

## 6 NYCRR PART 371 EXPRESS TERMS

Subdivision 371.1(a) introductory paragraph remains unchanged.

Paragraph 371.1 (a)(1) is amended to read as follows:

(1) A material is ‘accumulated speculatively’ if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year (commencing on January 1st) the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75-percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under section [372.1(e)(7)] 371.1(e)(3) of this Title are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation by recycling, however.

Paragraph 371.1(a)(2) through clause 371.1(c)(4)(ii)(‘a’) remain unchanged.

Clause 371.1(c)(4)(ii)(‘b’) and subparagraph 371.1(c)(4)(iii) are amended to read as follows:

(‘b’) However, commercial chemical products listed in section 371.4(d) of this Part are not solid wastes if they are fuels.

(iii) Except as provided under subparagraph 371.1(e)(1)(xxii) of this section, reclaimed [Reclaimed] materials noted with an asterisk in column 3 of Table 1 are solid wastes when reclaimed. Materials noted with a "- " in column 3 of Table 1 are not solid wastes when reclaimed.

Subparagraph 371.1(c)(4)(iv) through paragraph 371.1(c)(6) remain unchanged.

Paragraph 371.1(c)(7) is amended to read as follows:

(7) (i) Parties who raise a claim that a [certain] material intended to be reclaimed, recycled or reused is not a solid or hazardous waste, or who raise a claim that such material is exempt or conditionally exempt from regulation, [based on the intent to reclaim, recycle or reuse,] must notify the department, in writing, before utilizing the exemption or exclusion. Such notification shall give the names and locations of the generating and receiving facilities, [if different,] identify all exemptions or exclusions that the party is claiming, and describe the activity or activities which are believed to qualify for such exemptions or exclusions. Claims of exemption or exclusion are subject to subparagraph (ii) of this paragraph. The requirement to submit notification to the department does not apply to:

\_\_\_\_\_ ('a') dental amalgam as defined and regulated under Subpart 374-4 of this Title;  
\_\_\_\_\_ ('b') precious metals regulated under section 374-1.6 of this Title;  
\_\_\_\_\_ ('c') used lead acid batteries regulated under section 374-1.7 or Subpart 374-3 of this Title; or  
\_\_\_\_\_ ('d') used electronics directed for dismantling and recycling, meeting the conditions of clause 371.1(g)(1)(iii)(b) or subparagraph 371.1(e)(1)(xxi) of this section.

(ii) Documentation of claims that materials are not solid wastes or are exempt or conditionally exempt from regulation. Parties who raise a claim that a material intended to be reclaimed, recycled or reused is not a solid or hazardous waste, or who raise a claim that such material is exempt or conditionally exempt from regulation, must maintain documentation on-site of the basis for this exemption. Respondents in actions to enforce regulations, implementing article 27, who raise a claim that a certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation[, when intended for reclamation, recycling, or reuse,] must demonstrate:

[ (i) for on-site reclamation, recycling, or reuse, that the party meets the terms of the exclusion or exemption; or

(ii) for off-site reclamation, recycling, or reuse:]

(a) that there is a known market or disposition for the material;

(b) that the owner or operator of the receiving facility has the necessary equipment and capacity to process the entire volume of material offered; and

(c) through appropriate documentation, such as contracts, that the receiving party will reclaim, recycle, use, or reuse the material in such a manner as to qualify it for the exemption or exclusion.

Subdivision 371.1(c) Table 1 is amended to read as follows:

	Use constituting disposal (1)	Energy recovery/ fuel (2)	Reclamation (3)	Speculative accumulation (4)
Spent materials	(*)	(*)	(*)	(*)
Sludges listed in 371.4(b) and (c)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	--	(*)
Byproducts listed in 371.4(b) and (c)	(*)	(*)	(*)	(*)
Byproducts exhibiting a characteristic of hazardous waste	(*)	(*)	--	(*)
Commercial chemical products listed in 371.4(d)	(*)	(*)	--	--
Scrap metal [other than excluded scrap metal (see 371.1(a)(9)] <u>that is not excluded under 371.1(e)(1)(xiii)</u>	(*)	(*)	(*)	(*)

Paragraph 371.1(d)(1) introductory language through clause 371.1(d)(1)(ii)('d) introductory language remains unchanged.

Subclauses 371.1(d)(1)(ii)('d')('1') and ('2') are amended to read as follows:

('1') One or more of the following spent solvents listed in section 371.4(b) of this Part—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these spent solvents—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed [1 mg/l;] 1 part per million, or that the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended at 40 CFR parts 60, 61, or 63, as incorporated by reference and implemented by

section 200.10 of this Title, or at facilities subject to an enforceable limit in a State operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to monitor concentration levels must file a copy of their quality assurance project plan with the department at least 60 days prior to operating under this exemption. A facility must file a copy of a revised quality assurance project plan only if the initial plan is rendered inaccurate by changes in the facility's operations. A facility must file a copy of a revised quality assurance project plan to the department at least 30 days prior to modifying facility operations. The quality assurance project plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that its quality assurance project plan has been received by the department. The department may reject the quality assurance project plan if the department finds that the quality assurance project plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the quality assurance project plan or if the department finds that the facility is not following the quality assurance project plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(2) One or more of the following spent solvents listed in section 371.4(b) of this Part—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or scrubber waters derived from the combustion of these spent solvents—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed [25 mg/l;] 25 parts per million or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended at 40 CFR parts 60, 61, or 63, as incorporated by reference and implemented by section 200.10 of this Title, or at facilities subject to an enforceable limit in a State operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to monitor concentration levels must file a copy of their quality assurance project plan with the department at least 60 days prior to operating under this exemption. A facility must file a copy of a revised quality assurance project plan only if the initial plan is rendered inaccurate by changes in the facility's operations. A facility must file a copy of a revised quality assurance project plan to the department at least 30 days prior to modifying facility operations. The quality assurance project plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the quality assurance project plan has been received by the department. The department may reject the quality assurance project plan if the department finds that the quality assurance project plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the quality assurance

project plan or if the department finds that the facility is not following the quality assurance project plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

Subclause 371.1(d)(1)(ii)(‘d’)(‘3’) remains unchanged.

Subclause 371.1(d)(1)(ii)(‘d’)(‘4’) is amended to read as follows:

(‘4’) a discarded hazardous waste, commercial chemical product, or chemical intermediate listed in[section] sections 371.4(b) through 371.4(d) of this Part arising from ‘de minimis’ losses of these materials. [from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process.] For purposes of this [subparagraph] subclause 371.1(d)(1)(ii)(‘d’)(‘4’), ‘de minimis’ [means unintentional and minor losses of hazardous materials which occur unavoidably as a result of normal manufacturing processes] losses are inadvertent releases to a wastewater treatment system. ‘De minimis’ losses include[ing] minor losses resulting from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing[; or] . Any manufacturing facility that claims an exemption for ‘de minimis’ quantities of wastes listed in sections 371.4(b) through 371.4(d) of this Part, or any nonmanufacturing facility that claims an exemption for ‘de minimis’ quantities of wastes listed in section 371.4 of this Part must either have eliminated the discharge of wastewaters or have included in its State Pollution Discharge Elimination System (SPDES) permit application, pursuant to Part 750 of this Title, or submission to its pretreatment control authority, the constituents for which each waste was listed (in Part 371 Appendix 22 of this Part) and the constituents in the table ‘Treatment Standards for Hazardous Wastes’ in Part 376.4 of this Title for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or the control authority has been notified of possible ‘de minimis’ releases via the SPDES permit application or the pretreatment control authority submission. A copy of the SPDES permit application or the submission to the pretreatment control authority must be placed in the facility’s on-site files; or

Subclause 371.1(d)(1)(ii)(‘d’)(‘5’) remains unchanged.

Subclause 371.1(d)(1)(ii)(‘d’)(‘6’) through clause 371.1(d)(1)(ii)(‘e’) introductory language are amended to read as follows:

(‘6’) One or more of the following wastes listed in subdivision 371.4(c) of this Part—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to

any dilution[s] into the headworks of the facility's wastewater treatment system does not exceed a total of 5 [mg/l;] parts per million by weight or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR Parts 60, 61 or 63 as incorporated by reference and implemented by section 200.10 of this Title, or at facilities subject to an enforceable limit in a State operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to monitor concentration levels must file a copy of their quality assurance project plan with the department at least 60 days prior to operating under this exemption. A facility must file a copy of a revised quality assurance project plan only if the initial plan is rendered inaccurate by changes in the facility's operations. A facility must file a copy of a revised quality assurance project plan to the department at least 30 days prior to modifying facility operations. The quality assurance project plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the quality assurance project plan has been received by the department. The department may reject the quality assurance project plan if the department finds that the quality assurance project plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department rejects the quality assurance project plan or if the department finds that the facility is not following the quality assurance project plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(“7”) Wastewaters derived from the treatment of one or more of the following wastes listed in section 371.4(c) of this Part—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156)—provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter or the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63 as incorporated by reference and implemented by section 200.10 of this Title, or at facilities subject to an enforceable limit in a State operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to monitor concentration levels must file a copy of their quality assurance project plan with the department at least 60 days prior to operating under this exemption. A facility must file a copy of a revised quality assurance project plan only if the initial plan is rendered inaccurate by changes in the facility's operations. A facility must file a copy of a revised quality assurance project plan to the department at least 30 days prior to modifying facility operations. The quality assurance project plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once it receives confirmation that the quality assurance project plan has been received by the department. The department may reject the quality assurance project plan if the department finds that the quality assurance project plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the department

rejects the quality assurance project plan or if the department finds that the facility is not following the quality assurance project plan, the department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

(e) 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. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by [using an analytical method from SW-846, Third Edition, to show]demonstrating that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix 23). [EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, (202) 783-3238 (document number 955-001-00000-1).]

Subclause 371.1(d)(1)(ii)(e)(1) remains unchanged.

Subclause 371.1(d)(1)(ii)(e)(2) is amended to read as follows:

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

Paragraph 371.1(d)(2) through subparagraph 371.1(e)(1)(v) remain unchanged.

Subparagraph 371.1(e)(1)(vi) is amended to read as follows:

(vi) black liquor that is reclaimed in a [Kraft] pulping liquor recovery furnace and then used in the [Kraft] process unless it is accumulated speculatively as defined in paragraph (a)(1) of this section;

Subclause 371.1(e)(1)(vii) through subclause 371.1(e)(1)(ix)(c)(4) remain unchanged.

Subclause 371.1(e)(1)(ix)(c)(5) is amended to read as follows:

(5) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the [commissioner]department a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." This notification satisfies the requirement to submit a notification pursuant to subparagraph (c)(7)(i) of this section. The plant must maintain a copy of that document in its on-site records [for a period of no less than 3 years from the date specified in the notice] until closure of the

facility. The exclusion applies [only] so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the [commissioner]department for reinstatement. The [commissioner]department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions, that the violations have been resolved, and that the violations are not likely to recur;

Subparagraph 371.1(e)(1)(x) through 371.1(e)(1)(xv) remain unchanged.

Subparagraph 371.1(e)(1)(xvi) is removed and reserved.

Subparagraphs 371.1(e)(1)(xvii) and 371.1(e)(1)(xviii) remain unchanged.

New subparagraphs 371.1(e)(1)(xix) through (xxii) are adopted to read as follows:

(xix) Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

(‘a’) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in paragraph 371.1(a)(1) of this Part.

(‘b’) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(‘1’) Submit a one-time notice to the department, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded zinc-bearing hazardous secondary materials under the conditions specified in this subparagraph.

(‘2’) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment including the potential for flooding, and, for liquid excluded secondary material located over a sole source aquifer as described in subparagraph 373-1.1(d)(1)(iv) introductory language, meet the secondary containment requirements of clause 373-1.1(d)(1)(iv)(f). At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers stored outdoors must be managed within storage areas that:

(‘i’) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(‘ii’) provide for effective collection and management of leaks,

spills and accumulated precipitation; and

(‘iii’) prevent run-on into the containment system.

(‘3’) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of subparagraph 371.1(e)(1)(xix) of this Title.

(‘4’) Maintain records of all shipments of excluded hazardous secondary materials at the generator’s or intermediate handler’s facility for no less than three years. For each shipment these records must at a minimum contain the following information:

(‘i’) Name of the transporter and date of shipment;

(‘ii’) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(‘iii’) Type and quantity of excluded secondary material in each shipment.

(‘c’) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(‘1’) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in item 371.1(e)(1)(xix)(‘b’)(‘2’) of this Title.

(‘2’) Submit a one-time notification to the department that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded zinc-bearing hazardous secondary materials under the conditions specified in this subparagraph.

(‘3’) Maintain records of all shipments of excluded hazardous secondary materials received by the manufacturer for a minimum of three years, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received and a brief description of the industrial process that generated the material.

(‘4’) Submit to the department an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(‘d’) Nothing in this section preempts, overrides or otherwise negates the provision in paragraph 372.2(a)(2) of this Title, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(‘e’) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in item (‘b’)(‘1’) of this paragraph, and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of Subparts 373-2 and 373-3 of this Title.

(xx) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under subparagraph (xix) of this paragraph, provided that:

(‘a’) The fertilizers meet the following contaminant limits:

(‘1’) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(‘2’) For dioxin contaminants, the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(‘b’) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(‘c’) The manufacturer maintains records of all sampling and analyses performed for purposes of determining compliance with the requirements of clause (xx)(‘b’) of this paragraph for no less than three years. Such records must at a minimum include:

(‘1’) The dates and times product samples were taken, and the dates the samples were analyzed;

(‘2’) The names and qualifications of the person(s) taking the samples;

(‘3’) A description of the methods and equipment used to take the samples;

(‘4’) The name and address of the laboratory at which analyses of the samples were performed;

(‘5’) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(‘6’) All laboratory analytical results used to determine compliance with the contaminant limits specified in this subparagraph.

(xxi) Used cathode ray tubes (CRTs)

(‘a’) Used, intact CRTs as defined in subdivision 370.2(b) of this Title, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in paragraph 371.1(a)(1) of this section, by CRT collectors or glass processors.

(‘b’) Used, intact CRTs as defined in subdivision 370.2(b) of this Title, are not solid wastes when exported for recycling provided that they are managed in accordance with the requirements of subdivision 371.5(c) of this Part.

(‘c’) Used, broken CRTs as defined in subdivision 370.2(b) of this Title, are not solid wastes provided that they are managed in accordance with the requirements of subdivision 371.5(b) of this Part.

(‘d’) Glass removed from CRTs is not a solid waste provided that it is managed in accordance with the requirements of paragraph 371.5(b)(3) of this Part.

(xxii) Spent materials (as defined in paragraph 371.1(a)(7) of this Part) (other than hazardous wastes listed in section 371.4 of this Part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(‘a’) The spent material is legitimately recycled to recover minerals, acids,

cyanide, water or other values;

(‘b’) The spent material is not accumulated speculatively as defined in paragraph 371.1(a)(1) of this section;

(‘c’) The spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the spent material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in subdivision 370.2(b) of this Title), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent releases to the environment of these materials including the potential for flooding. For liquid spent material located over a sole source aquifer as described in subparagraph 373-1.1(d)(1)(iv) introductory language, the secondary containment requirements of clause 373-1.1(d)(1)(iv)(f) must be met.

(‘d’) Solid mineral processing spent material may not be placed on pads.

(‘e’) The owner or operator provides notice to the department providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(‘f’) For purposes of subparagraph 371.1(e)(2)(vi) of this subdivision, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

Paragraph 371.1(e)(2) introductory language through subclause 371.1(e)(2)(vi)(b)(20) remain unchanged.

Subclause 371.1(e)(2)(vi)(b)(21) is repealed.

[('21') Air pollution control dust/sludge from lightweight aggregate production.]

Clause 371.1(e)(2)(vi)(c) through subparagraph 371.1(e)(2)(xii) remain unchanged.

Paragraph 371.1(e)(2)(xiii) is amended to read as follows:

(xiii) leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(a) the solid wastes disposed would meet one or more of the listing descriptions for hazardous waste codes K169, K170, K171, K172, K174, K175, K176, K177, [and] K178, and K181, if these wastes had been generated after the effective date of the listing[.];

(b) the solid wastes described in clause (a) of this subparagraph were disposed prior to the effective date of the listing;

(c) the leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(d) discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under section 307(b) or 402 of the Federal Clean Water Act and the State Pollution Discharge Elimination System (SPDES), Parts 750 through 757 of this Title; and

(e) as of February 13, 2001, leachate or gas condensate derived from K169 - K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. [After] As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 [will not] is no longer [be] exempt if it is stored or managed in a surface impoundment prior to discharge. Leachate or gas condensate derived from K181 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this clause after the emergency ends.

Paragraphs 371.1(e)(3) through clause 371.1(e)(4)(v)(h) remain unchanged.

Clause 371.1(e)(4)(v)(i) introductory language is amended to read as follows:

(i) The facility prepares and submits a report to the [commissioner]department by March 15th of each year that [estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and] includes the following information for the previous calendar year:

Subclause 371.1(e)(4)(v)(i)(1) through paragraph 371.1(f)(1) remain unchanged.

Paragraph 371.1(f)(2) is amended to read as follows:

(2) Except for those wastes identified [as provided] in paragraphs (5), (6), (7), and (10) of this subdivision, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Part 372 through Subpart [374-3] 373-3, Subpart 374-1, and Part 376 of this

Title and the notification requirements of section 3010 of RCRA (see section 370.1(e) of this Title), provided the generator complies with the requirements of paragraphs (5), (6), (7) and (10) of this subdivision;

Paragraph 371.1(f)(3) introductory language through subparagraph 371.1(f)(3)(v) remain unchanged.

Subparagraph 371.1(f)(3)(vi) is amended and new subparagraph 371.1(f)(3)(vii) is adopted to read as follows:

(vi) is universal waste managed under subdivision (j) of this section and Subpart 374-3 of this Title~~];~~ or

(vii) is a hazardous waste that is an unused commercial chemical product (listed in section 371.4 of this Part or exhibiting one or more characteristics in section 371.3 of this Part) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to paragraph 372.2(e)(14) of this Title. For purposes of this provision, the term eligible academic entity shall have the meaning as defined in paragraph 372.2(e)(1) of this Title.

Paragraph 371.1(f)(4) remains unchanged.

Paragraphs 371.1(f)(5) through subparagraph 371.1(f)(6)(ii) are amended to read as follows:

(5) If a conditionally exempt small quantity generator generates acute hazardous waste [in quantities greater than that set forth below] in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month [full regulation] under [Parts] Parts 372[, 373, 374] through 374-1, and 376 of this Title, and the notification requirements of section 3010 of RCRA (see section 370.1(e) of this Title):

(i) a total of one kilogram of acute hazardous waste listed in section 371.4(b) [, (c)] and (d)(5) of this Part; or

(ii) a total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 371.4(b) [, (c)] and (d)(5) of this Part.

(6) [A] In order for acute hazardous wastes generated by a conditionally exempt small quantity generator [who generates] of acute hazardous wastes in quantities equal to or less than those set forth in subparagraph (5)(i) or (ii) of this subdivision to [may] be excluded from [full regulation under this subdivision] those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month, the generator must comply with [if] the following requirements [are complied with]:

(i) section 372.2(a)(2) of this Title;

(ii) the conditionally exempt small quantity generator may accumulate acute hazardous

waste on-site. If acutely hazardous wastes are accumulated at any time in quantities greater than those set forth in subparagraph (5)(i) or (ii) of this subdivision, [all of those accumulated wastes are] the generator is subject to regulation under Parts 372 through [374] 374-1, and 376 of this Title and the notification requirements of section 3010 of RCRA (see section 370.1(e) of this Title) for all of those accumulated wastes. The time period [for accumulation of wastes on-site given in] of section 372.2(a)(8)(ii) of this Title, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

Subparagraphs 371.1(f)(6)(iii) and (iv) remain unchanged.

Paragraph 371.1(f)(7) introductory language through subparagraph 371.1(f)(7)(ii) are amended to read as follows:

(7) In order for non-acute hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste [less than 100 kilograms of hazardous waste] during a calendar month to be excluded from [full regulation under this subdivision] regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month, the generator must comply with the following requirements:

(i) comply with section 372.2(a)(2) of this Title;

(ii) the conditionally exempt small quantity generator may accumulate hazardous waste on-site. If [he or she]this generator accumulates at any time [more than a total of] 1,000 kilograms or greater of [their own] hazardous wastes generated on this site, all of those accumulated non-acute hazardous wastes are subject to regulation under the special provisions of [Part 372] subparagraph 372.2(a)(8)(iii) of this Title applicable to generators of greater than 100 kg and less than 1,000 kg of hazardous waste [between 100 and 1,000 kg of hazardous waste] in a calendar month as well as the requirements of Parts 373, 374 and 376 of this Title, and the applicable notification requirements of section 3010 of RCRA. The time period of section 372.2(a)(8)(iii) of this Title for accumulation of non-acute hazardous wastes on-site begins for a conditionally exempt small quantity [generators] generator when the accumulated wastes equal or exceed 1,000 kilograms;

Subparagraph 371.1(f)(7)(iii) through paragraph 371.1(f)(9) remain unchanged.

Paragraph 371.1(f)(10) through subparagraph 371.1(g)(1)(iii) introductory language are amended to read as follows:

(10) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Subpart 374-2 and Part 613 (if applicable) of this Title [if it is destined to be burned for energy recovery]. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated [if it is destined to be burned for energy recovery].

(g) Requirements for recyclable materials.

(1) (i) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (2) and (3) of this subdivision, except for the materials listed in subparagraphs (ii) and (iii) of this paragraph. Hazardous wastes that are recycled will be known as ‘recyclable materials.’

(ii) The following recyclable materials are not subject to the requirements of this subdivision but are regulated under sections 374-1.3 through [374-1.8] 374-1.9, Subpart 374-2 and all applicable provisions in Subpart 373-1 and Parts 376, 621 and 624 of this Title:

(‘a’) Recyclable materials used in a manner constituting disposal (see section 374-1.3 of this Title);

(‘b’) Hazardous wastes burned [for energy recovery] (as defined in subdivision 374-1.8(a) of this Title) in boilers and industrial furnaces that are not regulated under sections 373-2.15 and 373-3.15 of this Title (see section 374-1.8 of this Title);

(‘c’) Reserved.

(‘d’) Recyclable materials from which precious metals are reclaimed (see section 374-1.6 of this Title); and

(‘e’) Spent lead-acid batteries that are being reclaimed (see section 374-1.7 of this Title).

(iii) The following recyclable materials, or the following hazardous wastes burned for energy recovery, are not subject to regulation under Parts 372 through 374 and 376 of this Title, and are not subject to the notification requirements of section 3010 of RCRA (see section 370.1(e) of this Title), provided that the waste is transported by a hauler complying with any applicable waste hauler permit requirements in Part 364 of this Title:

Clause 371.1(g)(1)(iii)(‘a’) through clause 371.1(g)(1)(iii)(‘d’) remain unchanged.

Subparagraph 371.1(g)(1)(iv) through subparagraph 371.1(h)(2)(i) is amended to read as follows:

(iv) Used oil that is recycled, or burned for energy recovery, and is also a hazardous waste solely because it exhibits a hazardous waste characteristic is not subject to the requirements of Parts 370 through 373, Subpart 374-1 and Part 376 of this Title, but is regulated under Part 364 and Subpart 374-2 of this Title. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, [burned for energy recovery,] or reprocessed.

(v) Hazardous waste, that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in section 372.5(h)(1) of this Title) for purpose of recovery is subject to the requirements of section 372.5 of

this Title, if it is subject to either the manifesting requirements of Part 372 of this Title, or to the universal waste management standards of Subpart 374-3 of this Title.

(2) Generators and transporters of recyclable materials, and generators and transporters of hazardous wastes burned for energy recovery, are subject to the applicable requirements of Part 372 of this Title and the notification requirements under section 3010 of RCRA (see section 370.1(e) of this Title), except as provided in paragraph (1) of this subdivision.

(3) (i) Owners or operators of facilities that store recyclable materials before they are recycled, or store hazardous wastes prior to being burned for energy recovery, are regulated under all applicable provisions of Subpart 373-1, sections 373-2.1 through 373-2.12, 373-2.27 through 373-2.29, [Subpart 373-1,] sections 373-3.1 through [373-3.13] 373-3.12, 373-3.27 through 373-3.29, Subpart 374-1, Parts [374], 376, 621 and 624 of this Title, [sections 373-2.27, 373-2.28, 373-2.29, 373-3.27, 373-3.28, and 373-3.29 of this Title,] and the notification requirements under section 3010 RCRA (see section 370.1(e) of this Title), except as provided in paragraph (1) of this subdivision. (The recycling process itself is exempt from regulation except as provided in paragraph (4) of this subdivision.)

(ii) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (1) of this subdivision:

(‘a’) notification requirements under section 3010 of RCRA (see section 370.1 (e) of this Title);

(‘b’) sections 373-2.5 and 373-3.5, and subdivision 373-3.5(b) (dealing with the use of the manifest and manifest discrepancies) of this Title; and

(‘c’) paragraph (4) of this subdivision.

(4) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of sections 373-2.27, 373-2.28, 373-3.27 and 373-3.28 of this Title.

(h) Residues of hazardous waste in empty containers.

(1) (i) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subdivision, is not subject to regulation under this Part and Parts 372 through [373] 374, and 376 of this Title, or to the notification requirements of section 3010 of RCRA (see section 370.1(e) of this Title). (Note: The discarding of the empty drum or inner liner itself may be subject to the disposal requirements of Parts 360 and 363 and the transportation requirements of Part 364 of this Title).

(ii) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (2) of this subdivision, is subject to regulation under Parts 371 through [373] 374, and Parts 376 of this Title, or to the notification

requirements of section 3010 of RCRA (see section 370.1(e) of this Title).

(2) (i) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in section 371.4(b) [- (d)] or (d)(5) of this Part, is empty if:

Clause 371.1(h)(2)(i)('a') through subparagraph 371.1(h)(2)(ii) remain unchanged.

Subparagraph 371.1(h)(2)(iii) is amended to read as follows:

(iii) A container or an inner liner removed from a container that has held an acute hazardous waste listed in section 371.4(b)[, (c)] or (d)(5) of this Part, is empty if:

Clause 371.1(h)(2)(iii)('a') through subparagraph 371.1(j)(1)(ii) remain unchanged.

Subparagraph 371.1(j)(1)(iii) is amended to read follows:

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

Subparagraph 371.1(j)(1)(iv) through 371.3(b)(1) introductory language remain unchanged.

Subparagraph 371.3(b)(1)(i) is amended to read as follows:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees Celsius (140 degrees Fahrenheit)[. Flash point must be], as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in the American Society for Testing Materials (ASTM) Standard D[-] 93-79 or D[-] 93-80; or a Setaflash Closed Cup Tester, using the test method specified in the [the American Society for Testing Materials (ASTM) and the] ASTM and the test method specified in ASTM Standard [D327878] D 3278-78[; or as determined by an equivalent test method approved by the commissioner as set forth in section 370.3(b) of this Title (see] , as incorporated by reference in section 370.1(e) of this Title. [ ]

Subparagraph 371.3(b)(1)(ii) remains unchanged.

Subparagraphs 371.3(b)(1)(iii) and (iv) are amended as follows:

(iii) It is an ignitable compressed gas, as defined in [49 CFR 172] 40 CFR 261.21(a)(3) (see section 370.1(e) of this Title). [, and as determined by the test methods described in that regulation or equivalent test methods approved by the commissioner as set forth in section 370.3(b) of this Title.]

(iv) It is an oxidizer as defined in [49 CFR 173.127] 40 CFR 261.21(a)(4) (see section 370.1(e) of this Title).

Paragraph 371.3(b)(2) through paragraph 371.3(3)(c)(1) introductory language remain unchanged.

Subparagraphs 371.3(c)(1)(i) and (ii) are amended to read as follows:

(i) it is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5 as determined by a pH meter using Method [9040] 9040C in "[^]Test Methods for Evaluating Solid Waste, Physical/Chemical Methods[^]" EPA publication number SW-846 as incorporated by reference in section 370.1(e) of this Title; or

(ii) it is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55 degrees Celsius (130 degrees Fahrenheit) as determined by [the test method specified in the National Association of Corrosion Engineers (NACE) Standard TM-01-69 as standardized] Method 1110A 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 Title.

Paragraph 371.3(c)(2) through subparagraph 371.3(d)(1)(vii) remain unchanged.

Subparagraph 371.3(d)(1)(viii) is amended to read as follows:

(viii) it is a forbidden explosive[, a Class A explosive or a Class B explosive] as defined in 49 CFR [173.51 and 173.53] 173.54, or is a Division 1.1, 1.2 or 1.3 explosive as defined in 49 CFR 173.50 and 173.53 (see section 370.1(e) of this Title).

Paragraph 371.3(d)(2) remains unchanged.

Paragraph 371.3(e)(1) is amended to read as follows:

(e) Toxicity characteristic.

- (1) [A]Except as provided in subparagraph (i) of this paragraph, a solid waste exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test method 1311 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 Title, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 at a concentration equal to or greater than the respective value given in that table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purpose of this subdivision.

(i) Manufactured Gas Plant (MGP) related remediation waste exhibiting the Toxicity Characteristic for benzene is not a hazardous waste based on toxicity if the following conditions are met:

(‘a’) The remediation wastes are from former MGP sites being remediated under a department order, agreement or State assistance contract, or under the oversight of the EPA;

(‘b’) The remediation waste is soil or sediment contaminated with coal tar related residuals that will be thermally treated (as in a combustion boiler unit or in a thermal desorber) at an off-site facility permitted to receive non-hazardous contaminated soil or at an on-site facility. MGP site remediation waste meeting the applicability requirements that is being sent out of state must comply with the rules and regulations of the receiving state; and

(‘c’) This exemption does not apply to coal tar contaminated materials which contain significant quantities of purifier wastes or any quantity of other hazardous wastes. A significant quantity of purifier waste is defined as any quantity that would cause the MGP site remediation waste mixture, sent for thermal treatment, to contain in excess of 3.5 percent sulfur by weight.

371.3(e) Table 1 through paragraph 371.4(a)(3) remain unchanged.

Paragraph 371.4(a)(4) is amended to read as follows:

(4) The following hazardous wastes listed in subdivision[s] (b) [and (c)] of this section are subject to the exclusion limits for acutely hazardous waste established in section 371.1(f) of this Part: EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027.

Paragraph 371.4(b)(1), the listing for F019 is amended to read as follows:

F019 Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process. Wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process will not be subject to this listing at the point of generation if the wastes are not placed on the land prior to shipment to a landfill for disposal and are either: disposed in a municipal or industrial landfill unit that is equipped with at least a single clay liner and is permitted, licensed or otherwise authorized by the state; or disposed in a landfill unit subject to, or otherwise meeting, the landfill requirements in Parts 360 and 363 of this Title and subdivisions 373-2.15(c) and 373-3.14(j) of this Title. For the purposes of this listing, motor vehicle manufacturing is defined in clause 371.4(b)(2)(iv)(‘a’); clause (‘b’) of this section describes the recordkeeping requirements for motor vehicle manufacturing facilities.

Paragraph 371.4(b)(1), Table 1, Footnote \* is added to read as follows:

\* (I,T) should be used to specify mixtures that are ignitable and contain toxic constituents.

Subparagraphs 371.4(b)(2)(i) through (iii) remain unchanged.

New subparagraph 371.4(b)(2)(iv) is adopted to read as follows:

(iv) For the purposes of the F019 listing, the following apply to wastewater treatment sludges from the manufacturing of motor vehicles using a zinc phosphating process.

(‘a’) Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

(‘b’) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of offsite; documentation showing when the waste volumes were generated and sent offsite; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these records on-site for no less than three years. The retention period for the records is automatically extended during the course of any enforcement action or as requested by the department.

371.4(c) Introductory language is amended to read as follows:

(c) Hazardous wastes from specific sources.

(1) The following solid wastes are listed hazardous waste from specific sources unless excluded under section 370.3(a) and (c) of this Title and listed in Appendix 24, ‘infra.’

Newly numbered listings from the beginning of the list through Inorganic Chemicals listings remain unchanged.

Newly numbered 371.4(c)(1) Organic Chemicals listings: new listing for K181 is adopted to read as follows:

K181 Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (3) of this subdivision, that are equal to or greater than the corresponding paragraph (3) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a landfill permitted under Part 360 of this Title or if out of state disposed in a 40 CFR Subtitle D landfill unit subject to the design criteria in 40 CFR 258.40, as incorporated by reference in subdivision 370.1(e) of this Title, (ii) disposed in a Part 373 landfill unit subject to either sections 373-2.14 or 373-3.14(j) of this Title or if out of state disposed in a 40 CFR Subtitle C landfill unit subject to either 40 CFR 264.301 or 40 CFR 264.301, as incorporated by reference in subdivision 370.1(e) of this Title, (iii) if out of state, disposed in other 40 CFR Subtitle D landfill units that meet the design criteria in 40 CFR 258.40, 264.301, or 265.301, or (iv) treated in a combustion unit that is permitted under Part 373 or 40 CFR Subtitle C, as incorporated by reference in subdivision 370.1(e) of this Title, or an on-site combustion unit that is permitted under the Clean Air Act at 40 CFR parts 60, 61, or 63, as incorporated by reference by section 200.10 of this Title. For the purposes of this listing, dyes and/or pigments production is defined

in subparagraph (2)(i) of this subdivision. Paragraph (4) of this subdivision describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under subdivisions 371.3(b),(c), (d) and (e) and 371.4(b), (c) and (d) of this Part, at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met. (T)

New numbered paragraph 371.4(c)(1) Listings from Inorganic chemicals through Iron and steel remain unchanged.

Newly numbered paragraph 371.4(c)(1) Listings from Primary Copper through Ferroalloys are amended to read as follows:

[Primary Copper:

K064 Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production. (T)

Primary Lead:

K065 Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. (T)

Primary Zinc:

K066 Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production. (T)]

Primary Aluminum:

K088 Spent potliners from primary aluminum reduction. (T)

[Ferroalloys:

K090 Emission control dust or sludge from ferrochromium-silicon production. (T)

K091 Emission control dust or sludge from ferrochromium production. (T)]

New numbered paragraph 371.4(c)(1) Listings from Secondary lead through Coking remain unchanged.

New paragraphs 371.4(c)(2) through (4) are adopted to read as follows:

(2) Listing Specific Definitions: (i) For purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or

FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(3) K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

<u>Constituent</u>	<u>Chemical abstracts No.</u>	<u>Mass levels (kg/yr)</u>
<u>Aniline</u>	<u>62-53-3</u>	<u>9,300</u>
<u>o-Anisidine</u>	<u>90-04-0</u>	<u>110</u>
<u>4-Chloroaniline</u>	<u>106-47-8</u>	<u>4,800</u>
<u>p-Cresidine</u>	<u>120-71-8</u>	<u>660</u>
<u>2,4-Dimethylaniline</u>	<u>95-68-1</u>	<u>100</u>
<u>1,2-Phenylenediamine</u>	<u>95-54-5</u>	<u>710</u>
<u>1,3-Phenylenediamine</u>	<u>108-45-2</u>	<u>1,200</u>

(4) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in subparagraphs (4)(i) through (4)(iii) and (4)(v) of this subdivision establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in paragraph (1) of this subdivision). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in paragraph (1) of this subdivision, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in subparagraph (4)(iv) of this subdivision.

(i) Determination based on no K181 constituents. Generators that have knowledge (e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (see paragraph (3) of this subdivision) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(ii) Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated

is 1,000 metric tons or less, the generator can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of paragraph (3) of this subdivision. To make this determination, the generator must:

(‘a’) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(‘b’) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of subparagraph (4)(iii) of this subdivision for the remainder of the year.

(‘c’) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(‘d’) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(‘1’) The quantity of dyes and/or pigment nonwastewaters generated.

(‘2’) The relevant process information used.

(‘3’) The calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

(iii) Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in clauses ((4)(iii)(‘a’) through (4)(iii)(‘k’) of this subdivision) in order to make a determination that its waste is not K181.

(‘a’) Determine which K181 constituents (see paragraph (3) of this subdivision) are reasonably expected to be present in the wastes based on knowledge of the wastes (e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

(‘b’) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in subparagraph (4)(ii) of this subdivision and keep the records described in clause (4)(ii)(‘d’) of this subdivision. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this subdivision.

(‘c’) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

(‘1’) A discussion of the number of samples needed to characterize the wastes fully;

(‘2’) The planned sample collection method to obtain representative waste samples;

(‘3’) A discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes.

(‘4’) A detailed description of the test methods to be used, including sample preparation, clean up (if necessary), and determinative methods.

(‘d’) Collect and analyze samples in accordance with the waste sampling and analysis plan.

(‘1’) The sampling and analysis must be unbiased, precise, and representative of the wastes.

(‘2’) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the listing levels of paragraph (3) of this subdivision.

(‘e’) Record the analytical results.

(‘f’) Record the waste quantity represented by the sampling and analysis results.

(‘g’) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

(‘h’) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(‘i’) Determine whether the mass of any of the K181 constituents listed in paragraph (3) of this subdivision generated between January 1 and December 31 of any year is below the K181 listing levels.

(‘j’) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(‘1’) The sampling and analysis plan.

(‘2’) The sampling and analysis results (including QA/QC data).

(‘3’) The quantity of dyes and/or pigment nonwastewaters generated.

(‘4’) The calculations performed to determine annual mass loadings.

(‘k’) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.

(‘1’) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(‘2’) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(‘3’) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

(iv) Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(v) Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the requirements of Parts 370 through 374-4 and Part 376 of this Title during the interim period, the generator is in violation and could be subject to an enforcement action for improper management.

Subdivision 371.4(d) introductory language through paragraph 371.4(d)(5) introductory language remain unchanged.

Paragraph 371.4(d)(5) listing for P194 is amended to read as follows:

P194            23135-22-0    [Ethanimidothioc] Ethanimidothioic acid, 2-(dimethylamino)-N-(((methylamino) carbonyl)oxy)-2-oxo-, methyl ester

Paragraph 371.4(d)(6) introductory language remains unchanged.

Paragraph 371.4(d)(6) table listings are amended to read as follows:

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

.....

[U202                   <sup>1</sup>81-07-2    Saccharin, & salts]

.....

U011	61-82-5	1H-1,2,4-Triazol-3-amine
U226	71-55-6	<u>1,1,1-Trichloroethane</u>
U227	79-00-5	1,1,2-Trichloroethane

Paragraph 371.4(e)(1) introductory language through listing for B001 remain unchanged.

Paragraph 371.4(e)(1), listing for B002 is amended to read as follows:

B002    Petroleum oil or other liquid containing 50 ppm or greater of PCBs, but less than 500 ppm PCBs. This includes oil from electrical equipment whose PCB concentration is unknown, except for circuit breakers, reclosers, rectifiers and cable.

Paragraph 371.4(e)(1), listing for B003 remains unchanged.

Paragraph 371.4(e)(1), listing for B004 is amended to read as follows:

B004    PCB Articles containing 50 ppm or greater of PCBs, but less than 500 ppm PCBs, excluding small capacitors. This includes oil-filled electrical equipment whose PCB concentration is unknown, except for circuit breakers, reclosers, rectifiers and cable.

Paragraph 371.4(e)(1), listing for B005 through paragraph 371.4(e)(2) remain unchanged.

Subparagraph 371.4(e)(3)(i) is amended to read as follows:

(i) ‘PCB Article’ means any manufactured article, other than a PCB container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. ‘PCB Article’ includes capacitors, transformers, electric motors, circuit breakers, reclosers, rectifiers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, cable, hydraulic machines, pumps, pipes, and any other manufactured item which is formed to a specific shape or design during manufacture, has end use function(s) dependent in whole or in part upon its shape or design during end use, and has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the PCB Article.

Subparagraph 371.4(e)(3)(ii) through clause 371.4(f)(2)(i)(‘c’) introductory language remain unchanged.

Subclauses 371.4(f)(2)(ii)(‘c’)(‘1’) and (‘2’) are amended to read as follows:

(1) [Rinses]rinses must be tested [in accordance with SW-846, Method 8290] by using an appropriate method.

(2) 'not detected' means at or below the following lower method calibration [limit (MCL) in SW-846, Method 8290, Table 1] limits (MCLs): The 2,3,7,8-TCDD-based MCL-0.01 parts per trillion (ppt), sample weight of 1000 g, IS spiking level of 1 ppt, final extraction volume of 10-50  $\mu$ L (microlitre). For other congeners-multiply the values by 1 for TCDF/PeCDD/PeCDF, by 2.5 for HxCDD/HxCDF/HpCDD/HpCDF, and by 5 for OCDD/OCDF.

Clause 371.4(f)(2)(ii)(d) through subdivision 371.4(h) remain unchanged.

Subdivision 371.4(i) is removed and reserved.

New Section 371.5 is adopted to read as follows:

Section 371.5 – Exclusions/Exemptions

(a) Reserved.

(b) Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they are managed in accordance with the following criteria. If the criteria are not met, the used, broken CRTs are solid waste, and hazardous waste if the definition of hazardous waste is met.

(1) Prior to processing: these materials must be destined for recycling and the following requirements met:

(i) Storage. The broken CRTs must be either:

(a) Stored in a building with a roof, floor, and walls, or

(b) Placed in a container (i.e., a package or a vehicle) that is constructed, filled, and closed to minimize releases to the environment of CRT glass (including fine solid materials or their constituents).

(ii) Labeling. Each container in which the used, broken CRT is contained must be labeled or marked clearly with one of the following phrases: "Used cathode ray tube(s)-contains leaded glass" or "Leaded glass from televisions or computers." It must also be labeled: "Do not mix with other glass materials."

(iii) Transportation. The used, broken CRTs must be transported in a container meeting the requirements of clause 371.4(j)(1)(i)(b) and subparagraph 371.4(j)(1)(ii) of this subdivision.

(iv) Speculative accumulation and use constituting disposal. The used, broken CRTs are subject to the limitations on speculative accumulation as defined in paragraph 371.1(a)(1) of this Part. If they are used in a manner constituting disposal, they must comply with the applicable requirements of section 374-1.3 of this Title instead of the requirements of this subdivision.

(v) Exports. In addition to the applicable conditions specified in subparagraph (1)(i) through (iv) of this subdivision, exporters of used, broken CRTs must comply with the requirements of 40 CFR 261.39(a)(5) as implemented by USEPA (incorporated by reference in subdivision 370.1(e) of this Title).

(‘a’) Notification of intent to export, required to be submitted to USEPA under 40 CFR 261.39(a)(5), must also be submitted to the department.

(2) Requirements for used CRT processing: Used, broken CRTs undergoing CRT processing as defined in subdivision 370.2(b) of this Title must be managed in accordance with the following criteria:

(i) Storage. Used, broken CRTs undergoing CRT processing are subject to the requirement of subparagraph (1)(iv) of this subdivision.

(ii) Processing.

(‘a’) All activities specified in subparagraphs (ii) and (iii) of the definition of ‘CRT processing’ in subdivision 370.2(b) of this Title must be performed within a building with a roof, floor, and walls; and

(‘b’) No activities may be performed that use temperatures high enough to volatilize lead from CRTs.

(3) Processed CRT glass sent to CRT glass making or lead smelting: Glass from used CRTs that is destined for recycling at a CRT glass manufacturer or a lead smelter after processing is not a solid waste unless it is speculatively accumulated as defined in paragraph 371.1(a)(1) of this Part.

(4) Use constituting disposal: Glass from used CRTs that is used in a manner constituting disposal must comply with the requirements of section 374-1.3 of this Title, instead of the requirements of this subdivision.

(c) Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

Used, intact CRTs exported for recycling are not solid wastes if they meet the notice and consent conditions of subparagraph (j)(1)(v) of this section, and if they are not speculatively accumulated as defined in paragraph 371.1(a)(1) of this Part.

(d) Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

CRT exporters who export used, intact CRTs for reuse must comply with the notification and recordkeeping requirements of 40 CFR 261.41 as implemented by USEPA (incorporated by

reference in subdivision 370.1(3) of this Title). Notification of intent to export, required to be submitted to EPA under 40 CFR 261.41(a), must be submitted to the department.

Appendix 19 is amended to read as follows:

## APPENDIX 19

### Representative Sampling Methods

Appendix I to 40 CFR Part 261, as of July 1, 2013 is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

[The methods and equipment used for sampling waste materials will vary with the form and consistency of the waste materials to be sampled. Samples collected using the sampling protocols listed below, for sampling waste with properties similar to the indicated materials, will be considered by the department to be representative of the waste.

Extremely viscous liquid - ASTM Standard D140-70; Crushed or powdered material - ASTM Standard D346-75; Soil or rock-like material - ASTM Standard D420-69; Soil-like material - ASTM Standard D1452-65; Fly Ash-like material - ASTM Standard D2234-76 (ASTM Standards are available from ASTM, 1916 Race Street, Philadelphia, PA 19103) (See 6 NYCRR 370.1(e)).

Containerized liquid waste - "COLIWASA" described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460 (see 6 NYCRR 370.1(e)). (Copies may be obtained from Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street., Cincinnati, OH 45268.)

Liquid waste in pits, ponds, lagoons and similar reservoirs. — "Pond Sampler," described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." These methods are also described in "Samplers and Sampling Procedures for Hazardous Waste Streams," EPA 600/2-80-018, January 1980 (See 6 NYCRR 370.1(e)).

This manual also contains additional information on application of these protocols.]

Appendices 20 and 21 are removed and reserved.

Appendix 22 is amended by deleting the entries K064, K065, K066, K090, and K091.

Appendix 22 is amended by adding the following entry in alphanumeric order (by first column) to read as follows:

K181 Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.

Appendix 23 is amended by adding in alphabetical sequence of common name the following

entries:

o-Anisidine (2-methoxyaniline)

p-Cresidine

2,4-Dimethylaniline (2,4-xylidine)

1,2-Phenylenediamine

1,3-Phenylenediamine

Appendix 23 is amended by deleting the following entry:

[Saccharin and salts (1,2-Benzothiazolin-3-one, 1,1-dioxide, and salts)]