

6 NYCRR PART 370 EXPRESS TERMS

Paragraphs 370.1(a)(1) and (2) remain unchanged.

Paragraph 370.1(a)(3) is repealed:

[(3) Persons subject to this Part are also subject to Part 378 of this Title.]

Subdivision 370.1(b) through paragraph 370.1(e)(1) remain unchanged.

Paragraph 370.1(e)(2) is amended to read as follows:

(2) Code of Federal Regulations (CFR).

(i) 29 CFR - title 29 of the Code of Federal Regulations (Labor), revised as of July 1, [2002:] 2013:

(a) parts 1900 through End.

(ii) 33 CFR - title 33 of the Code of Federal Regulations (Navigation and Navigable Waters), revised as of July 1, [2002:]2014:

(a) [parts 1 through 199]part 153.

(iii) 40 CFR - title 40 of the Code of Federal Regulations (Protection of Environment) revised as of July 1, [2002:] 2014:

(a) parts [1 through 80]51, 52, 60, 61, and 63;

(b) parts [100 through 259]112, 124, 144, 146, 148, 165, 220, 257 and 258;

(c) parts 260 through [299]266, 268, 270, 271, 279 and 280, except Subpart H-Transfrontier Shipments of Hazardous Waste for Recovery within the OECD of 40 CFR Part 262;

(d) part[s] 300 [through 399];

(e) part[s] 700 through End]761.

(iv) 49 CFR - title 49 of the Code of Federal Regulations (Transportation), revised as of October 1, [2002:] 2013:

(a) parts [100 through 199]171 through 173.

(v) [40 CFR - title 40 of the Code of Federal Regulations (Protection of Environment) part 268 revised as of July 1, 1990, for the purposes of section 376.4(a)(9) of this Title.]
Reserved.

(vi) [Reserved]40 CFR - title 40 of the Code of Federal Regulations (Protection of Environment) Part 63 revised as of July 1, 2000, for the purposes of paragraph 373-1.7(j)(1) of this Title.

[(vii) 40 CFR – title 40 of the Code of Federal Regulations (Protection of the Environment) parts 112, 279, 280 and 761, revised as of July 1, 2013, for the purposes of Subparts 360-14 and 374-2 of this Title.]

Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or
<https://www.gpo.gov/>

Paragraphs 370.1(e)(3) through subparagraph 370.1(e)(7)(xi) remain unchanged.

Paragraph 370.1(e)(7) is amended to add subparagraph (xii) to read as follows:

(xii) War and National Defense, 1985 (32 USC 1521, “Destruction of existing stockpile of lethal chemical agents and munitions”), USC 2006, Supplement V.

Subparagraph 370.1(e)(8)(i) is amended to read as follows:

(i) “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846 Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), [and] IIIA (April 1998), and IIIB (June 2005) document number 955-001-00000-1.

Subparagraph 370.1(e)(8)(ii) through subparagraph 370.1(e)(8)(vii) remain unchanged.

Note at the end of paragraph 370.1(e)(8) is amended to read as follows:

Note: (8)(i) [can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.] is available online at <https://www.epa.gov/hw-sw846>. 8(i)[- (vi)] through (vii) can be obtained from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Subparagraph 370.1(e)(8)(ii) through paragraph 370.1(e)(9) remain unchanged.

Subdivision 370.1(f) is amended to read as follows:

(f) Any laboratory tests or sample analyses [required under Article 27 of the ECL or Parts 370 through 374 and 376 of this Title,] for which the Commissioner of the New York State Department of Health issues certificates of approval, which are required under Article 27 of the ECL or Parts 370 through 374 and 376, must be performed by a laboratory certified to perform such tests or analyses pursuant to the New York State Department of Health (NYSDOH) Environmental Laboratory Approval Program (ELAP). The certificate of approval must have been issued by the NYSDOH commissioner pursuant to Section 502 of the Public Health Law, and the certificate must be valid and current as provided for under the ELAP.

Subdivision 370.2(a) through paragraph 370.2(b)(5) remain unchanged.

Paragraph 370.2(b)(6) is repealed and replaced to read as follows:

(6) ‘Acute hazardous waste’ means hazardous wastes that meet the listing criteria in subparagraph 371.2(b)(1)(ii) of this Title and therefore are either listed in subdivision 371.4(b) of this Title with the assigned hazard code of (H) or are listed in paragraph 371.4(d)(5) of this Title.

Paragraphs 370.2(b)(7) through 370.2(b)(15) remain unchanged.

Paragraph 370.2(b)(16) is repealed.

[(16) ‘Bedrock’ means the solid rock underlying unconsolidated earth materials, including those portions exposed at the earth’s surface.]

Paragraphs 370.2(b)(17) through (19) are renumbered 370.2(b)(16) through (18) and remain unchanged.

New paragraph 370.2(b)(19) is adopted to read as follows:

(19) ‘Cathode ray tube’ or ‘CRT’ means a vacuum tube, composed primarily of glass, which is a visual or video display component of an electronic device.

(i) A ‘used, intact CRT’ means a CRT whose vacuum has not been released.

(ii) A ‘used, broken CRT’ means glass that has been removed from the housing or casing of a CRT from which the vacuum has been released.

Paragraphs 370.2(b)(20) through (29) remain unchanged.

Paragraph 370.2(b)(30) is repealed.

[(30) ‘Composting facility’ means any facility used to provide aerobic, thermophilic decomposition of the solid organic constituents of solid waste to produce a stable, humus-like material.]

Existing paragraphs 370.2(b)(31) through (39) are renumbered 370.2(b)(30) through (38) and remain unchanged.

Existing paragraphs 370.2(b)(40) through (42) are renumbered 370.2(b)(43) through (45) and remain unchanged.

New paragraphs 370.2(b)(39) through (42) are adopted to read as follows:

(39) ‘CRT collector’ means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

(40) ‘CRT exporter’ means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(41) ‘CRT glass manufacturer’ means a party that conducts an operation or part of an operation that uses a furnace to manufacture CRT glass.

(42) ‘CRT processing’ means conducting the following activities:

(i) Receiving broken or intact CRTs; and

(ii) Managing the CRTs by

 (‘a’) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and/or

 (‘b’) Sorting or otherwise managing glass removed from CRT monitors.

Existing paragraphs 370.2(b)(43) through (45) are renumbered 370.2(b)(46) through (48).

New paragraph 370.2(b)(49) is adopted to read as follows:

(49) ‘Dioxins and furans (D/F)’ means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

Existing paragraphs 370.2(b)(46) through (61) are renumbered 370.2(b)(50) through (65) and remain unchanged.

Existing paragraph 370.2(b)(62) is repealed.

[(62) ‘Evidence of security’ means a surety bond or a policy of insurance with the appropriate endorsement attached.]

Existing paragraphs 370.2(b)(63) through (70) are renumbered 370.2(b)(66) through (73) and remain unchanged.

Existing paragraph 370.2(b)(74) is repealed.

[(74) ‘Final authorization’ means approval by EPA of a State program which has met the requirements of section 3006(b) of RCRA and the applicable requirements of 40 CFR part 271, Subpart A (see section 370.1(e) of this Part).]

Existing paragraph 370.2(b)(71) is renumbered paragraph 370.2(b)(74) and is amended to read as follows:

(74) ‘Facility mailing list’ means the [mailing] contact list for a facility maintained by the department for communicating in accordance with section [621.7(i)(6)] 621.7(i)(7) of this Title.

Existing paragraphs 370.2(b)(72) through (103) are renumbered 370.2(b)(75) through (105) and remain unchanged.

Existing paragraphs 370.2(b)(106) and (107) are repealed.

[(106) ‘Interim Authorization’ means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(g)(2) of RCRA and applicable requirements of 40 CFR part 271, subpart B (see section 370.1(e) of this Part).

(107) ‘Intermediate cover’ means a compacted layer of at least 12 inches of cover material.]

Existing paragraphs 370.2(b)(104) through (105) are renumbered 370.2(b)(106) through (107) and remain unchanged.

Existing paragraphs 370.2(b)(108) through 370.2(b)(115) remain unchanged.

Existing paragraph 370.2(b)(116) is repealed.

[(116) ‘Lift’ means the vertical thickness of a compacted volume of hazardous waste and the cover material immediately above it.]

Existing paragraphs 370.2(b)(117) and (118) are renumbered 370.2(b)(116) and (117), and remain unchanged.

Paragraph 370.2(b)(119) is repealed.

[(119) ‘Lower explosive limit’ (‘LEL’) means the lowest percentage by volume of a mixture of explosive gases which would propagate a flame in air at 25 degrees C and atmospheric pressure.]

Existing paragraphs 370.2(b)(120) through (122) are renumbered 370.2(b)(118) through (120) and remain unchanged.

New paragraph 370.2(b)(121) is adopted to read as follows:

(121) ‘Mercury-containing equipment’ means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

Existing 370.2(b)(123) through (125) are renumbered 370.2(b)(122) through (124) and remain unchanged.

Paragraph 370.2(b)(126) is repealed.

[(126) ‘Monofill’ means a specific type of landfill where the waste provides the fill and daily cover, forms the liner and, in some cases, forms the final cap.]

Existing paragraph 370.2(b)(127) is renumbered 370.2(b)(125) and remains unchanged.

Existing paragraph 370.2(b)(128) is repealed.

[(128) ‘National Pollutant Discharge Elimination System (NPDES)’ means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing the enforcing pretreatment requirements under sections 301, 302, 306, 307, 318, 402, and 405 of the Clean Water Act (see section 370.1(e) of this Part). The term includes an approved program.]

Existing paragraphs 370.2(b)(129) through (172) are renumbered 370.2(b)(126) through (169) and remain unchanged.

Existing paragraph 370.2(b)(173) is renumbered 370.2(b)(170) and is repealed and replaced to read as follows:

[(173)] (170) ‘Small quantity generator’ is a generator who generates the following amounts in a calendar month:

(i) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and

(ii) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in subdivision 371.4(b) or paragraph 371.4(d)(5) of this Title; and

(iii) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in subdivision 371.4(b) or paragraph 371.4(d)(5) of this Title.

Existing paragraphs 370.2(b)(174) is renumbered 370.2(b)(171) and is amended to read as follows:

[(174)](171) ‘Sole source aquifer’ means an aquifer system that the United States Environmental Protection Agency, pursuant to the Safe [Water] Drinking Water Act, 42 USC 300h-3(e) (see section 370.1(e) of this Part), has determined to be the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health. The following have been designated sole source aquifers:

(i) The Clinton Street-Ballpark Valley Aquifer System includes the entire municipalities of Vestal, Johnson City, Endicott, Nichols, Waverly and Owego, New York. Its recharge zone is considered to be one and the same with this area. The streamflow source zone is that portion of the Susquehanna River drainage basin composing the upstream headwaters area for the Broome and Tioga County area.

(ii) The Long Island Aquifer System includes the entire Counties of Kings, Queens, Nassau and Suffolk, New York.

(iii) The Schenectady/Niskayuna Aquifer System includes the entire municipalities of Ballston, Burnt Hills, Charlton, Glenville, Niskayuna, Rexford, Rotterdam, Schenectady and Scotia, New York.

Existing paragraphs 370.2(b)(175) through (188) are renumbered 370.2(b)(172) through (185) and remain unchanged.

New paragraph 370.2(b)(186) is adopted to read as follows:

(186) ‘TEQ’ means toxicity equivalence, the international method of relating the toxicity of

various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

Existing paragraphs 370.2(b)(189) through (201) are renumbered 370.2(b)(187) through (199) and remain unchanged.

Newly renumbered paragraph 370.2(b)(199) is amended to read as follows:

[(201)](199) ‘UIC’ means the underground injection control program under part C of the Safe [Water] Drinking Water Act, including an approved program (see section 370.1(e) of this Part).

Existing paragraphs 370.2(b)(202) through (206) are renumbered 370.2(b)(200) through (204).

Existing paragraph 370.2(b)(207) is renumbered 370.2(b)(205) and remains unchanged.

Newly renumbered subparagraph 370.2(b)(205)(iii) is amended to read as follows:

(iii) [Thermostats] Mercury-containing equipment as described in section 374-3.1(d) of this Title; and

Existing paragraphs 370.2(b)(208) through (221) are renumbered 370.2(b)(206) through (219) and remain unchanged.

Existing subdivision 370.2(c) through existing paragraph 370.3(c)(4) introductory language remain unchanged.

Existing clause 370.3(c)(4)(i)(‘a’) is amended to read as follows:

(‘a’) the petitioner must demonstrate that the waste does not contain the constituent or constituents (as defined in Appendix 22, ‘infra’) that caused the commissioner to list the waste [, using the appropriate test methods prescribed in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in section 370.1(e) of this Part]; or

Existing clause 370.3(c)(4)(i)(‘b’) through existing paragraph 370.3(e)(1) remains unchanged.

Existing paragraph 370.3(e)(2) is amended to read as follows:

(2) The [commissioner] department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original

production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(i) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

[(ii) the prevalence of the practice on an industry-wide basis;]

[(iii)] (ii) the extent to which the material is handled before reclamation to minimize loss;

[(iv)] (iii) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

[(v)] (iv) the location of the reclamation operation in relation to the production process;

[(vi)] (v) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

[(vii)] (vi) whether the person who generates the material also reclaims it; and

[(viii)] (vii) other relevant factors.

Existing paragraph 370.3(e)(3) through existing section 370.5 remain unchanged.