



**Department of
Environmental
Conservation**

Revised Part 360 Series Solid Waste Management Facility Regulations: Beneficial Use

Federation of New York Solid Waste Associations Conference
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Division of Solid & Hazardous Materials

6 NYCRR Part 360 Solid Waste Management Facilities

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Department of
Environmental
Conservation

6 NYCRR PART 360 SERIES

PART 360

Solid Waste Management Facilities

PART 361

Material Recovery Facilities

PART 362

Combustion, Thermal Treatment, Transfer, and Collection Facilities

PART 363

Landfills

PART 364

Waste Transporters

PART 365

Regulated Medical Waste and Other Infectious Wastes

PART 366

Local Solid Waste Management Planning

PART 369

State Assistance Projects

Effective date - November 4, 2017

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Where Does Beneficial Use Appear in the New 360 Series?

Part 360 General Requirements:

- Section 360.2 Definitions
- Section 360.4 Transition
- Section 360.12 Beneficial Use
- Section 360.13 Special Requirements for Beneficial Use of Fill Material

And...

- March 1, 2018 Enforcement Discretion Letter



Section 360.2

Definitions

Many New or Revised Definitions

Amendment (NDM)

Commercial aggregate

C&D Debris

Demolition Wastes

Fill Material

Inert Material (LI Landfill Law)

Land With A High/ Low Potential for
Public Exposure

Lift (fill placement)

Navigational Dredged Material

Processing (Solid Waste)

Pulverized

Putrescible

Qualified Environmental Professional

Recognizable

Residue

Soil

Unadulterated (Wood)

Uncontaminated

Undeveloped Land

Wood Debris



Section 360.4

Transition

Part 360 Transition Requirements for Beneficial Use Determinations (BUDs)

- Pre-determined BUDs from before 11/4/17 – Expired May 3, 2018
- All case-specific BUDs in effect prior to November 4, 2017 that do not contain an expiration date have now expired - unless a renewal request has been submitted to DEC



Section 360.12

Beneficial Use

360.12 – Beneficial Use

Subdivisions:

- (a) Applicability
- (b) Unacceptable Uses
- (c) Pre-determined Beneficial Uses
- (d) Case-specific BUDs – general
- (e) Case-specific BUDs – navigational dredged material
- (f) Case-specific BUDs – gas storage or production brine



360.12(a) - Applicability

Beneficial
Use



Waste as
effective
substitute for
commercial
product or
raw material

360.12(a) – Applicability

- 360.12 Beneficial Use does not apply to:
 - Materials being sent to **Part 361 facilities**
 - Waste used in a **manner that constitutes disposal**
- The Department reserves the right to require a **permit for land placement** to protect public health or the environment
- Default **storage time limit of 365 days**



360.12(b) Unacceptable Uses

- Flowable fill in mined land reclamation
- Encasement of waste tires in concrete
- Waste tires as fences or screening



360.12 – Pre-Determined Beneficial Uses

- **Annual reporting** for quantities greater than 10,000 tons
- Grouped by when the material ceases to be solid waste – **four groups:**
 - (1) When used as...
 - (2) When received at location of use as...
 - (3) When meeting specifications/ requirements for use as...
 - (4) When leaving a Material Handling and Recovery Facility (Part 361)

360.12 – Pre-Determined Beneficial Uses: Examples

- Street sweepings, car wash grit and catch-basin cleanout material as aggregate or fill
- Bread and grain products, including spent brewery grains, as animal feed
- Tire and glass aggregates (with specifications)
- Wood debris as mulch



360.12 – Pre-Determined Beneficial Uses: Examples (continued)

- Sandy navigational dredged material as commercial aggregate
- Concrete, brick and rock as aggregate (RCA)
- Asphalt pavement and millings in pavement and road construction (RAP)
- Fill Material generated outside of NYC with no history/suspect contamination (***no sampling required; unrestricted use***)
- Fill Material used in accordance with 360.13



360.12(d) – Case-Specific Beneficial Use Determinations: General

- Case-by-case review for any byproduct or waste material
- Review criteria (“essential nature is use not disposal”, “managed as a commodity”, “will not adversely affect health and the environment”, etc.)
- Lower of 6 NYCRR 375-6.8(b) Protection of Public Health-**Residential** Land Use and Protection of **Groundwater** Soil Cleanup Objectives for soil-like materials placed on the land
- All case-specific BUDs **expire no more than 5 years** from effective date
- **Annual reporting** for all case-specific BUDs
- Right to hearing for revocation



360.12(e) – Case-Specific Beneficial Use Determinations: Navigational Dredged Material (NDM)

- Does not apply to NDM managed under a dredging permit (federal or state) – **360.2(a)(3)(xi) exclusion**
- Modified petition contents for NDM
- Minimum sampling requirements for NDM – sampling performed with approval of the Department’s Division of Water or the US Army Corps of Engineers can be substituted



360.12(f) – Case-Specific Beneficial Use Determinations: Gas Storage Brine or Production Brine

- Applies to use of **brine for road treatment** (dust control and stabilization of unpaved roads; de-icing of paved roads)
- Specialized petition contents relevant to brine
- **Minimum** concentrations of beneficial salts
- **Maximum** concentrations of pollutants (e.g., benzene)
- Specifies practices to ensure minimum runoff into surface water bodies
- Annual reporting and brine analysis required
- Road spreading of brine from the **Marcellus formation prohibited**
- Road spreading of **drilling fluids and flowback water prohibited**



Section 360.13

Special Requirements for Pre-Determined Beneficial Use of Fill Material

The Challenge of Fill Material

Physical and Chemical Contamination...



360.13 – Special Requirements for Pre-Determined Beneficial Use of Fill Material

Subdivisions:

- Applicability
- Waste cessation
- Exemption for on-site reuse of fill material
- Testing requirements for fill material
- Sampling and analysis requirements for fill material
- Acceptable fill material uses
- Other fill material use criteria



360.13(a) – Applicability

Fill Material means soil and similar material excavated for the purpose of construction or maintenance...(360.2(b)(107))

Section 360.13 allows for the **self-assessment** of fill materials for appropriate use within 360.13 criteria.



360.13(a) – Applicability

Section 360.13 DOES NOT apply to:

- Fill material sent to **C&D Debris Handling and Recovery Facilities (CDDHRFs)**
- Fill material generated **outside of NYC with no evidence of historical impacts** such as reported spill events, or visual or other indication of chemical or physical contamination



360.13(a) – Applicability (continued)

Section 360.13 DOES NOT:

- Require all excavated soil or fill to be sampled
- Require sampling of material sent to CDDHRFs
- Prevent anyone from petitioning for a case-specific BUD pursuant to 360.12(d) for fill material



360.13(c) – Exemption for On-Site Reuse of Fill Material

- Materials excavated at a site can be used anywhere on the site in areas of similar **physical** characteristics
- If contaminated material will be used on a site with **public access**, minimum of 1 foot of clean soil cover must be placed
- Not applicable to Part 375 program sites



360.13(d) and (e) – Testing requirements for Fill Material

- Where and when required
- Parameters – required and contingent
- Frequency
- Visual estimate of physical contamination
- By Qualified Environmental Professional (QEP)



360.13(f) – Acceptable Fill Material Uses: Tested Fill Material

General Fill

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graph TD; A[General Fill] --> B[Restricted-Use Fill]; B --> C[Limited-Use Fill];
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Restricted-Use Fill

Limited-Use Fill

360.13(f) – Acceptable Fill Material Uses

Fill Material Type	% Inert, Non-Soil Material	Chemical Concentration Criteria	Allowable Use
General Fill	Zero	Lower of Residential & Groundwater SCOs in Part 375	Anywhere except undeveloped or agricultural land
Restricted-Use Fill	40	Same as General, but up to 3 ppm Ba(P) equivalent	On any land with more heavily contaminated material or in transportation corridors
Limited-Use Fill	100	Same but up to Commercial SCO metals; Ba(P) equiv.	Under foundations or pavements, above the water table



360.13(f) – Acceptable Fill Material Uses

- Inert, non-putrescible material can include ash or C&D debris, but **excludes** plastic, gypsum wallboard, wood, paper, or other material that may readily degrade or produce odors
- Due to the Long Island Landfill Law, in **Nassau and Suffolk Counties** Restricted-Use Fill criteria must meet stricter criteria and Limited-Use Fill is prohibited
- **Notification to DEC at least 5 days** in advance of movement for fill material generated in, transferred in, or imported to NYC in quantities greater than 10 CY



What are no longer BUDs?



Where Did Fuel Approvals Go?

362-1.2 – Combustion Facilities and Thermal Treatment Facilities: **Exemption**

- *Facility that **combusts** alternative fuel authorized under 6 NYCRR Part 212 or 227*

362-1.3 or 1.4 – Combustion Facilities and Thermal Treatment Facilities: **Registration** or **Permit**

- *Facility that **stores** wastes for fuel use*



Where Did In-Landfill Approvals Go?

363-6.21 – Landfills – Operating Requirements

- **Alternate daily cover** does NOT require a BUD
 - *Performance-based criteria for ADC*
 - *Limitation on sulfates*
- **Construction components** inside the landfill environmental containment area do NOT require a BUD
 - *Equivalent design*



DEC Enforcement Discretion Letter

March 1, 2018

March 1, 2018 Enforcement Discretion Letter

Until May 3, 2019 or regulation is amended:

- Source-separated **concrete, brick and rock** are free from regulation as long as they are under control of the entity who generated them, and they are destined for processing and beneficial use under **360.12(c)(3)(viii)**
- **Asphalt pavement and millings** under control of the generator are free from regulation if destined for processing and use under **360.12(c)(3)(ix) or (x)**.
- **“RUCARBS” for mine reclamation** can be used but only pursuant to a Mineral Resources Permit



Don't mix "RUCARBS" – Source-Separate Them!



March 1, 2018 Enforcement Discretion Letter

Until May 3, 2019 or regulation is amended:

- **Sampling of residue and fill material leaving CDDHRFs** for reuse will not be enforced for CDDHRFs with permits that are renewed after November 4, 2017, but before May 3, 2019.
- **Waste Tires used to secure tarpaulins on farms** do not need to meet requirements under 360.12(c)(2)(iv).



Thank You

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