

6 NYCRR SUBPART 373-1 EXPRESS TERMS

Subdivision 373-1.1(a) through subparagraph 373-1.1(b)(4)(ii) remain unchanged.

Subparagraph 373-1.1(b)(4)(iii) is amended to read as follows:

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

Subparagraph 373-1.1(b)(4)(iv) through clause 373-1.1(d)(1)(i)(a) remain unchanged.

Clause 373-1.1(d)(1)(i)(b) is amended to read as follows:

(b) generates in a calendar month any of the following acute hazardous wastes in quantities less than the quantities of hazardous waste specified below:

(1) a total of one kilogram of acute hazardous waste listed in section 371.4(b), (c) and (d)(5) of this Title; or

(2) 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 Title;

Subparagraph 373-1.1(d)(1)(ii) remains unchanged.

Subparagraph 373-1.1(d)(1)(iii) introductory language is amended to read as follows:

(iii) The storage in containers or tanks of hazardous waste that is generated onsite, for a period not exceeding 90 days, other than the storage of liquid hazardous wastes in the Counties of Kings, Nassau, Queens and Suffolk, or over the Schenectady/Niskayuna Aquifer System in Schenectady, Saratoga and Albany Counties and the Clinton Street-Ball Park Valley Aquifer System in Broome and Tioga Counties. [The requirements of this subparagraph do not apply to small-quantity generators.] Storage areas that are exempt must comply with the following requirements:

Clause 373-1.1(d)(1)(iii)(a) remains unchanged.

Clause 373-1.1(d)(1)(iii)(b) is amended to read as follows:

(b) [Reserved.] For all references to Subpart 373-3 of this Title in this subparagraph which require retention of documentation in an operating record, the generator

must maintain these records as required in Subpart 373-3 of this Title. These records must be furnished to the department upon request, postmarked within five business days of receipt of a written request. A generator must make such records available at all reasonable times for inspection by any officer, employee, or representative of the department who is duly designated by the commissioner.

Clause 373-1.1(d)(1)(iii)(c) introductory language through subclause 373-1.1(d)(iii)(c)(4) remain unchanged.

Subclause 373-1.1(d)(1)(iii)(c)(5) is amended to read as follows:

(5) the generator complies with the requirements for personnel training in [section 373-3.2] subdivision 373-3.2(g) of this Part, for preparedness and prevention in section 373-3.3 and contingency plans and emergency procedures in section 373-3.4, and [subparagraph 376.1(g)(1)(v)] with all applicable requirements under Part 376 of this Title; and

Subclause 373-1.1(d)(1)(iii)(c)(6) through clause 373-1.1(d)(1)(iii)(d) remain unchanged.

Clause 373-1.1(d)(1)(iii)(e) is amended to read as follows:

(e) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in paragraphs 371.4(b) and 371.4(d)(5) of this Title, in a calendar month, or greater than 100 kilograms 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 paragraphs 371.4(b) and 371.4(d)(5) of this Title, in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days in the storage area is subject to the requirements of Subparts 373-2 and 373-3 of this Title and the permit requirements of section 373-1.4 of this subpart unless the generator has been granted an extension to the 90-day period. Such [An] extension [of the 90-day period] may be granted by the department [Commissioner] if hazardous wastes must remain onsite for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the [Commissioner] department on a case-by-case basis.

Subparagraph 373-1.1(d)(1)(iv) introductory language remains unchanged.

Clauses 373-1.1(d)(1)(iv)(a) through (c) are repealed.

[(a) Reserved.

(b) Reserved.

(c) the facility submits a written notification to the appropriate regional office stating that it qualifies for this exemption;]

Clauses 373-1.1(d)(1)(iv)(‘d’) through (‘h’) are renumbered clauses 373-1.1(d)(1)(iv)(‘a’) through (‘e’).

(Renumbered clauses 373-1.1(d)(1)(iv)(‘a’) through (‘c’) remain unchanged)

Renumbered clause 373-1.1(d)(1)(iv)(‘d’) is amended to read as follows:

[(‘g’)](‘d’) For a small quantity generator, the requirements of subclauses [(f)(1) and (2)](‘c’)(‘1’) and (‘2’) of this subparagraph must be met at the time more than 185 gallons of liquid hazardous waste are accumulated or at the time any liquid hazardous wastes are accumulated in underground storage tanks. (Waste stored in areas exempted by subparagraph (vi) or (xiv) of this paragraph and characteristic hazardous waste stored prior to recycling are excluded from these volumes.) The storage of hazardous waste must also comply with the requirements of section 372.2(a)(8)(iii) through (v) of this Title.

Renumbered clause 373-1.1(d)(1)(iv)(‘e’) is amended to read as follows:

(‘e’) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in paragraphs 371.4(b) and 371.4(d)(5) of this Title, in a calendar month, or greater than 100 kilograms 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 paragraphs 371.4(b) and 371.4(d)(5) of this Title, in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days in the storage area is subject to the requirements of Subparts 373-2 and 373-3 of this Title and the permit requirements of section 373-1.4 of this subpart unless the generator has been granted an extension to the 90-day period. Such [An] extension [of the 90-day period] may be granted by the department [Commissioner] if hazardous wastes must remain onsite for longer than 90 days due to unforeseen, temporary and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the [Commissioner] department on a case-by-case basis.

Subparagraph 373-1.1(d)(1)(v) through clause 373-1.1(d)(1)(viii)(‘a’) remain unchanged.

Clause 373-1.1(d)(1)(viii)(‘b’) is amended to read as follows:

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

Clause 373-1.1(d)(1)(viii)(‘c’) through subparagraph 373-1.1(d)(1)(xi) remain unchanged.

Subparagraph 373-1.1(d)(1)(xii) is amended to read as follows:

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

(a) Except as provided in clauses (b) and (c) below, exempt units must comply with the following:

[(a)] (1) the requirements for personnel training in [section 373-3.2] subdivision 373-3.2(g) of this Part, for preparedness and prevention in section 373-3.3, and for contingency plans and emergency procedures in section 373-3.4;

[(b)] (2) [the] elementary neutralization units [are] that qualify as containers must be managed in accordance with section[s] 373-3.9 Use and Management of Containers [and 373-3.10(k)] of this Part;

[(c)] (3) all [areas,] containers and tanks used to treat hazardous waste must be marked with the words "[hazardous waste] Hazardous Waste" and other words that identify the contents. For underground tanks, the marking must be placed on a sign in the area above the tank and on the fill port; and

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

[(e)] (4) if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 high TOC subcategory defined in section 376.4(a) of this Title, Table Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in sections 373-2.2(i)(2) and 373-3.2(h)(2) of this Part.

(b) Small quantity generators, as defined in subdivision 370.2(b) of this Title, must meet the requirements of 372.2(a)(8)(iii)(e) for these units, and subclauses (a)(2), (a)(3), and (a)(4) of this subparagraph.

(c) Conditionally exempt small quantity generators, as defined in 371.1(f) of this Title, must meet the requirements of subparagraph 373-1.1(d)(1)(v) of this paragraph, provided the waste is managed immediately upon generation in the unit.

Subparagraph 373-1.1(d)(1)(xiii) through clause 373-1.1(d)(1)(xx) remain unchanged.

Clause 373-1.1(d)(1)(xxi) is repealed.

Paragraph 373-1.1(d)(2) through clause 373-1.4(a)(5)(iv)(a) remain unchanged.

Clause 373-1.4(a)(5)(iv)(b) is amended to read as follows:

(b) For remedial action plans (RAPs) under section 373-1.11 of this Subpart, if the operator certifies according to clause (a) of this subparagraph, then the owner may choose to make the following certification instead of the certification in clause (a) of this subparagraph:

"Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, [upon information] to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Subdivisions 373-1.4(b) through (g) remain unchanged.

Subdivision 373-1.4(h) is renumbered (i).

New subdivision 373-1.4(h) is adopted to read as follows:

(h) If the department concludes, based on one or more of the factors listed in paragraph (1) of this subdivision, that compliance with the standards of 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, alone may not be protective of human health and/or the environment, the department will require additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The department may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The department will base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, alone is protective of human health and the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations including unique dispersion patterns, proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), and other relevant considerations;

(ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;

(iii) Identities and quantities of non-dioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(vi) Volume and types of wastes, for example wastes containing highly toxic constituents;

(vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(ix) Such other factors as may be appropriate.

(2) Reserved.

Paragraph 373-1.5(a)(1) is amended to read as follows:

(a) General Requirements.

(1) The permit application consists of a completed Part A application, the general information requirements of this section, and the specific information requirements in subdivisions of this Subpart applicable to the facility. The information requirements presented in subdivisions (a)-(p) of this section reflect the standards in Subpart 373-2 of this Part. These information requirements are necessary in order for the department to determine compliance with the Subpart 373-2 standards. If the owner and operator of a hazardous waste management facility can demonstrate, to the department's satisfaction, that the information prescribed in this paragraph, other than in the Part A application, cannot be provided to the extent required, the department may make allowance for submission of such information on a case-by-case basis. However, such submission must be sufficient to allow the department to determine compliance with the

Subpart 373-2 standards. Information requirements in this section must be submitted to the department and signed in accordance with requirements in paragraph 373-1.4(a)(5) of this Subpart. Certain technical data, such as design drawings and specifications, and engineering studies and reports must be certified by a professional engineer registered in New York State. The location of property boundaries must be certified by a person or firm registered to practice land surveying in the State of New York. For post-closure permits, the information specified in subdivision (o) of this section is required in the permit application.

(Paragraph 373-1.5(a)(2) introductory language through subparagraph 373-1.5(a)(2)(vii) remain unchanged.)

Clause 373-1.5(a)(2)(viii)(a) is amended to read as follows:

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

(a) prevent hazards in loading and unloading operations [(for example, ramps, special forklifts)]. Physical hazards may be minimized, for example, by using ramps and special forklifts. Procedures and equipment used to prevent or contain spills must take into account the pressure and volume of the transfer lines, and the time needed for an operator to respond to a spill (e.g., failure of a transfer line or connection point);

Clause 373-1.5(a)(2)(viii)(b) through paragraph 373-1.5(d)(10) introductory language remain unchanged.

Subparagraph 373-1.5(d)(10)(i) is amended to read as follows:

(i) Any Part 373 permit application submitted by an owner or operator of a facility that stores, treats or disposes [of] hazardous waste in a surface impoundment must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous waste or hazardous constituents through releases related to the unit. At a minimum, the information must address:

(Subparagraph 373-1.5(d)(10)(ii) through subdivision 373-1.5(e) remain unchanged.)

Subdivision 373-1.5(f) introductory text is amended to read as follows:

(f) Specific information requirements for incinerators. Except as section 373-2.15(a) of this Part and paragraph (5) of this subdivision [provides] provide otherwise, owners and operators of facilities that incinerate hazardous waste must fulfill the requirements of paragraph (1), (2) or (3) of this subdivision.

Paragraph 373-1.5(f)(1) through clause 373-1.5(f)(3)(i)(b) remain changed.

Clauses 373-1.5(f)(3)(i)(c) and (d) are amended to read as follows:

(c) an identification of any hazardous organic constituents listed in Appendix 23 of this Title that are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Appendix 23 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques that are ELAP certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP certified[specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in subdivision 370.1(e) of this Title, or their equivalent];

(d) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by [the] appropriate analytical methods that are ELAP certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP certified[specified in "Test Methods For Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in subdivision 370.1(e) of this Title];

Clause 373-1.5(f)(3)(i)(e) through paragraph 373-1.5(f)(4) remain unchanged.

New paragraph 373-1.5(f)(5) is adopted to read as follows:

(5) (i) Except as set forth in subparagraphs (ii) and (iii) of this paragraph, the requirements of this subpart do not apply to a hazardous waste incineration unit when the owner or operator of the hazardous waste incineration unit that demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) of subpart EEE, documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title).

(ii) The department may request additional information related to the hazardous waste incineration unit in accordance with subdivisions 373-1.4(h) and (i), and impose permit conditions as necessary to protect human health and the environment in accordance with paragraph 373-1.6(c)(2) of this subpart.

(iii) If the owner or operator of a hazardous waste incineration unit elects to comply with clause 373-1.12(a)(1)(i)(‘a’) of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with paragraphs 373-2.15(f)(1) and (3) of this Part.

Subdivisions 373-1.5(g) and (h) remain unchanged.

Subdivision 373-1.5(i) introductory text is adopted to read as follows:

(i) Specific information requirements for boilers and industrial furnaces burning hazardous waste.

Except as set forth in paragraph (7) of this subdivision, the standards of this subpart do not apply to a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that becomes subject to Part 373 permit requirements after October 12, 2005, or no longer apply to a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace when the owner or operator of the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) of subpart EEE, documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title).

Paragraph 373-1.5(i)(1) introductory text through subclause 373-1.5(i)(1)(ii)(‘b’)(‘1’) remain unchanged.

Subclause 373-1.5(i)(1)(ii)(‘b’)(‘2’) is amended to read as follows:

(‘2’) results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in Appendix 23 of this Title, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve

proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP certified [specified in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (incorporated by reference, see subdivision 370.1(e)].

Subclause 373-1.5(i)(1)(ii)(b)(3) through paragraph 363-1.5(i)(6) remain unchanged

New paragraph 373-15.(i)(7) is adopted to read as follows:

The requirements of this subdivision continue to apply as follows:

(i) The department may request additional information related to the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace in accordance with subdivisions 373-1.4(h) and (i), and impose permit conditions as necessary to protect human health and the environment in accordance with paragraph 373-1.6(c)(2) of this Subpart.

(ii) If the owner or operator elects to comply with clause 373-1.12(a)(1)(i)(a) of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with subparagraph 374-1.8(c)(5)(i) and clause 374-1.8(c)(5)(ii)(c) of this Title.

(iii) If the boiler or industrial furnace is an area source and the owner or operator elects to comply with the subdivisions 374-1.8(f), (g) and (h) standards of this Title and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals.

Subdivision 373-1.5(j) through subparagraph 373-1.5(k)(4)(ii) remain unchanged.

Subparagraph 373-1.5(k)(4)(iii) is amended to read as follows:

(iii) a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in section 370.1(e) of this Title) or other engineering texts acceptable to the [commissioner] department that present basic control device [design] information. The design analysis [shall] must address the vent stream characteristics and control device operation parameters as specified in section 373-2.27(f)(2)(iv)(c) of this Part;

Subparagraph 373-1.5(k)(4)(iv) through subparagraph 373-1.5(l)(5)(ii) remain unchanged.

Subparagraph 373-1.5(l)(5)(iii) is amended to read as follows:

(iii) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in section 370.1(e) of this Title) or other engineering texts acceptable to the [commissioner] department that [prevent] present basic control device [design] information. The design analysis [shall] must address the vent stream characteristics and control device operation parameters as specified in section 373-2.27(f)(2)(iv)(c) of this Part;

Subparagraph 373-1.5(l)(5)(iv) through subparagraph 373-1.6(a)(12)(ii) introductory language remain unchanged.

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

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

Clause 373-1.6(a)(12)(ii)(b) through paragraph 373-1.6(c)(1) remain unchanged.

Paragraph 373-1.6(c)(2) is amended to read as follows:

(2) Each permit will include permit conditions necessary to achieve compliance with RCRA and its regulations and article 27, title 9 of the ECL and its regulations, including each of the applicable requirements specified in Subpart 373-2 and Parts 374 and 376 of this Title. In satisfying this provision, the [commissioner] department may incorporate applicable requirements of Subpart 373-2 and Parts 374 and 376 of this Title directly into the permit or establish other permit conditions that are based on this Part. The [commissioner] department may impose permit conditions as the [commissioner] department determines necessary to protect human health and the environment. If, as the result of an assessment or other information, the department determines that conditions are necessary in addition to those required under 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, Subpart 373-2 of this Part, or Subpart 374-1 of this Title, to ensure protection of human health and the environment, the department will include those terms and conditions in a Part 373 permit for a hazardous waste combustion unit.

Paragraph 373-1.6(c)(3) through subdivision 373-1.6(d) remain unchanged.

Subdivision 373-1.6(e) is amended to read as follows:

(e) ‘Effect of a permit.’ (1) Compliance with a permit issued pursuant to this Part during its term constitutes compliance, for purposes of enforcement, with Parts 370 through 374 and 376 of this Title except for those requirements not included in the permit which:

[(1)](i) become effective by statute;

[(2)](ii) are promulgated under Part 376 of this Title restricting the placement of hazardous wastes in or on the land;

[(3)](iii) are promulgated under Subpart 373-2 of this Part regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of section 373-1.7 of this Subpart for major modifications; or

[(4)](iv) are promulgated under section 373-3.27, 373-3.28 or 373-3.29 of this Part limiting air emissions.

(2) A permit may be modified, revoked, and reissued, or terminated during its term for cause as set forth in subdivision 373-1.7(b)

Subdivision 373-1.7(a) through subparagraph 373-1.7(c)(1)(vii) remain unchanged.

New subparagraph 373-1.7(c)(1)(viii) is adopted to read as follows:

(viii) changes to remove permit conditions that are no longer applicable or that result from the facility opting out pursuant to 373-1.7(c)(12)(iv) (i.e., because the standards upon which they are based are no longer applicable to the facility).

Paragraph 373-1.7(c)(2) through subparagraph 373-1.7(c)(12)(ii) remain unchanged.)

Subparagraph 373-1.7(c)(12)(iii) is amended and new subparagraph 373-1.7(c)(12)(iv) is adopted to read as follows:

(iii) Technology changes needed to meet standards under 40 CFR Part 63 (subpart EEE, National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), as incorporated by reference and implemented by subdivisions 200.10(a) and (d) [in section 370.1(e)] of this Title, provided the procedures of subdivision (j) of this section are followed.

(iv) Transition from Part 373 permit provisions to 40 CFR Part 63 Subpart EEE. Changes to Part 373 permit provisions needed to support transition to 40 CFR part 63 (subpart EEE, National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), as incorporated and implemented by subdivisions 200.10(a) and (d) of this Title, provided the procedures of subdivision (k) of this section are followed.

Paragraph 373-1.7(c)(13) through clause 373-1.7(c)(15)(ii)(a) remain unchanged.

New clause 373-1.7(c)(15)(ii)(b) is adopted to read as follows:

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

Subdivision 373-1.7(d) remains unchanged.

Subdivision 373-1.7(e) is amended to read as follows:

(e) Announcement of determination. Upon receipt of the commissioner's determination, the permittee must send an announcement of every minor modification to all persons on the facility mailing list maintained by the commissioner under section [621.7(i)(6)] 621.7(i)(7) of this Title, to any unit of local government having jurisdiction over the area where the facility is proposed to be located, and to each State agency having any authority under State law with respect to the construction or operation of such facility. This announcement must be made within 90 calendar days after the commissioner approves the request as a minor modification.

Subdivision 373-1.7(f) through subparagraph 373-1.7(f)(2)(ii) remain unchanged.

Subparagraph 373-1.7(f)(2)(iii) is amended to read as follows:

(iii) The permittee must send an announcement about the temporary authorization request to all persons on the facility mailing list maintained by the commissioner under section [621.7(i)(6)] 621.7(i)(7) of this Title, to any unit of local government having jurisdiction over the area where the facility is proposed to be located, and to each State agency having any authority under State law with respect to the construction or operation of such facility. This announcement must be made within seven days of submission of the authorization request.

Paragraph 373-1.7(f)(3) through subdivision (j) introductory language remain unchanged.

Paragraph 373-1.7(j)(1) is amended, and new paragraph 373-1.7(j)(2) and new subdivision 373-1.7(k) are adopted to read as follows:

(1) Facility owners or operators must [comply] have complied with the Notification of Intent to Comply (NIC) requirements of [40 CFR 63.1211] 40 CFR 63.1210 of subpart EEE that were in effect prior to October 11, 2000 (see 40 CFR part 63 sections 1200 through 1499, revised as of July 1, 2000, as incorporated by reference in [section] subparagraph 370.1(e)(2)(vi) of this Title,) in order to request [before] a permit modification [can be requested] under this Subpart for the purpose of technology changes needed to meet the standards under 40 CFR part 63, subpart EEE, sections 1203, 1204 and 1205, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title.

(2) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) of subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR part 63, subpart EEE, sections 1215, 1216, 1217, 1218, 1219, 1220, and 1221 standards, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title.

(k) Waiver of Part 373 permit conditions in support of transition to the 40 CFR part 63 subpart EEE MACT standards, as incorporated and implemented by subdivisions 200.10(a) and (d) of this Title.

(1) The owner or operator may request that the department waive specific Part 373 operation and emissions limits by submitting a minor modification request under subparagraph 373-1.7(c)(12)(iv) of this section. The owner or operator must:

(i) Identify the specific Part 373 permit operating and emissions limits which the owner or operator is requesting to waive;

(ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between Part 373 permit and MACT compliance; and

(iii) Discuss how the revised provisions will be sufficiently protective of human health and the environment.

(2) To request this modification in conjunction with MACT performance testing where the permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR part 63, subpart EEE, sections 1207(h)(2)(i) and (ii), as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the department), the owner or operator must:

(i) Submit the modification request to the department at the same time as they submit the test plans to the department; and

(ii) The department will approve or deny the request contingent upon approval of the test plans.

Section 373-1.8 remains unchanged.

Subdivision 373-1.9(a) is amended by adding introductory text to read as follows:

(a) Hazardous waste incinerator permits.

Except as set forth in paragraph (5) of this subdivision, the standards of this subpart do not apply to a hazardous waste incineration unit that becomes subject to Part 373 permit requirements after October 12, 2005, or no longer apply to a hazardous waste incineration unit when the owner or operator of the hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, Subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) of subpart EEE, documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title).

Paragraph 373-1.9(a)(1) through subclause 373-1.9(a)(2)(ii)('a')('2') remain unchanged.

Subclauses 373-1.9(a)(2)(ii)('a')('3') and ('4') are amended to read as follows:

(3) an identification of any hazardous organic constituent listed in Appendix 23 of this Title that are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Appendix 23 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on appropriate analytical techniques that are ELAP-certified analytical methods. If ELAP-certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP-certified[specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical

Methods," EPA Publication SW-846, as incorporated by reference in subdivision 370.1(e) of this Title, or their equivalent]; and

(4) an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by [the] appropriate analytical methods that are ELAP-certified analytical methods. If ELAP-certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP-certified.[specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in subdivision 370.1(e) of this Title, or their equivalent;]

Clause 373-1.9(a)(2)(ii)(b) through paragraph 373-1.9(a)(4) remain unchanged.

New paragraph 373-1.9(a)(5) is adopted to read as follows:

(i) The department may request additional information related to the hazardous waste incineration unit in accordance with subdivisions 373-1.4(h) and (i), and impose permit conditions as necessary to protect human health and the environment in accordance with paragraph 373-1.6(c)(2) of this Subpart.

(ii) If the owner or operator of the hazardous waste incineration unit elects to comply with clause 373-1.12(a)(1)(i)(a) of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with paragraphs 373-2.15(f)(1) and (3) of this Part.

Subdivisions 373-1.9(b) and (c) remain unchanged.

Subdivision 373-1.9(d) is amended by adding introductory text to read as follows:

(d) Permits for boilers and industrial furnaces burning hazardous waste. Except as set forth in paragraph (d)(8) of this subdivision, the standards of this subpart do not apply to a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that becomes subject to Part 373 permit requirements after October 12, 2005, or no longer apply to a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace when the owner or operator of the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations

in 40 CFR Part 63, Subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) of subpart EEE, documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title).

Paragraph 373-1.9(d)(1) through subparagraph 373-1.9(d)(3)(ii) introductory language remain unchanged.

Clauses 373-1.9(d)(3)(ii)(a) and (b) are amended to read as follows:

(a) an identification of any hazardous organic constituents listed in Appendix 23 of this Title that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix 23 that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP-certified; [specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in subdivision 370.1(e) of this Title, or their equivalent;]

(b) an approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by [the] appropriate analytical methods that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other established methods (e.g. Standard Methods for the Evaluation of Water and Wastewater, ANSI, ASTM, DOD). If no established method is available, the department will review the proposed analytical method to ensure that resulting data will meet their data quality objective. Department approval is required for any analysis that is not ELAP certified; [specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in subdivision 370.1(e) of this Title, or their equivalent.]

Clause 373-1.9(d)(3)(ii)(c) through paragraph 373-1.9(d)(7) remain unchanged.

New paragraph 373-1.9(d)(8) is adopted to read as follows:

The requirements of this subdivision continue to apply as follows:

(i) The department may request additional information related to the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace in accordance with subdivisions 373-1.4(h) and (i), and impose permit conditions as necessary to protect human health and the environment in accordance with paragraph 373-1.6(c)(2) of this Subpart.

(ii) If the owner or operator elects to comply with clause 373-1.12(a)(1)(i)(‘a’) of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with subparagraph 374-1.8(c)(5)(i) and clause 374-1.8(c)(5)(ii)(‘c’) of this Title.

(iii) If the boiler or industrial furnace is an area source and the owner or operator elects to comply with the subdivisions 374-1.8(f), (g) and (h) standards of this Title and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals.

Paragraph 373-1.9(e) through paragraph 373-1.10(a)(2) introductory language remains unchanged.

Paragraph 373-1.10(a)(2) is removed and reserved.

Paragraph 373-1.10(a)(3) through subparagraph 373-1.11(e)(1)(vi) remain unchanged.

Subparagraph 373-1.11(e)(1)(vii) is amended to read as follows:

(vii) [If you wish t]To renew [your]an existing RAP, [you must submit] a complete application for permit renewal must be submitted at least 180 days before the expiration date of the existing RAP as required by Part 621 of this Title;

Paragraph 373-1.11(e)(2) through subdivision 373-1.11(g) remain unchanged.

New section 373-1.12 is adopted to read as follows:

Section 373-1.12 Integration with Maximum Achievable Control Technology (MACT) Standards

(a) Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.

(1) Facilities with existing permits.

(i) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a Part 373-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the department address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to paragraphs 373-2.15(a)(3) and 374-1.8(a)(2) of this Title:

(‘a’) retain relevant permit conditions. Under this option, the department will:

(‘1’) Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR Part 63, section 1206(c)(2) of subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title; and

(‘2’) Limit applicability of the permit conditions identified in subclause (‘1’) of this clause to the period when the facility is operating under its startup, shutdown, and malfunction plan.

(‘b’) revise relevant permit conditions.

(‘1’) Under this option, the department will:

(‘i’) Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.

(‘ii’) Retain or add the permit requirements identified in item (‘i’) of this subclause to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(‘2’) Changes that may significantly increase emissions.

(‘i’) The owner or operator must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The owner or operator must notify the department of such changes within five days of making such changes. The owner or operator

must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(‘ii’) The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(‘A’) Upon permit renewal, or

(‘B’) By modifying the permit under section 373-1.7 of this Part, if warranted.

(‘C’) remove permit conditions. Under this option:

(‘1’) The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR Part 63, subpart EEE, section 1206(c)(2), has been approved by the department under 40 CFR Part 63, subpart EEE, section 1206(c)(2)(ii)(B), as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title; and

(‘2’) The department will remove permit conditions that are no longer applicable according to paragraphs 373-2.15(a)(3) and 374-1.8(a)(2) of this Title.

(ii) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the department a Notification of Compliance documenting compliance with the standards of 40 CFR Part 63, subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, may request in the application to reissue the permit for the combustion unit that the department control emissions from startup, shutdown, and malfunction events under any of the following options:

(‘a’) Part 373 option A.

(‘1’) Under this option, the department will:

(‘i’) Include, in the permit, conditions that ensure compliance with paragraphs 373-2.15(f)(1) and (3) of this Part or subparagraph 374-1.8(c)(5)(i) and clause 374-1.8(c)(5)(ii)(‘c’) of this Title to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and

(‘ii’) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan; or

(‘b’) Part 373 option B.

(‘1’) Under this option, the department will:

(‘i’) Include, in the permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and

(‘ii’) Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

(‘2’) Changes that may significantly increase emissions.

(‘i’) The owner or operator must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The owner or operator must notify the department of such changes within five days of making such changes. The owner or operator must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.

(‘ii’) The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:

(‘A’) Upon permit renewal, or

(‘B’) By modifying the permit under section 373-1.7 of this Part, if warranted; or

(‘C’) CAA option. Under this option:

(‘1’) The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR part 63, subpart EEE, section 1206(c)(2) has been approved by the department under 40 CFR part 63, subpart EEE, section 1206(c)(2)(ii)(B), as incorporated by reference and implemented by subdivision 200.10(a) and (d) of this Title; and

(‘2’) The department will omit, from the permit, conditions that are not applicable under paragraphs 373-2.15(a)(3) and 374-1.8(a)(2) of this Title.

(2) Interim status facilities.

(i) Interim status operations. In compliance with subdivision 373-3.15(a) and paragraph 374-1.8(a)(2) of this Title, the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Subpart 373-3 or 374-1 of this Title may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the department a Notification of Compliance documenting compliance with the standards of 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title.

(‘a’) Part 373 option. Under this option, the owner or operator continues to comply with the interim status emission standards and operating requirements of Subpart 373-3 or 374-1 of this Title relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

(‘b’) CAA option. Under this option, the owner or operator is exempt from the interim status standards of Subpart 373-3 or 374-1 of this Title relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the department that the startup, shutdown, and malfunction plan required under 40 CFR part 63, subpart EEE, section 1206(c)(2), as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title has been approved by the department under 40 CFR part 63, subpart EEE, section 1206(c)(2)(ii)(B), as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title .

(ii) Operations under a subsequent Part 373 permit. When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Subpart 373-3 or 374-1 of this Title submits a Part 373 permit application, the owner or operator may request that the department control emissions from startup, shutdown, and malfunction events under any of the options provided by clauses (1)(ii)(‘a’), (‘b’) or (‘c’) of this subdivision.

(3) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that became subject to Part 373 permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(i) Comply with the requirements specified in 40 CFR part 63, subpart EEE section 1206(c)(2) as incorporated by reference and implemented by subdivision 200.10(a) and (d) of this Title; or

(ii) Request to include in the Part 373 permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The department will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.