consists of municipal solid waste incinerator ash, coal ash, wood ash, and other wastes that were used to create usable land by filling water bodies, wetlands, and topographical depressions. This proposed regulation establishes criteria for the on-site use, off-site use, and disposal of historic fill. For instance, historic fill can be used if it is covered by either a building foundation, paved surface, or one to two feet of suitable soil cover, depending on the land use of the area.

Historic fill also can remain on-site if it is placed within the footprint of the historic fill disposal area. In all other situations, the historic fill can remain on-site if the NYSDEC grants a BUD, which assessment will be made on a case-specific basis, or if it is disposed of in a municipal solid waste landfill, unless the NYSDEC is persuaded that the waste contains only concrete, asphalt, rock, brick, glass, or similar uncontaminated construction and demolition (C&D) debris materials.

This proposed new part (in Section 360.15) revises the current rule regarding the expiration on registrations for registered facilities or transporters.

Currently, registrations have no expiration date. Under the proposal, the duration of registrations will be limited to a maximum of five years, which will require any party that has to be registered to undergo the registration process on a regular basis. This is intended to allow the NYSDEC to evaluate compliance histories and address potential adverse impacts of these facilities.

### Material Recovery Facilities

The proposed new Part 361 addresses "material recovery facilities." These are facilities that process source-separated non-putrescible (non-decaying) recyclables.

---

Under one proposal, facilities that compost mixed municipal solid waste would have to install and use fixed radiation detectors to monitor all incoming waste loads. Waste loads that exhibit radioactivity above 25 pCi/g could not be accepted at these facilities.

Among other things, the NYSDEC is proposing to require permits for recyclables handling and recovery facilities (RHRFs) that receive more than 250 tons per day of recyclables. According to the NYSDEC, 11 of the 86 RHRF facilities now operating in New York would meet this test.

Another noteworthy change relates to the existing regulations that prohibit certain radioactive waste from being accepted at a facility that receives municipal solid waste (MSW). Under the proposal, facilities that compost mixed MSW would have to install and use fixed radiation detectors to monitor all incoming waste loads. Waste loads that exhibit

radioactivity above 25 pCi/g could not be accepted at these facilities.

Section 361-4 covers wood debris and yard trimmings processing facilities. The production of mulch from the grinding and storage of clean wood currently is exempt from regulation. That will change under the new regulation because of concerns about odor problems, leachate concerns, and fires associated with these facilities. Under the proposal, facilities that process wood debris and yard trimmings that are between two acres and 10 acres in size would have to be registered. Facilities greater than 10 acres in size would need a permit. Registered and permitted facilities would have to meet rules relating to pile size, temperature monitoring, and other management methods.

Waste tire handling and recovery facilities would have to obtain a permit. Metal processing and vehicle dismantling facilities would need to be registered.

The NYSDEC's proposal similarly would affect facilities that receive, process, and sort mixed C&D debris. Under proposed Section 361-5, the receiving, processing, and sorting of mixed C&D debris would have to be performed within an enclosed building. The goal, the NYSDEC said, is "to minimize potential impacts on the surrounding community." Only newly constructed facilities that process mixed C&D debris would have to meet the enclosure requirement, although the NYSDEC notes that many existing facilities already use enclosures because of specific conditions in their permit.

Another proposal affecting C&D debris processing facilities is that they would no longer be able to produce mulch without being granted case-specific BUDs.

### Other Facilities

The NYSDEC is proposing to add another new part, Part 362, that would

govern combustion, thermal treatment, MSW processing, and household hazardous collection facilities and events. For example, the proposal would make it clear that emerging thermal treatment technologies such as gasification (a process of converting certain materials into synthesis gas) and pyrolysis (a process of treating certain materials with high heat) are regulated.

In addition, the NYSDEC would change the current rules regarding household hazardous waste collection events, which now require submission of a collection day plan 60 days prior to each collection event for approval by the NYSDEC. The individual collection event approval process would be replaced by a registration program that, in the view of the NYSDEC, should help to streamline the application and approval process for municipalities.

### Landfills

Naturally, a large section of the NYSDEC's proposal relates to landfills.

The proposed revisions would require active collection and destruction of landfill gas for all new MSW landfills and for subsequent development at existing MSW landfills. They also include new language to clarify the responsibilities of landfill owners after a landfill's closure. Under the proposed revisions, certain post-closure care activities—such as leachate collection and treatment; landfill cover maintenance and repair; regular landfill gas, groundwater, and surface water monitoring; and regular inspection—would have to be conducted until the owner or operator demonstrates that the landfill's potential threat to the public or the environment has been reduced to the level specified in the regulations.

The NYSDEC also is proposing changes to the rules regarding the

disposal of land clearing debris (LCD). Current regulations exempt LCD disposal when the material originates on properties with the same ownership or control, and require registration rather than permitting for LCD landfills of less than three acres in size. The proposed revisions remove the current registration and exemption and replace them with an exemption for facilities no more than one acre in size for the disposal of tree debris. This exemption, however, is unavailable for LCD facilities in Nassau and Suffolk counties.

In addition, the NYSDEC is proposing to replace the current exemption for the disposal of certain materials, such as uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock, collectively known as "CARBS," with an exemption that prohibits disposal of processing residues at an exempt site and that restricts disposal to no more than 5,000 cubic yards of these materials. This exemption would not be available in Nassau and Suffolk counties.

Other parts of the NYSDEC's proposal seek to govern the design, construction, and certification of landfills. The proposal also would regulate liner integrity testing and require the annual cleaning of a landfill's primary leachate collection and removal system and a biennial video inspection of primary or secondary leachate collection and removal systems.

### Further Issues

There are many other new, revised, or restated requirements contained in the NYSDEC's proposal, including a new part governing waste transporters that would, among other things, require waste tracking forms for the transport of certain specified wastes.

Biohazard waste management facilities would be subject to their own new Part 365, which would include criteria for regulated medical waste, household medical waste sharps (e.g., needles) collection, biohazard incident waste, and animal and contaminated food supply waste. This provision certainly will be of interest to generators such as nursing homes, hospitals, clinical laboratories, blood establishments (those that collect, manufacture, store, or process blood and blood products), colleges and universities, veterinarian and dental offices, funeral homes, research laboratories, and pharmaceutical and biotechnology facilities.

In addition, a new Part 366 would apply to local solid waste management plans. A new Part 369 would address state assistance projects for municipalities related to solid waste management.

### Conclusion

It is not clear whether the NYSDEC is likely to make significant changes, or any changes at all, to its proposal before it adopts final regulations. What is clear, however, is that the proposed regulations contain important changes to solid waste management practices throughout the state and that all of us will be affected by the final regulations.

.....●●●.....

1. See, NYSDEC, "Solid Waste Management Facilities (Part 360), Proposed Regulations," available at <http://www.dec.ny.gov/regulations/81768.html>.

2. See, NYSDEC, "Beyond Waste: A Sustainable Materials Management Strategy for New York State," available at <http://www.dec.ny.gov/chemical/41831.html>.

3. As the NYSDEC observed, there are no federal regulations for most of the facilities contained in the proposed rulemaking.