

# Jacobowitz and Gubits LLP

## New Part 360 Regulations

Presented by Marissa G. Weiss, Esq.  
and Ben Gailey, Esq.  
July 18, 2018



JACOBOWITZ  
AND GUBITS<sup>LLP</sup>  
COUNSELORS AT LAW

# Topics for Discussion

1. Part 360.4 Regulatory Compliance Transition Deadlines for All Facility Types
2. Changes to Beneficial Use Determinations (“BUDs”)
3. Construction and Demolition Debris Handling and Recovery Facilities (“C&D”)
4. Recyclables Handling and Recovery Facilities (“RHRFs”)
5. Composting and Other Organics Processing Facilities
6. Metal Processing and Vehicle Dismantling Facilities
7. Waste Transporters
8. Changes to State Assistance Grant Program
9. Part 360 Series Clarifications



# Part 360 Requirements

# Part 360.4 Regulatory Compliance Transition Deadlines for All Facility Types

- \* Regulations became effective on November 4, 2017
- \* Regulations became operational on May 3, 2018 (180 days)
  - \* Any facilities with new design and/or operational conditions imposed by the new regulations must comply by this date
    - \* Exceptions:
      - \* C&D Facilities have 545 days under Part 361-5
      - \* Existing permitted facility/transporter: previous permit stays in effect until expiration date of permit (permit renewal requires compliance w/ new regs)
      - \* Retrofits of existing facilities (other than landfills) do not need to comply, but new structural components do

# Part 360.4 Regulatory Compliance Transition Deadlines for All Facility Types

- \* Previously exempt facilities that require registration: 180 days
  - \* Registration is not a SEQR action
- \* Previously exempt or registered facilities that now require permit: 365 days (November 4, 2018)
  - \* Exception: C&D facilities have 545 days to obtain permit
  - \* New permit needed=SEQR
- \* Permitted facilities now registered or exempt: must remain in compliance with previous permit or registration until permit surrendered
- \* *Generally, most solid waste facilities require permits for construction and operation [ECL § 27-0707; § 360.17]*

# Changes to Beneficial Use Determinations ("BUDs") [§ 360.12]

- \* Beneficial use ("BUD"): labeling of certain wastes as effective substitutes for commercial products or raw materials
  - \* When labeled as a BUD, material no longer considered a solid waste

# Changes to Beneficial Use Determinations ("BUDs") [§ 360.12]

- \* BUDs can either be pre-determined by DEC or case specific BUDs
  - \* List of predetermined BUDs at § 360.12(c)
    - \* New pre-determined BUDs have been added to address common, acceptable uses including: wood pallets reused as pallets; use of street sweepings as fill; materials approved by DEC for remedial projects; the use of tires to hold down tarps; the use of up to 150 tires as planters and other similar uses, sandy dredged materials as aggregate, etc.; and materials emanating from facilities regulated by Part 361 (recyclables, compost, etc.)

# Changes to Beneficial Use Determinations ("BUDs") [§ 360.12]

- \* Case-specific BUDs need a written submission to DEC [ § 360.12(d)]
  - \* New specific regulations for navigational dredged material [§ 360.12(e)] and gas storage brine or production brine [§ 360.12(f)]
  - \* Revisions include 5-year term on BUD approvals, so DEC can remove inactive BUDs from the database
  - \* Annual reporting now required for all case-specific BUDs





# Part 361 Material Recovery Facilities

# Construction & Demolition Debris Handling and Recovery Facilities ("C&D") [§ 360.12, 361-5]

- \* C&D debris: includes wastes resulting from construction, remodeling, repair and demolition of structures, buildings and roads, as well as fill material, demolition wastes, and construction wastes, which are processed and/or stored by facilities to extract recyclable or reusable materials
- \* Overarching purpose of new regs: to better manage C&D debris and therefore reduce illegal disposal as C&D debris not previously comprehensively regulated
  - \* Processing of C&D debris can generate noise, dust, odors, and negative groundwater impacts
  - \* Registration/permit compliance date for C&D facilities: May 3, 2019 (545 days)

# Construction & Demolition Debris Handling and Recovery Facilities ("C&D") [§ 360.12, 361-5]

- \* Threshold: 500 tons/day based upon a weekly average
  - \* § 361-5.2: facilities that receive <500 tons/day of C&D debris only need to be registered, not permitted. Must still comply with new regulations.
- \* Specific storage requirements [§ 361-5.4]
  - \* Unprocessed asphalt pavement or millings, concrete, brick, fill material, rock, and wood can be stored uncovered, but limited to 365 days unless additional criteria satisfied
  - \* Any other unprocessed debris must be in enclosed/covered storage area for a maximum of 30 days, unless written DEC approval obtained
  - \* 10 ft. separation distance between piles (except for concrete, asphalt, brick, or rock)

# Construction & Demolition Debris Handling and Recovery Facilities ("C&D") [§ 360.12, 361-5]

- \* New recordkeeping and reporting requirements [§§ 361-5.5; 360.19(k)]
  - \* Facilities must submit in its permit application or registration submission the daily tonnage it intends to receive by material type
  - \* Annual reporting to DEC
  - \* Must also submit site plan showing storage and waste processing locations

# Construction & Demolition Debris Handling and Recovery Facilities ("C&D") [§ 360.12, 361-5]

- \* C&D debris tracking from registered and permitted facilities [§ 361-5.6]
  - \* All fill material, material that is not a BUD, or residue leaving a registered or permitted C&D facility must have a C&D debris tracking document from DEC, which must contain:
    - \* name and address of C&D debris handling and recovery facility;
    - \* name of transporter; and the
    - \* intended destination of the material
  - \* Tracking documents must be kept for a minimum of 7 years [§ 360.19(k)(2)]

# Recyclables Handling and Recovery Facilities ("RHRFs") [§ 361-1]

- \* Subpart applies to facilities which process source-separated nonputrescible recyclables, i.e. nonorganic recyclables
- \* Purpose of new regulation: concerns relating to noise, truck traffic, and other nuisances from large RHRFs currently only operating under a registration
  - \* Like C&D facilities, a permit is now required for RHRFs that receive >250 tons/day
- \* Additional design [§ 361-1.5] and reporting requirements [§ 361-1.6]

# Composting and Other Organics Processing Facilities [§ 361-3]

- \* Old regulatory scheme required registration for the addition of any amount of food scraps to a community garden generated by a resident
  - \* Now exempts small-scale composting facilities if <1000 lbs/week of food scraps
- \* Registration threshold has been increased from 1000 cubic yds to 5000 cubics yds/year
  - \* Facilities handling >5000 cubic yds require a permit
- \* Different requirements based on type of facility, e.g., composting, anaerobic digestion, fermentation, and animal feed production facilities

# Metal Processing and Vehicle Dismantling Facilities [§ 361-7]

- \* Applies to facilities that receive, decommission, process, dismantle, store, and recycle metal, discarded metal-containing products (e.g., appliances) and end-of-life vehicles
  - \* Exemptions:
    - \* (1) motor vehicle repair shops registered w/ NYS DMV that store <25 end-of-life vehicles on-site at any time
    - \* (2) scrap metal processors that store <1000 cubic yards of metal on-site at any one time (storage inside building does not count towards 1000 cubic yards)
      - \* Previously, this exemption had no threshold and existed for all scrap metal processors



# Metal Processing and Vehicle Dismantling Facilities [§ 361-7]

- \* No permit required—only registration and recordkeeping reporting requirements for the following facilities [§ 361-7.3(a)]:
  - \* NYS DMV-registered repair shops that store between 26-50 end-of-life vehicles on-site at any time
  - \* Vehicle dismantling facilities that receive <25 end-of-life vehicles/year and store <50 end-of-life vehicles on-site at any one time
  - \* Scrap metal processors that store >1000 cubic yards of metal

# Metal Processing and Vehicle Dismantling Facilities [§ 361-7]

- \* No permit required—only registration, recordkeeping and reporting, and operating requirements for the following facilities [§ 361-7.3(b)]
  - \* NYS DMV-registered repair shops that store >50 end-of-life vehicles on-site at any time
  - \* Vehicle dismantling facilities that receive >25 end-of-life vehicles/year and store >50 end-of-life vehicles on-site at any one time
  - \* Mobile vehicle crushers
- \* Above must follow § 361-7.4's operating guidelines
- \* Reporting requirements under § 361-7.5
  - \* Facility must maintain date of receipt and disposal of all-end-of-life vehicles on-site and routine inspection logs in accordance with § 360.19(k)(ii)

# Waste Transporters [§ 364]

- \* Purpose: “To protect the environment from mishandling and mismanagement of all regulated wastes transported from the site of generation to the site of ultimate treatment, storage or disposal and to prevent a discharge of wastes into the environment, whether accidental or intentional, except at a site approved for the treatment, storage or disposal of the wastes”
  - \* Waste Transporter regulations have not been revised in 25 years
  - \* Vital link and cross-check on all phases of the waste stream, especially in industrial and commercial sectors

# Waste Transporters [§ 364]

- \* Governs all waste originating or terminating at a location in NYS, including [§ 364-1.2]: raw sewage; septage; industrial-commercial waste such as acids, leachates, and petroleum; waste tires; waste oil; household hazardous waste (“HHW”); regulated medical waste (“RMW”); infectious waste; and hazardous waste

# Waste Transporters [§ 364]

- \* Summary of changes:
  - \* Exemption for small loads increased from 500 to 2,000 lbs [§ 364-2(b)(5)]
  - \* Registration only required [§ 364-3]:
    - \* Self-transport of RMW in quantities <50 lbs/month
    - \* Transport of <50 lbs of source-separated HHW
    - \* Transport of commercial solid waste in quantities >2,000 lbs
    - \* Transport of C&D debris in quantities >10 cubic yds
    - \* Transport of sharps from household medical waste facility

# Waste Transporters [§ 364]

- \* Waste Tracking document requirements [§ 364-5]:
  - \* RMW
  - \* Infectious wastes
  - \* Non-exempt drilling and production waste
  - \* Restricted-use, limited-use, and contaminated fill material generated statewide
  - \* General fill material under C&D debris generated in NYC

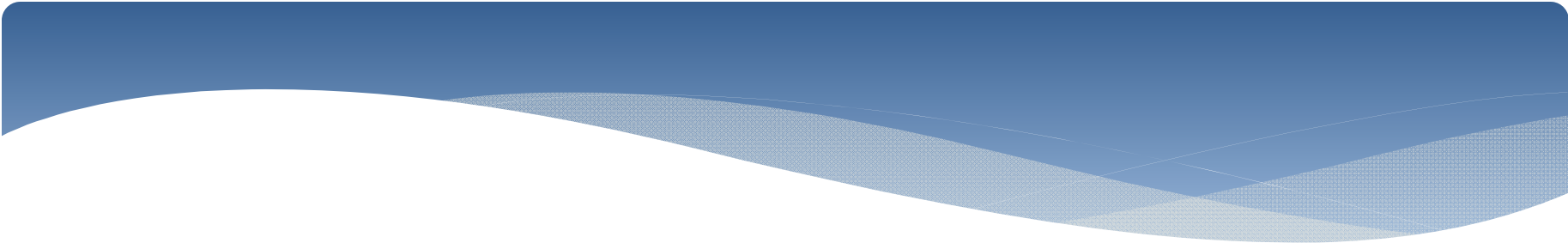
# Changes to State Assistance Grant Program [§ 369]

- \* Consolidation of all state assistance grant program regulations to a single separate subpart in the regulations
- \* Division of separate funding programs (e.g. capital projects (waste reduction & recycling, HHW; education and coordination projects; landfill gas management; etc.)
  - \* Better addresses municipalities' requests to fund routine and recurring municipal costs, e.g., education and HHW collection
- \* Establishes annual application/funding process for education and coordination and HHW projects
- \* Allows DEC to target high priority waste reduction and recycling areas annually
- \* Restricts landfill closure funding to landfills that stopped receiving waste prior to 4/9/1997

# Part 360 Series Clarifications

- \* Industry challenge to new regulations: Article 78 lawsuit
  - \* DEC Enforcement Discretion Letter (March 1, 2018)
    - \* E.g. C&D
- \* Stipulation & Order (May 15, 2018)
  - \* Potential for continued updates to regulations (check
  - \* Parties agreed to hold monthly meetings starting May 2018 regarding Revised Rule until DEC issues draft Revised Rule





Questions?  
Comments?

# Contact Us



Marissa G. Weiss, Associate  
[mgw@jacobowitz.com](mailto:mgw@jacobowitz.com)  
845.778.2121 x 261



J. Benjamin Gailey, Partner  
[jbg@jacobowitz.com](mailto:jbg@jacobowitz.com)  
845.778.2121 x 224



**845-764-8828**  
**WALDEN**  
**MONTICELLO**

**WORLD CLASS**  
**ATTORNEYS**  
**HUDSON VALLEY**  
**ROOTS**



**JACOBOWITZ**  
**AND GUBITS** LLP  
**COUNSELORS AT LAW**

**J A C O B O W I T Z . C O M**