

Practical Solutions

Environmental Advantage, Inc.
& Hazard Evaluations, Inc.

Spring 2022
Quarterly Newsletter

Important Compliance Deadlines & Dates for 2022:

Air Title V Emission Statement
April 15

1st Quarter TP-550 HW Assessment & Fees
April 20

1st Quarter Stormwater DMR
April 28

EPCRA Section 313 (Form R)
July 1

Hazardous Waste Reduction Plan
July 1

3636 N. BUFFALO ROAD.
ORCHARD PARK,
NEW YORK 14127
envadvantage.com
hazardevaluations.com



Special Requirements for Predetermined Beneficial Use of Fill Material



Department of Environmental Conservation

The New York State Department of Environmental Conservation (NYSDEC) recently focused their attention on the proper reuse of fill material. The general requirements for pre-determined beneficial use of fill material can be found in 6 NYCRR Part 360.12(c) and 360.13. Fill material is defined as “soil and similar material” excavated for the purpose of construction or maintenance. “Similar material” can include particles of sand, gravel, rock, ceramic tile, asphalt pavement, brick, glass, crushed concrete, or other durable human-made material that contributes to the function of the material as fill. This does not include plastic, gypsum wallboard, wood, paper, and other material that may readily degrade or produce odors. Use of these materials as fill is strictly prohibited. If the fill material originates from a site with suspected contamination, special requirements are outlined in Part 360.13. Fill materials suspected of being contaminated (generated outside of NYC) would include those with historical evidence of site impacts, fill that originates from a site with historical industrial land use, for visual / olfactory indications of chemical or physical contamination.

It is the responsibility of the contractor to understand the history of the project site and if contamination may be present. If one of the above indications of contamination are met / encountered, the regulation requires the fill to be sampled and analyzed under the direction of a Qualified Environmental Professional (QEP). Analytical parameters include metals, PCBs, pesticides, volatile organic compounds, and semi-volatile organic compounds. The analytical results obtained will then determine what types of restrictions will be placed on the use of the fill. Material which is characterized as restricted-use or limited-use requires notification at least 5 days before delivery for fill material greater than 10 cubic yards to an off-site location. Transport of restricted-use or limited-use fill also requires a Part 360 permitted waste transporter as well as other Part 360 requirements must be followed. For assistance making a determination, contact Environmental Advantage.

Revised Part 235 Standard in Effect



Department of Environmental Conservation

On January 1, 2022 the NYS Department of Environmental Conservation (NYSDEC) implemented and began enforcing new standards that limit the volatile organic compound (VOC) content in consumer products either sold or manufactured for use in the New York State. These new standards were adopted as part of the revisions to 6 NYCRR Part 235 (Consumer Products). The revisions included adding nine new product categories and revising ten existing categories in order to further reduce the amount of VOCs that can be found in commonly used consumer products. The lower VOC limits apply to adhesives, automotive cleaners and solvents, disinfectants, household floor and furniture cleaners, paint thinners and some hair care products, among other product categories. The changes to the VOC content limits for existing product categories were notable in some cases. For example, some adhesives previously had a VOC content limit of 15% by weight. After revisions, the same adhesives must be manufactured to the VOC content limit of 7% by weight. Additionally, the revised regulation states that no person shall sell, supply, offer for sale, or manufacture for sale in the State of New York any consumer product which contains any amount of specifically listed ozone depleting compounds, with an exemption given to currently manufactured products that are reformulated, as long as their ozone depleting compound content does not increase compared to the previous formulation. Any facility unable to comply with the updated requirements, because of extraordinary reasons beyond its control, may apply for a variance. For more information on the revised Part 235 regulation, visit the NYSDEC’s website or contact Environmental Advantage.

NYSDEC Extends Transition Deadline for Part 360 Series Regulations

The NYSDEC issued two enforcement discretion letters on March 16, 2022 that address the requirements of the Part 360 regulations. The letters further extend the transition deadline for facilities subject to Part 360, Part 361, and Part 364 until May 3, 2023 (or until amendments to the present rule are publicized).

Increase in OSHA Non-Compliance Penalties

OSHA® On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Improvements Act was signed into law. The Act requires numerous federal enforcement agencies, including OSHA, to increase the civil penalties assessed upon employers when regulatory violations are cited. As a result of this law, OSHA violations are increased annually based on the Consumer Price Index for Urban Consumers. OSHA's penalties were adjusted on January 13, for calendar year 2022.

The application of the law to OSHA results in a new penalty structure with increased maximum penalties per violation, as follows:

<u>Violation Type</u>	<u>Maximum Penalty 2022</u>
Other-Than-Serious	\$14,502 per violation
Serious	\$14,502 per violation
Willful or Repeated	\$145,027 per violation
Failure to Abate	\$14,502 per day
Posting Requirements	\$14,502 per violation

Although not all penalties are imposed at the maximum amount, employers should expect there to be an increase in penalty amounts assigned to any violation.

CBS & PBS Proposed Revisions



Department of
Environmental
Conservation

In 2021, the NYSDEC proposed updates to the Chemical Bulk Storage (CBS) and Petroleum Bulk Storage (PBS) rules to better correspond with the federal regulations and to provide more consistency between the two programs. The NYSDEC is proposing to consolidate the existing CBS program from Parts 596, 598, and 599 into a single new Part 598, and to amend Part 597. These changes will better align with the federal requirements, and will likely be more stringent than the current state requirements. Additionally, the proposed changes will harmonize the CBS program's spill and reporting requirements, which have often been a source of confusion. The Department's aim of this update is to better instruct regulated facilities on how to investigate and respond to spills, as compared to releases that require corrective action. One of the important changes in the proposed regulations is the requirement to report a suspected spill to the Department's Spill Hotline within two hours of discovery, which is the same as the response time required for actual spills and releases.

Similarly, the NYSDEC is aiming to harmonize the state's PBS Program requirements with the federal requirements. Unlike the CBS requirements, the PBS requirements involve major technical revisions, including updating some definitions that will change how regulated facilities operate. The proposed updates will also require more stringent leak detection methods, testing, monitoring, and inspecting, and new financial responsibility for the owners/operators of facilities with storage capacity more than 50,000 gallons. The NYSDEC's revisions will ensure that tank owners/operators have the financial means to remediate any spills that occur at the facility and any resulting environmental impacts or third-party claims caused by spills. Owners/operators will be required to demonstrate financial responsibility for corrective actions and for compensating third parties for bodily injury and property damages caused by spills. Additionally, the NYSDEC's proposed updates will clarify the responsibility of operators and carriers in regards to a spill or overflow during petroleum deliveries.

Many other proposed updates are the same for both CBS and PBS, such as:

- Certain failed testing / monitoring results constitute a suspected, reportable spill;
- Alignment with federal testing, monitoring, inspection, and repair requirements;
- Revised tank operator training requirements; and
- The addition to the list of parties required to report spills, which will likely impact buyers and sellers of regulated facilities.

The updates are only proposed at this point, so changes may occur. Be sure to check future issues of Practical Solutions for the final updates to the rules.

OSHA's Top 10 Violations of 2021

1. Fall Protection - General Requirements
2. Respiratory Protection
3. Ladders
4. Scaffolding
5. Hazard Communication
6. Lockout / Tagout
7. Fall Protection - Training Requirements
8. PPE - Eye and Face Protection
9. Powered Industrial Trucks
10. Machine Guarding