



**COMPLIANCE GUIDE FOR FILL MATERIAL TRANSFER STATIONS:**

# An Introduction to the NYSDEC Part 360 Rules



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## INTRODUCTION:

# The History of the NYSDEC Part 360 Rules

As a fill material transfer station owner or operator, you're required to comply with the ever-changing New York State Department of Environmental Conservation (NYSDEC) Part 360 regulations - but what are the new regulations and changes that will affect your operations?

With the State issuing so many changes and updates to the regulations over the past few years, it is hard to understand the current rules, and what you are expected to do to follow the rules. Plus, the State writes these regulations using a certain language style and verbiage that can often be confusing to follow and difficult to comprehend, which can make staying in compliance a challenging task.

Unfortunately, failure to maintain compliance with the rules leaves you and your business open to violations and notices of non-compliance from the State. Let us give you a brief history of the NYSDEC Part 360 regulations to help you better understand the State's rules as of the Fall of 2020.

## History

In March of 2016, Governor Andrew Cuomo announced proposed revisions to the State's solid waste regulations which were intended to increase protections for public health, natural resources and the environment. The proposed changes included measures to regulate previously unregulated facilities, activities, and waste streams within the State's existing solid waste management program. These proposed rules contained very limited 'grandfather' provisions.

Following the Governor's announcement, the State held many Public Hearings and Workshops to inform the regulated community and solicit feedback on the newly proposed regulations. Because the State had not made comprehensive revisions to the solid waste management rules since 1993, NYSDEC understood the importance of hearing from the Part 360 community and listening to their questions, comments and concerns. The State accepted written comments on the proposed regulations and took these comments into consideration when publishing the new final rule.

After all comments were received, the NYSDEC modified the rules for a final time. On September 20, 2017, the NYSDEC published the final updated Part 360 Regulations which went into effect on November 4, 2017. This final rule stated that all facilities must be in full compliance with the new regulations by May 3, 2019. The NYSDEC received significant push back from the facility owners most impacted by the rules, leading the State to extend the compliance time frame for one (1) year to May 3, 2020. Therefore, at the time of issuance fill material transfer facilities had 545 days to comply with the new regulations.

## Significant Impacts on Fill Material Transfer Stations

One major change in the Part 360 rules requires many previously unpermitted Fill Material Transfer Stations to apply for a permit. If your fill transfer station operation currently processes over 500 tons/day of various fill material types defined in the regulations, you will need to apply for a facility permit. The permitting process is very involved and includes preparing a detailed application, multiple facility operation plans, and an extensive engineering report that must be completed by a Professional Engineer.

Another major change that affects all Fill Material Transfer Stations is the requirement to test all outbound fill material. Only after the test results are obtained can the fill material be categorized and then transported off-site for use according to its classification based on the results. When classified fill material leaves the transfer station, the individuals responsible for moving the material off site to a new location must maintain a tracking document that accompanies the material until it reaches its final destination.

## Pending Updates to the 2017 Rule

In 2018, after reviewing the new Part 360 rules and understanding their impact on many businesses, the New York Construction Materials Association (NYCMA) members came together and decided to file a lawsuit against the State, opposing the new regulations. Based on the questions and concerns that NYSDEC continued to receive from NYCMA and the impacted community, the State decided to re-evaluate the newly published regulations and make further updates to the rule. The NYSDEC has stated that the new proposed regulations will be released late 2020 or early 2021 for public comment.

The current rules for Fill Material Transfer Stations, which went into effect on November 4, 2017, can be found under NYCRR Part 361-5, 360.12 and 360.13.

Click [here](#) for NYCRR Part 361-5

Click [here](#) for NYCRR Part 360.12

Click [here](#) for NYCRR Part 360.13

More changes were considered and made, as detailed in Chapter One: Changes to the Rules.



## CHAPTER ONE:

# Changes to the Rules

The newly published rules will have a great financial impact on Fill Transfer Stations, and require significant changes to their everyday operations.

Many of the new Part 360 requirements that apply to Fill Material Transfer Stations will cause these facilities to seek help from a Professional Engineer with expertise in solid waste management and a comprehensive understanding of the regulations. The Engineer can assess your facility and complete all of the items required by the new rules, including developing a new layout and process flow diagram, providing additional space for sample piles, and preparing the applications and detailed reports needed to obtain a permit from the NYSDEC.

## Modifications of the Rules

Many of the new rules have an extended compliance date. After the release of the new regulations in 2017, it stated that facilities had until May 3, 2019 to achieve full compliance, including obtaining an approved permit from the NYSDEC (if required). This date was extended to May 3, 2020 and then to May 3, 2021, as noted below. Additionally, facilities would have to begin sampling the outbound fill material and attaching a tracking document to that material whenever it leaves the facility. In order to comply with this new sampling requirement, facilities would have to significantly modify their procedures, and in many cases develop a new layout that allows them to test every 1,000 cubic yards of outbound fill material, because once tested, no additional material can be added to that pile. Therefore, facilities will need to have additional locations for all sampling piles, and be able to keep those piles in place without tampering while the sampling results are pending. Typically, the results take a minimum of three (3) days to be received from the laboratory. The quicker the results, the more expensive the sample analysis cost.

The increased facility operating costs will drive up the prices of the material sold by Fill Transfer Stations, which will impact the cost of products made using this material. Therefore, the price of fill, asphalt, concrete, and other products may significantly increase due to the new regulations. Given the opposition related to the massive changes to the daily operations of Fill Material Transfer Station facilities in order to comply with the rules released in November 2017, the State is in the process of re-evaluating the testing and sampling requirements (more information in Chapter 3: New Sampling Requirements) and expects to release updates to the sampling categories in the Fall of 2020.

In the meantime, NYSDEC has faced a great deal of pressure in keeping up with facility-specific questions on the nuances of the regulations and on what needs to be done to comply, which is further complicated by the on-going revisions to the sampling requirements. This, coupled with NYSDEC staff becoming overwhelmed by reviewing and commenting on the great magnitude of reports and documentation submitted with each permit application, has led the State to extend the compliance date to May 3, 2021 for fill material transfer facilities as discussed below.

## Enforcement Discretion Letters

The NYSDEC has delayed the deadline for obtaining compliance with the newly revised Part 360 regulations until May 3, 2021 as follows:

- If you are a C&D Debris Waste Management Facility that processes concrete, asphalt, rock, and/or soil, you are now required to obtain a registration or permit by May 3, 2021. If you were previously a registered facility but fall under the criteria for a permitted facility under the new rules, you must submit a complete permit application by May 3, 2021.
- If you fall under the criteria for an “exempt” facility, this delay does not apply to you.
- The NYSDEC has also delayed the requirement for fill material sampling until May 3, 2021. However, all fill material leaving a permitted or registered facility must still be classified as either General Fill, Restricted-Use Fill, or Limited-Use Fill in order to qualify for direct beneficial use.
- If you are a Solid Waste Management Facility and were issued a DEC registration prior to November 4, 2017 to accept and process loads of mixed fill material (formerly known as “RUCARBS”), you can continue to accept mixed fill under your registration until May 3, 2021; then you must have a permit in order to continue accepting mixed fill material.



## CHAPTER TWO:

# Requirements for Fill Material Transfer Stations

The State is now requiring many fill material transfer stations to comply with new rules that will ultimately change their daily operations.

Luckily, there is time to learn and understand what regulations apply to you and your facility, which will help you better understand the changes that need to be made.

The following changes will apply to most fill material transfer stations.

## Changes to Fill Material Transfer Stations

- 1. Need for a Registration/Permit.** According to the rule, if your facility processes more than 500 tons/day of material, your facility will need to acquire a permit, otherwise, you may be able to remain registered. Many transfer stations never needed to apply for a permit before this time.
- 2. Apply for a NYSDEC Part 360 Permit.** This is a lengthy process that will require you to retain the services of a Professional Engineer. The Engineer will evaluate your facility operation in order to create an engineering report, which is comprised of an operation and maintenance plan, training plan, process flow diagrams, closure plan and many other plans and drawings to provide documentation to the State detailing how you will comply with the new rules.
- 3. Create an Area for Sampling.** The layouts of many facilities may need to be restructured in order to maintain their same level of throughput by adding an area dedicated strictly for storage and sampling the finished outbound material. It can take at least three (3) days to receive sampling results from the laboratory, and while waiting for the results to come back, no material can be added to or taken from the storage pile. Fill material transfer facilities need to evaluate many potential changes due to this requirement, including daily throughput capacity, traffic flow inside the facility, and the need for additional space.

**4. Facilities must implement procedures to control both stormwater and leachate.** The NYSDEC understands the types of material that are handled by your facility, and they want to make sure that any contaminated material is properly handled. Additionally, the State wants to be confident that rainwater does not come into contact with such materials to ensure contaminated stormwater does not leave your site. Therefore, each site must develop and implement an approved stormwater and leachate control plan.

**5. Beneficial Use Determination.** All material that leaves your site must be classified with a Beneficial Use Determination or BUD. The State has developed three pre-determined BUD categories to classify material after it has been sampled and tested. The categories have certain physical and chemical qualifications. Each category has an approved use, as noted in the table below extracted from Part 360.13(f).

**TABLE 2: Fill Material Beneficial Use**

Fill Material Type	Fill Material End Use	Physical Criteria	Maximum Concentration Levels
General Fill	Any setting where the fill material meets the engineering criteria, for use, except: 1. Undeveloped land; and 2. Agricultural crop land. General Fill may also be used in the same manner as Restricted-Use Fill and Limited-Use Fill.	Only soil, sand, gravel or rock; no non-soil constituents.	Lower of Protection of Public Health-Residential Land Use and Protection of Groundwater in Table 375-6.8(b) of this Title.
Restricted-Use Fill <sup>1</sup>	Engineered use for embankments or subgrade in transportation corridors, or on sites where in-situ materials exceed Restricted-Use Fill or Limited-Use Fill criteria.  Must be placed above the seasonal high water table.  May also be used in the same manner as Limited-Use Fill.	Up to 40 percent by volume inert, non-putrescible non-soil constituents. <sup>2</sup>	General Fill criteria except that up to 3 mg/kg (dry weight) total benzo(a)pyrene (BAP) equivalent. <sup>3</sup>  No detectable asbestos.  In Nassau or Suffolk County – BAP equivalent does not apply. Polycyclic aromatic hydrocarbons must not exceed Protection of Groundwater Soil Cleanup Objectives in Table 375-6.8(b) of this Title.
Limited-Use Fill <sup>1</sup>	Engineered use under foundations and pavements above the seasonal high water table. <sup>4</sup>  Placement in Nassau and Suffolk Counties is prohibited.	No volume limit for inert, non-putrescible non-soil constituents. <sup>2</sup>	General Fill criteria, except up to Protection of Public Health-Commercial SCOs for metals; up to 3 mg/kg (dry weight) benzo(a)pyrene equivalent is allowed. <sup>3</sup>  No detectable asbestos.

**6. Tracking Document.** The NYSDEC now requires all material that leaves your facility is to be accompanied by a tracking document that identifies the generator, transporter, final destination and the type of material in the vehicle. The transporter and generator must sign the form when the material is picked up; the intended destination must sign when received; the transporters must send a copy back to the generating facility and provide a copy to NYSDEC; and the generating facility must keep documents on file for seven (7) years.

Depending on the location of your facility, additional levels of government agencies and requirements will be involved. If your facility is located in NYSDEC Region 1 or 3 through 9, you will be dealing with the NYSDEC and possibly the local county/township. If you are located in Region 2 (New York City), your facility falls under the NYSDEC as well as the New York City Department of Sanitation requirements.



## CHAPTER THREE:

# New Sampling Requirements

The new sampling requirements will call for each facility to sample every 1,000 cubic yards of material they process.

Once material samples are collected and transported to a NYSDEC approved analytical laboratory, the sampling results will be evaluated and the material will be classified as a BUD and can leave the facility, accompanied by a tracking document.

**The first step is to separate the sampling piles.** The size of the sampling pile does not matter, as long as one sample from every 1,000 cubic yards (CY) is tested. For example, if you have a 3,000 CY pile to classify, you will have to collect three (3) samples to be tested. Each individual sample is composed of a composite sample collected from five (5) different locations in a 1,000 CY portion of the pile, plus one additional grab sample. Upon receiving the results, the material will be inspected for inert material, and the pile can be classified and removed off-site. Additionally, if the sample results indicate the material is contaminated, the material may have to be either re-processed, or removed off-site and brought to an appropriate facility that handles contaminated waste.

**Once the material is classified, the material is ready to be moved off site to the next destination.** The three (3) classifications of material are General Fill, Restricted Use Fill, and Limited Use Fill. NYSDEC uses tracking documents to monitor the source and destination of the material in order to control illegal dumping. The rules prohibit Limited Use Fill from being brought to Long Island; generators are subject to stiff penalties if they have knowledge that Limited Use Fill from their facility is brought to Long Island.

**The State announced they will be making changes to the sampling classification rules.** NYSDEC is currently working on changes to the sampling requirements for fill material transfer station facilities. These updates are expected to be released before the end of 2020 or early 2021.

As detailed in this guide, the State's major overhaul of the Part 360 solid waste management regulations has caused a great deal of upset to the facilities impacted by the new, more stringent regulations. The State and the regulated community continue to navigate these new rules and how to apply them, while further updates will be released in the coming months. Just like any new situation, rolling out new regulations involves continued communication between the agency and the regulated facilities who have to modify their operations and develop new plans and procedures within the framework of the regulations.