



New York Imposes Stricter Requirements for Reuse of Fill and Construction and Demolition Debris

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The New York State Department of Environmental Conservation (“NYSDEC”) recently revised its solid waste management regulations, the first significant changes since 1993, reorganizing the existing rules and revising requirements for solid waste landfills, waste transporters, beneficial use determinations (“BUD”), and reuse of fill material, construction and demolition (“C&D”) debris and wastes generated from oil and gas production. Notably, the NYSDEC’s concerns surrounding illegal dumping resulted in regulations that contain stricter requirements for reuse of fill material and C&D debris.

The revised regulations, 6 NYCRR Section 360.13, set forth when entities may reuse fill material rather than be required to dispose of it. Entities wanting to reuse fill must meet certain requirements, including conducting an analytical and physical characterization of the fill. The sampling of the fill must be conducted by a qualified environmental professional (“QEP”), that is, a person with sufficient training to exercise professional judgment regarding the presence and impact of hazardous substances. The NYSDEC classifies the fill material as general fill, restricted use fill or limited use fill, based upon the physical constituents of the fill, and each has its own sampling requirements. The frequency of the sampling is based on the quantity of the fill for reuse. The QEP is required to sample the fill for metals, PCBs, pesticides, certain semi-volatile and volatile organic compounds, and asbestos if there was demolition of structures on the site from where the fill originated. The allowable concentration of any contaminant is based upon the classification of the fill and where it is going to be reused.

A person receiving restricted-use or limited-use fill is prohibited from taking payment for accepting such material. There also are notification requirements when transferring fill material from one site to another. In fact, the

NYSDEC must be notified of any transfers of fill material generated in, imported to or relocated within New York City and also transfers of restricted-use and limited-use fill in other areas of the State when the amount of fill is greater than ten (10) cubic yards.

Fill material that is reused on-site in areas with similar physical characteristics is exempt from the regulations. If, however, fill is going to be reused on-site in a public place and exhibits evidence of contamination it must be covered with a minimum of twelve (12) inches of soil and meet the requirements for general fill.

The regulations, 6 NYCRR Part 360, also apply to reuse of C&D debris. Additionally, 6 NYCRR Section 361-5 sets forth operational and permit requirements for facilities that recycle C&D debris. These facilities are required to keep records of the quantity and type of material sent from the facility and the destination of the material used as alternative capping material. Further, C&D tracking documents must accompany all fill material leaving a C&D facility that does not qualify for a beneficial use determination.

Entities that plan to reuse fill or C&D debris should review and gain an understanding of these new requirements and determine how best to adhere to them in order to avoid potential penalties and enforcement action.

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