

DSHM-SW-09-01 / Solid Waste Management Facility Permitting Policy

New York State Department of Environmental Conservation

DEC Program Policy

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I. Summary

The New York State Department of Environmental Conservation (Department) is developing a broad solid waste management initiative to increase materials recovery, reduce solid waste disposal, and minimize the environmental impacts of waste management. This initiative will be developed through the following actions:

- revising 6 NYCRR Part 360 (Part 360) Solid Waste Management Facilities Regulations;
- implementing a new State Solid Waste Management Plan;
- providing guidance on how to assess energy use and greenhouse gas emissions in environmental impact statements; and
- developing legislative proposals intended to create new or revise existing solid waste laws and management policies and increase the resources dedicated to materials recovery.

As the initiative proceeds, this Solid Waste Management Facility Permitting Policy (Permitting Policy) clarifies the Department's requirements, procedures, and responsibilities with regard to solid waste management facility permitting for new facility construction, existing facility expansion, and acceptance rate increases, in the context of the existing laws and regulations, to:

- integrate these solid waste management facility permitting decisions with local solid waste management planning and the State Solid Waste Management Policy (State SWM Policy) in accordance with 6 NYCRR §360-1.9(e)(4);
- consider most of these permit actions major under the 6 NYCRR Part 621 (Part 621) Uniform Procedures Regulations and, thereby, ensure adequate public discourse and scrutiny of proposed solid waste management facility permits;
- ensure that State Environmental Quality Review (SEQR) considers all of the relevant environmental impacts of these permit actions and achieves adequate mitigation of the identified impacts; and
- collect all the information available on greenhouse gas emissions from solid waste management facilities.

The policies and procedures set forth in this document are intended solely for the use and guidance of Department personnel. They are not intended to create any substantive or procedural rights enforceable by any party in administrative and judicial litigation with the State of New York. The Department reserves the right to act at variance with these policies and procedures.

II. Policy

Through the permitting process, the Department must ensure that the laws and regulations associated with the permitted activity are observed and that potential adverse environmental impacts are addressed and mitigated. This Permitting Policy provides that, in the Department's permit application review process, the following elements are considered in the context of new facility construction, existing facility expansions, and existing facility acceptance rate increases.

1. Integrating the State Solid Waste Management Policy and Local Solid Waste Management Plans (LSWMPs) into permit reviews

The Department will provide guidance to permit applicants and others on the Part 360 relationships between a permit application, State SWM Policy, and LSWMPs and ensure that the permit applicant is aware of these relationships early in the permit application process.

a) State Solid Waste Management Policy

Pursuant to Environmental Conservation Law (ECL) §27-0707(2) and current regulations, permitting actions must be determined to be consistent with the State SWM Policy defined by ECL §27-0106 prior to the Department providing a notice of a complete permit application to the applicant. 6 NYCRR §360-1.9(e)(4)(iv), requires that a permit application shall not be considered complete without a description of the facility's consistency with State SWM Policy. Furthermore, 6 NYCRR §360-1.10(a) provides that the Department may issue a facility construction permit only when the applicant has demonstrated consistency with State SWM Policy.

b) Local Solid Waste Management Plans

Additional requirements apply to the relationship of an LSWMP to a permit application for the construction of a solid waste management facility. 6 NYCRR §360-1.9(e)(4)(v) requires applications for the construction or expansion of a solid waste management facility submitted by, or on behalf of, a municipality as defined in 6 NYCRR §360-1.2(b)(21), to demonstrate consistency with the LSWMP. For applications which are not submitted by or on behalf of a municipality, 6 NYCRR §360-1.9(e)(4)(vi) requires an assessment of the impact of the proposed facility construction on the LSWMP of the local solid waste management planning unit and the planning units from which the waste is to be received. 6 NYCRR §360-1.8(g) states that the local solid waste management plan must include any required plan modification or update. The requirements described in this paragraph do not apply to acceptance rate increases that do not involve construction or expansion.

2. Treating SWMF permit applications as Major under the Uniform Procedures Act (UPA)

Permit actions for construction, expansion, and acceptance rate increases are to be treated as major under the UPA unless specifically designated as minor. ECL Article 70 and Part 621 establish Departmental authority to determine whether a permit application is treated as a major or minor action under the UPA. 6 NYCRR §621.4(m)(2) expressly authorized as minor projects: small C&D landfills, yard waste composting facilities, small transfer stations and some pre-approved staged facility construction projects. In the absence of such minor project designation, permit applications for construction, expansion, and acceptance rate increases are to be treated as major projects under

the UPA. Further, 6 NYCRR §621.3(b)(3) provides that in cases where the department determines that a minor project requires public notice, may have a significant impact on the environment under SEQR or requires a public hearing, the project will thereafter be processed as a major project.

3. Providing guidance on SEQR review of SWMF permit applications

The Department will provide guidance to lead agencies on SEQR reviews related to solid waste management projects, while continuing its existing lead agency coordination efforts under SEQR. However, the Department will, either as lead agency or by request to a designated lead agency, seek to ensure that the environmental review fully addresses such considerations as facility life, landfill capacity airspace, impacts of increased truck traffic, waste reduction and materials recovery incentives and infrastructure impacts, and greenhouse gas generation and mitigation. As steward of the State's natural resources, the Department must consider all these factors early in the process as it confronts decisions that irreversibly commit the State's natural resources for use as disposal sites.

4. Collecting data on greenhouse gas (GHG) generation.

The Department will evaluate the information submitted in the permit application associated with energy use and greenhouse gas emissions to determine if additional annual reporting data is needed beyond that currently required under its air resources and solid waste programs.

5. Negotiating mitigation measures.

The Department will negotiate special permit conditions, as authorized by 6 NYCRR §360-1.11(a), to mitigate the facility's impacts on climate change and the service areas' LSWMPs, based on the Department's understanding of the project and its service area, and the status of the service area's LSWMPs and recycling infrastructure. This could also include special permit conditions that reflect new concepts in solid waste management planning and staff's emerging understanding of additional environmental and natural resource impacts of SWMFs. Staff should seek to negotiate special permit conditions that reflect performance of recycling program and/or waste diversion activities to which the applicant has committed.

III. Purpose and Background

The Department's primary authority with regard to solid waste management rests in its approval of solid waste management facility permits authorized by ECL §27-0707. This Permitting Policy seeks to exercise that authority in a consistent manner across the State and further move the State toward the goals of the State SWM Policy established in ECL §27-0106:

- first, to reduce the amount of waste generated;
- second, to reuse material for the purpose for which it was originally intended or to recycle material that cannot be reused (For this purpose, composting and anaerobic digestion is considered a form of recycling.);
- third, to recover, in an environmentally acceptable manner, energy from solid waste that cannot be economically and technically reused or recycled; and
- fourth, to dispose of solid waste that is not being reused, recycled or from which energy is not being recovered, by land burial or other methods approved by the Department.

This Permitting Policy is offered in the context of the following facts and initiatives:

- The Department has developed a new State Solid Waste Management Plan that assessed disposal capacity and needs, established aggressive goals for materials recovery and waste reduction, and recommended legislation to accomplish these goals;
- The Department is revising and updating the 6 NYCRR Part 360 Solid Waste Management Facility Regulations;
- Recycling and waste prevention can play an important role in combating climate change by reducing carbon emissions from materials production and disposal;
- Recycling rates have remained stagnant for nearly a decade, while the amount of waste landfilled in the State and per-capita waste generation have increased;
- The export of waste from New York State, particularly the City of New York, persists and could be threatened by potential federal restriction;
- The Commissioner issued priorities for Department staff to consider as they implement their programs.

1. Integrating review of the State Solid Waste Management Policy and Local Solid Waste Management Plans in permit reviews

Local solid waste management planning is a critical tool in fostering responsible solid waste management and to achieve the goals of the State SWM Policy. As such, the Department will increase its attention to local solid waste management planning in a variety of ways, including fully utilizing the regulatory tools and requirements available to encourage local solid waste management planning units to actively engage in solid waste planning. The Department's aim is to ensure that LSWMPs are in place, up to date, in compliance with the Department's regulations, and consistent with the State's policy goals, all of which are required under the current Part 360.

2. Treating SWMF permit applications for construction, expansion and acceptance rate increases as Major under the UPA

A distinction needs to be made between the treatment of requests under the Part 621 Uniform Procedures regulations covering major and minor projects and the Part 360 regulations covering permit modifications. 6 NYCRR §360-1.8(e) states that for the purposes of Part 621 that an application to modify a permit for a solid waste management facility must be treated as a new application if the modification proposes any increase of the total quantity of solid waste received during any quarter by 50% or more. Even when a request for modification regarding acceptance rate increases falls below the 50 % threshold, 6 NYCRR §360-1.8(e) does not control the treatment of a project under Part 621 as major or minor.

Treating acceptance rate increases and facility expansions as major actions, regardless of the size of the request, is required by Part 621 and triggers the public notice and review required by ECL §27-0707(2)(c)(2) and Commissioner's Policy CP-29 Environmental Justice and Permitting Policy and the preliminary screening requirements of CP-29. Treating these applications as major also furthers the Commissioner's organizational goals of engaging the public in decision-making and being proactive in meeting the public's needs.

3. Providing guidance on SEQR review of SWMF permit applications

Even if the Department is not the lead agency, as an involved agency, 6 NYCRR §617.3(b) gives the Department the opportunity to impose substantial permit conditions following the filing of a final EIS and written findings statement. However, it is in the public interest and prudent for the Department to be involved early in the SEQR process, particularly since the Department already has the authority to request this environmental impact information under the current regulations. Furthermore, a proper and appropriately comprehensive evaluation of the issues under SEQR is necessary for both the SEQR lead agency and involved agencies to make necessary findings pursuant to SEQR.

4. Collecting data on greenhouse gas (GHG) generation.

The Department seeks to collect data to aid in its efforts to inventory, quantify, and compare the relative extent of contributions from solid waste management facilities to overall GHG loadings in the State and beyond. This data will be used in Department analyses and deliberations on potential policy approaches.

Pursuant to 6 NYCRR §360-1.4(c) and §360-2.17(t), all solid waste management facilities are required to submit annual reports containing information requested by the Department. Specific requirements for landfill gas recovery facilities are noted in 6 NYCRR §360-2.16(e)(6). Through these reports the Department currently collects certain information regarding landfill gas generation, including the volume of gas handled in collection systems and its BTU value. To obtain air permits, landfill gas recovery facility operators should use the EPA LandGem model for projecting landfill gas generation in a proposed project.

The Department's Guide for Assessing Energy Use and Greenhouse Gas Emissions in Environmental Impact Statements provides guidance as to methods to assess these impacts when preparing and reviewing an EIS. This information can be used to identify and assess climate change impacts and the steps to minimize the emission of greenhouse gases that cause climate change.

5. Negotiating mitigation measures.

The Department is directed by its enabling legislation and mission to protect and preserve the environment and natural resources. The Department is specifically authorized by 6 NYCRR §617.3(b) to "require substantive conditions upon an action to ensure that the requirements of" Part 617 are met and ECL §27-0703(2) to adopt rules to mitigate such obvious negative impact factors as water pollution, air pollution, noise pollution, obnoxious odors, unsightly conditions caused by uncontrolled release of litter, infestation of flies and vermin, and other conditions inimical to the public health, safety and welfare.

The Department has traditionally utilized the permitting authority granted by ECL §27-0704 and incorporated into 6 NYCRR §360-1.11(a) to impose special permit conditions to mitigate many of the obvious negative impacts, as well as more recently recognized impacts of concern such as generation of greenhouse gases and other air pollutants, traffic impacts, etc. 6 NYCRR §360-1.11(h) also requires the Department to require permit conditions limiting the acceptance of solid waste only from communities that have completed a Comprehensive Recycling Analysis and implemented the recyclables recovery program determined to be feasible by the analysis.

Special permit conditions that resulted through the negotiating process have included leaf and yard waste bans, special permit conditions that reflect performance of recycling program and/or waste

diversion activities, and imposition of on-site environmental monitors.

IV. Responsibility

The Division of Solid and Hazardous Materials (DSHM) is the lead program responsible for interpreting and implementing this Permitting Policy. The Division of Environmental Permits (DEP) will implement the UPA and SEQR elements of the Permitting Policy with technical support from the DMM.

V. Procedure

Department staff shall notify all applicants for solid waste management facility (SWMF) permits for new facility construction, existing facility expansions, and existing facility acceptance rate increases of this Permitting Policy as early as possible during the pre-application process (i.e., at the first pre-proposal meeting or discussion). Specific guidance with regard to the particular policy elements is as follows:

1. Integrating review of the State solid waste management policy and Local Solid Waste Management Plans in permit reviews

When reviewing an application for a SWMF permit, Department staff will refer to and determine compliance with the requirements of 6 NYCRR §360-1.9(e)(4)(iv). To comply with this provision, applicants must describe, as a part of their application, the proposed facility's consistency with State SWM Policy.

To determine the appropriate course of action with regard to integration of LSWMPs with a permit application review for the construction or expansion of a solid waste management facility, Department staff shall determine whether the application is made by, or on behalf, of a municipality as defined in 6 NYCRR §360-1.2(b)(21). If an application is determined to be by or on behalf of a municipality, pursuant to 6 NYCRR §360-1.9(e)(4)(v) the applicant must include in its application a narrative demonstrating consistency with the LSWMP in effect for the affected municipality(ies). The Department's consistency determination will be based on the proposed facility's relationship to the affected planning unit's integrated solid waste management system and the status of affected planning unit's LSWMP and compliance reports, including whether a plan modification is required pursuant to 6 NYCRR §360-15.11.

Pursuant to 6 NYCRR §360-1.9(e)(4)(vi), if an application for construction or expansion of a solid waste management facility is determined not to be made by or on behalf of a municipality, the applicant shall provide an assessment of the impact of the proposed facility on the LSWMP in effect for the solid waste management planning unit in which the facility is located, as well as those planning units from which solid waste is expected to be received. The assessment shall address the proposed facility's impact on the affected planning unit's integrated solid waste management system, including the achievement of recycling goals and impact on integrated system costs.

2. Treating SWMF permit applications for construction, expansion and acceptance rate increases as Major under the UPA

Department staff shall notify applicants that new permits, expansion permits, modifications for expansions, and/or acceptance rate increases, as described in section II.2 of this policy, must be treated as major under Part 621 - Uniform Procedures, and follow all applicable procedures for major actions, unless the subject project is specifically designated as a minor project under Part 621.

3. Providing guidance on SEQR review of SWMF permit applications

Department staff shall notify in writing SEQR lead agencies that environmental reviews for SWMFs must fully address the implications of the action on landfill life and airspace, encroachment on natural resources, waste reduction and materials recovery incentives and infrastructure, and greenhouse gas generation and mitigation.

4. Collecting data on GHG generation

Department staff will review and evaluate the GHG related information that is contained in the permit application and SEQR documents and how it relates to the Department's GHG reduction goals and include additional data reporting as needed.

5. Negotiating mitigation measures.

In addition to those special conditions typically utilized in the past, Department staff will consider the Commissioner's goals and priorities in deliberations regarding mitigation of solid waste management facility permit actions. Specific conditions applied in each case shall be determined based on the impacts to be mitigated, the nature of the request, the nature of the facility, the status of potential impacts on the LSWMP(s) for the facility's service area, the applicant's compliance history, and other relevant factors.

Related References:

Environmental Conservation Law §27-0106
Environmental Conservation Law §27-0707
Environmental Conservation Law §27-0717
6 NYCRR Part 360
6 NYCRR Part 617
6 NYCRR Part 621