July 21, 2017

Sent by e-mail to: SolidWasteRegulations@dec.ny.gov
Original by regular mail to:

Melissa Treers, P.E.
New York State Department of Environmental Conservation
Division of Materials Management
625 Broadway
Albany, NY 12233-7260

Re: Comments on Revised Proposed Regulations/Solid Waste Management Facilities (Part 360)

Dear Ms. Treers:

Please accept this letter into the record of the above referenced rulemaking, which provides comments and requests for clarification on the Revised Proposed Regulations/Solid Waste Management Facilities (Part 360) on behalf of the Long Island Contractors' Association.

Revised Part 360 Express Terms

Specific Citation	**Comment**
All	As the Department allowed itself over nine (9) months to review the comments on the initially proposed changes in the regulations and then drafted and published the subject revised version, it is simply inequitable to allow only a thirty (30) day time period, which included the July 4th Holiday week, for the public to provide comments. It is our understanding that this compressed timeframe was imposed on the public comment period for the Department to avoid a renewed administrative procedure and delay in any effective date of these proposed regulations. And while we are grateful to the Department for having Albany and Region 1 representatives meet with us, we believe that dialogue showed these regulations are not ready yet.

The Department and the regulated community would be better served to take the time to do the job right, rather than rush forward on matters which will have significant practical, environmental and financial impact.

In summary extend the deadline, start over if you must.

360.2 (a) (3) (viii)

Soil that has no known or suspected contamination present due to human activity should continue to not be classified as a waste.

360.2 (b) (16) (iii)

The definition of Sole Source Aquifer is vague, what does "for its service area...."mean? SSA should plainly be as designated under the Safe Drinking Water Act by the U.S. EPA.

360.2 (b) (62) and (109)

The new definition of C & D debris includes the new term "fill material," which itself is a defined term. Yet when the term fill material is used at 360.13 and 360.12, fill material is further characterized and redefined as "fill material type." To the extent the Department elects to adopt these "fill material type" designations, the definition of C & D debris should include each of the fill material types, and in turn a definition of each one of the fill material types; "General Fill," "Restricted Use Fill "and "Limited Use Fill" must be provided.

360.2 (b) (109)

Definitions of all the fill types "General Fill", "Restricted Use Fill" and "Limited Use Fill" need to be provided not just "Fill Material". The definition should include demolition as well as construction and the term "maintenance" in the definitions is vague and ambiguous and undefined.

360.2 (b) (228)/364 – 1.2 € (ii)

Fill material, particularly General Fill should not be a "Regulated Waste" in the same category and regulatory requirements as hazardous waste.

360.2 (b) (284)

Still presents a definition of "uncontaminated", but use of this term is for the most part minimized from use, specifically deleted from the definition of C & D debris and if the definition of uncontaminated remains, a definition of contaminated should also be presented.

360.4 (b) (i)	If a facility is exempt, how does it have a compliance requirement?
360.4 (b) (2)	Notices should be sent to Registered Facilities respecting new application and compliance requirements.
360.4 (b)	It is impractical and a regulatory burden to have all BUD's expire 180 days after the effective date of these new regulations. A renewed application and allowing continuance of the BUD until the Department makes a further determination must be considered.
360.9 (b) (6)	An unrealistic impracticable, if not illegal, restraint. It would appear to specifically exclude brokers (as it only cites facilities with N.Y. permits) for out of state disposal, which is absolutely improper and a violation of the interference with interstate commerce.
360.12 (c) (1) (ii)	Refers to fill material used in accordance with 360.13 which provides unrealistic and impractical constraints along with vague and ambiguous use criteria.
360.12 (c) (3) (viii) and (ix)	Should not only reference NYSDOT specification but allow and include any municipal specification to apply to such recycled aggregate/residue as well as asphalt millings (e.g. Portland Cement Concrete Aggregate, Suffolk County DPW Stabilized Soil – Aggregate Subbase, Town of Huntington Dense Graded Aggregate Base Material). Also SCDPW and Town of Huntington allow for a mixture of natural and recycled aggregate (asphalt and concrete), whereas NYSDOT allows only 59% asphalt in mixtures. What does uncontaminated asphalt pavement mean, as asphalt is made from petroleum products and inherently contains compounds in concentrations which will exceed Part 375 objectives? Paragraphs (viii) and (ix) do not specify "location of use". Consider moving recycled aggregate and residue, asphalt pavement and millings to (c) (1). To the extent uncontaminated recognizable concrete and asphalt is not a waste but in a BUD, but comes from New York City, will it require a transport manifest/tracking document?

360.12 (d) (2) (vii) (9) (2) — A time period for storage of a BUD commodity is unnecessary.

360.13 (9) — Appears to set characterization responsibility at point of the site of reuse rather than at point of generation.

360.13 (b) — States on-site management of fill material is exempt, but then applies mandate for testing to determine whether it is limited-use fill or restricted use fill.

360.13 (c) (1)/ And (3) — A requirement that fill material coming to a subpart 361-5 facility be characterized per 360.13 (d) is extremely burdensome, impractical, costly and will clearly reduce reuse/recycling opportunities.

360.13 (d) And (e) — The Fill Material Types presented, specifically at Table 2 are vague, ambiguous, unsupported by science or founded in regulations, and will clearly create huge volumes of waste rather than place a priority on material reuse/recycling.

As a foundation defect Table 2 presents improper "chemical criteria". First, the referenced soil cleanup objectives in Part 375 are wrongly presented as bright line standards for waste categorization. These objectives were expressly promulgated for application to the remediation of sites on the State's registry of Inactive Hazardous Waste Disposal Sites, remediation of Brownfield sites under the State's supervision and sites involved in the State Environmental Restoration program; and not to be applied to defining C & D debris. Furthermore, when applying these "Objectives" to such remediation of Registry, Brownfield or Restoration sites, they are applied as objectives or guidelines to determine adequate, feasible and cost effective clean-ups, which also includes an assessment of risk of exposure and allowing the use of institutional and engineering controls at such sites. It is an obvious and regulatory misuse of these "Objectives" as strict and inflexible "standards" by which potentially enormous volumes of material that maybe suitable for reuse/recycling could become a waste, and under the Department's bright line rule (founded in no regulation) must be disposed of off Long Island if the analysis shows any level of exceedance of any of the constituents in the Protection of Groundwater Soil Cleanup objectives. Also, to realistically create and apply such a standard, the Department should be required to test for background levels of these constituents of concern – to get a practical assessment of what is in the soil all over Long Island, short of the fatal flaw of applying

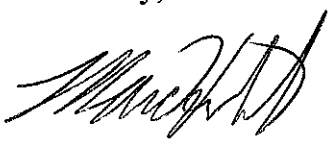
	"standards" which would have the potential of declaring enormous volumes of soils on Long Island waste which have to be shipped off of Long Island.
360.19 (c) (1) (iv)	Requires a clear and concise definition/explanation of "...the criteria for the intended use...".
360.20	Environmental monitoring services should be provided by personnel trained to consistently apply regulations and focus on assisting a permittee in compliance efforts rather than enforcement actions against the permittee.
361-5.4 (e)	The "contamination" identified in 360.13 is improper as stated above. No basis for sampling "residue", if it leaves as a waste and not for reuse.
361-5.4 (f) (1) (i)	Time limitation for storage of asphalt pavement and millings, concrete etc. is not necessary, and will decrease reuse/recycling options.
364-1.2 (e) (ii) and 364-2.1 (5)	Fill material should not be a regulated waste.
364-2.1 (23)	This exemption should include any "regulated waste – fill material" as would be defined in these regulations transported by/from any public works project.
364-4.1	A transporter of fill material should not require a Part 364 permit as if it were hazardous waste.

Revised Draft Generic Environmental Impact Statement On the Proposed Amendments

360.12 and 360.13 Pages 15 – 18	There is no analysis or evaluation presented to support the conclusions that these changes will increase recycling and beneficial use of materials, indeed such an evaluation will show just the opposite.

We request your careful consideration and review of these comments and requests for clarification. We reiterate the request, as the Department should recognize the need for additional time to provide comments and renovation to these draft proposed regulations. To the extent the Department proceeds with issuance of the proposed regulations, we respectfully request modifications be made to address and accommodate the comments presented herein, before final publication and before an effective date.

Sincerely,



Marc Herbst
Executive Director
Long Island Contractors' Association