MOMENTIVE

260 Hudson River Road
Waterford, NY 12188

October 20, 2014

Via Hand Delivery and E-Mail
Marc S. Migliore
Regional Permit Administrator
NYS DEC Region 5
232 Golf Course Road
Warrensburg, NY 12885

Re: Comments on Draft 6 NYCRR Part 373 Permit for the operations of MPM Silicones LLC
NYSDEC Permit No. 5-4154-00002/00357
EPA ID No. NYD002080034

Dear Mr. Migliore:

Below please see MPM Silicones LLC's ("MPM") comments on the Draft Part 373 Permit No. 5-4154-00002/00357 ("Draft Permit"). MPM's comments are organized by permit section to facilitate review.

TABLE OF CONTENTS

The footnote suggesting that documents classified as Confidential Business Information may be requested under FOIL should be omitted.

The Table of Contents for the Draft Permit includes a list of Attachments and Documents Incorporated by Reference. The titles of Attachment B and Documents 36 through 38 are typed in gray font, indicating the documents qualify as Confidential Business Information. A footnote provides that "Confidential Business Information may be requested under Freedom of Information Law [FOIL]". This is inadvertently inaccurate because while such documents may be requested, access to them should be denied pursuant to New York Public Officers Law ("POL") § 87(2)(c). POL § 87(2)(c) provides that an agency may deny access to records or portions thereof that "are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." The footnote which implies that documents are available under FOIL (implicitly absent a CBI determination) should be omitted.

MODULE I – GENERAL CONDITIONS

NYSDEC Guidance and Policy Documents

Conditions A.2 and A.3 should be omitted or in lieu of that, similar to Eastman Kodak Company's (Kodak) permit, a list of potentially relevant guidance documents and policies should be identified.

Module I, A.2 and A.3 provide that the Permittee *must* comply with the applicable Remediation Guidance and Policy Documents and applicable Commissioner Policies, respectively. The New York State Department of Environmental Conservation ("NYSDEC") has recognized that its guidance documents are non-binding and unenforceable. *In re Peterson Petroleum, Inc.*, No. RF-1583-92-03, 1994 WL 550028, N.Y. Dep't Env. Conserv. (Aug. 26, 1994) ("While such guidance documents are not binding as a matter of law, they oftentimes carry significant weight in a hearing."); *See also In the Matter of Britestarr Homes, Inc., et al.*, No. R2-3324-90-11, 1995 WL 141391, N.Y. Dep't Env. Conserv. (Mar. 4 1995); *In the Matter of City Enameling*, Nos. C3-0001-89-12, NYD001560580, 1990 WL 191279, N.Y. Dep't Env. Conserv. (Sept. 29, 1990)). Additionally, the State Administrative Procedures Act provides that an agency is authorized by law to make rules or final decisions in an adjudicatory proceeding. The definition of "rule" expressly excludes "forms and instructions, interpretive statements and statements of general policy which in themselves have no legal effect but are merely explanatory". Moreover, recent Part 373 permits issued by the NYSDEC do not require compliance with NYSDEC guidance and policies. For example, Kodak's Part 373 Permit merely lists out "potentially relevant" NYSDEC guidance documents and Commissioner's policies. There is no language in Kodak's permit that states Kodak *must comply* with NYSDEC guidance and policy.

Areas of Concern

The following language should be deleted from the definition of "area of concern": DELETE "All Permit references to and conditions for SWMUs shall apply to areas of concern."

It is Momentive's considered opinion that some of the day-to-day efforts implemented under the Draft Permit to manage long-term site remediation efforts are not as effective as they could be. This is especially true with the treatment of newly discovered Areas of Concern. Module I, Condition B.2.b defines an "area of concern" to mean "an area at the facility, or as an off-site area, which is not at this time known to be a solid waste management unit ("SWMU"), where hazardous waste and/or hazardous constituents are present, or are suspected to be present, as a result of a release from the facility. The term shall include areas of potential or suspected contamination as well as actual contamination. Such area(s) may require a study and a determination of what, if any, corrective action may be necessary. All Permit references to and conditions for SWMUs shall apply to areas of concern."

MPM objects to subjecting an "area of concern" to all RCRA program elements prior to its classification as a SWMU. Specifically, with respect to Mudderkill Creek and the Tributary conditions included in the permit, MPM believes that there is a strong possibility that these areas are actually part of an existing SWMU and would need to be investigated and remediated

accordingly. Another example is the newly discovered area near Building 34, where it is likely that the source is already a recognized SWMU. This is particularly problematic in the development of a comprehensive site-wide approach and places an unreasonable burden on MPM, as well as on the NYSDEC, in the investigation and remediation of such singular areas. Until such time as it is determined that an area of concern is to be named as a SWMU, it should remain, simply, an "area of concern."

SCHEDULE I OF MODULE I - FACILITY-SPECIFIC CONDITIONS

Condition B: Documents Incorporated by Reference

MPM requests that the sections of the Permit incorporating documents by reference (Table of Contents and Schedule 1 of Module 1, Condition B) be omitted entirely. Alternatively, the documents listed below should be omitted.

Condition B of Schedule I of Module I identifies 39 documents incorporated by reference. MPM's concern with the documents incorporated by reference is it fails to provide clear notice and instruction concerning a permit holder's obligations. Failure to expressly identify obligations under the permit is problematic.

The 39 documents cover almost forty years of operations. The footnotes on page S1-5 provide, "any subsequent Department approved document revisions" or "any subsequent Department approved replacement". We respectfully submit that NYSDEC has the obligation to identify which documents are part of the permit. 6 NYCRR 373-1.6(c)(4) provides: "[i]f incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit. The applicable regulations or requirements would be those which are in effect prior to the final issuance of the permit." Moreover, incorporation of subsequent revisions imposes requirements that will only come into effect after issuance of the permit, further compounding the issue. Without more, this provision, by imposing obligations not yet adopted, gives rise to due process concerns

Broad incorporation is inconsistent with the due process provisions of the New York State Constitution. As you are aware, the Courts have nullified State regulations that sought to incorporate federal OSHA regulations, and the attempted incorporation of federal hazardous waste regulations into the Environmental Conservation Law. *See Matter of New York State Coalition of Pub. Empls. v. New York State Dept. of Labor*, 60 NY2d 789, 791 (1983); *People v Attco Metals Indus.*, 122 Misc 2d 689, 691 (County Ct. 1984). The Draft Permit will have the same force as a rule or regulation; thus, the conceptually same principles apply. We believe the Permit should clearly state the legal obligations imposed on the Permittee on the effective date of the Permit.

Based on the foregoing, the sections of the Permit incorporating documents by reference should be omitted entirely. Alternatively, at a minimum, the following documents should be omitted:

a. *Documents 3 and 4.* These documents, negotiated with the prior owner and operator of the site, General Electric Company, more than twenty-five years ago, impose remedial

strategies that by any standard are dated and merit improvement. Current best practices call for a site wide strategy. It is of questionable wisdom to incorporate a remedial approach that lends itself to improvement. We submit the better approach is to seek to rescind the Consent Decree and place the requirements for a modern and efficacious remedial strategy in the Permit. The Permit would govern all aspects of site remediation rather than a collateral document.

b. *Items 10-17 are Risk Assessment reports/summaries for the incinerators.* These reports will not be revised upon completion of future CPTs as discussed in Comment 5 above. MPM concurs that these reports should be retained for verification that no risk-based conditions are warranted, but requests clarification as to what aspects of the reports NYSDEC considers binding permit conditions. It is MPM's opinion that these reports are required to be maintained for informational purposes, but are not part of the Part 373 permit.
c. *Items 18,19, 21, and 27* refer to outdated Trial Burn test plans, QAPP plans, and reports from 2004-2008. These documents are irrelevant to the current incinerator operating and monitoring parameters which are now based on CPTs conducted in 2010/2011.
d. *Items 22, 23, 28, 30, 31* include plans and test reports for the 2010/2011 CPTs. The results of these CPTs have been incorporated into the Title V Air Permit as required and should not be duplicated in this RCRA permit.
e. *The Notification of Compliance Status (NOCS) listed in items 26 and 32* are strictly HWC-MACT compliance notifications required to be submitted to the Division of Air and have no place in a RCRA permit. In addition, the NOCS listed in item 26 is not the most recent for the Rotary Kiln Incinerator ("RKI"). NOCS are not required to be submitted to, or approved by, the Division of Environmental Remediation, therefore, this RCRA permit cannot require document revisions per footnote 1.
f. *The SSMPs listed in items 24 and 29 and the CEMS and CMS plans in items 25 and 33* are HWC-MACT controlled documents and are administered through the Title V Air Permit and NYSDEC Division of Air. Review and approval of SSMPs, CEMS plans and CMS plans is managed through the Title V program.

Should Document 39 remain incorporated by reference, clarification is needed to indicate whether the Supplemental Spill Reporting Requirements in Document 39 supersede other reporting requirements identified outside of the permit.

<u>Condition C: Compliance Schedule</u>

Absent rescission of the Consent Decree, the following revisions to the Draft Permit are requested:

1. *Schedule 1 of Module I, Condition C, Compliance Schedule: Item No. 2 Final Cover Program for Landfill 2 (pages S1-6 and S1-7): DELETE REQUIREMENT*
2. *Schedule 1 of Module I, Condition C, Compliance Schedule: Footnote 2 (pages S1-15 through 16): DELETE FOOTNOTE*
3. *Schedule 1 of Module I, Condition C, Compliance Schedule: Item No. 9 RCRA Subpart AA, BB and CC protocols: DELETE REQUIREMENT*

The DEC has included, as Item No. 2 in its Compliance Schedule, a Final Cover Program for Landfill 2. Landfill 2 operation predated RCRA and MPM is currently bound to complete the remediation of Landfill 2 under the provisions of the Consent Decree. The Consent Decree (83-CV-77) is enforceable by its own terms and any remedial activities at Landfill 2 should not be incorporated into and thus enforceable under this Part 373 Permit. Only in the event that the NYSDEC rescinds the Consent Decree and ties the outstanding remedial action set forth therein into the Part 373 Permit should the inclusion of specific activities at Landfill 2 be subject to the provisions of the Permit.

The requirement to submit RCRA Subpart AA, BB and CC protocols has no regulatory basis. No such documents are required under the federal subparts or in NYCRR § 373-2.27, 2.28 and 2.29. First, Part 373-2.27 (Subpart AA) does not apply to the facility. Second, the requirements of Subpart BB (Part 373-2.28) RCRA LDAR are met through a monitoring and recordkeeping system that is managed through the Leak DAHS program. No additional "protocol" is warranted. In addition, the Subpart BB program is not new. It has been in existence for over 15 years and has previously been reviewed and audited by NYSDEC. A requirement to prepare a "Subpart BB protocol" at this time provides added expense to the facility with no environmental or regulatory benefit. Finally, extensive compliance documentation for Part 373-2.29 (Subpart CC) has previously been submitted to the NYSDEC Department of Environmental Remediation in the (i) "Report for NYSDEC RCRA Subpart CC Protocol Information Request" submitted on April 1, 2014; (ii) "Response to June 5, 2014 Letter Concerning RCRA 'Subpart CC Protocol'" dated June 27, 2014; and (iii) "Response Letter to NYSDEC Information Request for Air Emission Requirements" submitted August 22, 2014. No additional "Subpart CC Protocol" will be prepared or submitted per this condition.

<u>Condition D: Schedule of Deliverables</u>

Conceptual Site Model and Remedial Systems Optimization

The following Draft Permit revisions are requested:

1. *Schedule 1 of Module I, Section D, Schedule of Deliverables Item No. 2 CSM (Page S1-17): CHANGE Draft Deliverable Date to 360 Days and Final CSM Deliverable Date to 90 Days.*
2. *Schedule 1 of Module I, Section D, Schedule of Deliverables Item No. 3 RSO (Page S1-17): CHANGE Draft Deliverable Date to 270 Days and Final CSM Deliverable Date to 90 Days.*

Generally, MPM is concerned that the Draft Permit as written relies on the concept of an undefined number of single-area remedial plans according to the antiquated approaches included in the Consent Decree. Over the last 25 to 30 years, experiences and developments in the field of environmental hydrogeology support new technologies and approaches that support and advance more effective investigation and long-term remediation efforts at complicated facilities like MPM Waterford. At this time, the approach toward facility remediation addresses single Remedial Plan Areas one by one and is not optimized with respect to activities at other Remedial

Plan Areas; in some cases, the current approach impedes the effective long-term cleanup of the site. It is clear that a holistic, comprehensive site management strategy has not yet been developed and will be required to achieve the long-term remediation of soil and groundwater at the facility. MPM encourages the NYSDEC to allow it to adopt a more comprehensive and effective site management strategy based on the Conceptual Site Model ("CSM") and Remedial Systems Optimization ("RSO") tasks as described further below. Other changes are also requested to reach a more effective long-term facility remediation strategy.

The CSM concept currently required in the Permit was not in use in the industry at the time the Consent Decree and the original Permit were written. The range of cost-effective in-situ remedial technologies has greatly expanded since the prescription of the single area remedial approach specified at that time. In addition, a comprehensive understanding of site conditions had not yet been gained in the 1980s, when the Remedial Plan and Consent Decree were written. With respect to the site-wide CSM specified in this Permit, since the RSO could be considered to include the optimization of at least nine separate systems operating across the site, it is MPM's stated intention to deliver to the NYSDEC an RSO that would examine the optimization of site remediation as a whole. The RSO will include an examination of an appropriate range of modern remedial technologies grouped into alternatives that would be evaluated to select an appropriate site-wide remedy similar to the process used under CERCLA (the basis for the existing Consent Decree). The Draft Permit changes requested below would allow for the modernization of the approach necessary for the completion of effective and efficient implementation of long-term site remediation.

Due to the complex hydrogeology, continued generation of new data and the long-term effects of continued pumping, a useful site-wide RSO would need to rely on a properly calibrated three-dimensional groundwater model. Much of the available data for such a model exists in the form of drilling logs, well construction diagrams and permeability testing records contained in a myriad of historic reports. MPM, as part of its long-term groundwater monitoring program, has recently contracted the construction of a state-of-the art data management system. The discovery of pertinent historic data, population of the system and model setup and calibration, however, will take a significant amount of time and effort. Therefore, the requested changes for additional time are reasonable.

Electronic Access to Data

Condition D.6 of Schedule 1 of Module 1—REQUIREMENT FOR ELECTRONIC ACCESS TO DATA—should be omitted from the permit.

There are no regulatory requirements establishing "electronic access" for incinerator data. The facility will not be providing electronic access from a dedicated computer at the facility to a dedicated computer at the Department's Main Office as described Condition D.6 of Schedule 1 of Module I. There is no regulatory basis for this requirement. It over-reaches both the Part 373-2.15 regulation as well as the HWC-MACT. Since the Division of Air, not the Division of Environmental Remediation is the lead regulatory authority for the incinerators, all future data review and access will be coordinated through the Division of Air. In addition, this requirement represents a significant cost to the facility without any additional environmental protectiveness.

An extensive monitoring system data review is conducted by qualified engineering staff at the facility on a semiannual basis for all CMS and CEMS data as required by the HWC-MACT. Reports summarizing this data review are submitted to, and reviewed by, the NYSDEC Division of Air (for over 10 years). The RKI alone utilizes forty-five CMS which record 15-sec readings resulting in 64,800,000 data points in a typical year. A separate on-going review of this same data by NYSDEC Division of Environmental Remediation staff represents a duplication of both MPM's efforts as well as the Division of Air.

Audit of Compliance Monitoring System

With respect to the provision for Audit of Compliance Monitoring System, MPM requests the following revisions to the Permit: DELETE CONDITION D.7.

There are no regulatory or guidance requirements to conduct an 'Audit of Compliance Monitoring System'. This requirement over-reaches both the Part 373-2.15 regulation and the Hazardous Waste Combustor Maximum Achievable Control Technology (HWC-MACT, 40 CFR 63, Subpart EEE) regulations. The HWC-MACT conditions of the Title V Air permit address CMS requirements. An extensive CMS Performance summary is submitted with each Subpart EEE Semi-annual Report. This report is reviewed by the NYSDEC Division of Air (for over 10 years) and includes information concerning CMS audits, calibrations, downtime and malfunctions. A separate audit overseen by the by NYSDEC Division of Environmental Remediation staff represents a duplication of efforts by both MPM and the Division of Air. As such, this condition should be omitted from the Permit.

<u>Condition E: Requirements for an On-Site Environmental Monitor</u>

The Draft Permit proposes to expand the environmental monitor's oversight through the incorporation of a monitoring work plan—the concept for which is derived from a Draft DEC guidance document that has not yet been formally adopted. For the reasons set forth below, the requirement for an on-site monitor should be eliminated. Alternatively, the scope of the environmental monitor's oversight should be narrowly defined in a work plan, of which MPM should have the opportunity to review and comment.

In the event an on-site monitor is required, the following revisions to Condition E of Schedule 1 of Module I are requested:

1. *Omit the "incorporated by reference" language in E.1 and provide a narrowly defined work plan, providing MPM the opportunity to review and comment.*
2. *Omit E.13. This requirement is incorrect because it incorrectly assumes that MPM provides office space for its monitor in a trailer. The monitor is provided with an office in a building. MPM's office space is kept clean and safe for all of its employees, as well as the monitor. To make water tightness, exterior lighting, heating, cooling and snow removal a condition of the Permit is excessive.*
3. *Finally, should the site monitor requirement be retained, an objective standard should be established to determine annually whether the monitor, should be retained at all, or on a*

reduced schedule. The factors should include the efficacy of the Permittee's Environmental Management System, adequacy of compliance measures and compliance history over the prior twelve months. The standard should also include a procedure for allowing the Permittee on an annual basis to seek to modification to the requirement for a site monitor.

Condition E of Schedule 1 of Module I provides the requirements for an on-site environmental monitor. The on-site monitor was first required in the 1990's at MPM's facility to monitor on-site landfills that were in the process of being closed. The last of these landfills was closed over a decade ago. Gradually, the purview of the on-site monitor has increased to include virtually all RCRA related activities. The current annual cost of the on-site monitor exceeds $300,000 annually, inclusive of the monitor's salary, vehicle, office space and designated site liaison.

There is no statutory mandate that a monitor be placed at MPM's facility. Rather, NYSDEC's *Organization and Delegation Memo #92-10, Policy: On-site Environmental Monitors*, dated February 20, 1992 ("1992 On-site Monitor Guidance"), suggests that an on-site monitor *may* be required under certain circumstances. The nature of the operations at MPM's facility do not pose a threat of any material sort to public health or have the potential for causing material environmental damage. Since acquiring the facility in December 2006, MPM has spent tens of millions of dollars on environmental projects and compliance, including obtaining and maintaining Global ISO 14001 certification. MPM's sophisticated environmental management system, together with the material improvements it has made to facility operations, training, auditing and compliance, render the imposition of an on-site monitor unnecessary. Routine state and federal environmental compliance audits fail to identify circumstances which of their own weight would today merit an environmental monitor. Simply because a monitor was historically required should not foreclose reconsideration before this Permit issues.

Should the requirement for an on-site monitor remain, MPM believes the Permit should clearly delineate the monitor's responsibilities and ensure that they are closely linked to implementation of the Permit. The previous permit did this and limited the monitor's oversight to RCRA violations. The Draft Permit, however, expands the monitor's duties beyond the activities regulated by the Permit insofar as it incorporates an "environmental monitoring work plan" which is not contemplated by the exiting permit. Such work plan is not defined in the Draft Permit. Furthermore, the concept for the work plan is derived from a draft NYSDEC policy document titled *Environmental Monitoring Services*, which has not yet been formally adopted.

EXHIBITS

Exhibit A: Supplement to Module I – General Provisions

The following Permit revisions are requested with respect to financial assurance in Exhibit A:

1. *Exhibit A, Condition D (Page A-4. Paragraph 2):*
    - *Line 1-2 "...adjustment...is warranted," INSERT "including notification by the Permittee that specific remediation tasks have been accomplished and remedial objectives met,"*
    - *Line 3 CHANGE "increase" to "increase or decrease"*
    - *Line 4 CHANGE "increase" to "increase or decrease"*

Exhibit B: Supplement to Module II – Corrective Action

As discussed above, MPM objects to subjecting an "area of concern" to all RCRA program elements prior to its classification as a SWMU. With respect to the concept of area of concern, the following Permit revisions are requested:

1. *Exhibit B, Condition A.1.b: DELETE*
2. *Exhibit B, Condition A.1.c.: AFTER "any additional SWMUs" INSERT "resulting from AOCs not associated with existing SWMUs"*
3. *Exhibit B, Condition A.1, Paragraph 4 (Page B-2): DELETE*

Exhibit E: Supplement to Module VII – Incinerators

A full discussion of MPM's concerns with respect to the operation of incinerators is set forth below under MODULE VII. In summary, the inclusion of conditions regulating incinerators under MPM's Part 373 Permit is duplicative of regulations under the NYSDEC's Division of Air and MPM's Title V Permit. For this reason and others, more fully described below, it is requested that Exhibit E be deleted in its entirety. Alternatively, the following Permit revisions are requested to Exhibit E:

1. *Tables D-2, D-3, D-4, D-5, D-6, E-2, E-3, E-4, and E-5: DELETE all HWC-MACT parameters which have already been included in the Title V Air Permit.*
2. *DELETE ALL CONDITIONS FOR AWFCOS AND ESV OPENINGS.*
3. *DELETE Conditions C.3 and C.4*

Exhibit G: Closure/Post-Closure Care

Long-Term Site Management

With respect to site-wide, long term site management, the following Permit revisions are requested:

1. *ADD to Exhibit G, Section B, last line on p. G-2: "Notwithstanding this provision, NYSDEC understands that MPM must, at some point in the future, submit a revision to its remedial approach representing a comprehensive, long-term, site-wide Site Management Strategy for the facility based on the NYSDEC-approved CSM and RSO and that such a modification will supersede this provision without the need for a formal Permit modification."*

Permit conditions should be revised for consistency with CERCLA/NCP remedial approaches. Typically, long-term site management under CERCLA follows a site-wide investigation and remediation process. However, the Consent Decree considers a prescriptive approach toward site remediation: Specifically, the facility was required to:

- Install groundwater recovery wells and additional monitoring wells in *each* of nine designated areas
- Operate *each* groundwater recovery system and… *create a hydraulic barrier*
- Monitor the performance of *each* groundwater recovery system.

Such single area systems have developed competing approaches for the effective long-term management of the site. Examples of competing approaches resulting in a loss of effectiveness include:

- Some area-specific remedial systems at the site currently extract constituent-free water that constitutes almost 50% of the total groundwater and leachate recovered at the site. Such remedial action components, including the extraction of clean river water from the river boundary areas, do not provide much, if any, remedial benefit.
- The majority of area specific groundwater extraction systems are placed far downgradient of known constituent point source areas, resulting in the concern that constituent behavior may stabilize at some asymptotic level at or above cleanup criteria, resulting in recovery periods that greatly exceed existing estimates.
- Some groundwater extraction wells do not operate efficiently and some cause remedial systems to work against each other suggesting that more effective long-term site remediation is possible.

To effectively remediate the facility over the long-run, a comprehensive, long-term, site-wide Site Management Strategy is necessary.

Financial Assurance

As discussed above, MPM requests that the NYSDEC add language that will incentivize remedial efforts prior to long-term site closure and reduce financial assurance commitments in the form of reimbursements following the successful completion of specific projects as approved by the NYSDEC. The following Permit revisions are requested with respect to financial assurance in Exhibit G:

1. *Exhibit G Section A. (closure/post closure) 3. (long term care) b. (calcs)*

    - *Line 2 (Page G-2) CHANGE "increase" to "increase or decrease"*
    - *Line 2 (Page G-3) CHANGE "increase" to "increase or decrease"*
    - *Line 3 (Page G-2) REPLACE "establish additional" to "adjust the amount of"*
    - *Line 4 (Page G-2) CHANGE "increase" to "increase or decrease"*

MODULE VII - INCINERATORS

This section addresses MPM's concerns with respect to the operation of incinerators. Specific considerations are presented below with suggestions to strengthen and improve the Permit.

Inclusion of Duplicative Conditions Contradicts EPA Intent and Guidance

The inclusion of duplicative conditions in the Draft Permit contradicts EPA's intent and guidance and, therefore, MPM requests that all duplication of HWC-MACT (40 CFR 63, Subpart EEE) requirements including operating limits, feed rate limits, monitoring requirements, and record keeping and reporting requirements be omitted from the Permit as discussed below.

The incinerators are highly regulated through the HWC-MACT regulations (40 CFR 63, Subpart EEE). As with all MACT regulations that the facility complies with, the Subpart EEE regulations are comprehensive in scope and contain provisions for performance standards, operating limits, monitoring, testing, notification, recordkeeping, and reporting. In contrast, the Part 373-2.15 regulations are brief and contain fewer performance standards, and little in the way of specific operating, monitoring or reporting requirements.

EPA clearly intended that hazardous waste combustor requirements should be consolidated into a single set of regulations and implemented through a single permit.[1] Their intent was to move regulatory requirements for hazardous waste incinerators to Title V permits and to remove them

[1] *See* NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, 64 Fed. Reg. 52,828 (Sept. 30, 1999); *See also Wastes-Hazardous Waste-Treatment & Disposal: Frequently Asked Questions on Permitting*, ENVIRONMENTAL PROTECTION AGENCY last accessed Oct. 14, 2014), available at http://www.epa.gov/waste/hazard/tsd/td/combust/toolkit/permit.htm ("We changed our approach in the NESHAP final rulemaking to avoid unnecessary regulatory duplication between the RCRA and CAA programs. We did this by placing the new emission standards only in the CAA regulations at 40 CFR part 63 subpart EEE.")

from RCRA permits. EPA's approach was to place the new/upgraded emission standards only in 40 CFR Part 63 and to implement them through CAA Title V permits. EPA has stated that the permitting objectives were to establish a single permit scheme which minimized duplication and limited the time that a source might potentially be subject to overlapping requirements of RCRA and CAA. (*See* Footnote 1). MPM has been subject to duplicative regulation and permitting for over ten years. Multiple Comprehensive Performance Tests have been completed under MACT, multiple NOCs have been submitted, and all applicable 40 CFR 63 Subpart EEE and Subpart A requirements have been incorporated into the Title V permit. The facility has been complying with these permit conditions under the regulatory authority of the NYSDEC Division of Air, which with the implementation of the HWC-MACT, is the lead regulatory authority for the incinerators. *Therefore, MPM believes that Module VII of the Draft Permit and Exhibit E should be omitted.*

If it is NYSDEC's position that the Draft Permit must contain incinerator requirements until the Part 373 regulations are updated, then the Draft Permit should only contain requirements that are specifically covered by Part 373-2.15. The Draft Permit should not contain requirements for performance standards that are contained only in the HWC-MACT and not in Part 373. Since there are no performance standards for dioxin/furan, mercury, LVM, and SVM in Part 373-2.15, the Draft Permit should not seek to regulate these. These are already covered by Subpart EEE requirements in the Title V permit. *Therefore, all HWC-MACT parameters which have already been included in the Title V Air Permit should be omitted from Tables D-2, D-3, D-4, D-5, D-6, E-2, E-3, E-4, and E-5 of Exhibit E.*

Duplication of Conditions and Inclusion of Less Stringent NYSDEC Permit Conditions Creates Unnecessary Burden

The HWC-MACT is more stringent than RCRA. Issuing the Draft Permit with Module VII and Exhibit E adds regulatory burden for MPM, and adds regulatory duplication for NYSDEC, without providing any additional environmental protectiveness. Therefore, with respect to the duplication of conditions and inclusion of less stringent NYSDEC permit conditions that create an additional burden for MPM and NYSDEC, MPM requests that both Module VII and Exhibit E be omitted from the Part 373 permit.

EPA replaced the RCRA incinerator program with the HWC-MACT program which is more comprehensive and more stringent than RCRA. The 1994 Hazardous Waste Combustion Strategy committed EPA to upgrading emission standards for Hazardous Waste Combustors through the use of the best available technology and the most current scientific understanding. The resulting HWC-MACT standards, which were promulgated jointly in 1999 under the combined authority of the CAA and RCRA, far exceed the standards in Part 373-2.15.

Emissions from the incinerators are reported to the Division of Air through Part 202 Annual Emission Statements. In contrast, the Division of Environmental Remediation seeks to regulate the incinerators without assessing actual annual emissions. The requirements and duplication presented by this permit are burdensome yet provide no additional environmental protectiveness. This draft permit will not achieve any additional reduction in emissions from the incinerators. Significant emissions reductions were achieved through the introduction of more stringent

HWC-MACT standards. Since these standards are 'maximum achievable', and since the types and quantities of waste incinerated at the facility are fairly consistent, incinerator emissions after the initial MACT reductions have remained fairly flat as expected. No reduction in emissions will be achieved through continuation of the Part 373-2.15 RCRA incinerator program. The conditions in the draft Part 373 permit result in duplication of monitoring, recordkeeping, and reporting requirements for the facility that are a regulatory burden. These requirements also result in duplication of efforts for NYSDEC since personnel form both the Division of Air and the Division of Environmental Remediation review data, review reports attend testing and perform inspections.

Moreover, the facility has complied with the more comprehensive MACT standards since the completion of the first CPT in 2004, and the Division of Air has had more than ten years to become fully competent with the management of Subpart EEE MACT standards, requirements and enforcement.

NYSDEC Failure to Adopt USEPA's Regulatory Transition from RCRA to HWC-MACT Creates Unnecessary Duplication and the Need for Future Permit Modification

With respect to NYSDEC's duplication of less stringent Permit conditions than MPM's USEPA Permit, MPM requests that the 'transition' issue be resolved prior to issuance of the final Permit.

EPA has already authorized NYS to administer the HWC-MACT as indicated by the " * " next to Subpart EEE on Table 4 of 6 NYCRR 200.10. The NYSDEC Division of Air has administered the HWC-MACT through the Title V Air Permit Program since 2004. The required testing and NOC submittals were completed twice—in 2004 and 2010/2011. Test reports have been found compliant and accepted by NYSDEC through incorporation into the Title V Air Permit. The Title V Air Permit contains wording stating that the 2010/2011 Comprehensive Performance Tests (CPT) for the incinerators fulfills the requirements for demonstrating compliance with the HWC-MACT emission limits, which is the "finding of compliance". All of the limits established in the CPTs and submitted in the NOCs have been incorporated into the Title V Air Permit. All of the conditions in paragraph E.1 that void the conditions of Module VII have been met.

MPM believes there is no need to "transition" regulation of air emissions from the incinerators from the hazardous waste management program to the air resources program as indicated in the Draft Permit, since the air resources program has already been fully implemented. The hold up to "sun setting" of the RCRA permit requirements for incinerators is not with obtaining EPA authorization of the of the HWC-MACT, or with a "transition" from one program to the other, but with NYS adoption of the federally worded sunset provision into the NYSDEC Part 373-2.15 regulation. When the HWC-MACT rule was promulgated, EPA also revised the RCRA regulations to state that incinerator air emission standards and operating parameters would be omitted from the RCRA permit. Adoption of this language into Part 373 has been on the schedule in NYSDEC's Regulatory Agenda each year since 2009. In the interim, contrary to what EPA intended, and contrary to EPA guidance, the facility has been subject to two separate regulatory programs for the incinerators. The long delay in adoption of this provision into Part 373-2.15 regulation is an internal NYSDEC issue, but as a consequence, the facility has been burdened with the requirements of two conflicting permits.

EPA has stated:

- "We strongly recommend that sunset provisions be included in a RCRA permit that will be issued well in advance of compliance with MACT to avoid duplication and a later modification to remove the duplicative RCRA conditions."

- "We view it as an unnecessary duplication of effort between programs as well as an unnecessary expenditure of resources and costs for both facilities and regulatory authorities to maintain a RCRA permit and a Title V permit that contain duplicative requirements. It would make sense to transition a source to MACT compliance prior to issuing a RCRA permit." (*See* Footnote 1).

Trial Burns

MPM will complete CPTs according to the HWC-MACT compliance schedule, with the next testing to occur in 2016. No additional RCRA Trial Burns will be completed. MPM requests clarification from NYSDEC that all future incinerator testing will be considered CPTs and not Trial Burns, and that all testing oversight will be coordinated through the Division of Air. All references to Trial Burns should be omitted from the Draft Permit.

The HWC-MACT program has been fully integrated into the facility's Title V permit, and has been overseen by NYSDEC Division of Air for over 10 years. At this juncture, two HWC-MACT CPTs have been completed for each incinerator (one in 2004 and one in 2010/2011). No further RCRA Trial Burns should be required. NYSDEC Region 5 Division of Air has sufficient highly qualified personnel to oversee and review CPT protocols, testing and reports. The facility will be conducting CPTs for both incinerators in 2016, and protocols will be submitted in 2015. Therefore, no additional Trial Burns will be completed.

Condition C.2.k of Exhibit E states that upon request of the Department, testing must be conducted as required by NYCRR 373-2.15(g)(1)(iii), which in turn states that "upon the request of the commissioner, sampling and analysis of the waste and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the performance standards". Since Part 373-2.15 pre-dates the HWC-MACT replacement program, and the commissioner oversees both the Division of Environmental Remediation (RCRA permit) and the Division of Air (Title V Permit), it is assumed that the Commissioner will not require duplicate tests (by both Divisions) or additional tests (per this paragraph by the Division of Environmental Remediation), since the federally mandated testing requirements now reside with the Division of Air. However, MPM requests clarification concerning future testing requirements.

With respect to Trial Burns, the following Permit revisions and actions are requested:

Risk Burns or Risk Assessments

MPM has already satisfied the requirements for the risk assessment tests. Therefore, all language in Module VII that references Risk Burns and Risk Assessments should be omitted.

When the HWC MACT was finalized, EPA determined that sources complying with MACT were generally not anticipated to pose an unacceptable risk to human health or the environment under RCRA, but EPA left open the possibility of using a site-specific risk assessment to confirm whether operation in accordance with the MACT standards would be protective of human health or the environment under RCRA. The Waterford facility has completed multi-pathway risk assessments for the Rotary Kiln and Fixed Box incinerators. Initial testing was completed in 2004 and the final site-specific human health risk assessment and the ecological risk assessment were updated with 2010/2011 CPT data and submitted in 2012. These assessments concluded that there was no unacceptable risk to human health or the environment from the operation of the MPM's incinerators. These risk assessments were accepted by DEC and incorporated by reference into the Draft Permit. As such, there is no basis for inclusion of additional risk-based conditions in the Draft Permit.

Completion of the risk burn and preparation of the Risk Assessments was an extensive effort completed over multiple years. EPA guidance clearly notes that completion of risk burns and risk assessments should be a one-time only requirement: "it should be noted that the Agency generally does not expect that facilities that have conducted risk assessments will have to repeat them" (*See* Footnote 1).

The basic operation of the facility and waste streams produced has not varied significantly over the last ten years. Overall emissions from the incinerators, which combined is less than 0.5 tpy of hazardous air pollutants, is expected to remain relatively stable as far as magnitude and composition. As with all similar MACT standards, the HWC-MACT regulation ensures that emissions are reduced to the greatest extent possible. After meeting the requirements for "maximum achievable control," with minimal changes in waste composition or quantity incinerated, no change in the risk to human health or the environment can be foreseen. With two CPTs completed and all MACT standards met, the facility will essentially be testing the same control for the same waste streams every five years under the HWC-MACT program. Additional Risk Burns or Risk Assessments are not warranted. The MACT program is more than sufficient to regulate the emissions from the incinerators. In addition, EPA has noted that "if the permitting authority concludes that a risk assessment is necessary for a particular combustor, the permitting authority must provide the factual and technical basis for its decision in the permit's administrative record and must make it available to the public during the comment period for the draft permit" (*See* Footnote 1). Since no such factual or technical basis has been provided, and no change in the risk to human health or the environment is anticipated, all references to Risk Burns and Risk Assessments should be omitted from the Draft Permit.

Operational Flexibility Limited by Two Different Sets of Operating Limits

NYSDEC's Division of Environmental Remediation's approach to permitting of the incinerators severely limits operational flexibility that is provided by the HWC-MACT regulations. This limitation subjects the facility to on-going compliance with two permits which contain two separate sets of operating limits for the same operation. Therefore, MPM requests that both Module VII and Exhibit E be omitted from the Draft Permit.

As mentioned above, the facility will complete CPTs according to the HWC-MACT compliance schedule, with the next testing scheduled for 2016. Upon submittal of the CPT report and approval of the report by the Division of Air, the HWC-MACT/Title V requirements will be updated with a Notification of Compliance Status ("NOCS") to be submitted to the Division of Air. The NOC will immediately reset operating parameters in the air program to reflect the testing completed in 2016. Since there is no mechanism for updating the RCRA permit in a similar fashion, after the 2016 testing, the facility will again be subject to two sets of operating parameters and AWFCOs as is now the case with the 1998 RCRA permit and the 2013 Title V permit. This creates an unfair regulatory burden on the facility, but provides no additional environmental protectiveness.

The duplication of the current HWC-MACT operating limits into the RCRA permit, in conjunction with the lack of a RCRA NOC process, severely limits operational flexibility for the facility while providing no additional environmental protectiveness. Since the RCRA program provides no mechanism for operating limit updates, it would require a major permit modification per Part 373-1.7(d)(11) to incorporate the 2016 CPT results. A major modification of the RCRA permit is, obviously, an extremely long process. In the interim, which could be years, the facility would have a Title V Air Permit with 2016 CPT results incorporated, and a RCRA permit with outdated 2010 CPT results. This will again require that the facility operate under two sets of operating limits as it currently does (currently operating under a 1998 RCRA permit with trial burn results from the 1990's as well as a Title V Air permit with the most recent CPT results from 2010), which is unacceptable.

Conflicting Permit Conditions

The Draft Permit contains conditions that encompass both the Part 373-2.15 regulation and the HWC-MACT. Many of these conditions directly conflict with the operational concepts of the HWC-MACT regulation and guidance, and with the conditions of the Title V air permit. Specific examples include the draft Part 373 permit treatment of (A) Automatic Waste Feed Cut-Offs ("AWFCOs") and (B) Emergency Safety Vent ("ESV") openings. The facility cannot operate the incinerators efficiently with two conflicting sets of permit conditions. *RCRA conditions dealing with AWFCOs and ESV openings should be omitted from the Draft Permit.*

A. AWFCOs:

There are no requirements in Part 373-2.15 that limit the number of AWFCOs. The Title V Air Permit already includes the HWC-MACT requirements for AWFCOs, and the facility is already complying with the MACT AWFCO regulations. Inclusion of the AWFCO requirements of paragraphs C.1.f.i and ii contradicts EPA guidance. The requirements of these paragraphs, in conjunction with paragraph C.3.b.ii.d represent a significant conflict with the HWC-MACT program and current EPA guidance concerning AWFCOs. These paragraphs, which have no regulatory basis, indicate that NYSDEC Division of Environmental Remediation seeks to regulate AWFCOs based on the belief that EPA requires "steady-state" operation. While this was a belief in the early 1980's, the EPA has since gathered many years of operational data from numerous incinerators and developed the replacement program: HWC-MACT. The HWC-MACT does not seek to regulate the occurrence of AWFCOs. Instead, HWC-MACT contains both regulations and guidance indicating a preference for AWFCOs to avoid exceeding operating parameter limits. There is no environmental impact from turning waste off, but there are potential impacts from exceedances of operating parameter limits. Current EPA guidance states that "A source may choose to shut off its waste feed (automatically or otherwise) before an exceedance of an AWFCO parameter occurs. In such a situation, if no subsequent exceedance occurs while hazardous waste remains in the combustion chamber, then there is no exceedance" (*See* Footnote 1).

The RKI is an inherently evolving state operation; liquid waste feeds are turned on or off based on production levels, drums are dropped into the combustion chamber, process vents are turned on or off, and ash and slag drop off. Good operation under the HWC-MACT is judged based on CMS exceedance as a percent of operating time, with a goal of remaining under one percent. This is achieved by purposely setting AWFCOs below the operating parameter limits and having AWFCOs as needed. The facility operates the incinerators at CMS exceedance levels that are typically an order of magnitude below the one percent level. When drums are not being fed, AWFCOs average two per day at the RKI. When drums are being fed, there may be five to six AWFCOs per day. The facility cannot remain under the 25 or 50 AWFCOs desired by the Division of Environmental Remediation and also remain below the one percent exceedance level required by the HWC-MACT administered by the Division of Air. There is an inherent difference in goals and philosophy between these two programs that must be addressed by NYSDEC.

In addition, paragraph C.4.a requires submittal of a written notice to EPA. Where is this notice to be submitted? EPA does not seek to regulate AWFCO limitations under its current HWC-MACT program. Is there a particular EPA office or division to which this notification must be submitted? Paragraph C.4.b requires a PE report with corrective measures aimed at reducing AWFCOs. Since the facility will continue to set AWFCO limits below operating parameter limits to meet the operational goals and requirements of HWC-MACT, will this same report be submitted over and over again every month? The requirement to submit 25 or 50 AWFCO reports is burdensome, serves no regulatory purpose, and provides no protectiveness of the environment. The philosophy behind these reports is a direct contradiction of current EPA guidance in the HWC-MACT concerning treatment of AWFCOs.

B. <u>ESV Openings:</u>

There are no regulatory requirements related to ESV openings in Part 373-2.15, however, paragraphs D.2.c.iii and E.2.b.iii of Exhibit E of the Draft Permit contain language concerning violations related to emergency safety vent (ESV) openings that differ substantially from those established in the HWC-MACT (40 CFR 63.1206(c)(4)) and that have been incorporated into the facility's Title V Air Permit. These paragraphs state that instances when the ESV is opened and waste remains in the combustion chamber are violations and must be reported. In contrast, the HWC-MACT states that ESV openings when hazardous waste remains in the chamber during a malfunction, as defined in the startup, shutdown, malfunction plan, are not violations and do not require reporting. A report within five days must only be made if the ESV opening occurs due to an event that is not a malfunction as defined in the startup, shutdown, malfunction plan and the opening results in a failure to meet the emission standards of Subpart EEE. Paragraphs D.2.c.iii and E.2.biii overreach both the Part 373 regulations and the HWC MACT regulations. The ESV systems are designed to open as needed as a safety precaution. Such openings should not be violations when they occur for their intended purpose.

In addition, the term "waste remains in the combustion chamber" should be clarified. The incinerators are operated above the minimum required temperature established during performance testing. Once residence time (at temperature) has expired, the HWC-MACT regulations indicate that there is no longer hazardous waste in the combustion chamber. In contrast, the RCRA interpretation seems to indicate that all residues generated from the incineration process (ash, slag, clinker) are still hazardous waste, in which case, since there is always ash/slag residue inside the incinerators, the units could never actually comply with permit conditions such as paragraph D.2 of Module VII of the Draft Permit. The RKI, for example, optimally operates with a slag layer in place that protects the refractory brick and facilitates flow of slag between the primary and secondary chambers. If the interpretation is that any residue in the incinerators after residence time has passed is still hazardous waste, then any ESV opening, even if the unit was shut down, could be interrupted as a violation under paragraphs D.2.c.iii and E.2.biii. It is also unclear as to what ESV openings should be reported under paragraph C.3.b.i.d. *Does this reporting include ESV openings when hazardous waste residence time has expired or when the units are not operating?*

With respect to conflicting permit conditions for AWFCOs and ESVs, MPM requests the deletion of all conditions for AWFCOs and ESV openings.

RCRA Omnibus Provision

MPM requests clarification on the use of the RCRA omnibus provision and the inclusion of requirements beyond those in the HWC-MACT.

Per EPA guidance, the RCRA permit may, via the RCRA omnibus provision, include additional conditions beyond those included in the HWC-MACT, if the Risk Assessment indicates that the MACT standards are not protective of human health and the environment in a particular case. (Note: EPA guidance does not indicate that, based on the Risk Assessment, the RCRA omnibus

provision may be used to incorporate the actual HWC-MACT standards that have already been included in the Title V Air Permit, into the RCRA permit.) However, the site specific Risk Assessments have already been completed and have shown no risk to human health and the environment from operation of the incinerators. The standards found at 6 NYCRR 373-2.15 have already been found to be insufficient to protect human health and the environment which is why the RCRA incinerator regulations have been replaced by the more stringent conditions in the HWC-MACT/Title V Air Permit, thus the concept set forth in paragraph A.4 of Module VII is in error. MPM requests that for any Draft Permit conditions which have been included based on the RCRA omnibus provision, the condition be identified to the facility and managed per the EPA policy which states "permitting authorities must provide the justification for any omnibus-based permit conditions in the facility's administrative record" (*See* Footnote 1).

In addition to the Draft Permit conditions concerning AWFCOs, ESV openings, electronic database access, and reports that are discussed elsewhere in these comments, the following conditions appear to exceed both Part 373-2.15 and the HWC-MACT regulations indicating that the RCRA omnibus authority may have been invoked for their inclusion:

- Requirement to archive CO data until closure of the facility
- Requirement to calculate contribution of fuel oil and natural gas contributions to HWC-MACT regulated contaminant emissions (Exhibit E, paragraph C.2.a.i.d)
- Inclusion of BIF standards
- Requirements for FBI soot blowing gas flow rate limits (Exhibit E, Table E-6)
- Requirement to read parameters once per second (Exhibit E, Paragraph C.2.a.ii)
- Requirement to submit one-minute operating data for all parameters in an electronic Excel format on a monthly basis (Exhibit E, paragraph C.3.b.i.f)
- Requirement to store date uncompressed on digital media (Exhibit E, paragraph C.4.g)

There is no basis to develop additional RCRA permit conditions based on RCRA's omnibus provision. RCRA's omnibus authority allows implementation of RCRA risk-based emission limitations that exceed the CAA technology-based limitations in the Title V Air Permit, if "necessary to protect human health or the environment." *MPM requests specific identification of any such conditions which overreach both the Part 373-2.15 regulation and the HWC-MACT, and which have been included in the Draft Permit through the RCRA omnibus provision, along with the justification for each condition.*

Reporting Requirements

Reporting requirements of the Draft Permit are burdensome and contradict EPA guidance. Therefore, reporting requirements in Exhibit E, Conditions C.3, C.4 and F.16 should be omitted from the permit.

Per 6 NYCRR 200.10, EPA has authorized NYS to include MACT standards in permits issued under Part 201 (Title V Permits) not in Part 373 permits. The Title V Air Permit, and 40 CFR 63 Subparts A and EEE, require the facility to submit semiannual 40 CFR 63, Subpart EEE (HWC MACT) reports to the administrative authority for the applicable MACT regulation, which is NYSDEC Division of Air under Part 201 permits. The Subpart EEE, HWC MACT semiannual

reports have been submitted to NYSDEC Region 5, Division of Air, the NYSDEC Central Office Bureau of Quality Assurance, and the Chief of the Stationary Source Compliance Section at EPA Region 2 for over ten years. These agencies provide review and oversight of the MACT program and reports. There is no regulatory requirement to submit MACT reports under a Part 373 permit to the NYSDEC Division of Environmental Remediation. In addition, the Part 373 permit cannot require that a MACT report contain information not required by the MACT regulation (e.g., total quantity of waste incinerated as noted in the last sentence of this paragraph). *This requirement overreaches Part 373. Condition C.4.f of Exhibit E must be omitted from the Draft Permit.*

Reporting requirements are duplicative and substantially different than those in Subpart EEE/Subpart A and existing Title V permit conditions. Subpart EEE/Subpart A have detailed requirements for recordkeeping and reporting. In contrast, there are no reporting requirements in Part 373-2.15. The facility is already complying with the reporting requirements of Subpart EEE/Subpart A. Duplicative/different reporting requirements should not be included in the Part 373 permit. The additional reporting requirements of these paragraphs represent an unfair regulatory burden on the facility and overreach both the Part 373 regulations and the HWC MACT regulations.

In addition, the quarterly Absolute Calibration Audit (ACA) is conducted per the HWC-MACT program and is overseen through the NYSDEC Division of Air through the Title V Air Permit. There is no regulatory requirement to submit ACA reports to the Division of Environmental Remediation, nor is there a report to be called 'Calibration Error Test Report'. If the NYSDEC Division of Environmental Remediation seeks to oversee the ACAs, then ACA reports should be requested through the Division of Air rather than from the facility and details of this oversight should be discussed with the Division of Air. *There is no need or regulatory requirement for the environmental monitor to be notified in advance of ACAs as note in Footnote 4. Condition F.16 of Schedule 1 of Module 1 should be omitted from the permit.*

MISCELLANEOUS COMMENTS

In addition to the major issues identified above, there are a handful of miscellaneous comments that have been identified on the basis of (i) an operational requirement, (ii) regulatory concern, (iii) administrative flexibility, or (iv) clarification. These comments are set forth in the chart attached hereto as Exhibit A.

Thank you for your consideration of MPM's comments and concerns. Should you have any questions related to this response, please do not hesitate to contact me.

Sincerely,

William Collins
Environmental, Health & Safety Manager

EXHIBIT A

MPM DRAFT PART 373 PERMIT REFERENCE	PAGE	BASIS	MPM COMMENT
MODULE 1: GENERAL CONDITIONS. D. PERMIT MODIFIDATION AND PERMIT TRANSFER.	I-7	Regulatory Concern	Permit transfer regulatory requirements are very specific and should not be paraphrased here. The Permittee must process all changes in Facility ownership and/or operational control in accordance with the requirements of 6 NYCRR 373-1.7(a). Strike remainder of paragraph.
MODULE 1: GENERAL CONDITIONS. H. COMPLIANCE SCHEDULE.	I-9	Clarification	Please clarify requirements and consider building a flexible permit schedule.
MODULE 1: GENERAL CONDITIONS. N. DATA AND DOCUMENT STANDARDS.	I-10	Administrative Flexibility	Data validation on all data is an administrative and financial burden. Strike out "The Permittee must have all closure, post-closure and corrective action data validated by a third party prior to submission to the Department."
MODULE 1: GENERAL CONDITIONS. R. MISCELLANEOUS. 6.	I-15	Clarification	Please clarify the condition and provide the regulatory basis for this condition. MPM is concerned this may limit interactions between NYSDEC and MPM. Verbal and email exchanges are dynamic and the 30-day window may not be appropriate.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: A. PERMITTED ACTIVITIES.	SI-1	Clarification	Add Storage and Maintenance to activity type.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: A. PERMITTED ACTIVITIES: Unit Type: Transfer Areas (S99)	S1-1	Clarification	The transfer area units and quantity within the permit are inconsistent with the volume in the permit application. Revise the container information to be consistent with permit application.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: A. PERMITTED ACTIVITIES: Unit Type: Miscellaneous Units	S1-1	Operational Requirement	Miscellaneous units are used for on-site storage and maintenance in accordance with regulatory requirements.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: A. PERMITTED ACTIVITIES: Unit Type: Tanks (S02)	S1-1	Clarification	The tank volume quantity in the permit is inconsistent with the volume in the permit application. Revise the container information to be consistent with the permit application.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: A. PERMITTED ACTIVITIES: Unit Type: Incinerators (T03)	S1-1	Operational Requirement	A BTU/Hour limit on incinerator operation is an operational restriction and is not protective of human health and the environment. Quantity for Incinerators should be "Not Applicable."
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: A. PERMITTED ACTIVITIES: Unit Type: Incinerators (T03)	S1-1	Clarification	The capacity limit for the incinerators is listed in terms of thermal throughput. The incinerators already include mass-based limits for feed rates.

MPM DRAFT PART 373 PERMIT REFERENCE	PAGE	BASIS	MPM COMMENT
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No. 2. Final Cover Program for Landfill No. 2	S1-6	Operational Requirement	A five year inspection cycle was recommended by the testing company. A three year inspection cycle for destructive testing has the potential to shorten the effective life of the cover. Revise the inspection cycle referenced in the first bullet to "every five years thereafter."
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No. 2. Final Cover Program for Landfill No. 2	S1-6	Operational Requirement	The Engineering Design Report should only become necessary in the event that the tests of the existing cover show it fails to protect human health and the environment. Under the schedule it should state "Within one year of a test result that demonstrates the existing cover cannot be repaired and is at risk of failing to protect human health and the environment, MPM shall submit an Engineering Design Report to DEC."
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No. 3. Secondary Containment Capacity – Loading/Unloading Areas	S1-7	Administrative Flexibility	Although Momentive will make this structural upgrade to our transfer stations, many of the transfer stations cannot be coated unless area operations are shut down. This type of work is typically scheduled for our annual plant shut down, during which major and multiple minor maintenance projects are undertaken. Due to resource limitations during plant shut downs, Momentive proposes the work be scheduled over the course of three annual shut downs. Suggested revision to under compliance date: Allow 90 days for the work plan and 3 years for implementation.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No. 4. Secondary Containment Capacity – Interconnected Tanks and Containment Areas	S1-8	Regulatory Concern	There is no known regulatory guidance that valves have to be automated to provide tank isolation. Manual valve operation is sufficient to functionally isolate the tanks. Suggest revision: Strike item No. 4a.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No. 4. Secondary Containment Capacity – Interconnected Tanks and Containment Areas	S1-8	Regulatory Concern	Momentive completed a robust review of chemical handling and shared containment areas in response to the NYSDEC's technical comments on our original permit submission. As a result of this review, which included all hazardous materials managed at the plant, including hazardous waste, Momentive provided a detailed description of what controls are in place for potentially incompatible materials in interconnected containment areas in Section IV-B.I of Momentive's RCRA permit application. A work plan, engineering report, and tank/containment modifications would constitute repeating these efforts by a third party, at a high cost for a limited benefit. Furthermore, the results of this work would not be expected to change how we manage hazardous materials at our plant. Suggest revision: Strike item No. 4b.

MPM DRAFT PART 373 PERMIT REFERENCE	PAGE	BASIS	MPM COMMENT
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No. 6. Tanks 539 A & B Fire Protection Plans	S1-9	Operational Requirement	Momentive engaged a Fire Protection Project Engineer to assess insulation requirements dictated by NFPA and State Building and Fire Codes. The Engineer reported there is no requirement for insulation on liquid storage tanks and advised MPM to evaluate the adequacy of venting equipment on the tanks. It was determined the venting equipment is adequate for fire protection. Therefore, a Work Plan, Draft Engineering Report, Final Engineering Report, and Fire Protection improvements are not necessary to document the adequacy of a fire protection plan for tanks 539 A & B. Strike item No. 6.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: COMPLIANCE SCHEDULE: Item No. 8. Underground piping inspection	S1-12	Clarification	DEC provides no guidance on the standards for procedures. MPM requests DEC to provide procedural guidance and allow adequate time for Momentive to prepare a proposal and to implement such procedures.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: COMPLIANCE SCHEDULE: Item No. 8. Underground piping inspection	S1-12	Regulatory Concern	Protocols are not required by the regulation. Remove Item No. 9 from the table in Condition C.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: COMPLIANCE SCHEDULE: Item No. 10. Building 78 Transfer Station—Upgrade of Secondary Containment.	S1-14	Operational Requirement	Revise compliance date from 90 days to "Within one year of NYSDEC approval of Final Engineering Report."
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: C. COMPLIANCE SCHEDULE: Item No.11. Site Institutional Controls, Footnote 3	S1-16	Clarification	MPM suggests revision to resolve consistency with regulatory requirements. Strike blanket language regarding requirement to conduct an evaluation of the vapor intrusion potential.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: D. SCHEDULE OF DELIVERABLES: Item No. 8.	S1-19	Operational Requirement	Propose extending deadline for evaluation and proposal to 3 years and 6 months to complete the work following DEC's approval of proposal.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: D. SCHEDULE OF DELIVERABLES: Footnotes	S1-20	Regulatory Concern	Momentive has all the documents required by regulation available for review. These documents provide comprehensive site-wide documentation regarding the environmental status of the site. This footnote demonstrates there is no regulatory requirement associated with items 2, 4, and 5. MPM requests DEC to honor MPM's position regarding the NYSDEC's permit requirements for a web based electronic management database, RSO, and waste code audit. If there is a regulatory requirement, please cite it here.

MPM DRAFT PART 373 PERMIT REFERENCE	PAGE	BASIS	MPM COMMENT
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: D. SCHEDULE OF DELIVERABLES: Footnote 2. Development of a "Web-Based" Electronic Waste Management Database	S1-21	Operational Requirement; Clarification	Suggested revision to resolve inconsistency with regulatory requirements: WAP data is currently managed separately within an excel spreadsheet. Per current negotiations between MPM and NYSDEC, MPM will update default values annually. These calculations are supported by the current WAP management system. There is no known regulatory basis for this requirement and developing a new database system presents a significant burden to MPM. The current control system for the incinerators incorporates many of the features described herein and a requirement is already stated in section C to provide remote monitoring of the system. Default values are currently programmed directly into the control system. Having an additional web based link into a control system provides a potentially dangerous "back door" into the control system and would reduce the effectiveness of current security measures that prevent non-authorized personnel from changing the controls of on-site processes. MPM requests a discussion which results in a functionally equivalent proposal that avoids some of these serious concerns. Please Strike this requirement.
SCHEDULE 1 of MODULE I: FACILITY-SPECIFIC CONDITIONS: F. ROUTINE REPORTING AND COMPLIANCE ACTIVITIES. 16. CALIBRATION ERROR TEST REPORT.	S1-27	Regulatory Concern	There is no regulatory requirement to submit these reports to DEC and currently these tests are not followed up by a report. It is an administrative burden to require submission of the reports within 5 days of testing.
EXHIBIT A: SUPPLEMENT TO MODULE I - GENERAL PROVISIONS: A. GENERAL CONDITIONS, 1.	A-1	Operational Requirement	We have an onsite brigade that handles these inspections. This condition requires that MPM make arrangements for semi-annual inspections. MPM has no jurisdiction over local fire companies. It is recommended this condition be rephrased so it is not a permit violation should the local fire department decline.
EXHIBIT A: SUPPLEMENT TO MODULE I - GENERAL PROVISIONS: A. GENERAL CONDITIONS, 3.	A-1	Clarification	This requirement is boundary-less and without distinct guidelines. It is unclear as to whether DEC may require MPM to confirm past historical operating practices and/or releases (i.e. burden of proof). Additionally, this requirement questions the value of the closure plan criteria.
EXHIBIT A: SUPPLEMENT TO MODULE I - GENERAL PROVISIONS: A. GENERAL CONDITIONS: 4.	A-2	Regulatory Concern	373-1.6 (C)(4) requires that incorporations must be in effect prior to final issuance of the permit. Also incorporations must include citation to the applicable regulation or requirement.
EXHIBIT A: SUPPLEMENT TO MODULE I - GENERAL PROVISIONS: A. GENERAL CONDITIONS: 4.	A-2	Administrative Flexibility	Additionally, if reported to DEC Monitor, it would then classify the release as reportable to DEC and require notification to the Town of Waterford.

MPM DRAFT PART 373 PERMIT REFERENCE	PAGE	BASIS	MPM COMMENT
EXHIBIT A: SUPPLEMENT TO MODULE I - GENERAL PROVISIONS: A. GENERAL CONDITIONS: 4.	A-2	Regulatory Concern	Suggested revision to resolve inconsistency with regulatory requirements. Strike the paragraph and use the following language from the regulation: "The Regulatory framework presented in 6 NYCRR 621.13 allows for the permit to be modified, suspended, or revoked when: materially false or inaccurate statements in the permit application or supporting papers; failure by the Permittee to comply with any terms or conditions of the permit; exceeding the scope of the project as described in the permit application; newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit; noncompliance with previously issued permit conditions, orders of the commissioner, or any provisions of the Environmental Conservation Law or regulations of the department related to the permitted activity."
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES, 1.	C-1	Operational Requirement	Storage restriction for RKI Feed Pad does not allow for storage of wastes to be disposed/reclaimed. Additionally, both DSS areas are restricted to wastes listed in Table C-1 on page C-2. This will pose logistical challenges for managing waste streams not identified on the list. This may also impact hazardous liquid inventories on 90-day pads due to inability to move materials to permitted DSS.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES, 1: Table C-1 - Waste Streams Authorized at the Drum Storage Structure (DSS) and RKI Feed Pad (RKI)	C-2	Clarification	This line implies it is not permitted to handle non-hazardous waste on the RKI drum pad. This would prohibit the combustion of non-hazardous waste drums, including paper, etc. What is the specific regulatory reason or requirement that prevents MPM from handling non-hazardous materials on the RKI drum pad?
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES 1. Table C-1 - Waste Streams Authorized at the Drum Storage Structure (DSS) and RKI Feed Pad (RKI): Caustic Liquids – High pH	C-2	Clarification	Momentive's RCRA permit application identifies waste codes for caustic liquid high pH that are different in the permit. Revise caustic liquid high pH from D001, D002 to "D002" only.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES 1. Table C-1 - Waste Streams Authorized at the Drum Storage Structure (DSS) and RKI Feed Pad (RKI): Non-Polar Solvents (NPS)	C-2	Clarification	Momentive's RCRA permit application identifies waste codes for NPS that are different in the permit. Revise NPS from "D001, D009, D011, F003, F005" to "D001, D009, D039, F003, F005"

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EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES 1. Table C-1 - Waste Streams Authorized at the Drum Storage Structure (DSS) and RKI Feed Pad (RKI): Silicone Solids	C-2	Clarification	Momentive's RCRA permit application identifies waste codes for silicone solids that are different in the permit. Revise Silicone Solids from "D001, D002, D003, D018, D021, F002, F003, F005, F039" to "D001, D003, D018, F002, F003, F005, F039"
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES 2. Authorized Transfer Areas	C-3	Operational Requirement	Allow all hazardous waste drums that may be stored on the one year pad to be stored on at the RKI feed pad.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES, 2. Authorized Transfer Areas	C-3	Operational Requirement	Strike the columns "Largest Container Permitted in TA". Replace "Maximum Quantity of hazardous waste and/or containers allowed in TA" with "Maximum Storage Volume for hazardous waste containers."
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES, 2. Authorized Transfer Areas, Footnote 1	C-4	Regulatory Concern	Product containers are not regulated under the RCRA permit. Suggested revision to resolve inconsistency with regulatory requirements: strike footnote 1.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES 3. Authorized Containers Subject to 373-2.29 Level 2 Controls or complying with 373-2.29(j)(10), Permitted Containers	C-4	Regulatory Concern	There is no regulatory basis for regulating individual containers (e.g. tank wagons) used on-site. Doing so limits Momentive's operational flexibility to modify its fleet to meet its business needs. Furthermore, the vacuum trailers are not owned by Momentive. Suggested revision to resolve inconsistency with regulatory requirements: strike "Permitted Containers" column from the permit.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: A. AUTHORIZED	C-5	Regulatory Concern	There is no regulatory basis for limiting how much a container may be filled. Suggested revision to resolve inconsistency with regulatory requirements: strike footnote 1.

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STORAGE AREAS, WASTE TYPES AND STORAGE VOLUMES: 3. Authorized Containers Subject to 373-2.29 Level 2 Controls or complying with 373-2.29(j)(10), Permitted Containers, Footnote 1			
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: B. SPECIAL CONDITIONS FOR CONTAINERS (GENERAL), 3.a.	C-6	Regulatory Concern	There is no RCRA requirement to maintain concrete sealants in container storage areas. Sometimes sealants are used in lieu of re-pouring a concrete slab. In the event a concrete slab is re-poured, would it then have to be resealed when the objective is to provide an impervious surface in accordance with Momentive's best management practices? Suggested revision to resolve inconsistency with regulatory requirements and to provide operational flexibility: strike B.3.a
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: B. SPECIAL CONDITIONS FOR CONTAINERS (GENERAL), 4.	C-6	Regulatory Concern	There is no RCRA requirement defining where waste containers may be opened. Suggested revision to resolve inconsistency with regulatory requirements and to provide operational flexibility: strike B.4
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: B. SPECIAL CONDITIONS FOR CONTAINERS (GENERAL), 6.	C-6	Regulatory Concern	USDOT packaging specifications not required if container is not in commerce.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 1.b.	C-7	Operational Requirement	If a container is <90 days of age, operational flexibility would allow the drum to be returned to the 90-day area.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 2.b.	C-7	Operational Requirement	If a container is <90 days of age, operational flexibility would allow the drum to be returned to the 90-day area.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 2.c.	C-7	Clarification	Why must the containers must be opened and visually inspected to verify the amount of material in the drum and its visible physical characteristics?
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 2.h.	C-7	Clarification	This condition does not specify allowable areas for which sampling may occur for other waste streams. This conflicts with the restriction on page C1 which places restrictions on RKI Feed Pad storage.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS	C-7	Operational Requirement	Sampling is performed on the RKI Feed Pad as there are the appropriate grounding stations and ample work space, if needed.

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FOR CONTAINERS (SPECIFIC), 2.h.			
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 2.h.	C-7	Operational Requirement	Drums may need to be sampled to confirm waste characteristics at the RKI Feed Pad. Suggested revision to improve operational flexibility: strike C.2.h.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 3.a-iii.	C-7,8	Clarification	In regard to container Level 2 requirements and utilizing Method 27 for vapor tightness, why is method 21 not acceptable?
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 4.	C-8	Clarification	Table 3 may need a footnote referencing C.4 because it is unclear as to whether temporary placement of containment is a violation of the permit.
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 4.	C-8	Regulatory Concern	The RCRA regulations do not require management of individual containers that may be stored in specific storage areas. Suggested revision to resolve inconsistency with regulatory requirements: strike C.4
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 4.a.	C-8	Regulatory Concern	The RCRA regulations do not require the NYSDEC to be notified of the movement and storage of specific hazardous waste containers. Suggested revision to resolve inconsistency with regulatory requirements: strike C.4.a
EXHIBIT C: SUPPLEMENT TO MODULE III - USE AND MANAGEMENT OF CONTAINERS: C. SPECIAL CONDITIONS FOR CONTAINERS (SPECIFIC), 4.e.	C-9	Regulatory Concern.	Hazardous waste transfer areas are permitted for 90 day storage. Furthermore, the container may be brought to our waste treatment plant to dispose of its contents. Suggested revision to resolve inconsistency with regulatory requirements: strike C.4.e
EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 15	D-1	Clarification	The Waste Codes listed for NPS and APS do not match the RCRA permit application. Suggested revision to resolve inconsistency with RCRA Permit Application: add D039 to the EPA Hazardous Waste Code.
EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 250	D-2	Clarification	The Waste Codes listed for NPS and APS do not match the RCRA permit application. Suggested revision to resolve inconsistency with RCRA Permit Application: add D039 to the EPA Hazardous Waste Code.

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EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 251	D-2	Clarification	Suggested revision to resolve inconsistency with RCRA Permit Application. The Waste Codes listed for NPS and APS do not match the RCRA permit application: add D039 to the EPA Hazardous Waste Code.
EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 252	D-2	Clarification	The Waste Codes listed for NPS and APS do not match the RCRA permit application. Suggested revision to resolve inconsistency with RCRA Permit Application: add D039 to the EPA Hazardous Waste Code.
EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 539A	D-2	Clarification	The Waste Codes listed for NPS and APS do not match the RCRA permit application. Suggested revision to resolve inconsistency with RCRA Permit Application: add D039 to the EPA Hazardous Waste Code.
EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 539B	D-3	Clarification	The Waste Codes listed for NPS and APS do not match the RCRA permit application. Suggested revision to resolve inconsistency with RCRA Permit Application: add D039 to the EPA Hazardous Waste Code.
EXHIBIT D: SUPPLEMENT TO MODULE IV – TANK SYSTEMS: A. AUTHORIZED STORAGE TANK, WASTE TYPES AND STORAGE VOLUME, 1: Tank System I.D. 538	D-3	Clarification	The Waste Codes listed for NPS and APS do not match the RCRA permit application. Suggested revision to resolve inconsistency with RCRA Permit Application: add D039 to the EPA Hazardous Waste Code.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: A: AUTHORIZED INCINERATION UNITS, 1: Table A-1: Permitted Incineration Units	E-1	Clarification	The waste sources identified in Table D-1 and E-1 of this permit only allow for incineration of hazardous waste and we request adding non-hazardous waste.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: A: AUTHORIZED INCINERATION UNITS, 1: Table A-1: Permitted Incineration Units	E-1	Regulatory Concern	There is no provision under Section 373 for limitation of the thermal input to an incinerator nor is it an appropriate limitation for control of emissions from such units. Mass throughput limitations are more appropriate and are already included in this permit. Remove thermal limitations from this table and replace with mass-based limitations contained later in this Exhibit.

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EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: C. GENERAL CONDITIONS, 1.b.	E-2	Regulatory Concern	The RKI monitors for CO concentration in the emissions. There is no "PIC" CEMS unit currently installed. What is the regulatory basis for requirement of a thermal limit? Use of CO monitoring for determining Destruction Removal Efficiency is common and well documented in both NYCRR and Federal MACT standards. This would be the first time MPM would be made aware of PIC monitoring requirements. This item should be re-worded to only include a requirement for CO monitoring and data recording.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: C. GENERAL CONDITIONS, 1.c.	E-2	Regulatory Concern	There are no regulations under Part 373-2.15 that limit thermal capacities. There is no need or requirement to include these limits and there are no associated monitoring requirements for thermal capacity. This paragraph overreaches the Part 373-2.15 regulation. Remove paragraph C.1.c in its entirety as it is not required by Part 373-2.15.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: C. GENERAL CONDITIONS, 1.h.ii.	E-4	Regulatory Concern	The requirement as written is too broad and leads to easy misinterpretation of when it is applicable. Revise regulatory language to reference applicable requirement in 6 NYCRR 373-1.7.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: C. GENERAL CONDITIONS, 2.b.	E-4	Clarification	Permit clarification required in Exhibit C because non-hazardous waste streams are not listed as an allowed waste stream for incineration.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: C. GENERAL CONDITIONS, 3.b.iii	E-8	Regulatory Concern	Requires MPM to report instances where CO monitor exceeds acceptable daily drift of less than 3% of span value. This differs from current guidance. A scenario explains this easiest: If CO monitor low range span is 200ppm, and then 3% is 6ppm. If CO cal gas is 150ppm on day 1, instrument reads 146ppm then there is a 2.0ppm drift. On Day 2 if the instrument reads 153ppm, there is a total drift of 7ppm which would require reporting. Current requirements allow for +/- 3% drift from the cal gas concentration. By operation in this fashion, Day 2 would only show a +3.0 ppm drift and would not be reportable.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: C. GENERAL CONDITIONS, 4.c.	E-9, E-10	Operational Requirement	Emergency stack openings absent a waste feed are irrelevant towards compliance with this permit. Modify language to indicate that the required notifications are only applicable to openings that occur when waste feed is in the system.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: D. ROTARY KILN INCINERATOR (RKI) CONDITIONS, 1.c.iv.	E-12	Clarification.	The use of the term "energetic materials" absent a clear definition may be too broadly interpreted. Please provide a regulatory definition for energetic materials
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: D. ROTARY KILN INCINERATOR (RKI) CONDITIONS, 1.d.	E-12	Regulatory Concern	There is no provision under Section 373 for limitation of the thermal input to an incinerator nor is it an appropriate limitation for control of emissions from such units. Mass throughput limitations are more appropriate and are already included in this permit. Remove paragraph D.1.d.

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EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: D. ROTARY KILN INCINERATOR (RKI) CONDITIONS, 2.c.i.	E-18	Clarification	The values at which each parameter causes the ESV to open need to be updated.
EXHIBIT E: SUPPLEMENT TO MODULE VII – INCINERATORS: D. ROTARY KILN INCINERATOR (RKI) CONDITIONS, 3.a. Table D-6 – Monitoring Systems: Locations and Calibrations	E-19	Regulatory Concern	Instrument tag numbers and equipment tag numbers are used for internal recordkeeping purposes only and their inclusion in this table creates an arbitrary reference that has no regulatory significance. Furthermore, "routine" and "Comprehensive" are used without any clarification as to their definition. Additionally, there are items included in this table that are not monitored for regulatory compliance and are also not required to calculate a regulated parameter. Monitoring of parameters including, but not limited to, parameters such as instrument air header pressure and fuel oil flow rates, etc. provides no documented protection of human health or the environment. Suggested Revisions: Remove columns entitled "Equipment" and "Tech Identification No." Provide regulatory definitions for "routine" and "comprehensive" as well as basis for their inclusion. Remove parameters which do not provide for protection of human health and the environment.
EXHIBIT F: SUPPLEMENT TO MODULE X – HAZARDOUS WASTE MISCELLANEOUS UNITS: B. SPECIAL CONDITIONS FOR MISCELLANEOUS UNITS (GENERAL), 1.	F-1	Operational Requirement	Containment or protective barrier to prevent damage of the coating during water blasting activities. Formal inspection required within 24 hours of using a bucket loader/heavy equipment. If damage is noted then repair must be made within 30 days and noted in the inspection log.
MODULE II: CORRECTIVE ACTION REQUIREMENTS: B. STANDARD CONDITIONS FOR CORRECTIVE ACTION, 5.e.	II-3	Clarification	Request revision to resolve consistency with the existing consent order. As this is currently written, these provisions conflict with existing requirements. Suggested revision: strike B.5.e
MODULE II: CORRECTIVE ACTION REQUIREMENTS: C. SCHEDULE FOR ASSESSMENT OF NEWLY IDENTIFIED SWMUs AND AOCs, 5.	II-5	Clarification	As this is currently written, these provisions conflict with existing requirements and consent order. Suggested edits include describing current reporting requirements and replacing 5 with "5. SWMU/AOC Sampling and Analysis Report: The Permittee must follow reporting requirements in any approved Plan. The Permittee must provide analytical data generated during the SWMU investigation with the quarterly SWMU report."
MODULE II: CORRECTIVE ACTION REQUIREMENTS: E. OTHER REQUIREMENTS, Item No. 4 – DISPUTE RESOLUTION	II-11	Clarification	These regulations should not be paraphrased in the permit due to potential conflicts in word changes and potential regulatory modifications. Suggested revision: Strike section and replace with "Disputes related to Department decisions shall be administered in accordance with 6 NYCRR 621."

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MODULE III – USE AND MANAGEMENT OF CONTAINERS: K. OTHER REQUIREMENTS: E. INSPECTIONS [6 NYCRR 373-2.9(e)] AND REPAIR/REMEDIAL ACTION [6 NYCRR 373-2.2(g)(3)]. 6.	III-2	Operational Requirement	Suggest revising the first sentence to read: "The Permittee must repair all identified defects and deficiencies of the secondary containment system for containers in accordance with 6 NYCRR 373-2.2(g)(3) and Conditions E.8 of this Module."
MODULE III – USE AND MANAGEMENT OF CONTAINERS: D. MANAGEMENT OF CONTAINERS	III-2	Regulatory Concern	Suggest revising to strike "All container storage areas must comply with the applicable sections of the New York State Fire Code and the National Fire Protection Association (NFPA) 30 – 'Flammable and Combustible Liquids Code.' The Permittee must demonstrate compliance with the applicable portions of the New York State Fire Code and the NFPA 30 to the satisfaction of the Department." and replace with "Container storage areas must be maintained in accordance with building codes at the time of construction.
MODULE III – USE AND MANAGEMENT OF CONTAINERS: E. INSPECTIONS AND REPAIR/REMEDIAL ACTION	III-2	Regulatory Concern	Containers in a satellite accumulation area do not have written inspection logs. Suggest revising to strike E.3 and replace with "Records and results of inspections will be maintained as required by 6 NYCRR 373-2.2(g)(4)."
MODULE III – USE AND MANAGEMENT OF CONTAINERS: K. OTHER REQUIREMENTS: E. INSPECTIONS [6 NYCRR 373-2.9(e)] AND REPAIR/REMEDIAL ACTION [6 NYCRR 373-2.2(g)(3)]. 8.	III-3	Clarification	Please revise to clarify the written requirement.
MODULE III – USE AND MANAGEMENT OF CONTAINERS: K. OTHER REQUIREMENTS: E. INSPECTIONS [6 NYCRR 373-2.9(e)] AND REPAIR/REMEDIAL ACTION [6 NYCRR 373-2.2(g)(3)]. 8.b.	III-3	Operational Requirement	Suggested revision: If repairs take longer than 30 days to complete, the Permittee must submit a proposed schedule for Department approval. The proposed schedule must include the date for completing the repairs which must be within six (6) months from the date when the defect was identified.
MODULE III – USE AND MANAGEMENT OF CONTAINERS: J. AIR EMISSION STANDARDS [6 NYCRR 373-2.9(j)].1.	III-4	Operational Requirement	Suggested revision: strike J.1. and replace with "1. The Permittee must manage all hazardous wastes in containers authorized by this Permit in accordance with 6 NYCRR 373.29(g) and Schedule 1 of Module I of this Permit with respect to process vents and equipment leaks."
MODULE III – USE AND MANAGEMENT OF CONTAINERS: J. AIR EMISSION STANDARDS [6 NYCRR 373-2.9(j)].1.	III-4	Operational Requirement	Suggested revision: strike K.1 and replace with "1. Independent Secondary Containment Assessment of Container Storage Areas: For container storage areas that require secondary containment pursuant to this Permit, the Permittee must conduct an annual assessment of each secondary containment area, unless otherwise specified in Schedule 1 of Module 1. The assessment must identify any deficiencies in each containment area including, but not limited to, cracks, gaps, sealant/coating defects or other defects that would inhibit the ability of the containment system to contain

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			leaks or spills of containerized liquids, in accordance with the requirements of 6 NYCRR 373 2.9 (f)(1). The assessment must be performed by a qualified professional. All surfaces of the containment system must be completely exposed for inspection, unless otherwise specified in Schedule 1 of Module I. Any defects identified must be documented. Once any defects have been repaired, the secondary containment area(s) must be re-inspected by the inspector to evaluate the adequacy of the repairs and to confirm the secondary containment area(s) meets the requirements of 6 NYCRR 373 2.9(f)(1)(i) and Condition F of this Module. The results of such re-inspections must be documented in accordance with 6 NYCRR 373 1.6(a)(10) and must be available for review upon Department request."
MODULE III – USE AND MANAGEMENT OF CONTAINERS: K. OTHER REQUIREMENTS. 1.	III-4,5	Regulatory Concern	There is no regulatory requirement for a PE to conduct independent assessments requiring the use of a PE to perform inspections already completed by a NACE certified operator seems burdensome and unwarranted.
MODULE III – USE AND MANAGEMENT OF CONTAINERS: K. OTHER REQUIREMENTS. 3.	III-5	Clarification	Suggested revision: the Permittee must remove precipitation from hazardous waste secondary containment structures within 24 hours in accordance with the Permittee's Integrated Contingency Plan.
MODULE III – USE AND MANAGEMENT OF CONTAINERS: K. OTHER REQUIREMENTS	III-5	Operational Requirement	The ICP has provisions for removing precipitation and managing snow in containment areas. The following suggested revision adds the ICP provision "3. The Permittee must remove precipitation from hazardous waste secondary containment structures within 24 hours in accordance with the Permittee's Integrated Contingency Plan."
MODULE IV - TANK SYSTEMS: B. DESIGN AND INSTALLATION OF NEW TANK SYSTEMS OR COMPONENTS [6 NYCRR 373-2.10(c)], 1.	IV-1	Clarification	As written, the text deviates from the regulatory requirement. The suggested revision to resolve inconsistency with regulatory requirements: strike the paragraph and replace with "1. For a new hazardous waste tank system or component, the Permittee must obtain a permit modification. The permit modification will be based upon a written assessment, reviewed and certified by an independent, qualified, professional engineer registered in New York attesting that the tank system has sufficient structural integrity and is acceptable for storing and treating of hazardous waste. The certification must be consistent with the applicable provisions of subparagraph 373-1.4(a)(5)(iv). The Assessment must report the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility for the wastes to be stored or treated, and that the tank system has adequate corrosion protection to ensure that it will not collapse, rupture or fail. This assessment, which will be used by the commissioner to review and approve or

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			disapprove the acceptability of the tank system design, must include, at a minimum, the information required in 6 NYCRR 373-2.10 (c)."
MODULE IV - TANK SYSTEMS: B. DESIGN AND INSTALLATION OF NEW TANK SYSTEMS OR COMPONENTS [6 NYCRR 373-2.10(c)], 2.	IV-1	Regulatory Concern	Suggested revision to resolve inconsistency with regulatory requirements and for operational flexibility: strike 'modified tank systems' because this reference could include changing a gauge or performing maintenance activities on an existing permitted tank.
MODULE IV - TANK SYSTEMS: B. DESIGN AND INSTALLATION OF NEW TANK SYSTEMS OR COMPONENTS [6 NYCRR 373-2.10(c)], 4.b.	IV-2	Regulatory Concern	There is no regulatory requirement for the Department to inspect a hazardous waste tank as part of its installation. Suggested revision to resolve inconsistency with regulatory requirements (6NYCRR373-2.10C.) and to improve operational flexibility: strike existing language and replace with "b. The Permittee of a new hazardous waste tank system must ensure that proper handling procedures are followed to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, the tank system must be inspected by an independent, qualified, installation inspector or an independent, qualified, professional engineer registered in New York, either of whom is trained and experienced in the proper installation of tank systems or components."
MODULE IV - TANK SYSTEMS: B. DESIGN AND INSTALLATION OF NEW TANK SYSTEMS OR COMPONENTS [6 NYCRR 373-2.10(c)], 4.c.	IV-2	Regulatory Concern	Pursuant to NYCRR373-2.10C., there is no regulatory requirement necessitating a Department inspection. Suggested revision to resolve inconsistency with regulatory requirements: strike paragraph B.4.c.
MODULE IV - TANK SYSTEMS: E. INSPECTIONS AND REPAIR/REMEDIAL ACTION, No. 8	IV-3	Regulatory Concern	Consider qualifying this condition such that it does not apply to minor maintenance (e.g., replacing a rusty bolt).
MODULE IV - TANK SYSTEMS: E. INSPECTIONS AND REPAIR/REMEDIAL ACTION, Nos. 8.a and 8.c	IV-3, IV-4	Regulatory Concern	There is no repair schedule requirements identified in the regulations. Suggest revising to strike E.8.a and E.8.c

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MODULE IV - TANK SYSTEMS: G. CLOSURE AND POST-CLOSURE CARE [6 NYCRR 373-2.10(h)], 1.	IV-4	Regulatory Concern	6 NYCRR 373-2.14(g) does not apply to tank systems. Suggested revision to resolve inconsistency with regulatory requirements: strike reference to "6NYCRR 373-2.14."
MODULE IV - TANK SYSTEMS: J. AIR EMISSION STANDARDS [6 NYCRR 373-2.10(k)], 1.	IV-4	Clarification	6 NYCRR 373-2.27 does not apply to the facility. Suggested revision: delete reference to 373-2.27 from this paragraph.
MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 1.	IV-5	Regulatory Concern	Including P&IDs as part of the Permit poses a significant administrative burden on the Permittee. P&IDs are constantly modified to address safety issues, improved practices, process changes, and regulatory requirements. P&IDs are regulated by OSHA. Suggested revision to resolve inconsistency with regulatory requirements and to provide operational flexibility: Replace with K.1 "Tank System Modifications:. The Permittee may replace tank system ancillary equipment (e.g., pipes, pumps, valves, etc.) without modification of this Permit provided that the materials/components used are functionally equivalent or an improvement to the materials/components being replaced. If the Permittee wishes to replace tank system ancillary equipment with materials/components that are not functionally equivalent or not an improvement of the materials/components, the Permittee must submit a permit modification request with appropriate back up materials and obtain Department approval of the revisions prior to implementing the replacement. Permit modifications will be accomplished by following the procedures described in the General Conditions of this permit. At its discretion, the Department may review a permit modification and grant verbal approval for proposed replacements, which will be followed by a written approval."
MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 3.	IV-5	Regulatory Concern	No regulatory basis for PE to conduct tank inspections.
MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 3.d.	IV-6, IV-7	Administrative Flexibility	Independent assessment of tank systems by a PE is a burden. We currently have trained professionals who are certified to perform these inspections.

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MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 3.d.	IV-6, IV-7	Regulatory Concern	This condition extends beyond the requirements of 6 NYCRR 373-2.10 (f). The reference to ultrasonic thickness measurements limits the technology which may be used to assess the tank's shell thickness. The inspector's report may be limited to identifying an issue and may not define how the repair will be made. The repair recommendation may come from a different source. Additionally, sending reports to the Department that are part of the operating record presents an administrative burden to the Permittee. These reports in the Operating Record are available to the Department upon request. Suggested revision to resolve consistency with regulatory requirements and to improve operational flexibility: strike paragraph K.3.d and use "The results of the inspection and subsequent repair work must be recorded in accordance with 6 NYCRR 373-2.10 (f)(4)."
MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 3.d.	IV-6	Operational Requirement	Suggested revision: strike paragraph K.3.d. and use "The results of the inspection and subsequent repair must be recorded in accordance with 6 NYCRR 373-2.10(f)(4).
MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 4.a.	IV-7	Administrative Flexibility	Reports generated by GE Inspection Services are available upon request.
MODULE IV - TANK SYSTEMS: K. OTHER REQUIREMENTS: 4.a.	IV-7	Regulatory Concern	There is no regulatory basis for PE to conduct tank secondary containment assessments.
MODULE VII – INCINERATORS: E. HAZARDOUS WASTE PERMITS [6 NYCRR 373-2.15(e) and 374-1.8(c)(4)]	VII-2, VII-3	Clarification	This paragraph indicates only the wastes specified in Tables D-1 and E-1 of Exhibit E may be burned in the incinerator. This should be revised to indicate that the facility may burn hazardous wastes specified in these tables, non-hazardous waste, and process vents. Suggest revision to paragraph to indicate that this applies only to hazardous waste. Remove 'and 374-1.8(c)(4)' from the heading of section E since it does not apply to the facility and is not referenced in paragraph E.1.
MODULE VII – INCINERATORS: F. OPERATING REQUIREMENTS [6 NYCRR 373-2.15(f) and 374-1.8(c)(5)], 2.	VII-3	Clarification	We are concerned about this language and its inconsistency with the design principles of a rotary kiln based incinerator. By design, the kiln has gaps between the rotating barrel and the fixed breechings. The ambiguity of this requirement could result in interpretation that these gaps, which are inherent to the design and are properly maintained, are by design in violation of this permit requirement. Control of fugitive emissions from these devices is achieved by maintenance of a negative pressure in the combustion chamber and is consistent with the provisions allowed by 373-2.15(f)(4), which provides for three methods by which an incinerator may demonstrate compliance with controlling fugitive emissions: "Fugitive emissions from the combustion zone must be controlled by: (i) keeping the combustion zone totally sealed against fugitive emissions or (ii) maintaining the combustion zone pressure lower than atmospheric pressure, or (iii) an alternate means of control demonstrated (with Part 373 permit

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			application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure." The requirement specified in this Permit for maintaining the system without "holes" can be interpreted as requiring a sealed combustion system, which is not required by regulation, and is contrary to the design of the incinerators because the incinerators were not designed to be sealed combustion systems. We recommend removal of this requirement in its entirety or modification of it to simply state that the "Permittee shall control fugitive emissions from the combustion chambers in accordance with 373-2.15(f)(4)." Furthermore, any such defect revealed as part of a unit inspection, would be subject to the general facility standards pertaining to repair of defects specified in 373-2.2(g)(3). This provision requires that any deterioration or malfunction of equipment or structures which the inspection reveals must be repaired on a schedule which ensures that the problem does not lead to an environmental or human health hazard and in instances when a hazard is imminent or has already occurred, remedial action must be taken immediately.
MODULE X – HAZARDOUS WASTE MISCELLANEOUS UNITS: C. MONITORING, ANALYSIS, INSPECTION, RESPONSE, REPORTING AND CORRECTIVE ACTION	X-1	Regulatory Concern	6 NYCRR 373-2.3(d) is a requirement for the ICP and is not appropriate for the Miscellaneous Units module as it is covered elsewhere in Permit conditions. Duplicative requirements have the potential to cause confusion. Suggested revision to resolve consistency with other program requirements: strike regulatory references "373 2.3 (d)... (g)"
MODULE X – HAZARDOUS WASTE MISCELLANEOUS UNITS: C. MONITORING, ANALYSIS, INSPECTION, RESPONSE, REPORTING AND CORRECTIVE ACTION. 6.	X-2	Clarification	Please revise to clarify requirement.
MODULE X – HAZARDOUS WASTE MISCELLANEOUS UNITS: C. MONITORING, ANALYSIS, INSPECTION, RESPONSE, REPORTING AND CORRECTIVE ACTION. 9.	X-2	Clarification	Please revise to clarify requirement.
MODULE X – HAZARDOUS WASTE MISCELLANEOUS UNITS: C. MONITORING, ANALYSIS, INSPECTION, RESPONSE, REPORTING AND CORRECTIVE ACTION. 9. b.	X-2	Operational Requirement	Replace with "If repairs take longer than 30 days to complete, the Permittee will submit a proposed schedule for Department approval. The proposed schedule must include the date for completing the repairs which must be within six (6) months from the date when the defect was identified; or"
MODULE X – HAZARDOUS WASTE MISCELLANEOUS UNITS: E. OTHER REQUIREMENTS, 1.	X-3	Regulatory Concern	There is no regulatory driver for an independent, third-party inspection. Permittees may have employees and/or on-site contractors with the appropriate qualifications to complete this work; a PE is not necessary and presents an administrative burden to the Permittee. Further, providing reports presents a reporting burden to the NYSDEC. These are part of the site

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			records and are available upon request as reflected by the requested revision. Suggested revision to resolve inconsistency with regulatory requirements: replace E.1 with "1. Assessment of Miscellaneous Units: For the hazardous waste miscellaneous unit(s) authorized by this Permit, annual assessments must be conducted at the frequency specified in Schedule 1 of Module I. The assessment must identify deficiencies in each unit including, but not limited to, cracks, gaps or defects in the impermeable surface coatings or other defects that would inhibit the ability of the unit to contain leaks or overflows. The assessment must be performed by a qualified inspector. All surfaces must be completely exposed for inspection. Any defects identified must be documented. Once any defects have been repaired, the unit must be re-inspected by the inspector to evaluate the adequacy of the repairs and to confirm that the unit meets the requirements of Condition B of this Module. The results of such re-inspections must be documented in accordance with 6 NYCRR 373 1.6(a)(10) and made available for review upon Department request ."