

- The off-site reuse of any fill material generated in New York City in amounts greater than 10 cubic yards, or the off-site reuse of limited-use fill or restricted-use fill generated in locations in the state in amounts greater than 10 cubic yards, requires notification to DEC of at least 5 days prior to delivery [360.13(g)(2), (3)]. The form for this pre-notification can be found here: <https://www.dec.ny.gov/chemical/8821.html>. This is a one-time project notification which identifies the location of generation, the location of reuse, and the type and estimated amount of fill material to be reused among other information.
- Exempt fill, which is described in 360.12(c)(1)(ii), can be used on any site for any use. General fill and restricted-use fill, which are described in 360.13(f), can be used to level building sites so long as the appropriate requirements of Section 360.13 are met. For example, restricted-use fill can be used on sites where the existing site soils exhibit the criteria for either restricted-use fill or limited-use fill. Limited-use fill can only be used to level building sites where building footprints or pavement will cover them.
- The March 1, 2018 Enforcement Discretion Letter states in part that “Section 361-5.4(e) requires that all permitted construction and demolition facilities are required to perform certain sampling on any fill material or residue leaving the facility for reuse. The Department will utilize its enforcement discretion with respect to this provision to delay the enforcement of this sampling requirement regardless of the timing of the permit issuance to the facility.” The implication of this decision is that fill material which moves through CDDHRFs does not require analytical sampling by any party prior to reuse under Section 360.13 until May 3, 2019 or until new regulations are promulgated. However, remaining requirements of Section 360.13, other than analytical requirements, continue to be applicable.
- Fill material outside of New York City which exhibits no evidence of historic impacts, such as spills, or exhibits no visual or other indication of chemical or physical contamination (e.g., odors, sheen, etc.) is not subject to the requirements of Section 360.13 (§360.12(c)(1)(ii)).