

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF MATERIALS MANAGEMENT

625 Broadway

Albany, NY 12233

6 NYCRR SUBPART 374-2
STANDARDS FOR THE MANAGEMENT OF USED OIL

As of July 8, 2023

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SUBPART 374-2
STANDARDS FOR THE MANAGEMENT OF USED OIL
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Section 374-2.1 Definitions.

- (a) Terms that are defined in sections 370.2 and 371.1 of this Title have the same meanings when used in this Subpart, unless otherwise defined in this Subpart. Terms relevant to the interpretation of Part 360 of this Title have the same meanings as given in Part 360 of this Title.
- (b) **For the purpose of this Subpart, the following definitions apply:**
- (1) ***Aboveground used oil tank*** means a tank used to store or process used oil that is not an underground used oil tank.
 - (2) ***Aboveground used oil tank system*** means any tank system that is not an underground tank system.
 - (3) ***Accessible underground area*** means an underground room – such as a basement, cellar, shaft, or vault – that allows for the physical inspection of the entire exterior of the tank component of the tank system.
 - (4) ***Adjacent towns or cities*** means towns and cities that share a common border with each other.
 - (5) ***Container*** means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
 - (6) ***Contract*** means a promissory agreement between two or more persons to perform or not perform a particular act.
 - (7) ***Do-it-yourselfer used oil collection center, or DIY used oil collection center***, means any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.
 - (8) ***Existing tank*** means a tank that is used for the storage or processing of used oil and that is in operation, or for which installation has commenced on or prior to January 14, 1995. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin installation of the tank and if either:
 - (i) a continuous on-site installation program has begun; or
 - (ii) the owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for installation of the tank to be completed within a reasonable time.
 - (9) ***Household do-it-yourselfer used oil, or DIY used oil***, means oil that is derived from households, such as used oil generated by individuals through the maintenance of their personal vehicles.
 - (10) ***Household do-it-yourselfer used oil generator, or DIY used oil generator*** means an individual who generates household do-it-yourselfer used oil.
 - (11) ***Lubricating oil*** means all oil suitable for use as a lubricant, or sold for use as a lubricant.
 - (12) ***New tank*** means a tank that will be used to store or process used oil and for which installation has commenced after January 14, 1995.
 - (13) ***On-premises oil changing operation*** means any commercial operation that drains or collects used lubricating oil and replaces it with new or re-refined lubricating oil.
 - (14) ***Petroleum refining facility*** means an establishment primarily engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, and lubricants, through fractionation, straight distillation of crude oil, redistillation of unfinished petroleum derivatives, cracking or other processes (facilities within the classification under the North American Industry Classification System).

- (15) **Processing** means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining.
- (16) **Release** means any intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of used oil into the waters of the state or onto lands from which it might flow or drain into said waters, or into waters outside the jurisdiction of the State when damage may result to lands, waters, or natural resources within the jurisdiction of the State.
- (17) **Re-refining distillation bottoms** means the heavy fraction produced by vacuum distillation of filtered and dehydrated used oil. The composition of still bottoms varies with column operation and feedstock.
- (18) **Retail** means the sale of lubricating oil to consumers in containers of five gallons or less for direct use by the consumer and not offered for resale.
- (19) **Retail establishment** means every vendor that sells lubricating oil at retail in quantities in excess of 1,000 gallons per year.
- (20) **Service establishment** means any automobile service station, including gas only outlets, or any other retail outlet and boat marina, selling at least 500 gallons of lubricating oil annually and having an on-premises oil changing operation.
- (21) **Spill** means the accidental leaking, pumping, emitting, emptying or dumping of hazardous waste, used oil or materials which, when spilled, become hazardous wastes, out of the ordinary containers employed in the normal course of storage, transfer, processing or use.
- (22) **Tank** means any stationary device, designed to contain an accumulation of used oil which is constructed primarily of non-earthen materials, (e.g., wood, concrete, steel, plastic) which provides structural support.
- (23) **Tank system** means a used oil storage or processing tank and its associated ancillary equipment and containment system.
- (24) **Total halogens** means the total of organic and inorganic halides (fluorine, F; chlorine, Cl; bromine, Br; iodine, I), expressed as chloride present in a used oil, in parts per million (ppm) by weight.
- (25) **Underground used oil tank** means any one or combination of tanks (including any piping connected thereto) that is used to contain an accumulation of used oil, the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include a tank system situated in an accessible underground area.
- (26) **Used oil** means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and as a result of such use, is contaminated by physical or chemical impurities.
- (27) **Used oil aggregation point** means any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

- (28) **Used oil burner** means a facility where used oil not meeting the specification requirements in section 374-2.2(b)(1) of this Subpart is burned for energy recovery in devices identified in section 374-2.7(b) of this Subpart.
- (29) **Used oil collection center** means any site or facility that is recognized by this department pursuant to section 374-2.4(b)(2) of this Subpart, to manage used oil, and accepts/aggregates and stores used oil collected from used oil generators regulated under section 374-2.3 of this Subpart, who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of section 374-2.3(e) of this Subpart. Used oil collection centers may also accept used oil from household do-it-yourselfers.
- (30) **Used oil fuel marketer** means any person who conducts either of the following activities:
- (i) directs a shipment of off-specification used oil from their facility to a used oil burner; or
 - (ii) first claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 374-2.2(b)(1) of this Subpart.
- (31) **Used oil generator** means any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
- (32) **Used oil processor/re-refiner** means a facility that processes and/or re-refines used oil.
- (33) **Used oil transfer facility** means any transportation related facility including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours and not longer than 35 days during the normal course of transportation or prior to an activity performed pursuant to section 374-2.3(a)(2)(ii) of this Subpart. Transfer facilities that store used oil for more than 35 days are subject to regulation under section 374-2.6 of this Subpart.
- (34) **Used oil transporter** means any person who transports used oil, any person who collects used oil from more than one generator and transports the collected oil, and owners and operators of used oil transfer facilities. Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation but, with the following exception, may not process used oil. Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products or used oil fuel.

Section 374-2.2 Applicability.

(a) Applicability.

This subdivision identifies those materials which are subject to regulation as used oil under this Subpart. This subdivision also identifies some materials that are not subject to regulation as used oil under this Subpart, and indicates whether these materials may be subject to regulation as hazardous waste under Part 370 through Subparts 374-1, 374-3, and Part 376 of this Title.

- (1) Used oil. The department presumes that used oil is to be recycled or burned for energy recovery unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in subdivision (b) of this section, the regulations of this Subpart apply to used oil and to materials identified in this subdivision as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in section 371.3 of this Title. Used oil subject to regulation under this Subpart is a solid waste as defined under section 360.2 of this Title.

- (2) Mixtures of used oil and hazardous waste.
- (i) Listed hazardous waste.
 - ('a') Mixtures of hazardous waste, listed in section 371.4 of this Title, and of used oil are subject to regulation as hazardous waste under Part 370 through Subparts 374-1, 374-3, and Part 376 of this Title, rather than as used oil under this Subpart.
 - ('b') Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in section 371.4 of this Title. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by demonstrating that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix 23 of this Title).
 - ('1') Laboratory analyses completed for purposes of rebuttable presumption must be performed by a laboratory currently certified under the appropriate approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).
 - ('2') The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement, as described in section 374-2.3(e)(3) of this Subpart, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.
 - ('3') The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
 - (ii) Characteristic hazardous waste. Mixtures of used oil and of hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in section 371.3 of this Title, and mixtures of used oil and of hazardous waste that is listed in section 371.4 of this Title solely because it exhibits one or more of the characteristics of hazardous waste identified in section 371.3 of this Title are subject to:
 - ('a') except as provided in clause ('c') of this subdivision, regulation as hazardous waste under Part 370 through Subparts 374-1, 374-3, and Part 376 of this Title rather than as used oil under this Subpart, if the resultant mixture exhibits any characteristics of hazardous waste identified in section 371.3 of this Title; or
 - ('b') except as specified in clause ('c') of this subdivision, regulation as used oil under this Subpart, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under section 371.3 of this Title.
 - ('c') regulation as used oil under this Subpart, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability (e.g., ignitable-only mineral spirits), provided that the resultant mixture does not exhibit the characteristic of ignitability under section 371.3(b) of this Title.
 - (iii) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under section 371.1(f)(10) of this Title are subject to regulation as used oil under this Subpart.
- (3) Materials containing or otherwise contaminated with used oil.

374-2.2(a)

- (i) Except as provided in subparagraph (ii) of this paragraph, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:
 - ('a') are not used oil and thus not subject to this Subpart; and
 - ('b') if applicable are subject to the hazardous waste regulations of Part 370 through Subparts 374-1, 374-3, and Part 376 of this Title.
 - (ii) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under this Subpart.
 - (iii) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under this Subpart.
- (4) Mixtures of used oil with products.
- (i) Except as provided in subparagraph (ii) of this paragraph, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under this Subpart.
 - (ii) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to this Subpart once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of section 374-2.3 of this Subpart.
- (5) Materials derived from used oil.
- (i) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal (e.g., re-refined lubricants) are:
 - ('a') not used oil and thus are not subject to this Subpart; and
 - ('b') not solid wastes and are thus not subject to the hazardous waste regulations of Part 370 through Subparts 374-1, 374-3, and Part 376 of this Title as provided in section 371.1(d)(3)(ii)('a') of this Title.
 - (ii) Materials produced from used oil that are burned for energy recovery (e.g., used oil fuels) are subject to regulation as used oil under this Subpart and as waste oil under Subpart 225-2 of this Title.
 - (iii) Except as provided in subparagraph (iv) of this paragraph, materials derived from used oil that are disposed of or used in a manner constituting disposal are:
 - ('a') not used oil and thus are not subject to this Subpart; and
 - ('b') are solid wastes regulated under Part 360 of this Title, unless they are subject to the hazardous waste regulations of Part 370 through Subpart 374-1, 374-3, and Part 376 of this Title if the materials are listed or identified as hazardous waste.
 - (iv) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to this Subpart.
- (6) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Federal Clean Water Act, as incorporated by reference in section 370.1(e) of this Title (including wastewaters at facilities which have eliminated the discharge of wastewater), contaminated with *de minimis quantities of used oil* are not subject to the requirements of this Subpart. For purposes of this paragraph, *de minimis quantities of used oils* are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception will not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills, or other releases, or to used oil recovered from wastewaters.

- (7) Used oil introduced into crude oil pipelines or a petroleum refining facility.
- (i) Used oil mixed with crude oil or natural gas liquids (e.g., in a production separator or crude oil stock tank) for insertion into a crude oil pipeline is exempt from the requirements of this Subpart. The used oil is subject to the requirements of this Subpart prior to the mixing of used oil with crude oil or natural gas liquids.
 - (ii) Mixtures of used oil and crude oil or natural gas liquids containing less than one percent used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of this Subpart.
 - (iii) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of this Subpart provided that the used oil constitutes less than one percent of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this Subpart.
 - (iv) Except as provided in subparagraph (v) of this paragraph, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of this Subpart only if the used oil meets the specifications of paragraph (b)(1) of this section. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of this Subpart.
 - (v) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of this Subpart. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system (e.g., by pouring collected used oil into the wastewater treatment system).
 - (vi) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of this Subpart.
- (8) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to this Subpart until it is transported ashore.
- (9) Used oil containing PCBs.
- (i) Used oil containing 50 ppm by weight, or greater, of polychlorinated biphenyls (PCBs) is a hazardous waste as defined in section 371.4(e) of this Title, and is not subject to the requirements of this Subpart, but is subject to regulation under 40 CFR part 761, as incorporated by reference in section 370.1(e) of this Title, and to Parts 370 through 373, Subparts 374-1 and 374-3, and Part 376 of this Title.
 - (ii) Used oil containing PCBs at any concentration less than 50 ppm is subject to the requirements of this Subpart. If the PCB concentration in the used oil has been diluted to less than 50 ppm, it is also regulated under 40 CFR part 761 as used oil containing PCBs at 50 ppm or greater.
 - (iii) PCB-containing used oil subject to the requirements of this Subpart may also be subject to the prohibitions and requirements found at 40 CFR part 761, including section 761.20(d) and (e). No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Subpart or in 40 CFR part 761.

(b) Used oil specifications.

- (1) Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under this Subpart unless it is demonstrated not to exceed any of the allowable levels of the constituents and properties shown in Table 1 of this subdivision. Once used oil that is to be burned for energy recovery has been demonstrated not to exceed any allowable level and the person making that demonstration complies with section 374-2.8(c) and (d), and (e)(2) of this Subpart, the used oil is no longer subject to this Subpart.
- (i) Laboratory analyses completed for purposes of specification determination must be performed by a laboratory currently certified under the appropriate approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).

Table 1
Used Oil Not Exceeding Any Allowable Level Shown Below Is Not Subject to This Subpart When Burned for Energy Recovery¹

<i>Constituent/property</i>	<i>Allowable level</i>
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
PCBs	2 ppm maximum ²
Flash point	100° F minimum
Total halogens	4,000 ppm maximum ³

¹ The allowable levels do not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste (see paragraph (a)(2) of this section).

² Used oil containing 50 ppm by weight, or greater, of PCBs is a hazardous waste, excluding oil derived from small capacitors, as defined in section 371.4(e)(3)(ii) of this Title, as the sole PCB contamination source. Applicable standards for the burning of used oil containing PCBs are imposed by Part 370 through Subpart 374-1 and Part 376 of this Title and 40 CFR 761.20(e), as incorporated by reference in section 370.1(e) of this Title.

³ Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under subparagraph (a)(2)(i) of this section. Such used oil is subject to section 374-1.8 of this Part rather than this Subpart when burned for energy recovery, unless the presumption of mixing can be successfully rebutted.

- (2) All used oil, whether in transit or in storage at a facility, must be considered off-specification used oil, unless analysis or other information documents that the used oil is on-specification.

(c) Prohibitions.

- (1) Surface impoundment prohibition. Used oil must not be managed in surface impoundments, waste piles, pits, ponds or lagoons.
- (2) Use as a dust suppressant. The use of used oil as a dust suppressant, for land application, or for disposal directly on the land, is prohibited.
- (3) Burning in particular units. Off-specification used oil fuel may be burned for energy recovery in only the following devices:
 - (i) industrial furnaces identified in section 370.2(b) of this Title;
 - (ii) boilers, as defined in section 370.2(b) of this Title, that are identified as follows:
 - ('a') industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;
 - ('b') utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
 - ('c') used oil-fired space heaters provided that the burner meets the provisions of section 374-2.3(d) of this Subpart.
 - (iii) hazardous waste incinerators subject to regulation under sections 373-2.15 and 373-3.15 of this Title.
- (4) Absorbents. Used oil which is recyclable or reusable must not be disposed of through the use of absorbent materials, other than for purposes of spill cleanup.

Section 374-2.3 Standards for used oil generators.**(a) Applicability.**

- (1) General. Except as provided in subparagraphs (i) through (iv) of this paragraph, this section applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.
 - (i) Household “do-it-yourselfer” used oil generators. Household “do-it-yourselfer” used oil generators are not subject to regulation under this Subpart.
 - (ii) Vessels. Vessels at sea or at port are not subject to this section. For purposes of this section, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with this section once the used oil is transported ashore. The co-generators may decide among themselves which particular co-generator will fulfill the requirements of this section. In the event of a violation of this section, the co-generators are jointly and severally liable for the violations.
 - (iii) Diesel fuel. Mixtures of used oil and diesel fuel mixed on site by the generator of the used oil for use in the generator's own vehicles are not subject to this Subpart once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of this section.
 - (iv) Farmers. Farmers who generate an average of 25 gallons or less per month of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of this Subpart, if the used oil is used in normal farming operations. Normal farming operations do not include land application or land disposal of used oil.

- (2) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of this Subpart as indicated in subparagraphs (i) through (v) of this paragraph:
- (i) Generators who transport used oil, except under the self-transport provisions of paragraphs (e)(1) and (2) of this section, must also comply with section 374-2.5 of this Subpart.
 - (ii) Generator processing.
 - ('a') Except as provided in clause ('b') of this subparagraph, generators who process or re-refine used oil must also comply with section 374-2.6 of this Subpart.
 - ('b') Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on-specification or off-specification used oil fuel:
 - ('1') filtering, cleaning or otherwise reconditioning used oil before returning it for reuse by the generator;
 - ('2') separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Federal Clean Water Act, as incorporated by reference in section 370.1(e) of this Title, or other applicable Federal or State regulations governing the management or discharge of wastewaters;
 - ('3') using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;
 - ('4') draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to section 374-2.2(a)(3) of this Subpart; or
 - ('5') filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to subdivision (d) of this section.
 - (iii) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of subdivision (d) of this section, must also comply with section 374-2.7 of this Subpart.
 - (iv) Generators who direct shipments of off-specification used oil from their facility to a used oil burner, or who are the first to claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications, set forth in section 374-2.2(b)(1) of this Subpart, must also comply with section 374-2.8 of this Subpart.
 - (v) Generators who dispose of used oil must also comply with section 374-2.9 of this Subpart.

(b) Hazardous waste mixing.

- (1) Mixtures of used oil and hazardous waste must be managed in accordance with section 374-2.2(a)(2) of this Subpart.
- (2) The rebuttable presumption for used oil as provided in section 374-2.2(a)(2)(i)(‘b’) of this Subpart applies to used oil managed by generators. Under the rebuttable presumption for used oil, used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and must be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oils/fluids and certain used oils removed from refrigeration units. Laboratory analyses completed for purposes of addressing the rebuttable presumption must be performed by a laboratory currently certified under the appropriate

approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).

(c) Used oil storage.

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112, as incorporated by reference in section 370.1(e) of this Title), in addition to the requirements of this section. Used oil generators are also subject to the Underground Storage Tank (40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title) standards for used oil stored in underground used oil tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this section.

- (1) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Subparts 373-2 and 373-3 of this Title.
- (2) Used oil tanks. Compliance with petroleum bulk storage regulations.
 - (i) All aboveground and underground used oil tank systems, regardless of tank size, must be in compliance with Part 613 of this Title.
 - (ii) New aboveground and new underground used oil tank systems, regardless of tank size, must be installed in accordance with Part 613 of this Title.
 - (iii) Used oil tanks at a facility licensed under Part 610 of this Title do not require registration under Part 613 of this Title.
- (3) Condition of units. Containers and aboveground used oil tanks used to store used oil at generator facilities must be:
 - (i) in good condition (no severe rusting, apparent structural defects or deterioration); and
 - (ii) not leaking (no visible leaks).
- (4) Labels.
 - (i) Every container and aboveground used oil tank used to store used oil at a generator facility must be clearly labeled or marked with the words "Used Oil". In addition, every aboveground tank used to store oil at a generator facility must be labeled with the design capacity and working capacity of the tank.
 - (ii) Fill pipes used to transfer used oil into underground used oil tanks at generator facilities must be clearly labeled or marked with the capacity of the tank and with the words "Used Oil".
- (5) Response to releases.
 - (i) Any spill, discharge, or release of used oil shall be subject to all applicable provisions of article 12 of the Navigation Law (NL Sections 170 through 197) and its implementing rules and regulations, 17 NYCRR Parts 32 - 33 and Part 611 of this Title, regarding, but not limited to, notification, cleanup, and liability, and are also subject to applicable provisions of article 17, title 10 and section 17-1743, of the Environmental Conservation Law, and Subpart 613-6 of this Title.
 - (ii) Upon detection of a release of used oil to the environment that is not subject to the requirements of subpart F of 40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title, a generator must perform the following cleanup steps:
 - ('a') stop the release;
 - ('b') contain the released used oil;
 - ('c') clean up and manage properly the released used oil and other materials; and
 - ('d') if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.

- (iii) Within two hours of detecting a spill, discharge, or release of used oil, the generator must notify the department Spill Hotline at (800) 457-7362, or, if calling from out of state, (518) 457-7362.

(d) On-site burning in space heaters.

Generators may burn used oil in used oil-fired space heaters provided that:

- (1) the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourselfer used oil generators;
- (2) the heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and
- (3) the combustion gases from the heater are vented to the outside ambient air.

(e) Off-site shipments.

Except as provided in paragraphs (1) through (3) of this subdivision, generators must ensure that their used oil is transported only by transporters who have obtained an EPA identification number and are authorized under Part 364 of this Title to transport used oil, if applicable.

- (1) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:
 - (i) the generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
 - (ii) the generator transports no more than 55 gallons of used oil at any time; and
 - (iii) the generator transports the used oil to a used oil collection center that is permitted pursuant to section 374-2.4(b)(2)(ii) of this Subpart.
- (2) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:
 - (i) the generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;
 - (ii) the generator transports no more than 55 gallons of used oil at any time; and
 - (iii) the generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.
- (3) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract (known as a "tolling arrangement"), must indicate:
 - (i) the type of used oil and the frequency of shipments;
 - (ii) that the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and
 - (iii) that reclaimed oil will be returned to the generator.

(f) Service and retail establishments.

A *service establishment* is any automobile service station, including gas only outlets, or any other retail outlet and boat marina, selling at least 500 gallons of lubricating oil annually and having an on-premises oil changing operation. A *retail establishment* is every vendor that sells lubricating oil at retail in quantities in excess of 1,000 gallons per year. Generators who are service establishments or retail establishments must also comply with the following requirements:

(1) Service establishments.

- (i) An owner or an employee of every service establishment who is present on the premises must accept, at no charge, used petroleum-based or synthetic lubricating oil in quantities not to exceed five gallons per day from any household do-it-yourselfer, in accordance with the following requirements:
 - ('a') the service establishment must maintain a tank or container with sufficient capacity to provide adequate service to individuals, for the temporary storage of used oil;
 - ('b') the service establishment may refuse to accept used oil if the used oil tank or container is temporarily filled to capacity. If filled to capacity, the service establishment must proceed expeditiously to have the used oil emptied by a used oil transporter authorized under Part 364 of this Title, and must inform individuals when used oil can be brought back to the establishment for collection.
 - ('c') the service establishment must accept used oil only during the normal business hours of the establishment;
 - ('d') the service establishment may require used oil to be dropped off in rigid screw-top closed containers;
 - ('e') the service establishment may refuse to accept used oil if it has been contaminated through other than ordinary and normal use;
 - ('f') the service establishment may not impose a separate charge or fee upon any individual for acceptance or disposal of used oil, whether or not the individual is a customer for service; and
 - ('g') the service establishment must conspicuously post a sign in a location which is always open to public view, stating: "WE ACCEPT USED OIL FOR RECYCLING AT NO CHARGE". Such establishment may additionally state, on the same sign or an additional sign, that used oil is accepted only during normal business hours and may state such hours. The information on any sign must be legible from a distance of at least 25 feet from the outside of the establishment's building, with lettering a minimum of one inch in height;

(2) Retail establishments. Retail establishments may either directly accept used petroleum-based or synthetic lubricating oil from household do-it-yourselfers, or contract with another retail establishment, service establishment or municipality, for the collection of used oil brought to it for acceptance.

- (i) Retail establishments which elect to provide for the direct collection of used oil must accept, at no charge, used petroleum-based or synthetic lubricating oil in quantities not to exceed five gallons per day from any household do-it-yourselfer, in accordance with the following requirements:
 - ('a') the retail establishment must maintain a tank or container with sufficient capacity to provide adequate service to individuals, for the temporary storage of used oil;

- (b) the retail establishment may refuse to accept used oil if the used oil tank or container is temporarily filled to capacity. If filled to capacity, the retail establishment must proceed expeditiously to have the used oil emptied by a used oil transporter permitted under Part 364 of this Title to transport used oil, and must inform individuals when used oil can be brought back to the establishment for collection;
 - (c) the retail establishment must accept used oil only during the normal business hours of the establishment;
 - (d) the retail establishment may require used oil to be dropped off in rigid screw-top closed containers;
 - (e) the retail establishment may refuse to accept used oil if it has been contaminated through other than ordinary and normal use; and
 - (f) the retail establishment must conspicuously post a sign in a location which is always open to public view, stating: "WE ACCEPT USED OIL FOR RECYCLING AT NO CHARGE." Such establishment may additionally state, on the same sign or an additional sign, that used oil is accepted only during normal business hours and may state such hours. The information on any sign must be legible from a distance of at least 25 feet from the outside of the establishment's building, with lettering a minimum of one inch in height.
- (ii) Retail establishments which elect not to provide for direct collection of used oil must either:
- (a) enter into a contract with another retail establishment, service establishment or municipality, which maintains a tank or container for the temporary storage of used oil. The retail establishment which contracts with another retail establishment, service establishment or municipality, for the provision of collection services must conspicuously post a sign in a location which is always open to public view, stating: "USED OIL FOR RECYCLING WILL BE ACCEPTED BY (name of contracted establishment or municipality) AT (address of contracted establishment or municipality) AT NO CHARGE". The information on this sign must be legible from a distance of at least 25 feet from the outside of the establishment's building and have lettering a minimum of one inch in height:
 - (1) in counties or cities with a population of one million or more, the distance between the contracting retail establishment and the contractor shall not exceed eight miles; and
 - (2) in all other areas, the contracting retail establishment and the contractor must be within the same town or city or within adjacent towns or cities; or
 - (b) obtain a hardship waiver from the department for inability to comply with this subdivision due to prohibition by local codes, ordinances, or State or Federal statute or regulation, or due to the impossibility of installing a used oil tank or container because of physical constraints. The retail establishment must submit a request for a hardship waiver to the Director, Division of Environmental Remediation, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, which includes the following information:
 - (1) the name and location, including street address, of the retail establishment;
 - (2) the approximate gallons of lubricating oil sold annually by the retail establishment;

- (3') a discussion which includes the statutory, regulatory or physical constraints prohibiting the placement of a tank or container for temporarily storing used oil, a description of specific efforts being made by the retail establishment to overcome those constraints, a street scale map of the geographic range established in subclauses ('1') and ('2') of this clause indicating the location of the retail establishment requesting the waiver, and the locations of other retail establishments, municipalities, and service establishments located within that geographic range.
- (3) In the event that the department, pursuant to section 613-5.1 of this Title, affixes a tag to the fill pipe of a used oil tank at a service or retail establishment, the service or retail establishment remains subject to the requirements of paragraph (1) or (2) of this subdivision, as applicable, and must provide appropriate alternative means of temporary used oil storage.

Section 374-2.4 Standards for used oil collection centers and aggregation points.

(a) Do-it-yourselfer used oil collection centers.

- (1) **Applicability.** This section applies to owners or operators of all do-it-yourselfer (DIY) used oil collection centers. A DIY used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.
- (2) **DIY used oil collection center requirements.** Owners or operators of all DIY used oil collection centers must comply with the generator standards in section 374-2.3 of this Subpart.

(b) Used oil collection centers.

- (1) **Applicability.** This section applies to owners or operators of used oil collection centers. A used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under section 374-2.3 of this Subpart who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of section 374-2.3(e)(1) of this Subpart. Used oil collection centers may also accept used oil from household do-it-yourselfers.
- (2) **Used oil collection center requirements.** Owners or operators of all used oil collection centers must:
- (i) comply with the generator standards in section 374-2.3 of this Subpart;
 - (ii) be registered pursuant to section 374-2.10(a) of this Subpart; and
 - (iii) comply with the following reporting requirements:
 - ('a') for those that process used oil, the reporting requirements of section 374-2.6(h)(2) of this Subpart that are otherwise applicable to used oil processors/re-refiners; or
 - ('b') for those that do not process used oil, the reporting requirements of section 374-2.6(h)(2) of this Subpart that are otherwise applicable to used oil processors/re-refiners, except for the requirement to provide a summary of the manner in which the used oil is processed as set forth in section 374-2.6(h)(2)(iv)(‘c’) of this Subpart.

(c) Used oil aggregation points owned by the generator.

- (1) **Applicability.** This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no

more than 55 gallons under the provisions of section 374-2.3(e)(2) of this Subpart. Used oil aggregation points may also accept used oil from household do-it-yourselfers.

- (2) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points must comply with the generator standards in section 374-2.3 of this Subpart.

Section 374-2.5 Standards for used oil transporters and transfer facilities.

(a) Applicability.

- (1) General. Except as provided in subparagraphs (i) through (iv) of this paragraph, this section applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities.
- (i) This section does not apply to on-site transportation.
 - (ii) This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil collection center as specified in section 374-2.3(e)(1) of this Subpart.
 - (iii) This section does not apply to generators who transport shipments of used oil totaling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in section 374-2.3(e)(2) of this Subpart.
 - (iv) This section does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of this Subpart. Except as provided in subparagraphs (i) through (iii) of this paragraph, this section does apply, however, to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.
- (2) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of this section from the time the used oil enters and until the time it exits New York State.
- (3) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in section 371.1(h) of this Title prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and must be managed as hazardous waste unless, under the provisions of section 374-2.2(a)(2) of this Subpart, the hazardous waste/used oil mixture is determined not to be hazardous waste.
- (4) Other applicable provisions. Used oil transfer facilities may be required to obtain a permit in accordance with section 374-2.10(b) of this Subpart. Used oil transporters who conduct the following activities are also subject to other applicable provisions of this Subpart as indicated in subparagraphs (i) through (vi) of this paragraph:
- (i) transporters who generate used oil must also comply with section 374-2.3 of this Subpart;
 - (ii) transporters who process or re-refine used oil, except as provided in subdivision (b) of this section, must also comply with sections 374-2.6 and 374-2.10(c) of this Subpart;
 - (iii) transporters who burn off-specification used oil for energy recovery must also comply with section 374-2.7 of this Subpart;
 - (iv) transporters who direct shipments of off-specification used oil from their facility to a used oil burner, or who first claim that used oil that is to be burned for energy recovery meets the used

oil fuel specifications set forth in section 374-2.2(b)(1) of this Subpart must also comply with section 374-2.8 of this Subpart;

- (v) transporters who dispose of used oil must also comply with section 374-2.9 of this Subpart; and
- (vi) used oil transfer facilities that store used oil for 35 days or less, and which do not process used oil, must comply with the reporting requirements of section 374-2.6(h)(2) of this Subpart that are otherwise applicable to used oil processors/re-refiners, except for the requirement to provide a summary of the manner in which the used oil is processed as set forth in section 374-2.6(h)(2)(iv)(‘c’) of this Subpart.

(b) Restrictions on transporters who are not also processors or re-refiners.

- (1) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraphs (2) and (3) of this subdivision, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in section 374-2.6 of this Subpart.
- (2) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation (e.g., settling and water separation), but that are not designed to produce (or make more amenable for production of) used oil derived products unless they also comply with the processor/re-refiner requirements in section 374-2.6 of this Subpart.
- (3) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in section 374-2.6 of this Subpart.

(c) Notification.

- (1) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA, section 3010 must comply with these requirements and obtain an EPA identification number.
- (2) Mechanics of notification. Used oil transporters who have not received an EPA identification number may obtain one by notifying the EPA regional administrator of their used oil activity by submitting either:
 - (i) a completed EPA Form 8700-12 (EPA Form 8700-12 is available at the EPA website, <http://www.epa.gov>); or
 - (ii) a letter requesting an EPA identification number. Call RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter must include the following information:
 - (‘a’) transporter company name;
 - (‘b’) owner of the transporter company;
 - (‘c’) mailing address for the transporter;
 - (‘d’) name and telephone number for the transporter point of contact;
 - (‘e’) type of transport activity (i.e., transport only, transport and transfer facility, transfer facility only);
 - (‘f’) location of all transfer facilities at which used oil is stored; and
 - (‘g’) name and telephone number for a contact at each transfer facility.

(d) Used oil transportation.

- (1) Deliveries. A used oil transporter must deliver all used oil received to:
 - (i) another used oil transporter who has obtained an EPA identification number and who is authorized under Part 364 of this Title to transport used oil;
 - ('a') owners or operators of a used oil transfer facility must ensure that used oil is transported to their facility only by transporters who are permitted, as required by Part 364 of this Title. Owners or operators of used oil transfer facilities are required to confirm that the transporters delivering used oil to their facilities carry a valid Part 364 waste transporter permit, if required;
 - (ii) a used oil processing/re-refining facility who has obtained an EPA identification number and who is authorized under Part 360 of this Title;
 - (iii) an off-specification used oil burner facility who has obtained an EPA identification number and who is authorized under Subpart 225-2 of this Title; or
 - (iv) an on-specification used oil burner facility.
- (2) DOT requirements. Used oil transporters must comply with all applicable requirements of Part 364 of this Title, and all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR parts 171 through 180, as incorporated by reference in section 370.1(e) of this Title. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8, as incorporated by reference in section 370.1(e) of this Title, must comply with all applicable regulations in 49 CFR parts 171 through 180, as incorporated by reference in section 370.1(e) of this Title.
- (3) Used oil discharges. Any spill, discharge, or release of used oil shall be subject to all applicable provisions of article 12 of the Navigation Law (NL sections 170 through 197) and its implementing rules and regulations, 17 NYCRR Parts 32 - 33, and Part 611 of this Title, regarding, but not limited to, notification, clean up, and liability, and are also subject to applicable provisions of article 17, titles 10 and 17, of the Environmental Conservation Law.
 - (i) In the event of a spill, discharge, or release of used oil during transportation, the transporter must comply with the notification provisions of section 613-6.2 of this Title and must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities or dike the discharge area).
 - (ii) If a discharge of used oil occurs during transportation and an official (State or local government or a Federal agency), acting within the scope of official responsibilities, determines that immediate removal of the used oil is necessary to protect human health or the environment, that official may authorize the removal of the used oil by transporters who do not have EPA identification numbers.
 - (iii) An air, rail, highway, or water transporter who has discharged used oil must:
 - ('a') give notice, if required by 49 CFR 171.15, as incorporated by reference in section 370.1(e) of this Title, to the National Response Center ((800) 424-8802 or (202) 426-2675) and, within two hours of detection, to the department Spill Response Hotline at (800) 457-7362, or, if calling from out of state, (518) 457-7362; and
 - ('b') report in writing as required by 49 CFR 171.16, as incorporated by reference in section 370.1(e) of this Title, to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, DC 20590.

- (iv) A water transporter who has discharged used oil must also give notice as required by 33 CFR 153.203, as incorporated in section 370.1(e) of this Title.
- (v) A transporter must clean up any used oil discharge that occurs during transportation and take such action as may be required or approved by Federal, State, or local officials so that the used oil discharge no longer presents a hazard to human health or the environment and is consistent with the remediation standards of article 12 of the Navigation Law.

(e) Quality control and rebuttable presumption for used oil.

- (1) To ensure that used oil is not a hazardous waste under the rebuttable presumption of section 374-2.2(a)(2)(i)('b') of this Subpart, a used oil transporter must determine whether the total halogen content of used oil being transported is greater than or equal to 1,000 ppm. The transporter must make this determination by:
 - (i) testing the used oil; or
 - (ii) applying knowledge of the halogen content of the used oil in light of the materials or processes used.
- (2) A transporter who is an owner or operator of a used oil transfer facility must test all incoming loads of used oil for total halogen content by employing the screening procedures set forth under section 374-2.6(d) of this Subpart. The owner or operator must develop and follow a written quality control plan for the facility, in accordance with section 374-2.6(f) of this Subpart.
- (3) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in section 371.4 of this Title. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by demonstrating that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix 23 of this Title).
 - (i) Laboratory analyses completed for purposes of rebuttable presumption must be performed by a laboratory currently certified under the appropriate approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).
 - (ii) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement, as described in section 374-2.3(e)(3) of this Subpart, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.
 - (iii) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
- (4) Used oil containing 50 ppm by weight, or greater, of PCBs is a hazardous waste, excluding oil derived from small capacitors, as defined in section 371.4(e)(3)(ii) of this Title, as the sole PCB contamination source. Applicable standards are contained in Part 370 through Subpart 374-1 and Part 376 of this Title.
- (5) Record retention. Records of analyses conducted or information used to comply with paragraphs (1), (2), (3), and (4) of this subdivision must be maintained by the transporter for at least three years. The owner or operator of a transfer facility subject to permitting under Part 360 of this Title must maintain the records for at least seven years.

(f) Used oil storage at transfer facilities.

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112, as incorporated by reference in section 370.1(e) of this Title) in addition to the requirements of this section. Used oil transporters are also subject to the Underground Storage Tank (40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this section.

- (1) **Applicability.** This subdivision applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to regulation as processors under section 374-2.6 of this Subpart.
- (2) **Storage units.** Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers or units subject to regulation under Subparts 373-2 and 373-3, of this Title.
- (3) **Used oil tanks.** Compliance with petroleum bulk storage regulations.
 - (i) All aboveground or underground used oil tank systems, regardless of tank size, must be in compliance with Part 613 of this Title. In addition, owners and/or operators must comply with the following requirements:
 - ('a') aboveground used oil tanks must be equipped with secondary containment:
 - ('1') the secondary containment system must consist of, at a minimum:
 - ('i') dikes, berms or retaining walls; and
 - ('ii') a floor. The floor must cover the entire area within the dikes, berms, or retaining walls, except, for tanks existing as of January 14, 1995, where existing portions of the tank meet the ground; or
 - ('iii') an equivalent secondary containment system.
 - ('2') The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.
 - ('b') used oil tanks at a facility licensed under Part 610 of this Title do not require registration under Part 613 of this Title.
 - (ii) New aboveground and new underground used oil tank systems, regardless of tank size, must be installed in accordance with Part 613 of this Title.
- (4) **Condition of units.** Containers and aboveground used oil tanks used to store used oil at transfer facilities must be:
 - (i) in good condition (no severe rusting, apparent structural defects or deterioration); and
 - (ii) not leaking (no visible leaks).
- (5) **Secondary containment for containers.** Containers used to store used oil at transfer facilities must be equipped with a secondary containment system.
 - (i) The secondary containment system must consist of, at a minimum:
 - ('a') dikes, berms or retaining walls;
 - ('b') a floor. The floor must cover the entire area within the dikes, berms or retaining walls; or
 - ('c') an equivalent secondary containment system.

- (ii) The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.
- (6) Labels.
- (i) Every container and aboveground used oil tank used to store used oil at a transfer facility must be clearly labeled or marked with the words “Used Oil”. In addition, every aboveground tank used to store oil at a transfer facility must be labeled with the design capacity and working capacity of the tank.
 - (ii) Fill pipes used to transfer used oil into underground used oil tanks at transfer facilities must be clearly labeled or marked with the capacity of the tank and with the words “Used Oil”.
- (7) Response to releases.
- (i) Any spill, discharge, or release of used oil shall be subject to all applicable provisions of article 12 of the Navigation Law (NL sections 170 through 197) and its implementing rules and regulations, 17 NYCRR Parts 32 - 33 and Part 611 of this Title, regarding, but not limited to, notification, clean up, and liability, and are subject to applicable provisions of article 17, titles 10 and 17, of the Environmental Conservation Law, and Subpart 613-6 of this Title.
 - (ii) Upon detection of a release of used oil to the environment that is not subject to the requirements of subpart F of 40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title, and Subpart 613-6 of this Title, the owner/operator of a transfer facility must perform the following cleanup steps:
 - ('a') stop the release;
 - ('b') contain the released used oil;
 - ('c') clean up and manage properly the released used oil and other materials;
 - ('d') if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.
 - (iii) Within two hours of detecting a spill, discharge, or release of used oil, the facility owner or operator must notify the department Spill Hotline at (800) 457-7362, or, if calling from out of state, (518) 457-7362.
- (8) Closure.
- (i) Aboveground used oil tanks. Owners and operators who store used oil in aboveground used oil tanks must comply with the following requirements within 180 days after used oil collection or storage has ceased:
 - ('a') At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment systems components, contaminated soils, and structures and equipment contaminated with used oil, and, unless the materials are not hazardous waste under Part 371 of this Title, manage them as hazardous waste. In addition, the owner or operator must comply with the closure requirements of section 613-4.5 of this Title.
 - ('b') If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in clause ('a') of this subparagraph, then the owner or operator must close the tank system and perform post-closure care requirements that apply to hazardous waste landfills (Subparts 373-2 and 373-3 of this Title).
 - (ii) Containers. Owners and operators who store used oil in containers must comply with the following requirements within 180 days after used oil collection or storage has ceased:

- (a) at closure, containers holding used oil or residues of used oil must be removed from the site; and
- (b) the owner or operator must remove or decontaminate used oil residues, contaminated containment systems components, contaminated soils, and structures and equipment contaminated with used oil, and, unless the materials are not hazardous waste under Part 371 of this Title, manage them as hazardous waste.
- (iii) Underground used oil tanks must be closed in accordance with section 613-2.6 or 613-3.5 of this Title, as applicable, and the applicable requirements contained in 40 CFR part 280 (as incorporated by reference in section 370.1(e) of this Title).

(g) Tracking.

- (1) Acceptance. Used oil transporters must keep a record of each used oil shipment accepted for transport. In addition, owners and operators of used oil transfer facilities subject to permitting under Part 360 of this Title must maintain copies of all invoices. Records for each shipment must include:
 - (i) the name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;
 - (ii) the EPA identification number (if applicable) of the generator, transporter, or processor/re-refiner who provided the used oil for transport;
 - (iii) the quantity of used oil accepted;
 - (iv) the date of acceptance;
 - (v) the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport, except that intermediate rail transporters are not required to sign the record of delivery; and
 - (vi) owners and operators of used oil transfer facilities subject to permitting under Part 360 of this Title must include on their shipment records the type of used oil (on-specification or off-specification) and, if on-specification, the method of determination (chemical analysis, pre-characterization, or other).
- (2) Deliveries. Used oil transporters must keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Owners and operators of used oil transfer facilities subject to permitting under Part 360 of this Title must also maintain copies of all invoices. Records of each delivery must include:
 - (i) the name and address of the receiving facility or transporter;
 - (ii) the EPA identification number of the receiving facility or transporter;
 - (iii) the quantity of used oil delivered;
 - (iv) the date of delivery;
 - (v) the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter, except that intermediate rail transporters are not required to sign the record of delivery; and
 - (vi) owners and operators of used oil transfer facilities subject to permitting under Part 360 of this Title must include on their delivery records the type of used oil (on-specification or off-specification) and, if on-specification, the method of determination (chemical analysis, pre-characterization, or other).
- (3) Exports of used oil. Used oil transporters must maintain the records described in subparagraphs (2)(i) through (2)(iv) of this subdivision and, if applicable, (2)(vi) of this subdivision for each shipment of used oil exported to any foreign country.

- (4) Record retention. Except as specified in subparagraph (i) of this paragraph, the records described in paragraphs (1), (2), and (3) of this subdivision must be maintained for at least three years.
- (i) Owners or operators of transfer facilities subject to permitting under Part 360 of this Title must maintain the records for at least seven years.

(h) Management of residues.

Transporters who generate residues from the storage or transport of used oil must manage the residues as specified in section 374-2.2(a)(5) of this Subpart.

Section 374-2.6 Standards for processors and re-refiners.

(a) Applicability.

- (1) The requirements of this section apply to owners and operators of facilities that process or re-refine used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of this section do not apply to:
- (i) transporters that conduct incidental processing operations that occur during the normal course of used oil transportation as provided in section 374-2.5(b) of this Subpart; or
- (ii) burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in section 374-2.7(b)(2) of this Subpart.
- (2) Other applicable provisions. No person shall construct or operate a used oil processing or re-refining facility unless a permit has been obtained in accordance with section 374-2.10(c) of this Subpart. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of this Subpart as indicated in subparagraphs (i) through (v) of this paragraph.
- (i) Processors/re-refiners who generate used oil must also comply with section 374-2.3 of this Subpart.
- (ii) Processors/re-refiners who transport used oil must also comply with section 374-2.5 of this Subpart.
- (iii) Except as provided in clauses ('a') and ('b') of this subparagraph, processors/re-refiners who burn off-specification used oil for energy recovery must also comply with section 374-2.7 of this Subpart. Processors/re-refiners burning used oil for energy recovery under the following conditions are not subject to section 374-2.7 of this Subpart:
- ('a') used oil that is generated by the processor/re-refiner may be burned in an on-site space heater, provided that the requirements of section 374-2.3(d) of this Subpart are met; or
- ('b') the used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing;
- (iv) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or who first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 374-2.2(b)(1) of this Subpart must also comply with section 374-2.8 of this Subpart; and
- (v) Processors/re-refiners who dispose of used oil also must comply with section 374-2.9 of this Subpart.

(b) Notification.

- (1) Identification numbers. Used oil processors and re-refiners who have not previously complied with the notification requirements of RCRA 3010 must comply with these requirements and obtain an EPA identification number.
- (2) Mechanics of notification. Used oil processors or re-refiners who have not received an EPA identification number may obtain one by notifying the EPA regional administrator of their used oil activity by submitting either:
 - (i) a completed EPA Form 8700-12 (EPA Form 8700-12 is available at the EPA website, <http://www.epa.gov>); or
 - (ii) a letter requesting an EPA identification number. Call RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter must include the following information:
 - ('a') processor or re-refiner company name;
 - ('b') owner of the processor or re-refiner company;
 - ('c') mailing address for the processor or re-refiner;
 - ('d') name and telephone number for the processor or re-refiner point of contact;
 - ('e') type of used oil activity (i.e., process only, process and re-refine); and
 - ('f') location of the processor or re-refiner facility.

(c) General facility standards.

- (1) Preparedness and prevention. Owners and operators of used oil collection centers, transfer, processing and re-refining facilities must comply with the following requirements:
 - (i) Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.
 - (ii) Required equipment. All facilities must be equipped with the following, unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in clauses ('a') through ('d') of this subparagraph:
 - ('a') an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;
 - ('b') a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;
 - ('c') portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and
 - ('d') water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.
 - (iii) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.
 - (iv) Access to communications or alarm system.
 - ('a') Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or

emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in subparagraph (ii) of this paragraph.

- (v) Required aisle space. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.
- (vi) Arrangements with local authorities.
 - ('a') The owner or operator must attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:
 - (1) arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;
 - (2) where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;
 - (3) agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and
 - (4) arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.
 - ('b') Where State or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.
- (2) Contingency plan and emergency procedures. Owners and operators of used oil collection centers, transfer, processing and re-refining facilities must comply with the following requirements:
 - (i) Purpose and implementation of contingency plan.
 - ('a') Each owner or operator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.
 - ('b') The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment. The facility operator must assure that the provisions of this plan are carried out in the event of an incident covered by it.
 - (ii) Content of contingency plan.
 - ('a') The contingency plan must describe the actions facility personnel must take to comply with subparagraphs (i) and (vi) of this paragraph in response to fires, explosions, or any

- unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility, and actions to be taken if the facility is shutdown for more than 24 hours.
- (b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR part 112, as incorporated by reference in section 370.1(e) of this Title, or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions that are sufficient to comply with the requirements of this Subpart.
 - (c) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to subparagraph (c)(1)(vi) of this section.
 - (d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see subparagraph (v) of this paragraph), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.
 - (e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.
 - (f) The plan must include an evacuation plan for facility personnel, including a description of signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of used oil or fires).
- (iii) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:
 - (a) maintained at the facility; and
 - (b) submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.
 - (iv) Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:
 - (a) applicable regulations are revised;
 - (b) the plan fails in an emergency;
 - (c) the facility changes - in its design, construction, operation, maintenance, or other circumstances - in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;
 - (d) the list of emergency coordinators changes; or
 - (e) the list of emergency equipment changes.
 - (v) Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the

facility's contingency plan, all operations and activities at the facility, the location and characteristics of used oil handled, the location of all records within the facility, and facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. Guidance: The emergency coordinator's responsibilities are more fully spelled out in subparagraph (vi) of this paragraph. Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of used oil handled by the facility, and type and complexity of the facility.

- (vi) Emergency procedures.
 - ('a') Whenever there is an imminent or actual emergency situation, the emergency coordinator (or the designee when the emergency coordinator is on call) must immediately:
 - ('1') activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and
 - ('2') notify appropriate State or local agencies with designated response roles if their help is needed.
 - ('b') Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. This may be done by observation or review of facility records of logs, invoices, manifests, bills of lading, or other shipping documents and, if necessary, by chemical analysis.
 - ('c') Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).
 - ('d') If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, the incident must be assessed and findings reported as follows:
 - ('1') if the assessment indicated that evacuation of local areas may be advisable, the emergency coordinator must immediately notify appropriate local authorities. The coordinator must be available to help appropriate officials decide whether local areas should be evacuated; and
 - ('2') within two hours of detecting a spill, discharge, or release of used oil, the emergency coordinator must notify the department Spill Hotline at (800) 457-7362, or, if calling from out of state, (518) 457-7362. The emergency coordinator must immediately notify either the government official designated as the on-scene coordinator (in the applicable National Contingency Plan under part 300 of title 40 of the Code of Federal Regulations, as incorporated by reference in section 370.1(e) of this Title), or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report must include:
 - ('i') name and telephone number of reporter;
 - ('ii') name and address of facility;
 - ('iii') time and type of incident (e.g., release, fire);
 - ('iv') name and quantity of material(s) involved, to the extent known;

- (v) the extent of injuries, if any; and
 - (vi) the possible hazards to human health, or the environment, outside the facility.
- (e) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil, hazardous waste, solid waste or used oil-derived fuels or products at the facility. These measures must include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.
 - (f) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.
 - (g) Immediately after an emergency, the emergency coordinator must provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.
 - (h) The emergency coordinator must ensure that, in the affected area(s) of the facility:
 - (1) no waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed;
 - (2) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed; and
 - (3) the owner or operator must notify the regional director of the department in the region in which the facility is located and local authorities that the facility is in compliance with subclauses ('1') and ('2') of this clause before operations are resumed in the affected area(s) of the facility.
 - (i) The owner or operator must note in the operating record: the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the owner or operator must submit a written report on the incident to the EPA regional administrator and the regional director of the department in the region in which the facility is located. The report must include:
 - (1) name, address, and telephone number of the owner or operator;
 - (2) name, address, and telephone number of the facility;
 - (3) date, time, and type of incident (e.g., fire, explosion);
 - (4) name and quantity of material(s) involved;
 - (5) the extent of injuries, if any;
 - (6) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and
 - (7) estimated quantity and disposition of recovered material that resulted from the incident.

(d) Quality control and rebuttable presumption for used oil.

- (1) To ensure that used oil managed at a used oil processing/re-refining facility is not hazardous waste under the rebuttable presumption of section 374-2.2(a)(2)(i)(b') of this Subpart, the facility owner or operator must determine whether the total halogen content of used oil managed at the facility is greater than or equal to 1,000 ppm. The owner or operator must make this determination, upon arrival of every used oil transport vehicle at the facility, by obtaining a sample from each incoming

load, in accordance with Appendix 19 of this Title or a method shown to be equivalent under section 370.3(a) and (b) of this Title. Such sample must be tested by using an analytical method from SW-846, as incorporated by reference in section 370.1(e)(8) of this Title, to determine whether the total halogen content of the load, whether or not commingled from various generators, is greater than or equal to 1,000 ppm.

- (i) If the tests for total halogens are performed at other than a department acceptable laboratory, then five percent of all tests must have split samples taken and transmitted to a laboratory acceptable to the department.
- (2) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in section 371.4 of this Title. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by demonstrating that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix 23 of this Title).
 - (i) Laboratory analyses completed for purposes of rebuttable presumption must be performed by a laboratory currently certified under the appropriate approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).
 - (ii) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed through a tolling arrangement, as described in section 374-2.3(e)(3) of this Subpart, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.
 - (iii) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
- (3) If the owner or operator of a used oil processing/re-refining facility does not attempt or is unable to rebut the presumption, the owner or operator must immediately contact the appropriate department Regional Environmental Remediation Engineer and reject the load, in accordance with the procedures of paragraph (f)(3) of this section.
- (4) Used oil containing 50 ppm by weight, or greater, of PCBs is a hazardous waste, excluding oil derived from small capacitors, as defined in section 371.4(e)(3)(ii) of this Title, as the sole PCB contamination source. Applicable standards are contained in Part 370 through Subpart 374-1 and Part 376 of this Title.

(e) Used oil management.

Used oil processors/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112, as incorporated by reference in section 370.1(e) of this Title) in addition to the requirements of this section. Used oil processors/re-refiners are also subject to the Underground Storage Tank (40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this section.

- (1) Management units. Used oil processors/re-refiners shall not store used oil in units other than tanks, containers, or units subject to regulation under Subparts 373-2 and 373-3 of this Title.
- (2) Used oil tanks. Compliance with petroleum bulk storage regulations.

- (i) All aboveground or underground used oil tank systems, regardless of tank size, must be in compliance with Part 613 of this Title. In addition, owners and/or operators must comply with the following requirements:
 - ('a') Aboveground used oil tanks must be equipped with secondary containment:
 - ('1') The secondary containment system must consist of, at a minimum:
 - ('i') dikes, berms or retaining walls; and
 - ('ii') a floor. The floor must cover the entire area within the dikes, berms, or retaining walls, except, for tanks existing as of January 14, 1995, where existing portions of the tank meet the ground; or
 - ('iii') an equivalent secondary containment system.
 - ('2') The entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.
 - ('b') Used oil tanks at a facility licensed under Part 610 of this Title do not require registration under Part 613 of this Title.
 - (ii) New aboveground and new underground used oil tank systems, regardless of tank size, must be installed in accordance with Part 613 of this Title.
- (3) Condition of units. Containers and aboveground used oil tanks used to store or process used oil at processing and re-refining facilities must be:
 - (i) in good condition (no severe rusting, apparent structural defects or deterioration); and
 - (ii) not leaking (no visible leaks).
- (4) Secondary containment for containers. Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.
 - (i) The secondary containment system must consist of, at a minimum:
 - ('a') dikes, berms or retaining walls; and
 - ('b') a floor. The floor must cover the entire area within the dike, berm or retaining wall; or
 - ('c') an equivalent secondary containment system.
 - (ii) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.
- (5) Labels.
 - (i) Every container and aboveground used oil tank used to store used oil at a processing and re-refining facility must be clearly labeled or marked with the words "Used Oil". In addition, every aboveground tank used to store oil at a processing and re-refining facility must be labeled with the design capacity and working capacity of the tank.
 - (ii) Fill pipes used to transfer used oil into underground used oil tanks at processing and re-refining facilities must be clearly labeled or marked with the capacity of the tank and with the words "Used Oil".
- (6) Response to releases.
 - (i) Any spill, discharge, or release of used oil shall be subject to all applicable provisions of article 12 of the Navigation Law (NL sections 170 through 197) and its implementing rules and regulations, 17 NYCRR Parts 32 - 33 and Part 611 of this Title, regarding, but not limited to, notification, clean up, and liability, and are also subject to applicable provisions of article 17, titles 10 and 17, of the Environmental Conservation Law, and Subpart 613-6 of this Title.

- (ii) Upon detection of a release of used oil to the environment that is not subject to the requirements of subpart F of 40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title, and Subpart 613-6 of this Title, the owner/operator must perform the following cleanup steps:
 - ('a') stop the release;
 - ('b') contain the released used oil;
 - ('c') clean up and manage properly the released used oil and other materials;
 - ('d') if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.
- (iii) Within two hours of detecting a spill, discharge, or release of used oil, the facility owner or operator must notify the department Spill Hotline at (800) 457-7362, or, if calling from out of state, (518) 457-7362.

(7) Closure.

- (i) Aboveground used oil tanks. Owners and operators who store or process used oil in aboveground used oil tanks must comply with the following requirements within 180 days after used oil storage or processing has ceased:
 - ('a') At closure of a tank system, the owner or operator must remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and, unless the materials are not hazardous waste under Part 371 of this Title, manage them as hazardous waste. In addition, the owner or operator must comply with the closure requirements of section 613-4.5 of this Title.
 - ('b') If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in clause ('a') of this subparagraph, then the owner or operator must close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills (section 373-3.14(d) of this Title).
- (ii) Containers. Owners and operators who store used oil in containers must comply with the following requirements within 180 days after used oil storage has ceased:
 - ('a') at closure, containers holding used oils or residues of used oil must be removed from the site;
 - ('b') the owner or operator must remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and, unless the materials are not hazardous waste under Part 371 of this Title, manage them as hazardous waste.
- (iii) Underground used oil tanks must be closed in accordance with section 613-2.6 or 613-3.5 of this Title, as applicable, and the applicable requirements of 40 CFR 280, subpart G, as incorporated by reference in section 370.1(e) of this Title.

(f) Quality control plan.

Owners or operators of used oil processing and re-refining facilities must develop and follow a written quality control plan describing the procedures that will be used to comply with the analysis requirements of subdivision (d) of this section and, if applicable, section 374-2.8(c) of this Subpart. The owner or operator must keep the plan at the facility, and must receive approval from the department for any changes to an approved plan before implementation of such changes.

- (1) Rebuttable presumption for used oil in subdivision (d) of this section. At a minimum, the plan must provide a detailed description of how all incoming loads of used oil will be tested for total halogen content, specifying the following:
 - (i) the sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:
 - ('a') one of the sampling methods in Appendix 19 of this Title; or
 - ('b') a method shown to be equivalent under section 370.3(a) and (b) of this Title;
 - (ii) the frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and
 - (iii) the methods used to analyze used oil for the parameters specified in subdivision (d) of this section.
- (2) On-specification used oil fuel in section 374-2.8(c) of this Subpart. At a minimum, the plan must specify or include the following if section 374-2.8(c) of this Subpart is applicable:
 - (i) a detailed flow diagram of the facility, indicating where off-specification and on-specification used oils are handled;
 - (ii) whether sample analyses or other information will be used to make the on-specification determination;
 - (iii) if sample analyses are used to make the on-specification determination:
 - ('a') the sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:
 - ('1') one of the sampling methods in Appendix 19 of this Title; or
 - ('2') a method shown to be equivalent under section 370.3(a) and (b) of this Title;
 - ('b') whether used oil will be sampled and analyzed prior to or after any processing/refining;
 - ('c') the frequency of sampling to be performed; and whether the analysis will be performed on-site or off-site; and
 - ('d') the methods used to analyze used oil for the parameters specified in section 374-2.8(c) of this Title.
 - (iv) the type of information that will be used to make the on-specification used oil fuel determination; and
 - (v) a description of what procedures and precautions will be taken to assure that on-specification used oil is not contaminated with foreign substances that would cause the used oil to be classified as off-specification.
- (3) Management of materials suspected or determined to be hazardous waste. The plan must provide detailed procedures as to how the owner or operator will handle a load of used oil that is suspected to be, or is determined to contain a listed hazardous waste. This plan must include the following:
 - (i) a description of the procedures to be used if the load is rejected prior to being off-loaded at the facility;
 - (ii) a description of the procedures to be used if the load is off-loaded at the facility and is later found to contain a listed hazardous waste; and
 - (iii) a description of the procedures for notifying the department if a load of used oil is rejected from the facility due to the potential of the load containing a listed hazardous waste. These procedures must include the notification by the facility operator to the appropriate department Regional Environmental Remediation Engineer immediately by phone and within three days by letter.

(g) Tracking.

- (1) Acceptance. Used oil processors/re-refiners must ensure that used oil is transported to their facilities only by transporters who are permitted, as required by Part 364 of this Title. Used oil processors/re-refiners are required to confirm that the transporters delivering used oil to their facilities carry a valid Part 364 waste transporter permit, if required. Used oil processors/re-refiners must keep copies of invoices for each used oil shipment accepted for processing/re-refining. Records for each shipment must include the following information:
 - (i) the name and address of the transporter who delivered the used oil to the processor/re-refiner;
 - (ii) the name and address of the generator, transfer facility or processor/re-refiner from whom the used oil was sent for processing/re-refining;
 - (iii) the EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;
 - (iv) the EPA identification number (if applicable) of the generator, transfer facility or processor/re-refiner from whom the used oil was sent for processing/re-refining;
 - (v) the quantity of used oil accepted;
 - (vi) the type of used oil (on-specification or off-specification) and, if on-specification, the method of determination (chemical analysis, pre-characterization); and
 - (vii) the date of acceptance.
- (2) Delivery. Used oil processors/re-refiners must keep copies of invoices for each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. This record may take a form of a log, invoice, manifest, bill of lading, or other shipping document. Records for each shipment must include the following information:
 - (i) the name and address of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;
 - (ii) the name and address of the burner, processor/re-refiner or disposal facility who will receive the used oil;
 - (iii) the EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner or disposal facility;
 - (iv) the EPA identification number of the burner, processor/re-refiner, or disposal facility who will receive the used oil;
 - (v) the quantity of used oil shipped;
 - (vi) the type of used oil (on-specification or off-specification) and, if on-specification, the method of determination (chemical analysis, pre-characterization); and
 - (vii) the date of shipment.
- (3) Record retention. The records described in paragraphs (1) and (2) of this subdivision must be maintained for at least seven years.

(h) Operating record and reporting.

- (1) Operating record.
 - (i) The owner or operator of a used oil processing or re-refining facility must keep a written operating record at the facility.
 - ('a') The operating record must include the facility's used oil tracking records, as described in subdivision (g) of this section.
 - ('b') Unless otherwise specified in Part 613 of this Title, records of inspections must be maintained in the facility's operating record for a period of seven years.

- (ii) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility;
 - ('a') records and results of used oil analyses performed as described in the quality control plan required under subdivision (f) of this section; and
 - ('b') summary reports and details of all incidents that require implementation of the contingency plan as specified in paragraph (c)(2) of this section.
- (2) Reporting. No later than March 1st of each calendar year, the owner or operator of a used oil processing or re-refining facility must file with the department's central office and the department office administering the region in which the facility is located, an annual report for the prior calendar year in a form prescribed by or acceptable to the department. The report must include the following information:
 - (i) facility name, address, EPA identification number, contact person, phone number and location;
 - (ii) the calendar year covered by the report;
 - (iii) a listing of each storage tank and its capacity;
 - (iv) a monthly summary of all incoming and outgoing loads since the last report which must include:
 - ('a') a list of the names, addresses, and EPA identification numbers of the originating facilities from which used oil was accepted (if used oil is received from numerous facilities under one load, the transporter's name, Part 364 permit number, and EPA identification number can be used);
 - ('b') a list of the names, addresses and EPA identification numbers of the off-site receiving facilities to which oil was shipped; and
 - ('c') a summary by type of the quantity of used oil accepted from or shipped to the facilities listed under clauses (a) and (b) of this subparagraph (on-specification or off-specification), and the manner in which the used oil is processed/re-refined, including the specific processes employed.
 - (v) if, since the last report, any chemical analysis was performed on the used oil received by the facility for the purpose of checking on-site screening for total halogens, a tabulation of the data from any such analysis and the associated total halogen screening data;
 - (vi) a description of any spills or emergencies that occurred at the facility since the last report and corrective actions taken in response to such occurrences;
 - (vii) a list of any unacceptable used oil that was rejected or received by the facility since the last report and how it was handled. Unacceptable used oil must be managed in accordance with the permittee's used oil quality control plan for the management of materials suspected or determined to be hazardous waste, as required by paragraph (f)(3) of this section. This list must include the date the shipment was rejected or received, the quantity of material rejected, the Part 364 permit number of the transporter of the rejected load, and the EPA identification number of the transporter of the rejected load; and
 - (viii) a description of any operational changes since the last report or anticipated future changes to the facility.

(i) Off-site shipments of used oil.

Used oil processors/re-refiners who initiate shipments of used oil off-site must ship the used oil using a used oil transporter who has obtained an EPA identification number and who is authorized under Part 364 of this Title.

(j) Management of residues.

Owners and operators who generate residues from the storage, processing, or re-refining of used oil must manage the residues as specified in section 374-2.2(a)(5) of this Subpart.

Section 374-2.7 Standards for used oil burners who burn off-specification used oil for energy recovery.**(a) Applicability.**

- (1) General. The requirements of this section apply to used oil burners except as specified in subparagraphs (i) and (ii) of this paragraph. A used oil burner is a facility where used oil not meeting the specification requirements in section 374-2.2(b)(1) of this Subpart is burned for energy recovery in devices identified in paragraph (b)(1) of this section. Facilities burning used oil for energy recovery under the following conditions are not subject to this section:
 - (i) the used oil is burned by the generator in an on-site space heater under the provisions of section 374-2.3(d) of this Subpart; or
 - (ii) the used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing.
- (2) Other applicable provisions. Used oil burners must comply with the applicable requirements of Parts 201 and 225 of this Title. In addition, used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of this Subpart as indicated below:
 - (i) burners who generate used oil must also comply with section 374-2.3 of this Subpart;
 - (ii) burners who transport used oil must also comply with section 374-2.5 of this Subpart and Part 364 of this Title, if applicable;
 - (iii) except as provided in paragraph (b)(2) of this section, burners who process or re-refine used oil must also comply with section 374-2.6 of this Subpart;
 - (iv) burners who direct shipments of off-specification used oil from their facility to a used oil burner, or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 374-2.2(b)(1) of this Subpart, must also comply with section 374-2.8 of this Subpart; and
 - (v) burners who dispose of used oil must comply with section 374-2.9 of this Subpart.
- (3) Specification fuel. This section does not apply to persons burning used oil that meets the used oil fuel specification of section 374-2.2(b)(1) of this Subpart, provided that the burner complies with the requirements of section 374-2.8 of this Subpart.

(b) Restrictions on burning.

- (1) Off-specification used oil fuel may be burned for energy recovery in only the following devices:
 - (i) industrial furnaces identified in section 370.2(b) of this Title;
 - (ii) boilers, as defined in section 370.2(b) of this Title, that are identified as follows:

- (a) industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;
- (b) utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale; or
- (c) on-site burning in space heaters. Generators may burn used oil in used oil-fired space heaters provided that:
 - (1) the heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourselfer used oil generators;
 - (2) the heater is designed to have a maximum capacity of no more than 0.5 million Btu per hour; and
 - (3) the combustion gases from the heater are vented to the outside ambient air;
- (iii) hazardous waste incinerators subject to regulation under section 373-2.15 or 373-3.15 of this Title.

(2) Other used oil activities.

- (i) Except as provided in subparagraph (ii) of this paragraph, used oil burners may not process used oil unless they also comply with the requirements of section 374-2.6 of this Subpart.
- (ii) Used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil.

(c) Notification.

- (1) Identification numbers. Used oil burners which have not previously complied with the notification requirements of RCRA section 3010 must comply with these requirements and obtain an EPA identification number.
- (2) Mechanics of notification. Used oil burners who have not received an EPA identification number may obtain one by notifying the EPA regional administrator of their used oil activity by submitting either:
 - (i) a completed EPA Form 8700-12 (EPA Form 8700-12 is available at the EPA website, <http://www.epa.gov>); or
 - (ii) a letter requesting an EPA identification number. Call the RCRA/Superfund Hotline to determine where to send a letter requesting an EPA identification number. The letter must include the following information:
 - (a) burner company name;
 - (b) owner of the burner company;
 - (c) mailing address for the burner;
 - (d) name and telephone number for the burner point of contact;
 - (e) type of used oil activity; and
 - (f) location of the burner facility.
- (3) Department notification. A used oil burner must notify the department in writing of its operation. Such notification must be sent to the department office of the region in which the facility is located.

(d) Quality control and rebuttable presumption for used oil.

- (1) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of section 374-2.2(a)(2)(i)(b) of this Subpart, a used oil burner must

determine whether the total halogen content of used oil managed at the facility is greater than or equal to 1,000 ppm.

- (2) The used oil burner must determine if the used oil contains greater than or equal to 1,000 ppm total halogens by:
 - (i) testing the used oil;
 - (ii) applying knowledge of the halogen content of the used oil in light of the materials or processes used; or
 - (iii) if the used oil has been received from a processor/re-refiner subject to regulation under section 374-2.6 of this Subpart, using information provided by the processor/re-refiner.
- (3) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in section 371.4 of this Title. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste (for example, by demonstrating that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix 23 of this Title).
 - (i) Laboratory analyses completed for purposes of rebuttable presumption must be performed by a laboratory currently certified under the appropriate approval categories by the New York State Department of Health's Environmental Laboratory Approval Program (ELAP).
 - (ii) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement, as described in section 374-2.3(e)(3) of this Subpart, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.
 - (iii) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
- (4) Used oil containing 50 ppm by weight, or greater, of PCBs is a hazardous waste, excluding oil derived from small capacitors, as defined in section 371.4(e)(3)(ii) of this Title, as the sole PCB contamination source. Applicable standards are contained in Part 370 through Subpart 374-1 and Part 376 of this Title.
- (5) Record retention. Records of analyses conducted or information used to comply with paragraphs (1), (2), (3), and (4) of this subdivision must be maintained by the burner for at least three years.

(e) Used oil storage.

Used oil burners are also subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR part 112, as incorporated by reference in section 370.1(e) of this Title) in addition to the requirements of this section. Used oil burners are also subject to the Underground Storage Tank (40 CFR part 280, as incorporated by reference in section 370.1(e) of this Title) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this section.

- (1) Storage units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under Subparts 373-2 and 373-3 of this Title.
- (2) Used oil tanks. Compliance with petroleum bulk storage regulations.

- (i) All aboveground or underground used oil tank systems, regardless of tank size, must be in compliance with Part 613 of this Title. In addition, used oil burners must comply with the following requirements:
 - ('a') aboveground used oil tanks must be equipped with secondary containment:
 - ('1') the secondary containment system must consist of, at a minimum:
 - ('i') dikes, berms or retaining walls; and
 - ('ii') a floor. The floor must cover the entire area within the dikes, berms, or retaining walls, except, for tanks existing as of January 14, 1995, where existing portions of the tank meet the ground; or
 - ('iii') an equivalent secondary containment system;
 - ('2') the entire containment system, including walls and floors, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water;
 - ('b') used oil tanks at a facility licensed under Part 610 of this Title do not require registration under Part 613 of this Title.
 - (ii) New aboveground and new underground used oil tank systems, regardless of tank size, must be installed in accordance with Part 613 of this Title.
- (3) Condition of units. Containers and aboveground used oil tanks used to store used oil at burner facilities must be:
 - (i) in good condition (no severe rusting, apparent structural defects or deterioration); and
 - (ii) not leaking (no visible leaks).
- (4) Secondary containment for containers. Containers used to store used oil at burner facilities must be equipped with a secondary containment system.
 - (i) The secondary containment system must consist of, at a minimum:
 - ('a') dikes, berms or retaining walls; and
 - ('b') a floor. The floor must cover the entire area within the dike, berm, or retaining wall.
 - (ii) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.
- (5) Labels.
 - (i) Every container and aboveground used oil tank used to store used oil at a burner facility must be clearly labeled or marked with the words "Used Oil". In addition, every aboveground tank used to store oil at a burner facility must be labeled with the design capacity and working capacity of the tank.
 - (ii) Fill pipes used to transfer used oil into underground used oil tanks at burner facilities must be clearly labeled or marked with the capacity of the tank and with the words "Used Oil".
- (6) Response to releases.
 - (i) Any spill, discharge, or release of used oil shall be subject to all applicable provisions of article 12 of the Navigation Law (NL sections 170 through 197) and its implementing rules and regulations, 17 NYCRR Parts 32 - 33 and Part 611 of this Title, regarding, but not limited to, notification, clean-up, and liability, and are also subject to applicable provisions of article 17, titles 10 and 17, of the Environmental Conservation Law, and Subpart 613-6 of this Title.
 - (ii) Upon detection of a release of used oil to the environment that is not subject to the requirements of subpart F of 40 CFR part 280, and Subpart 613-6 of this Title, as incorporated

by reference in section 370.1(e) of this Title, a burner must perform the following cleanup steps:

- ('a') stop the release;
 - ('b') contain the released used oil;
 - ('c') clean up and manage properly the released used oil and other materials;
 - ('d') if necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service; and
- (iii) Within two hours of detecting a spill, discharge, or release of used oil, the facility owner or operator must notify the department Spill Hotline at (800) 457-7362, or, if calling from out of state, (518) 457-7362.

(f) Tracking.

- (1) Acceptance. Used oil burners must ensure that used oil is transported to their facilities only by transporters who are permitted, as required by Part 364 of this Title. Used oil burners are required to confirm that the transporters delivering used oil to their facilities carry a valid Part 364 waste transporter permit, if required. Used oil burners must keep a record of each used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment must include the following information:
- (i) the name and address of the transporter who delivered the used oil to the burner;
 - (ii) the name and address of the generator, transfer facility, or processor/re-refiner from whom the used oil was sent to the burner;
 - (iii) the EPA identification number of the transporter who delivered the used oil to the burner;
 - (iv) the EPA identification number (if applicable) of the generator, transfer facility, or processor/re-refiner from whom the used oil was sent to the burner;
 - (v) the quantity of used oil accepted; and
 - (vi) the date of acceptance.
- (2) Record retention. The records described in paragraph (1) of this subdivision must be maintained for at least seven years.

(g) Notices.

- (1) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transfer facility, transporter, or processor/re-refiner, the burner must provide to the generator, transfer facility, transporter, or processor/re-refiner a one-time written and signed notice certifying that:
- (i) the burner has notified EPA and the department office in the region in which the facility is located stating the location and general description of his or her used oil management activities; and
 - (ii) the burner will burn the used oil only in an industrial furnace or boiler identified in paragraph (b)(1) of this section.
- (2) Certification retention. The certification described in paragraph (1) of this subdivision must be maintained for seven years from the date the burner last receives shipment of off-specification used oil from that generator, transfer facility, transporter, or processor/re-refiner.

(h) Management of residues.

Burners who generate residues from the storage or burning of used oil must manage the residues as specified in section 374-2.2(a)(5) of this Subpart.

Section 374-2.8 Standards for used oil fuel marketers.**(a) Applicability.**

- (1) Any person who conducts either of the following activities is subject to the requirements of this subdivision:
 - (i) directs a shipment of off-specification used oil from their facility to a used oil burner; or
 - (ii) first claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in section 374-2.2(b)(1) of this Subpart.
- (2) The following persons are not marketers subject to this section:
 - (i) used oil generators, transfer facilities, and transporters who transport used oil received only from generators, unless the generator, transfer facility, or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Generators, transfer facilities, and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to this section;
 - (ii) persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of section 374-2.2(b)(1) of this Title.
- (3) Any person subject to the requirements of this section must also comply with one of the following:
 - (i) section 374-2.3 of this Subpart - Standards for used oil generators;
 - (ii) section 374-2.5 of this Subpart - Standards for used oil transporters and transfer facilities;
 - (iii) section 374-2.6 of this Subpart - Standards for used oil processors and re-refiners; or
 - (iv) section 374-2.7 of this Subpart - Standards for used oil burners who burn off-specification used oil for energy recovery.

(b) Prohibitions.

No used oil fuel marketer shall initiate a shipment of off-specification used oil to anyone other than a used oil burner who:

- (1) has an EPA identification number; and
- (2) burns the used oil in an industrial furnace or boiler identified in section 374-2.7(b)(1) of this Subpart.

(c) On-specification used oil fuel.

- (1) Analysis of used oil fuel. A generator, transporter, transfer facility, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of section 374-2.2(b)(1) of this Subpart by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.
- (2) Record retention. A generator, transporter, transfer facility, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under section 374-2.2(b)(1) of this Subpart, must keep copies of analyses of the used oil (or other information used to make the determination) for seven years.

(d) Notification.

- (1) Identification numbers. A used oil fuel marketer subject to the requirements of this section who has not previously complied with the notification requirements of RCRA 3010 must comply with these requirements and obtain an EPA identification number.
- (2) Used oil fuel marketers who have not received an EPA identification number may obtain one by notifying the EPA regional administrator of their used oil activity by submitting either:
 - (i) a completed EPA Form 8700-12 (EPA Form 8700-12 is available at the EPA website, <http://www.epa.gov>); or
 - (ii) a letter requesting an EPA identification number. The letter must include the following information:
 - ('a') marketer company name;
 - ('b') owner of the marketer;
 - ('c') mailing address for the marketer;
 - ('d') name and telephone number for the marketer point of contact; and
 - ('e') type of used oil activity (i.e., generator directing shipments of off-specification used oil to a burner).

(e) Tracking.

- (1) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:
 - (i) the name and address of the transporter who delivers the used oil to the burner;
 - (ii) the name and address of the burner who will receive the used oil;
 - (iii) the EPA identification number of the transporter who delivers the used oil to the burner;
 - (iv) the EPA identification number of the burner;
 - (v) the quantity of used oil shipped; and
 - (vi) the date of shipment.
- (2) On-specification used oil delivery. A generator, transporter, transfer facility, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under section 374-2.2(b)(1) of this Subpart must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:
 - (i) the name and address of the facility receiving the shipment;
 - (ii) the quantity of used oil fuel delivered;
 - (iii) the date of shipment or delivery; and
 - (iv) a cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under paragraph (c)(1) of this section.
- (3) Record retention. The records described in paragraphs (1) and (2) of this subdivision must be maintained for at least seven years.

(f) Notices.

- (1) Certification. Before a used oil generator, transporter, transfer facility, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he or she must obtain a one-time written and signed notice from the burner certifying that:
 - (i) the burner has notified the department and the EPA stating the location and general description of used oil management activities; and
 - (ii) the burner will burn the off-specification used oil only in an industrial furnace or boiler identified in section 374-2.7(b)(1) of this Subpart.
- (2) Certification retention. The certification described in paragraph (1) of this subdivision must be maintained for seven years from the date the last shipment of off-specification used oil is shipped to the burner.

Section 374-2.9 Standards for disposal of used oil.**(a) Applicability.**

Except as provided in paragraph (1) of this subdivision, the requirements of this section apply to all used oils that cannot be recycled and are therefore being disposed.

- (1) This section does not apply to used oils that are burned for energy recovery in accordance with section 374-2.7 of this Subpart and Parts 201 and 225 of this Title.

(b) Disposal.

- (1) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled or burned for energy recovery in accordance with this Subpart and Parts 201 and 225 of this Title must be managed in accordance with the hazardous waste management requirements of Part 370 through Subparts 374-1, 374-3, and Part 376 of this Title.
- (2) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled or burned for energy recovery in accordance with this Subpart and Parts 201 and 225 of this Title must be disposed in accordance with the requirements of Part 360 of this Title.

(c) Use as a dust suppressant.

The use of used oil as a dust suppressant is prohibited in New York State.

Section 374-2.10 Permitting and registration.**(a) Used oil collection centers.**

Every used oil collection center subject to section 374-2.4(b) of this Subpart must obtain a registration pursuant to section 360.15 of this Title.

(b) Used oil transfer facilities.

Every used oil transfer facility must obtain a permit under section 360.16 of this Title unless the used oil transfer facility meets the conditions set forth in either paragraph (1) or (2) of this subdivision:

- (1) A facility whose only activity at a particular site is the transfer of used oil from vehicle-to-vehicle, provided the following requirements are met:
 - (i) transfer operations are continuously observed;

- (ii) a contingency plan meeting the applicable requirements of section 374-2.6(c)(2) of this Subpart is in place in case of an emergency during transfer. The contingency plan must be prepared and certified by an individual licensed to practice engineering in the State of New York;
 - (iii) the transporters meet all applicable requirements of Part 364 of this Title;
 - (iv) procedures are established to meet the requirements of sections 374-2.6(f)(1) and (3) of this Subpart;
 - (v) facilities storing beyond 24 hours must also comply with the facility standards of 40 CFR 279, subpart E, incorporated by reference in section 370.1(e) of this Title;
 - (vi) used oil must be stored for 35 days or less, from receipt.
- (2) The storage of used oil by a transporter permitted under Part 364 of this Title at such transporter's facility for a period of 10 calendar days or less provided that no transfer, pumping or consolidation of loads occurs. Facilities storing beyond 24 hours must also comply with the facility standards of 40 CFR part 279 subpart E, incorporated by reference in section 370.1(e) of this Title.
- (3) Permit application.

In addition to the requirements of section 360.16 of this Title, the permit application must include the following information:

- (i) a copy of the facility's EPA notification and identification number, obtained in accordance with section 374-2.5(c) of this Subpart;
- (ii) the engineering report required under section 360.16(c)(3) of this Title must include:
 - ('a') a description of the types of used oils to be accepted by the facility and the origin of the used oils; and
 - ('b') a flow diagram of the facility, indicating where off-specification and, if applicable, on-specification used oils are individually handled;
- (iii) a copy of the quality control plan required under section 374-2.5(e)(2) of this Subpart which will substitute for the waste control plan required as part of the facility manual under section 360.16(c)(4)(i) of this Title;
- (iv) a copy of the contingency plan required under section 374-2.5(a)(5) of this Subpart which will substitute for the emergency response plan required as part of the facility manual under section 360.16(c)(4)(iv) of this Title;
- (v) documentation of financial assurance in accordance with section 360.22 of this Title which will secure closure of the facility consistent with the closure plan required by section 360.16(c)(4)(v) of this Title.

(c) Used oil processors/re-refiners.

Every used oil processor/re-refiner must obtain a permit under section 360.16 of this Title:

- (1) Permit application. The permit application must include the following additional information:
- (i) a copy of the facility's EPA notification and identification number, obtained in accordance with section 374-2.6(b) of this Subpart;
 - (ii) the engineering report required under section 360.16(c)(3) of this Title must include:
 - ('a') a description of the types of used oils to be accepted by the facility and the origin of the used oils; and
 - ('b') a flow diagram of the facility, indicating where off-specification and, if applicable, on-specification used oils are handled;

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- (iii) a copy of the quality control plan required under section 374-2.6(f) of this Subpart which will substitute for the waste control plan required as part of the facility manual under section 360.16(c)(4)(i) of this Title;
 - (iv) a copy of the contingency plan required under section 374-2.6(f) of this Subpart which will substitute for the emergency response plan required as part of the facility manual under section 360.16(c)(4)(iv) of this Title;
 - (v) documentation of financial assurance in accordance with section 360.22 of this Title which will secure closure of the facility consistent with the closure plan required by section 360.16(c)(4)(v) of this Title.
- (d)** Any used oil transfer facility, processor/re-refiner or collection center located at a facility regulated under Part 373 of this Title must be structurally independent of the Part 373 facility operations, in order to be regulated under this Subpart. Facilities having operations regulated under this Subpart and Part 373 of this Title may share joint laboratories, offices, and access roads. However, all used oil storage tanks, piping and appurtenances, processing equipment, and transfer points must be structurally separate from the Part 373 facility. Where tanks or containers regulated under Part 373 of this Title share the same containment area or transfer point as used oil tanks or containers, any spills in the containment area or at the same transfer point must be managed as a hazardous waste, unless testing or knowledge is used to determine that the material is not a hazardous waste pursuant to Part 371 and section 374-2.2(a)(2) of this Title.