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# ***Reuse of Fill Material Under a Pre-determined Beneficial Use***



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New York State Department of Environmental Conservation (NYSDEC) solid waste management regulations specify provisions in 6 NYCRR Part 360.13 that apply to direct use of fill material under a pre-determined beneficial use. These provisions apply to on-site and off-site management of fill with limited exceptions. The current regulations allow for self-assessment of fill materials through analytical and physical characterization of the fill to determine if and where the material can be reused. Characterization of fill is required to be performed through a sampling program, with certification from a qualified environmental professional (QEP). Fill that does not meet designated criteria is considered a solid waste and must be disposed of at an appropriate facility.

The written sampling program must be designed and implemented by or under the direction of a QEP. Representative samples of fill should be collected, with minimum quantities outlined in Table 1 of 6 NYCRR Part 360.13(f)<sup>1</sup>, and analyzed by a laboratory certified by the New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP). Grab samples are laboratory analyzed for volatile organic compounds, and composite samples are laboratory analyzed for semi-volatile organic compounds, pesticides, hexavalent chromium, cyanide, metals, and polychlorinated biphenyls. Additionally, visual observation of the fill material should be conducted to estimate the volume of physical contaminants. Analysis for asbestos should be performed if demolition of structures has occurred on the site.



Analytical results and physical characteristics for sampled fill materials are compared to criteria described in Table 2 of 6 NYCRR Part 360.13(f). The fill can then be categorized as to whether it meets requirements to be used as General Fill, Restricted Use-Fill, or Limited-Use Fill. Having the most restrictive criteria for contaminant levels and physical constituents, General Fill can be used in any setting where the fill meets the engineering criteria, with the exception of undeveloped land and agricultural crop land. Restricted-Use Fill may be used in transportation corridors or on sites where in-situ materials exceed Restricted-Use or Limited-Use criteria. It must also be placed above the seasonal high-water table. Limited-Use Fill may be used under foundations and pavements above the seasonal high-water table, with the exception of sites located in Nassau or Suffolk Counties.

<sup>1</sup> Westlaw New York Codes, Rules and Regulations:

[https://govt.westlaw.com/nycrr/Document/Id4d6080cdf911e7aa6b9b71698a280b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/Id4d6080cdf911e7aa6b9b71698a280b?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

For fill meeting the Restricted-Use or Limited-Use Beneficial Use Criteria, and exceeding 10 cubic yards, the NYSDEC must be notified at least 5 days before delivery. Fill material must also be used within 30 days of arriving at the project site. The generator, processor, and receiver of the material must keep the records of the fill material quantities and analytical results for a minimum of three years.



Sampling and analysis for fill material originating outside of New York City is required if there is historical evidence of impacts at the site, or if material exhibits visual or other indication of contamination. Sampling and analysis is also required if the material is from a site subject to industrial land use, or if visual indication of chemical or physical contamination is discovered during excavation. Sampling and analysis for fill material originating from New York City is required unless the quantity is less than 10 cubic yards from one site and does not contain historical evidence of impacts from contamination.

If you have a project that may require soil sampling per NYSDEC 6 NYCRR Part 360, ATL, a WBE certified company, has experienced environmental professionals located throughout New York State, to perform sampling and coordinate applicable analysis services.

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