

## TECHNICAL ADMINISTRATIVE GUIDANCE MEMORANDUM

### T A G M

Approved: SBH  
Director, Division of Solid & Hazardous Materials

**TAGM: SW-98-12**

**Subject: Recyclables Recovery Programs and  
Percentage Recoveries**

**Effective Date: May 3, 2001**

☐ New

☒ Revised

☒ Supersedes Number: DSHM-98-08

Dated: July 29, 1998

#### I. PURPOSE

TAGMs are developed to provide guidance and clarify program issues to facilitate compliance with statutory and regulatory requirements. They also provide assistance to Department staff and the regulated community in interpreting and applying regulations and to Division of Solid & Hazardous Materials (DSHM) staff in achieving program uniformity throughout the state. A TAGM cannot impose new requirements beyond those contained in existing regulations or statutes. Furthermore, a TAGM is not a fixed rule; therefore, it does not create any enforceable right by any party using the TAGM.

The purpose of this TAGM is to describe the Department's statutory and regulatory authority to require applicants for permits to construct and operate solid waste management facilities issued under 6 NYCRR Part 360 Solid Waste Management Facilities (Part 360) to ensure that, to the extent economically and technically practicable, solid waste from a service area to be treated at a solid waste incinerator or disposed of at a landfill will constitute only that portion of the waste stream remaining after the implementation of an aggressive recyclables recovery program. In accordance with Section 360-2.17 and Subdivision 360-3.3(j), only authorized wastes are acceptable for treatment or disposal at these facilities.

#### II. BACKGROUND

The Legislature has found and declared that the proper management of solid waste is necessary to protect the public health and the environment. Toward this end, the Legislature found it necessary to reduce the generation of solid waste, to accelerate the recovery and reuse of secondary materials within the State, to encourage the conservation of resources, to foster public and private initiatives to achieve these ends, and to encourage a new ethic among New York's citizens to conserve and reuse, rather than discard, useful materials. The Legislature also found that waste reduction is a key strategy whose promotion, on a statewide or regional basis, would assist local governments in developing more effective waste disposal programs. Lastly, the Legislature has found that when accompanied by the development of adequate markets for materials separated from the waste stream, source separation and recycling programs can be effective ways to reduce the ultimate volume of solid waste requiring disposal. (L.1988, c.70, Section 2).

The two primary statutory provisions the Department uses to address the matters raised in these findings are Environmental Conservation Law (ECL) Article 8 (the State Environmental Quality Review Act) and ECL 27-0106 (the State Solid Waste Management Policy).

ECL 8-0109.1 provides that:

*"Agencies shall use all practicable means to realize the policies and goals set forth in [the State Environmental Quality Review Act] . . . , and shall act and choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement process."*

ECL 27-0106, establishes an ordered listing of solid waste management methodologies, the two most preferred being reduction of the amount of solid waste generated and the reuse of materials for the purposes for which it was originally intended or to recycle materials that cannot be reused. The Legislature mandated that ECL 27-0106, after consideration of economic and technical feasibility, must guide the solid waste management programs and decisions of the Department and of other state agencies and authorities.

Pursuant to this mandate, the Department issued Subdivision 360-1.9(f) and 360-1.11(h). Subdivision 360-1.9(f) provides that:

*“In the case of applications that are submitted by or on behalf of a municipality for initial permits to construct and operate, or to renew a permit (unless otherwise determined by the department), for a landfill (other than one used exclusively for ash residue, clean fill or construction and demolition debris), a solid waste incinerator (other than one used exclusively to incinerate regulated medical waste), a refuse-derived fuel processing facility, a construction and demolition debris processing facility, a mixed solid waste composting facility or a transfer station (other than one used exclusively for transfer of regulated medical waste), the applicant must submit as part of the complete application a comprehensive recycling analysis, unless (for the service area for the proposed facility) such an analysis had been previously submitted and approved by the Department; or a local solid waste management plan is in effect that addresses all components of such an analysis.*

Subdivision 360-1.11(h) provides that:

*“In the case of a permit relating to a landfill (other than one used exclusively for ash residue, clean fill or construction and demolition debris), a solid waste incinerator (other than one used to incinerate regulated medical waste), a refuse-derived fuel processing facility, a construction and demolition debris processing facility, a mixed solid waste composting facility or a transfer station (other than one used exclusively for transfer of regulated medical waste), the permit must contain a condition that the permittee must not accept at the facility solid waste which was generated within a municipality that has either not completed a comprehensive recycling analysis or is not included in another municipality’s comprehensive recycling analysis satisfying the requirements of subdivision 360-1.9(f) of this Part which has been approved by the department and implemented their recyclables recovery program determined to be feasible by the analysis.”*

When read together, Subdivisions 360-1.9(f) and 360-1.11(h)(2) require municipalities having waste generated within their borders being managed at the types of facilities identified in Subdivisions 360-1.9(f) and 360-1.11(h) to also have aggressive recyclables recovery programs that seek to attain specified, progressively increasing percentages of the waste stream to be recovered as recyclables. Hence, the Department, through the regulatory provisions relating to the implementation of recyclables recovery programs, intends to carry out the statutory mandate by ensuring that municipal waste reduction, reuse and recycling efforts are pursued as aggressively as economically and technically practicable.

In March 1987, the Department issued under ECL 27-0103 the New York State Solid Waste Management Plan. This Plan calls for the attainment by 1997, on a statewide basis, of at least a 50 percent reduction in the amount of waste generated that would be sent to solid waste incinerators or landfills for treatment and/or ultimate disposal, by means of waste reduction, reuse and recycling programs. While this 50 percent waste reduction, reuse and recycling planning objective presently cannot be mandated, nonetheless, the objective is consistent with ECL 27-0106's mandate that the Department's decision making maximize waste reduction, reuse and recycling efforts to the extent technologically and economically practicable.

### **III. GUIDANCE**

The Department interprets its responsibilities under applicable law and regulation to require itself to exercise its permitting authority in such a manner as to ensure that municipalities undertake recyclables recovery programs that are as aggressive and change-forcing as economically and technically practicable. This action will have the beneficial effect of promoting the attainment of the statewide 1997 planning objective of at least a 50 percent

reduction in the amount of waste generated by weight that would be sent to solid waste incinerators or landfills for treatment and/or disposal and implementing the 1992 source separation requirement. (This planning objective includes an eight to ten percent waste reduction component.) The focus of the Department's implementation of this responsibility is in the recyclables recovery program identified in Subdivisions 360-1.9(f) and 360-1.11(h).

In order to articulate the implementation of the Department's responsibilities under these provisions, the following is provided:

- A. The recyclables recovery program must include specified, progressively increasing percentages of the waste stream that are intended to be recovered as recyclables. These percentages must reflect ambitious, yet realistically attainable goals.
- B. Each major component of the waste stream must be subjected to the recyclables recovery analysis. At a minimum, the applicant should segment the municipality's waste stream into the following general components: waste generated from residential, commercial, and institutional sources (i.e., , paper and paper products, glass, metals, plastics, textiles, food waste, garden and yard waste, tires, vehicle and dry cell batteries, etc.); non-hazardous industrial waste (including industrial sludges); construction and demolition debris; and sludge from municipal sewage treatment plants and water treatment plants. Of course, a municipality may segment its waste stream further; and in that event, each such additional component must be subjected to aggressive recyclables recovery analysis.
- C. The recyclables recovery program must seek to maximize, to the extent economically and technically practicable, the recovery/reuse of solid waste in each of the above-identified general components of the waste stream. Hence, the reuse/recycling percentages with respect to each of the above-identified general components of the waste stream should stand on their own merits.
- D. Waste reduction and reuse-recycling calculations must be on a per capita basis to account for future population fluctuations. The base year will be 1988 (the year of enactment of ECL 27-0106). Hence, the basis for attainment of the waste reduction and reuse-recycling goals shall be the waste generated within the municipality within each of the above-identified general components divided by the population of the municipality in 1988. A municipality's per capita waste generation rate in future years will then be determined by measuring waste in each of the general components identified above generated within the municipality in a given year and dividing that amount by the population in that year. The progress toward the municipality's waste reduction reuse/recycling goal can be determined by comparing that year's per capita rate to the 1988 per capita rate.
- E. Private and municipal waste reduction reuse/recycling activities started before 1988 but still continuing, should be included in determining the 1988 per capita waste generation rate so as not to penalize a municipality that may have previously initiated such programs. The quantity of recycled materials would have to be documented by marketing records or other suitable means to be included in the 1988 per capita generation rate.
- F. Waste reduction can be achieved by:
  1. citizens who change their consuming habits;
  2. federal and state initiatives, and;
  3. local programs.

Municipalities should evaluate any opportunities they may have for waste reduction such as altering procurement practices, educating citizens and industry with respect to improving purchasing practices, and by assisting with waste audits.

If you have any questions, please contact:

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