

ATTACHMENT 2

New York State Department of Environmental Conservation
Division of Solid & Hazardous Materials

List of State Initiated Corrections

1) **370.2(b)(173)** definition of small quantity generator is clarified as follows:

(173) "Small quantity generator" means a generator who generates less than 1000 kilograms of non-acute hazardous waste in a month and stores less than 6000 kilograms of this waste at any one time; or a generator who generates less than one kilogram of acute hazardous waste in a month and stores less than one kilogram of [this] acute hazardous waste at one time and generates less than 1000 kilograms of non-acute hazardous waste in a month and stores less than 6000 kilograms of non-acute hazardous waste at any one time.

2) **370.2(b)(188)** definition for tank system is clarified as follows:

(188) "Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system, including loading and unloading areas.

3) **370.2(b)**: Definitions not used in the regulation are proposed to be deleted, including: "composting facility"; "evidence of security"; "final authorization"; "interim authorization"; "intermediate cover"; "lift"; "lower explosive limit"; "national pollutant discharge elimination system"; and "transit country".

4) **371.1(d)(1)(ii)('e')**: EPA noted in Used Oil authorization process that the phone number for the Government Printing Office is wrong. This will be corrected by deleting the information on obtaining the document from this paragraph and cross-reference to 370.1(e)(8)(i) where this document is incorporated by reference.

5) **371.1(d)(1)(ii)('e')('2')**: In the official state register, a spelling error needs correction as follows:

(2') The rebuttable presumption does not apply to used oils contaminated with [chlorofluorocarbons] chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

6) **371.1(e)(1)(vi)**: Delete the word "Kraft" from the exclusion to match federal regulations.

7) **371.1(e)(2)(vi)('b')('21')**: This exemption for air pollution control dust/sludge from lightweight aggregate production is deleted to match federal regulation.

8) 371.1(f)(2): Requirements for CESQGs are clarified to state that a conditionally exempt small quantity generator's hazardous wastes are not subject to the notification requirements of section 3010 of RCRA.

9) 371.1(g): The language in this subdivision is amended to clarify that it applies to hazardous wastes burned for energy recovery. In the federal regulations, recyclable materials include wastes burned for energy recovery. However, in State statute, burning for energy recovery is defined as disposal, not recovery. When the federal provisions regarding recyclable materials were adopted into State regulation, modification to the regulatory text to take this difference into account was overlooked.

10) 371.4(d)(6): Correct the listing for U164 and add the listing for U010 as follows to match federal regulations:

U164	56-04-2	[Mitomycin C] <u>Methylthiouracil</u>
U010	50-07-7	<u>Mitomycin C</u>

11) 371.4(e)(1): Definitions for two PCB wastes, B002 and B004, are amended to add "rectifiers" to the list of exceptions, to match TSCA requirements.

12) 371.4(e)(3)(i): Add "rectifiers" to the definition of a PCB Article.

13) 371.4(i)(3)(xii)('a'): Correct the cross reference from "paragraph (c)(2)" to "subparagraph (3)(ii)".

14) Appendix 19: Delete text and incorporate federal "Appendix I to Part 261 - Representative Sampling Methods" by reference.

15) 372.1(e)(7): This regulatory text is deleted as it is redundant with the same regulatory requirement found at 371.1(e)(3)(i).

16) 372.2(a)(3): Add USEPA's web site address for obtaining the Notification of Regulated Waste Activity form (EPA Form 8700-12). <http://www.epa.gov>
Delete reference to EPA Hotline phone numbers.

17) 372.2(a)(8)(i): Language is clarified to make clear how acute and non-acute hazardous waste are defined.

(i) ('a') A generator may accumulate up to one quart of acutely hazardous waste listed in section 371.4(b), (c) and (d)(5) of this Title or 55 gallons of non-acute hazardous waste [or one quart of acutely hazardous waste listed in section 371.4(b), (c) and (d)(5) of this Title] in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subparagraph (ii) of this paragraph provided the generator:

(1') complies with section 373-3.9(b)-(d) of this Title; and

(2') marks the containers with the words "Hazardous Waste" and with other words that identify the contents of the containers.

(b') A generator who accumulates: either acutely hazardous waste listed in section 371.4(b), (c) and (d)(5) of this Title or non-acute hazardous waste [or acutely hazardous waste listed in section 371.4(b), (c) and (d)(5)] in excess of the amounts listed in clause ('a') of this subparagraph at or near any point of generation, with respect to that amount of excess waste, must comply within three days, with subparagraph (ii) of this paragraph or other applicable provisions of this Title. During the three day period, the generator must continue to comply with subparagraph (i) of this paragraph. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

18) 372.2(a)(8)(ii): This paragraph requires that the date beginning the period of accumulation be clearly marked on tanks and storage areas. This is not required by federal regulation. While a generator must track and be able to document that waste stored in a storage area has been there less than 90 days, the actual storage area does not need to be marked. Tanks can track the 90 day limit using mass balance of waste put in and taken out of the tank, making a Start Date irrelevant. Reference to storage areas and tanks is proposed to be deleted, making the regulation consistent with federal regulation.

(ii) Except as provided in subparagraphs (iii), (iv), and (v) of this paragraph, a generator may accumulate hazardous waste on-site of generation for a period of 90 days or less under the provisions of subparagraphs 373-1.1(d)(1)(iii), (iv), (xix) and (xx) of this Title. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on all containers[, tanks, or storage areas].

19) 372.5(c)(2): Correct the Department mailing address:

(2) Notifications submitted by mail should be sent to the following mailing addresses: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 and to the [Regulatory Development] Manifest Section, NYSDEC, 625 Broadway, Albany, NY [12233] 12233-7252. Hand-delivered notifications should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC, and mailed to the [Regulatory Development] Manifest Section at the above address. In all cases, the following shall be prominently displayed on the front of the envelope: ``Attention: Notification of Intent to Export."`

20) 372.5(f)(2): The Department mailing address is corrected.

(2) Annual reports submitted by mail should be sent to the following mailing addresses: Office

of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the [Regulatory Development] Manifest Section, NYSDEC, 625 Broadway, Albany, NY [12233] 12233-7252. Hand-delivered reports should be sent to: Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting, and Data Division (2222A), Environmental Protection Agency, Ariel Rios Bldg., 12th St. and Pennsylvania Ave., NW., Washington, DC, and mailed to the [Regulatory Development] Manifest Section at the above address.

21) 373-1.5(a)(viii)('a'): Language is added to assure that hazardous waste tank system loading and unloading areas are managed in a way that is at least as stringent as chemical bulk storage tank system loading and unloading areas.

(viii) A description of procedures, structures, or equipment used at the facility to:

(a) prevent hazards in loading and unloading operations (for example, ramps, special forklifts). Describe how the loading and unloading areas for hazardous waste are designed and managed consistent with the requirements of 6 NYCRR 599.17(c) Chemical Bulk Storage regulations;

22) 373-1.6(a)(2): Clarify the provision regarding submission of permit renewals to be consistent with federal requirements, as follows:

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. Complete applications for permit renewal must be submitted at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Department pursuant to a special permit condition as required by Part 621 of this Title. The Department shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

23) 373-1.1(d)(1)(vii)('b'): Clarify the wording as follows:

(b) [This exemption is not available to any units, other than boilers] Boilers and industrial furnaces[,] that burn hazardous wastes for energy recovery are exempt from this Part only as provided in subdivisions 374-1.8(as) and 374-1.8(i) of this Title. This exemption is not available to any other units that burn hazardous wastes for energy recovery.

24) 373-1.1(d)(1)(xii) is amended to delete the requirements that exempt units comply with waste analysis plan provisions and the requirement for dating “areas” and batch treatment and equalization units. These provisions require extraneous paperwork efforts which do not offer any added protection to human health or the environment.

(xii) Elementary neutralization units or wastewater treatment units, as defined in Part

370 of this Title, other than units that are part of commercial hazardous waste management facilities as defined in Part 370 of this Title. Elementary neutralization units and wastewater treatment units located at commercial hazardous waste management facilities that are only used to neutralize or treat hazardous waste resulting from the recycling of hazardous wastes or from the reclamation of precious metals from hazardous wastes are also exempt. Elementary neutralization units and wastewater treatment units that are used to commercially neutralize or treat hazardous wastes, generated only at geographically contiguous sites, and transported via dedicated pipeline are also exempt. Exempt units must comply with the following:

(a) the requirements for personnel training in section 373-3.2 of this Part, for preparedness and prevention in section 373-3.3, and for contingency plans and emergency procedures in section 373-3.4;

(b) the units are managed in accordance with section 373-3.9 [and subdivision 373-3.10(k)] of this Part;

(c) all [areas,] containers and tanks used to treat hazardous waste must be marked with the words "Hazardous Waste" and other words that identify the contents; and

[(d) for batch treatment and equalization units, the date on which each period of accumulation begins is clearly marked and visible for inspection.]

[(e)] (d) if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in subdivision 376.4(a) of this Title, Table Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in paragraphs 373-2.2(i)(2) and 373-3.2(h)(2) of this Part.

25) 373-1.6(a)(12)(ii)(a) is amended to read as follows:

(a) the permittee has submitted to the commissioner by certified mail or hand delivery a letter signed by the permittee and a [registered] professional engineer registered in New York State stating that the facility has been constructed or modified in compliance with the permit; and

26) 373-1.6(c)(1): add reference regarding permit renewals:

(1) In addition to conditions required in all permits (subdivision (a) of this section), the commissioner may establish, as required on a case-by-case basis, conditions in permits regarding section 373-1.8(a) of this Subpart (duration of permits), section 373-1.8(b)(renewal applications), subdivision 373-1.6(d) (schedules of compliance and alternate schedules of compliance), and subdivision 373-1.6(b) (monitoring).

27) 373-1.7(c)(15)(ii)(b) is added to specifically address federal Class 2 permit modifications in relation to the State major/minor categories for permit modifications.

(ii) The Department shall determine whether the request qualifies to be administered as a modification or an application for a new permit in accordance with section 621.11 (Uniform Procedures) of this Title. In making this determination, the Department shall consider the degree to which the proposed changes are similar to those listed above and the following criteria:

(a) minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

(b) if a modification designated as a Class 2 modification under 40 CFR 270.42 Appendix I, as incorporated by reference in subdivision 370.1(e) of this Title, is deemed a minor modification, the requirements of 40 CFR 270.42(b), as incorporated by reference in subdivision 370.1(e) of this Title, must be met.

28) 373-1.8(b): Amend to clarify renewal procedures.

b) Renewal applications. Complete applications for permit renewal must be submitted at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Department pursuant to a special permit condition as required by Part 621 of this Title. The Department shall not grant permission for applications to be submitted later than the expiration date of the existing permit. See also section 373-1.10 of this Subpart.

29) 373-2.1(a)(6) and 373-3.1(a)(6): Add reference to 371.1(g)(1)(iii) as these facilities would be regulated by this Subpart if one of the conditions listed in 371.1(g)(1)(iii) are not met.

30) 373-2.5(b)(1)(v) and 373-3.5(b)(1)(v): Clarify that for rejected loads, there should be one new manifest form for each incoming manifest form with a partial or full rejection. Facilities should not lump multiple rejections onto one new manifest form.

(v) Except as provided in clause ('g') of this subparagraph, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest for each manifest with a full or partial load rejection in accordance with subdivision 372.2(b) of this Title and the following instructions:

31) 373-2.5(b)(1)(vi) and 373-3.5(b)(1)(vi): Clarify that for rejected loads, there should be one new manifest form for each incoming manifest form with a partial or full rejection. Facilities should not lump multiple rejections onto one new manifest form.

(vi) Except as provided in clause ('g') of this subparagraph, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest

for each manifest with a full or partial load rejection in accordance with subdivision 372.2(b) of this Title and the following instructions:

32) 373-2.5(b)(2)(iv) and 373-3.5(b)(2)(iv): Existing text limits rejected unmanifested shipments to being sent back to the generator, and does not require the use of a manifest for this return shipment. Federal regulations are silent on the question of unmanifested shipments, but requires shipments of hazardous waste initiated by the facility to meet the generator requirements (i.e. to manifest it), and includes under “manifest discrepancies” wastes received using shipping papers as well as manifests and through this, the rejected waste requirements can be interpreted to apply to an unmanifested waste which is transported with a shipping paper.

The text is proposed to be changed as follows:

(iv) reject the shipment of hazardous waste, and:

(a) manage the hazardous waste pursuant to paragraph (1)(iv) of this subdivision;

(b) manifest the hazardous waste pursuant to paragraph (1)(v) or (1)(vi) of this subdivision as appropriate, except that, instead of the old manifest number, the phrase “unmanifested shipment” will be inserted into box 14 “Special Handling and Additional Information Block” of the new manifest; [instruct the transporter to return the hazardous waste to the generator,] and

(c) file an unmanifested waste report in accordance with subparagraph (3)(ii) of this subdivision.

33) 373-2.6(l)(1):

(l) Corrective action for solid waste management units.

(1) The owner or operator of a facility which has, had, should have had, or is seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time the waste was placed in such unit.

34) 373-2.6(l)(2): Text is clarified to state “... and assurances of financial responsibility as defined in section 373-2.8 of this Subpart for completing such corrective action.

35) 373-2.8(d)(5)(x) intro; 373-2.8(f)(5)(xi) intro; 373-2.8(h)(1)(ii); 373-2.8(h)(2)(ii) 373-3.8(d)(5)(ix) intro; 373-3.8(f)(5)(x) intro; 373-3.8(h)(1)(ii); 373-3.8(h)(2)(ii)

Language is clarified to make clear that the requirement that the financial statement of the owner

or operator cannot be consolidated with the financial statement of the guarantor applies only to “revenue-oriented” facilities.

“An owner or operator of a facility which is not a revenue-oriented facility may meet the requirements of this subdivision by obtaining a written guarantee, hereafter referred to as “guarantee.” If the firm which is providing the guarantee does not meet the definition of “revenue-oriented” in section 373-2.8 or 373-3.8, it may provide the guarantee on behalf of the owner or operator even if the owner or operator is a “revenue-oriented” facility[. However] however, the financial statement of the owner or operator cannot be consolidated with the financial statement of the guarantor.”

36) 373-2.14(g)(1): The word “over” is changed to “cover”. Typo correction.

37) Appendix 33: Groundwater Monitoring List: Correct the CAS numbers for the following entries (found alphabetically within the list):

Nitrobenzene [96-95-3] 98-95-3

Phenanthrene [86-01-8] 85-01-8

38) 373-2.27(a)(3) is amended to correct a typo:

(3) For the owner or operator of a facility subject to this section and who received a final permit under RCRA section 3005 or Subpart 373-1 prior to December 6, 1996, the requirements of this section shall be incorporated into the permit when the permit is reissued in accordance with the requirements of section 621.11 of this Title or reviewed in accordance with the requirements of section 373-1.8 of this Part. Until such date when the owner or operator receives a final permit incorporating the requirements of this section, the owner [and] or operator is subject to the requirements of section 373-3.27 of this Part.

39) 373-2.29(a)(3) is amended to correct a typo:

(3) For the owner [and] or operator of a facility subject to this section who received a final permit under Part 373 of this Title, prior to December 6, 1996, the requirements of this section shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Part 621 of this Title or reviewed in accordance with the requirements of section 373-1.8 of this Title. Until such date when the owner [and] or operator receives a final permit incorporating the requirements of this section, the owner [and] or operator is subject to the requirements of section 373-3.29 of this Title.

40) 373-2.29(j)(10) is amended to correct a typo:

(10) For each hazardous waste management unit not using air emission controls specified in subdivisions 373-2.29(e) through 373-2.29(h) of this section in accordance with the requirements

of 373-2.29(a)(2)(vii) of this section, the owner [and] or operator shall record and maintain the following information:

41) 373-3 Title: revise to make it match federal title and make it clear that this subpart does not apply to generators.

6 NYCRR Subpart 373-3 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

42) 373-3.1(a)(6): There is a reference to “subparagraphs 371.1(g)(1)(ii) and (iv) of this Part” which should be changed to “of this Title”.

43) 373-3.29(a)(3) and (3)(ii): Amended to correct typos:

(3) For the owner [and] or operator of a facility subject to this section who has received a final permit under Part 373 of this Title, prior to December 6, 1996, the following requirements apply:

(i) The requirements of 6 NYCRR Part 373-2.29 shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Part 621 of this Title or reviewed in accordance with the requirements of section 373-1.8 of this Part.

(ii) Until the date when the permit is reissued in accordance with the requirements of Part 621 of this Title or reviewed in accordance with the requirements of section 373-1.8 of this Part, the owner [and] or operator is subject to the requirements of this section.

44) 373-3.29(b)(18)(ii) is amended to correct a typo:

(ii) When the facility owner [and] or operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

45) 373-4.1(d)(3) & (4) are amended to clarify that CESQG generated universal waste is regulated by either the universal waste rules of 374-3 or by 373-4.

46) 374-1.6(a)(2)(ii): The cross reference to 371.1(f), CESQG requirements, is deleted. This regulation will now match federal requirements. CESQG's are exempt from 374-1 requirements pursuant to 371.1(f)(2).

47) 374-2.5(c)(2)(i): Add USEPA’s web site for obtaining the Notification of Regulated Waste Activity form (EPA Form 8700-12). Delete reference to EPA Hotline as it is no longer in use.

(i) a completed EPA Form 8700-12 ([To obtain ordering information for] EPA Form 8700-12 [call RCRA/Superfund Hotline at 1-800-424-9346 or 703-920-9810]) is available at the

USEPA web site; or

48) 376.1(g)(2): Clarify the applicability of this paragraph by inserting “Requirements for treaters”.

(2) Requirements for treaters: Treatment facilities must test their wastes according to the frequency specified in their waste analysis plan as required by subdivision 373-2.2(e) (for permitted TSD's) or 373-3.2(d) (for interim status facilities) of this Title. Such testing must be performed as provided in subparagraphs (i), (ii), and (iii) of this paragraph.

49) 376.1(g)(3): Clarify the applicability of this paragraph by inserting “Requirements for disposal facilities”.

(3) Requirements for disposal facilities: Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to paragraph 374-1.3(a)(2) of this Title, the owner or operator of any land disposal facility disposing any waste subject to restrictions under this Part must:

(50) 376.4 (a) Table: Treatment Standards for Hazardous Waste, footnote 3, is amended to clarify text as follows:

3 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples, except as provided in paragraph 376.4(a)(2) of this section for D004 through D011 wastes.