

New York Environmental Regulator Proposes Major Overhaul of Solid Waste Regulations

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On Monday, Feb. 29, 2016, the New York Governor announced that the New York Department of Environmental Conservation (“DEC”) was proposing new regulations for the handling of solid waste. The proposed changes to the solid waste regulations contained in Parts 360, 364, and 369 seek to reorganize and rationalize the muddled set of regulations created by over two decades of ad-hoc rulemaking. Besides clarity and organization, the proposed regulations emphasize waste reduction, waste re-use, mitigation of environmental impacts and eliminating the burden of duplicative or ineffective regulations on waste handlers, processors, transporters and facilities.

Organization and Rationalization

The most apparent change brought by the proposed rules is their attempt to comprehensively reorganize the regulations of solid waste facilities and transporters. The legislature first authorized DEC to produce rules for the management of solid waste facilities in 1973, with the first iteration of Part 360 appearing in 1988. (ECL 27-0701, legislative history.) In pursuit of more efficient and more broadly applicable rules, the regulations under Parts 360, 364, and 369 have been amended in a piecemeal fashion over the course of the last two decades. With each additional amendment—eleven since 1993 in the case of Part 360—the rules themselves became more muddled. This has resulted in a highly complicated and convoluted regulatory regime, with numerous definitions sections, cross-references to sections that have since been repealed, and some provisions that directly contradicted each other.

The new regulations seek to rationalize and reorganize the older regulations of Part 360. Unlike the older rules, which divided the various legal requirements based on expected impact, design, or types of waste, the new regulations follow the single criteria of the type of disposal facility. After addressing standards of reporting, procedure, and definitions in the new Part 360 (General Requirements), the regulations dedicate a full part to each form of resource recovery or disposal, in descending order of agency preference:

- Part 361 – Recycling facilities

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- Part 362 – Energy recovery and other management facilities (including combustion and anaerobic digestion)
 - Part 363 – Disposal facilities (landfills)
 - Part 365 – Biohazard facilities (including all regulations related to Regulated Medical Waste.)

The regulations also dedicate individual sections to transporters (Part 364), local solid waste management plans (Part 366), and state financing of projects (Part 369), as well as consolidating requirements for financial assurances. By consolidating all of the requirements that apply to a given facility, party, or financing type, the new rules seek to reduce clutter and uncertainty in the permitting process.

Expansion of Options for Reuse of Fill and other Material

To further their goal of prioritizing reuse, recycling, and other forms of resource recovery, DEC has also promulgated new criteria for Beneficial Use Determinations (“BUD”) as part of their rule proposal. BUDs—both predetermined and case specific—eliminate regulatory jurisdiction over waste materials used for an alternate, beneficial manner. Under the proposed rules, DEC is promoting additional pre-determined BUDs for recyclable materials, compost, and construction and demolition (C&D) debris, which would permit certain uses of these materials without further departmental approval. For example, the new rules permit the use of C&D debris as fill material without requiring a case specific determination to be made. The rules have also added new case-specific BUD standards for the use of produced brine water—a byproduct of oil and gas drilling—as an ice and dust control measure.

Experience-Based Changes

The new rules proposed by DEC also attempt to incorporate twenty additional years of experience into its regulatory scheme. DEC first promulgated rules on solid waste management in the early 1970s. While these regulations have largely been replaced, the last comprehensive reconfiguration occurred in 1993—the year that the World Wide Web was created. In the intervening decades, trial and error has allowed the agency to determine what types of regulations work, which are excessively burdensome, and what possible measures could improve the overall regime. DEC’s revised regulations also seek to infuse greater policy considerations into the regulations themselves, easing regulation of programs that encourage recycling and deemphasizing standards that encourage landfill disposal.

One of the major changes is the addition of new criteria for categories of pollutants and impacts that create a greater environmental impact than anticipated in initial rulemaking. For example, the revised rules propose new standards for the disposal, reuse, and storage of historic fill material, wood waste, and construction and demolition debris, including requiring manifests for transportation of this waste. Waste streams like old tires—previously dealt with primarily through storage—would be addressed through new regulations aimed at increasing recycling. They have also introduced new regulations for the handling of wastes previously not seen as innocuous, such as historic fill and coal ash. At the same time, unnecessary or excessively burdensome regulation, like the testing requirements for airborne volatile matter coming from combustors, have been reduced where a potential impact has been dealt with elsewhere.

DEC has also altered its rules governing solid waste permitting. Many activities like composting or used cooking oil recycling have the potential to impact the environment; however, recognizing the positive impacts of reducing waste streams, DEC has reduced or eliminated most of the registration and testing requirements for small-scale recyclers, which is a welcome change. At the same time, the rules impose new permitting requirements on activities that were previously seen as less noxious but which have the potential to cause environmental harm, such as recycling facilities, mulch processing centers, or operations and maintenance at closed landfill facilities.

Technological Improvements

Additionally, the rules proposed by DEC attempt to cope with advancements in disposal and protective technology. Technical requirements for capping, groundwater monitoring at landfills, radionucleotide testing, and other engineering controls have been altered to account for newer methods of ameliorating negative impacts of landfills. Under the prior iteration of the rules, for example, landfill liners are allowed to leak at a certain rate; the new rules, on the other hand, require the use of liner integrity testing ex ante to ensure no leakage occurs. The new rules also seek to give DEC more flexibility in funding priorities, creating a targeted priority area assistance program that could be used to support new funding in accordance with needs at the time.

Briana Costa contributed to this blog post.

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National Law Review, Volume VI, Number 70

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