

6 NYCRR SUBPART 373-2 EXPRESS TERMS

Paragraphs 373-2.1(a)(1) through (5) remain unchanged.

Paragraph 373-2.1(a)(6) is amended to read as follows:

(6) The requirements of this Subpart apply to those portions of a facility managing recyclable materials described in subparagraphs 371.1(g)(1)(ii), (iii) and (iv) of this Title only to the extent that the requirements of this Subpart are referred to in sections 374-1.3, 374-1.6, 374-1.7, 374-1.8 or Subpart 374-2 of this Title.

Paragraph 373-2.1(a)(7) introductory language through subparagraph 373-2.1(a)(7)(ii) remain unchanged.

Subparagraph 373-2.1(a)(7)(iii) is amended to read as follows:

(iii) [thermostats] mercury-containing equipment as described in subdivision 374-3.1(d) of this Title; and

Subparagraph 373-2.1(a)(7)(iv) through subdivision 373-2.2(c) remain unchanged.

Paragraph 373-2.2(d)(1) is amended to read as follows:

(1) The owner or operator of a facility that has arranged to receive hazardous waste from a source outside of the United States must notify the department in writing at least four weeks in advance of the date on which the first shipment of [a given] the hazardous waste is expected to arrive at the facility. The owner or operator of a facility that has arranged to receive hazardous waste from an OECD country, as defined in section 372.5(h)(1) of this Title must also notify the EPA regional administrator in writing at least four weeks in advance of the date on which the first shipment of [a given] the hazardous waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

Note: for purposes of reference only: The owner or operator of a recovery facility that has arranged to receive hazardous waste from an OECD member country, as defined in paragraph 372.5(h)(1) of this Title, must also meet the requirement of 40 CFR 264.12(a)(2).

Paragraph 373-2.2(d)(2) through subparagraph 373-2.2(h)(1)(iii) remain unchanged.

New subparagraph 373-2.2(h)(1)(iv) is adopted to read as follows:

(iv) For facility employees who receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

Paragraph 373-2.2(h)(2) is amended to read as follows:

(2) Facility personnel must successfully complete the program required in [subdivision (a) of this section] paragraph (1) of this subdivision within [six months after the effective date of these regulations or] six months after the date of their employment or an assignment to a facility, whichever is later. Employees [hired after the effective date of these regulations] must not work in unsupervised positions until they have completed the training requirements of paragraph (1) of this subdivision.

Paragraph 373-2.2(h)(3) through paragraph 373-2.4(c)(1) remain unchanged.

Paragraph 373-2.4(c)(2) is amended to read as follows:

(2) If the owner or operator has already prepared a spill prevention, control, and countermeasures (SPCC) Plan as defined in section 610.2(j) of this Title and 40 CFR part 300, or some other emergency or contingency plan, that plan need only be amended to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Subpart (see section 370.1(e) of this Title). The owner or operator may develop one contingency plan which meets all regulatory requirements. When modifications are made to the non-Part 370 through 374 and Part 376 provisions in an integrated contingency plan, the changes do not trigger the need for a Part 373 permit modification.

Paragraph 373-2.4(c)(3) through subparagraph 373-2.4(g)(4)(i) remain unchanged.

Subparagraph 373-2.4(g)(4)(ii) introductory language is amended to read as follows:

(ii) The emergency coordinator must immediately notify both the department (using the New York State 24-hour oil and hazardous material spill notification number [518/457-7362] 518/402-9543) and either the government official designated as the on-scene coordinator for that geographical area (in the applicable regional contingency plan under 40 CFR part 300[,] (see section 370.1(e) of this Title), or the National Response Center (using their 24-hour toll-free number, 800/424-8802). The report must include:

Clause 373-2.4(g)(4)(ii)(a) through clause 373-2.5(b)(1)(i)(b)(4) remain unchanged.

Subclause 373-2.5(b)(1)(i)(b)(5) is amended to read as follows:

(5) within 10 calendar days of delivery, mail a copy of the manifest to the generator, the generator state and the destination state (if different from the generator state), making legible photocopies as necessary. Mail the department copy to: New York State Department of Environmental Conservation, [Division of Solid & Hazardous Materials, Manifest Section], 625 Broadway, Albany, NY 12233-7252[. Facilities do not need to distribute manifest copies to states other than New York, if those states do not require such a copy be submitted to them]; and

Subclause 373-2.5(b)(1)(i)(b)(6) remains unchanged.

Clause 373-2.5(b)(1)(i)(c) is amended to read as follows:

(c) If a facility receives hazardous waste imported from a foreign source, the receiving facility must also mail a copy of the manifest and documentation confirming EPA's

consent to the import of hazardous waste to the following address within 30 days of delivery:

[International Compliance Assurance Division
OFA/OECA (2254A),] Office of Enforcement and Compliance Assurance, Office of Federal
Activities, International Compliance Assurance Division (2254A), U.S. Environmental
Protection Agency, [Ariel Rios Building] 1200 Pennsylvania Avenue, NW, Washington, DC
20460

Note: for purposes of reference only: The owner or operator of a recovery facility that has
arranged to receive hazardous waste from an OECD Member country, as defined in paragraph
372.5(h)(1) of this Title, must also meet the requirement of 40 CFR 264.71(d).

Clause 373-2.5(b)(1)(i)('d') through subparagraph 373-2.5(b)(1)(iv) remain unchanged.

Subparagraph 373-2.5(b)(1)(v) introductory language is amended to read as follows:

(v) Except as provided in clause ('g') of this subparagraph, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest for each manifest with a full or partial load rejection in accordance with [section] subdivision 372.2(b) of this Title and the following instructions:

Clause 373-2.5(b)(1)(v)('a') through ('e') remain unchanged.

Clause 373-2.5(b)(1)(v)('f') is amended to read as follows:

(f) Sign the generator's/offeror's certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

Clause 373-2.5(b)(1)(v)('g') remains unchanged.

Subparagraph 373-2.5(b)(1)(vi) introductory language and clause 373-2.5(b)(1)(vi)('a') are amended to read as follows:

(vi) Except as provided in clause ('g') of this subparagraph, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest for each manifest with a full or partial load rejection in accordance with [section] subdivision 372.2(b) of this Title and the following instructions:

(a) Write the facility's U.S. EPA ID number in item 1 of the new manifest. Write the [generator's] facility's name and mailing address in item 5 of the new manifest. If the mailing address is different from the [generator's] facility's site address, then write the [generator's] facility's site address in the designated space for item 5 of the new manifest.

Clauses 373-2.5(b)(1)(vi)('b') through ('e') remain unchanged.

Clauses 373-2.5(b)(1)(vi)('f') and ('g') are amended and new clause ('h') is adopted to read as follows:

(‘f’) Sign the generator’s/offerer’s certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation, and mail a signed copy of the manifest to the generator identified in item 5 of the new manifest.

(‘g’) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing items 18a and 18b of the manifest and supplying the generator’s information in the alternate facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany this shipment. If the original manifest is not used, then the facility must use a new manifest and comply with clauses (‘a’), (‘b’), (‘c’), (‘d’), (‘e’), [and] (‘f’), and (‘h’) of this subparagraph.

(‘h’) For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in subparagraph 372.2(c)(3)(i) of this Title.

Subparagraph 373-2.5(b)(1)(vii) through subparagraph 373-2.5(b)(2)(iii) remain unchanged.

Subparagraph 373-2.5(b)(2)(iv) is amended to read as follows:

(iv) reject the shipment of hazardous waste, and:

(‘a’) manage the hazardous waste pursuant to paragraph (1)(iv) of this subdivision;

(‘b’) manifest the hazardous waste pursuant to paragraph (1)(v) or (1)(vi) of this subdivision as appropriate, except that the phrase “unmanifested shipment from” and the generator's EPA ID number (if known) or the generator's name and address will be inserted into Item 14 “Special Handling and Additional Information” block of the new manifest; [instruct the transporter to return the hazardous waste to the generator,] and

(‘c’) file an unmanifested waste report in accordance with subparagraph (3)(ii) of this subdivision.

Paragraph 373-2.5(b)(3) through subparagraph 373-2.5(c)(2)(i) remain unchanged.

Subparagraph 373-2.5(c)(2)(ii) is amended to read as follows:

(ii) the location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows [of] each cell or disposal area. For all facilities, this information must include cross-references to [specific] manifest document numbers[,] if the waste was accompanied by a manifest;

Subparagraphs 373-2.5(c)(2)(iii) to (vii) remain unchanged.

Subparagraph 373-2.5(c)(2)(viii) is amended to read as follows:

(viii) all closure cost estimates under section 373-2.8(c) of this Subpart, and[,] for disposal facilities, all post-closure cost estimates under section 373-2.8(e) of this Subpart; [and] Subparagraphs 373-2.5(c)(2)(ix) to (xvii) remain unchanged.

New subparagraph 373-2.5(c)(2)(xviii) is adopted to read as follows:

(xviii) certifications as required by paragraph 373-2.10(g)(6) of this Subpart.

Subdivision 373-2.5(d) through paragraph 373.2.6(h)(1) introductory language remain unchanged.

Subparagraphs 373-2.6(h)(1)(i) through clause 373-2.6(h)(i)(a) are amended to read as follows:

(i) represent the quality of background groundwater [water] that has not been affected by leakage from a regulated unit;

(a) a determination of background groundwater quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

Subclause 373-2.6(h)(i)(a)(1) through subdivision 373-2.6(i) introductory language remain unchanged.

Paragraph 373-2.6(i)(1) is amended to read as follows:

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in [ground water] groundwater. The commissioner will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

Subparagraph 373-2.6(i)(1)(i) through paragraph 373-2.6(i)(3) remain unchanged.

Paragraph 373-2.6(i)(4) is amended to read as follows:

(4) The [commissioner]department will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this subdivision in accordance with paragraph (h)(7) of this section. [A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring.]

Paragraph 373-2.6(i)(5) through subparagraph 373-2.6(i)(8)(i) remain unchanged.

Subparagraphs 373-2.6(i)(8)(ii) and (iii) are amended to read as follows:

(ii) immediately sample the [ground water] groundwater in all monitoring wells at the compliance point and determine whether constituents [identified] in the list of Appendix 33 of this Title are present and, if so, at what concentration. However, the department, on a

discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix 33 list of this part and other representative/related waste constituents;

(iii) For any Appendix 33 compounds found in the analysis pursuant to subparagraph (8)(ii) of this subdivision, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the department and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds [found pursuant to] in subparagraph (8)(ii) of this subdivision, the hazardous constituents found during this initial Appendix 33 analysis will form the basis for compliance monitoring.

Subparagraph 373-2.6(i)(8)(iv) through paragraph 373-2.6(j)(4) remain unchanged.

Paragraphs 373-2.6(j)(5) and (6) are amended to read as follows:

(5) The [commissioner]department will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with paragraph (h)(7) of this section. [A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility.]

(6) Annually, the [The] owner or operator must [analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix 33 of this Title at least annually to] determine whether additional hazardous constituents from Appendix 33, which could possibly be site-related compounds, [present] but are not on the detection monitoring list in the permit, [constituents] are actually present in the uppermost aquifer and, if so, at what concentration pursuant to procedures in paragraph (i)(7) of this section. To accomplish this, [If] the owner or operator must consult with the department. The department will determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix 33 of this Title for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix 33 constituents are present [finds constituents from Appendix 33] in the [ground water] groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the department, and repeat the [Appendix 33] analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the [commissioner] department within seven days after completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the [commissioner] department within seven days after completion of the initial analysis and add them to the monitoring list. Notwithstanding the above reporting requirements, any other applicable statutory and regulatory reporting requirements apply.

Paragraph 373-2.6(j)(7) through 373-2.6(k)(6) remain unchanged.

Paragraph 373-2.6(k)(7) is amended to read as follows:

(7) The owner or operator must report in writing to the [commissioner]department on the effectiveness of the corrective action program. The owner or operator must submit these reports [semi-annually] annually unless directed by the department to submit the reports semi-annually.

Paragraph 373-2.6(k)(8) remains unchanged.

Paragraphs 373-2.6(l)(1) and (2) are amended to read as follows:

(1) The owner or operator of a facility which has, had, should have had, or is seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time the waste was placed in such unit.

(2) Corrective action will be specified in the permit or order in accordance with this subdivision and section 373-2.19 of this Subpart. The permit or order will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or order) and assurances of financial responsibility as defined in section 373-2.8 of this Subpart, except that language is added to the financial assurance mechanism to include corrective action; or as specified in the Part 373 permit for completing such corrective action.

Paragraph 373-2.6(l)(3) through subparagraph 373-2.7(d)(5)(iv) remain unchanged.

Subparagraph 373-2.7(d)(5)(v) is amended to read as follows:

(v) During the period of corrective action, the owner or operator shall provide [semi-annual] annual reports to the [commissioner that describe] department describing the progress of the corrective action program, compile all [ground-water]groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of the corrective action. The department may require the owner or operator to report semi-annually as needed to evaluate the progress of the corrective action program.

Subparagraph 373-2.7(d)(5)(vi) through paragraph 373-2.8(a)(4) remain unchanged

New Paragraph 373-2.8(a)(5) is adopted to read as follows:

(5) The total cost estimate for a facility must include all applicable financial assurance obligations (closure, post-closure, corrective action).

Subdivision 373-2.8(b) through subparagraph 373-2.8(c)(1)(iv) remain unchanged.

Paragraph 373-2.8(c)(2) is amended to read as follows:

(2) During the active life of the facility, the owner or operator must adjust the closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with subdivision (d) of this section. For owners and operators using the financial test or corporate guarantee, the closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission

of updated information to the commissioner as specified in section 373-2.8(d)(5)(iii) of this Subpart. The adjustment may be made by recalculating the maximum costs of closure in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross [National] Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subparagraphs (i) and (ii) of this paragraph. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

- (i) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.
- (ii) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

Paragraph 373-2.8(c)(3) through paragraph 373-2.8(d)(4) remain unchanged.

Subparagraph 373-2.8(d)(4)(i) is amended to read as follows:

(i) An owner or operator may satisfy the requirements of this subdivision by obtaining closure insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the [commissioner] department. An owner or operator of a new facility must submit the certificate of insurance to the [commissioner] department at least 60 days before the date on which hazardous waste is first received for treatment, storage or disposal. The insurance must be effective before this initial receipt of hazardous waste. At a minimum, the insurer must be authorized by the [superintendent] Superintendent of the New York State [Insurance] Department of Financial Services to conduct the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in New York State.

Subparagraph 373-2.8(d)(4)(ii) through subparagraph 373-2.8(d)(5)(ix) remain unchanged.

Subparagraph 373-2.8(d)(5)(x) introductory language is amended to read as follows:

(x) An owner or operator of a facility which is not a revenue-oriented facility may meet the requirements of this subdivision by obtaining a written guarantee, hereinafter referred to as "guarantee." If the firm which is providing the guarantee does not meet the definition of revenue-oriented in this section or section 373-3.8 of this Part, it may provide the guarantee on behalf of the owner or operator even if the owner or operator is a "revenue-oriented" facility. [However,] For a revenue-oriented facility, the financial statement of the owner or operator cannot be consolidated with the financial statement of the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in subparagraphs (i) through (viii) of this paragraph and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in paragraph (j)(6) of this section. A certified copy of the guarantee must accompany the items sent to the commissioner as specified in subparagraph (iii) of this paragraph. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial

business relationship with the owner or operator, this letter must describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

Clause 373-2.8(d)(5)(x)(a) through paragraph subparagraph 373-2.8(e)(1)(ii)

Paragraph 373-2.8(e)(2) is amended to read as follows:

(2) During the active life of the facility, the owner or operator must adjust the post-closure cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instruments used to comply with section 373-2.8(f) of this Subpart. For owners or operators using the financial test or corporate guarantee, the post-closure cost estimate must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the commissioner as specified in section 373-2.8(f)(5)(v) of this Subpart. The adjustment may be made by recalculating the post-closure cost estimate in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross [National] Domestic Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified in subparagraphs (i) and (ii) of this paragraph. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

- (i) The first adjustment is made by multiplying the post-closure cost estimate by the inflation factor. The result is the adjusted post-closure cost estimate.
- (ii) Subsequent adjustments are made by multiplying the latest post-closure estimate by the latest inflation factor.

Paragraph 373-2.8(e)(3) through subparagraph 373-2.8(f)(5)(x) remain unchanged.

Subparagraph 373-2.8(f)(5)(xi) introductory language is amended to read as follows:

(xi) An owner or operator of a facility which is not a revenue-oriented facility may meet the requirements of this subdivision by obtaining a written guarantee, hereinafter referred to as "guarantee." If the firm which is providing the guarantee does not meet the definition of revenue-oriented in this section or section 373-3.8 of this Part, it may provide the guarantee on behalf of the owner or operator even if the owner or operator is a revenue-oriented facility. [However,] For a revenue-oriented facility, the financial statement of the owner or operator cannot be consolidated with the financial statement of the guarantor. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor must meet the requirements for owners or operators in subparagraphs (i) through (ix) of this paragraph and must comply with the terms of the guarantee. The wording of the guarantee must be identical to the wording specified in paragraph (j)(6) of this section. A certified copy of the guarantee must accompany the items sent to the commissioner as specified in subparagraph (iii) of this paragraph. One of these items must be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the owner or operator, this letter must describe this substantial

business relationship and the value received in consideration of the guarantee. The terms of the guarantee must provide that:

Clause 373-2.8(f)(5)(xi)(a) through clause 373-2.8(h)(1)(i)(a) remain unchanged.

Clause 373-2.8(h)(1)(i)(b) is amended to read as follows:

(b) Each insurance policy must be issued by an insurer which, at a minimum, is licensed to transact the business of insurance, or [authorized] eligible to provide insurance as an excess or surplus lines insurer within New York State, by the [superintendent] Superintendent of the New York State [Insurance] Department of Financial Services.

Subparagraph 373-2.8(h)(1)(ii) introductory language is amended to read as follows:

(ii) An owner or operator of a facility which is not a [revenue-orient\] revenue-oriented facility may meet the requirements of this paragraph by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (6) and (7) of this subdivision. If the firm which is providing the guarantee does not meet the definition of revenue-oriented in this section or section 373-3.8 of this Part, it may provide the guarantee on behalf of the owner or operator even if the owner or operator is a revenue-oriented facility. [However,] For a revenue-oriented facility, the financial statement of the owner or operator cannot be consolidated with the financial statement of the guarantor.

Subparagraph 373-2.8(h)(1)(iii) through subparagraph 373-2.8(h)(2)(i) remain unchanged.

Subparagraph 373-2.8(h)(2)(ii) is amended to read as follows:

(ii) An owner or operator of a facility which is not a revenue-oriented facility may meet the requirements of this paragraph by passing a financial test or using the guarantee for liability coverage as specified in paragraphs (6) and (7) of this subdivision. If the firm which is providing the guarantee does not meet the definition of "revenue-oriented" in section 373-2.8 or 373-3.8, it may provide the guarantee on behalf of the owner or operator even if the owner or operator is a "revenue-oriented" facility. [However,] For a revenue-oriented facility, the financial statement of the owner or operator cannot be consolidated with the financial statement of the guarantor.

Subparagraph 373-2.8(h)(2)(iii) through 373-2.8(h)(9)(iii) remain unchanged.

New subparagraph 373-2.8(h)(9)(iv) is adopted to read as follows:

(iv) A surety bond may be used to satisfy the requirements of this subdivision only if the Attorneys General or Insurance Commissioners of ('a') the State in which the surety is incorporated, and ('b') each State in which a facility covered by the surety bond is located have submitted a written statement to the Commissioner that a surety bond executed as described in this subdivision and paragraph (j)(11) of this section is a legally valid and enforceable obligation in that State.

Paragraph 373-2.8(h)(10) through paragraph 373-2.8(i)(2) remain unchanged.

Subdivision 373-2.8(j) introductory language is amended to read as follows:

CORPORATION)

STATE OF :
: SS.:

COUNTY OF :

On this day of , [19] , before me personally came , to me known and known to me to be the person(s) described in and who executed the within Trust Fund Agreement; and acknowledged that (s)he executed the same.

Notary

Public

(ACKNOWLEDGEMENT BY SETTLOR/OWNER OPERATOR, IF A CORPORATION)

STATE OF :
: SS.:

COUNTY OF :

On this day of , [19] , before me personally came , to me known, who, by me duly sworn, did depose and say that (s)he resides in ; that (s)he is the of , the corporation described in and which executed the within Trust Agreement; that (s)he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

Paragraph 373-2.8(j)(2) introductory language is amended to read as follows:

(2) A surety bond, as specified in paragraph (d)(2) or (f)(2) of this section, or paragraph (d)(2) or (f)(2) of section 373-3.8 of this Part, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Paragraph 373-2.8(j)(2) Surety Bond Text remains unchanged.

Paragraph 373-2.8(j)(2) Acknowledgement by Principal language is amended to read as follows:

(ACKNOWLEDGEMENT BY PRINCIPAL, UNLESS IT BE A CORPORATION)

STATE OF :
: SS.:

COUNTY OF :

On this day of , [19] , before me personally came , to me known and known to me to be the person(s) described in and who executed the foregoing instrument and acknowledged that (s)he executed the same.

Notary Public

(ACKNOWLEDGEMENT BY PRINCIPAL, IF A CORPORATION)

STATE OF _____ :

: SS.:

COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the

_____ of _____, the corporation described in and which executed the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

(ACKNOWLEDGEMENT BY SURETY COMPANY; PREPARE SEPARATE ACKNOWLEDGEMENT FOR EACH SURETY)

STATE OF _____ :

: SS.:

COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, (insert name of Surety), the corporation described in and which executed the within instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by the laws of the State of New York.

Notary Public

Paragraph 373-2.8(j)(3) introductory paragraph remains unchanged.

Paragraph 373-2.8(j)(3) Department of Environmental Conservation address is amended to read as follows:

Irrevocable Standby Letter of Credit

Name and address of banking establishment [Date]

Commissioner
New York State Department of Environmental Conservation
[Attn: Division of Solid & Hazardous Materials]
625 Broadway

Subparagraph 373-2.8(j)(6)(ii) remains unchanged except that the notary language is amended to read as follows:

STATE OF _____ :
 : SS:
COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that (s)he is of _____, the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

Paragraph 373-2.8(j)(7) introductory paragraph through section 2.(e) remains unchanged.

Paragraph 373-2.8(j)(7) Section 2.(f) is amended to read as follow:

(f) This endorsement shall be attached to and form a part of Policy No. _____ issued by (name of Insurer), herein called the Insurer, of (address of Insurer) to (name of Insured) of (address) this _____ day of _____, [19] _____. The effective date of the policy is the _____ day of _____, [19] ____.

Paragraph 373-2.8(j)(7) certification statement remains unchanged.

Paragraph 373-2.8(j)(8) section 1 is amended to read as follows:

1. [Name of Insurer] (the “Insurer”), of [address of Insurer], hereby certifies that it has issued a policy of liability insurance (the “Policy”), covering bodily injury and property damage, to [name of Insured] (the “Insured”), of [address of Insured], in connection with the Insured's obligation to demonstrate financial responsibility under 6 NYCRR Part 370 ‘et seq.’ The coverage applies at [list EPA identification numbers, names and addresses for each facility] for [insert “sudden accidental occurrences,” “non-sudden accidental occurrences” or “sudden and non-sudden accidental occurrences”]; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for “sudden accidental occurrences,” which are insured for “nonsudden accidental occurrences,” and which are insured for both]. The limits of liability are [insert the dollar amount of “each occurrence” and “annual aggregate” limits of the Insurer's liability], exclusive of legal defense costs.* The coverage is provided under Policy number _____, issued on [date], and the expiration date of the policy is _____ [date].

Paragraph 373-2.8(j)(8) section 2 through 373-2.8(j)(9) introductory paragraph remain unchanged.

Paragraph 373-2.8(j)(9) is amended to read as follows:

Letter from Chief Financial Officer

(Address to Commissioner of DEC,[Attn: Division of Solid and Hazardous Materials]).

Paragraph 373-2.8(j)(9) text of letter remains unchanged.

Paragraph 373-2.8(j)(10) is amended to read as follows:

A letter of credit, as specified in paragraph (h)(8) of this section or section 373-3.8(h)(8) of this Part, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Name and Address of Issuing Institution

Commissioner of NYSDEC
[ATTN: Division of Solid & Hazardous Materials]
625 Broadway
Albany, NY 12233-[7250]1011
RE: Letter of Credit No. _____

The remainder of Paragraph 373-2.8(j)(10) through Paragraph 373-2.8(j)(11) remain unchanged.

Paragraph 373-2.8(j)(12) Introductory Language through Section 20 remains unchanged.

Paragraph 373-2.8(j)(12) Certifying language is amended to read as follows:

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 6 NYCRR 373-2.8(j)(12) as such regulations were constituted on the date first above written.

(Signature of Grantor)
(Title)

Attest:

(Seal)

(Signature of Trustee)
(Title)

Attest:

(Seal)

(ACKNOWLEDGEMENT BY TRUSTEE, IF A BANK)

STATE OF _____ :
 : SS.:
COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the banking institution described in and which executed the within Trust Fund Agreement; and that (s)he signed his/her name thereto by authority of such banking institution.

Notary Public

(ACKNOWLEDGEMENT BY TRUSTEE, IF A CORPORATION)

STATE OF _____ :
 : SS.:
COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the corporation described in and which executed the within Trust Agreement, that (s)he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

(ACKNOWLEDGEMENT BY GRANTOR/OWNER OPERATOR, UNLESS IT BE A CORPORATION)

STATE OF _____ :
 : SS.:
COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known and known to me to be the person(s) described in and who executed the within Trust Fund Agreement; and acknowledged that (s)he executed the same.

Notary Public

(ACKNOWLEDGEMENT BY GRANTOR/OWNER OPERATOR, IF A CORPORATION)

STATE OF _____ :
COUNTY OF _____ : SS.:

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the corporation described in and which executed the within Trust Agreement; that (s)he knows the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order.

Notary Public

Paragraph 373-2.8(j)(13) Introductory language through Section 18 remain unchanged.

Paragraph 373-2.8(j)(13) Certifying language is amended to read as follows:

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 6 NYCRR 373-2.8(j)(13) as such regulations were constituted on the date first above written.

(Signature of Grantor)

(Title)

Attest:

(Title)

(Seal)

(Signature of Trustee)

Attest:

(Title)
(Seal)

The following are examples of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 6 NYCRR 373-2.8(h)(8) or 373-3.8(h)(8) of this part.

(ACKNOWLEDGEMENT BY TRUSTEE, IF A BANK)

STATE OF _____ :
 : SS.:
COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the banking institution described in and which executed the within Trust Fund Agreement; and that (s)he signed his/her name thereto by authority of such banking institution.

Notary Public

(ACKNOWLEDGEMENT BY TRUSTEE, IF A CORPORATION)

STATE OF _____ :
 : SS.:
COUNTY OF _____ :

On this _____ day of _____, [19] _____, before me personally came _____, to me known, who, by me duly sworn, did depose and say that (s)he resides in _____; that (s)he is the _____ of _____, the corporation described in and which executed the within Trust Agreement, that (s)he knows the seal of said corporation; [that the seal affixed to said instrument was such corporate seal;] that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by authority of such banking institution.

Notary Public

(ACKNOWLEDGEMENT BY GRANTOR/OWNER OPERATOR, UNLESS IT BE A CORPORATION)

STATE OF _____ :
 : SS.:
COUNTY OF _____ :

[(ii) for all existing tank systems used to store or treat Hazardous Wastes Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987;

(iii) for those existing non-enterable underground tanks and tank systems of known and documented age within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later;

(iv) for those existing non-enterable underground tanks and tanks systems for which the age cannot be documented within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later; and

(v) for all other tanks systems, within the time intervals required in subparagraphs (iii) and (iv) of this paragraph; and]

[(vi)] (ii) for tank systems that store or treat materials that become hazardous wastes[after the effective date of these regulations, within the time intervals required in subparagraphs (i)- (v) of this paragraph, except that the date a material becomes a hazardous waste must be used in place of January 12, 1987.], within two years of the hazardous waste listing.

Paragraph 373-2.10(d)(2) through paragraph 373-2.10(d)(3) remain unchanged.

Paragraph 373-2.10(d)(4) is amended to read as follows:

(4) Secondary containment for tanks must include one or more of the following devices:

(i) a liner (external to the tank);

(ii) a vault;

(iii) a double-walled tank; or

(iv) an equivalent device as approved by the [commissioner]department.

Paragraph 373-2.10(d)(5) through paragraph 373-2.10(f)(1) remain unchanged.

Paragraphs 373-2.10(f)(2) through (4) are amended as follows:

(2) The owner or operator must inspect at least once each operating day[:

(i) aboveground portions of the tank system, if any, to detect corrosion or releases of waste;

(ii)] data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.[: and

(iii) the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes)

to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation)]

Note: Section 373-2.2(g)(3) of this Part requires the owner or operator to remedy any deterioration or malfunction the owner or operator finds. Subdivision (g) of this section requires the owner or operator to notify the commissioner within 24 hours of confirming a leak. Also, 40 CFR Part 302 may require the owner or operator to notify the National Response Center of a release.

(3) In addition, except as noted under paragraph (4) of this subdivision, the owner or operator must inspect at least once each operating day:

(i) aboveground portions of the tank system, if any, to detect corrosion or releases of waste; and

(ii) the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(4) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement other established workplace practices to ensure leaks are promptly identified within 24 hours, must inspect at least weekly those areas described in subparagraphs (3)(i) and (3)(ii) of this subdivision. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(5) Ancillary equipment that is not otherwise secondarily contained, as described in subparagraph 373-2.10(d)(6)(i) through (iv) of this section, must be inspected at least once each operating day.

[(3)] (6) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(i) the proper operation of the cathodic protection system must be confirmed within six months after initial installation and annually thereafter; and

(ii) all sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

Note: The practices described in the National Association of Corrosion Engineers (NACE) standard, "Recommended Practice (RP-02-85) Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and the American Petroleum Institute (API) Publication 1632 Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems may be used, where applicable, as guidelines in maintaining and inspecting cathodic protection systems.

[(4)] (7) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs [(3)] (1)-(6) of this subdivision.

Subdivision 373-2.10(g) introduction through paragraph 373-2.10(g)(5) remain unchanged.

Paragraph 373-2.10(g)(6) is amended to read as follows:

(6) Certification of major repairs. If the owner or operator has repaired a tank system in accordance with paragraph (5) of this subdivision, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, professional engineer registered in New York in accordance with section 373-1.4(a)(5)(iv) of this Part that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to and approved by the [commissioner]department within seven days after returning the tank system to use. This certification must be placed in the operating record and maintained until closure of the facility.

Paragraph 373-2.10(g)(6) notes through clause 373-2.11(b)(5)(i)(a)(1) remain unchanged.

Clause 373-2.11(b)(5)(i)(a)(2) is amended to read as follows:

(2) the monofill is located more than one-quarter mile from an ‘underground source of drinking water’ (as that term is defined in [40 CFR 144.3 (see subdivision 370.1(e) of this Title)] subdivision 370.2(b) of this Title); and

Clause 373-2.11(b)(5)(i)(a)(3) through paragraph 373-2.11(k)(2) introductory language remains unchanged.

Subparagraph 373-2.11(k)(2)(i) is amended to read as follows:

(i) notify the commissioner in writing of the [exceedence] exceedance within seven days of the determination;

Subparagraph 373-2.11(k)(2)(ii) through subdivision 373-2.11(l) remain unchanged.

Paragraph 373-2.12(a)(1) is amended to read as follows:

(1) The regulations in this section apply to owners and operators of facilities that place, store or treat hazardous waste in piles, except as subdivision 373-2.1(a) of this Subpart provides otherwise.

Paragraph 373-2.12(a)(2) through paragraph 373-2.12(b)(2) remain unchanged.

Paragraph 373-2.12(b)(3) introductory language is amended to read as follows:

(3) The owner or operator of each new waste pile unit [on which construction commences after January 29, 1992], each lateral expansion of a waste pile unit [on which construction commences after July 29, 1992], and each replacement of an existing waste pile unit [that is to commence reuse after July 29, 1992] must install two or more liners and a leachate collection and removal system above and between such liners. [Construction commences is as defined in subdivision 370.2(b) under "existing facility".]

Subparagraph 373-2.12(b)(3)(i) through clause 373-2.14(c)(5)(ii)(‘a’)(‘1’) remain unchanged.

Clause 373-2.14(c)(5)(ii)(‘a’)(‘2’) is amended to read as follows:

(‘2’) the monofill is located more than one-quarter mile from an ‘underground source of drinking water’ (as that term is defined in [40 CFR 144.3 (see subdivision 370.1(e) of this Title)] subdivision 370.2(b) of this Title); and

Clause 373-2.14(c)(5)(ii)(‘a’)(‘3’) through subdivision 373-2.14(f) remain unchanged.

Paragraph 373-2.14(g)(1) introductory language is amended to read as follows:

(1) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final [over] cover designed and constructed to:

Subparagraph 373-2.14(g)(1)(i) through paragraph 373-2.14(j)(2) remain unchanged.

Paragraph 373-2.14(j)(3) is amended to read as follows:

(3) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method [9095] 9095B (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," (EPA Publication No. SW-846 (see subdivision 370.1(e) of this Title).

Paragraph 373-2.14(j)(4) through paragraph 373-2.14(o)(2) introductory language remain unchanged.

Subparagraph 373-2.14(o)(2)(i) is amended to read as follows:

(i) notify the commissioner in writing of the [exceedence] exceedance within seven days of the determination;

Subparagraph 373-2.14(o)(2)(ii) through paragraph 373-2.15(a)(2) remain unchanged.

Existing paragraphs 373-2.15(a)(3) through (5) are renumbered 373-2.15(a)(4) through (6).

New paragraph 373-2.15(a)(3) is adopted to read as follows:

(3) ‘Integration of the MACT standards.’

(i) except as provided by subparagraphs (ii) through (v) of this paragraph, the standards of this Subpart

(‘a’) do not apply to a new hazardous waste incineration unit that becomes subject to Part 373 permit requirements after October 12, 2005; or

(‘b’) no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title, by conducting a comprehensive performance test and submitting to the department a Notification of Compliance under 40 CFR

sections 63.1207(j) and 63.1210(d) of subpart EEE documenting compliance with the 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) Part 373 permit conditions that were based on the standards of this Subpart will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

(iii) the MACT standards do not replace the closure requirements of subdivision (h) of this section or the applicable requirements of sections (1) through (8), (28) and (29) of this Subpart.

(iv) the particulate matter standard of paragraph 373-2.15(d)(3) of this section remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard under 40 CFR section 63.1206(b)(14) and 63.1219(e) of subpart EEE, as incorporated by reference in and implemented by subdivisions 200.10 (a) and (d) of this Title.

(v) the following requirements remain in effect for startup, shutdown, and malfunction events if the owner or operator elects to comply with subparagraph 373-1.12(a)(1)(i) of this Part to minimize emissions of toxic compounds from these events:

(‘a’) paragraph 373-2.15(f)(1) of this section requiring that an incinerator operate in accordance with operating requirements specified in the permit; and

(‘b’) paragraph 373-2.15(f)(3) of this section requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.

Subdivision 373-2.15(b) through subparagraph 373-2.15(d)(1)(i) remains unchanged.

Subparagraph 373-2.15(d)(1)(ii) is amended to read as follows:

(ii) An incinerator burning [Hazardous Waste] hazardous wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each principal organic hazardous constituent (POHC) designated under subdivision (c) of this section in its permit. This performance must be demonstrated on POHC's that are more difficult to incinerate than tetra, penta, and hexachlorodibenzo-p dioxins and dibenzofurans. DRE is determined for each POHC from the equation in subparagraph (i) of this paragraph. In addition, the owner or operator of the incinerator must notify the [commissioner] department of the intent to incinerate hazardous wastes F020, F021, F022, F023, F026, or F027.

Paragraph 373-2.15(d)(2) through paragraph 373-2.15(g)(3) remain unchanged.

Paragraph 373-2.15(g)(4) is amended to read as follows:

(4) This monitoring and inspection data must be recorded and the records must be placed in the operating [log] record required by section 373-2.5(c) of this Subpart.

Subdivision 373-2.15(h) through subclause 373-2.19(c)(5)(vi)(‘c’)(‘4’) remain unchanged.

Subclause 373-2.19(c)(5)(vi)(‘c’)(‘5’) is amended to read as follows:

(‘5’) [Hydrological] hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential or actual releases; and

Subclause 373-2.19(c)(5)(vi)(‘c’)(‘6’) through subparagraph 373-2.23(d)(13)(i) remain unchanged.

Subparagraphs 373-2.23(d)(13)(ii) and (iii) are amended to read as follows:

(ii) The [Commissioner] department will review the information submitted, make a determination regarding whether the pad must be removed from service completely or partially until repairs and [clean up] cleanup are complete and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and [clean up] cleanup, the owner or operator must notify the [Commissioner] department in writing and provide a certification signed by an independent, qualified professional engineer registered in New York State, that the repairs and [clean up] cleanup have been completed according to the written plan [submitted] approved by the department in accordance with clause (13)(i)(‘d’) of this subdivision.

Paragraph 373-2.23(d)(14) through subdivision 373-2.24(a) remains unchanged.

Subdivision 373-2.24(b) introductory language is amended to read as follows:

(b) Environmental performance standards. A miscellaneous unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Permit terms and provisions [shall] must include those requirements of sections 373-2.9 through 373-2.15 and sections 373-2.27 through 373-2.29 of this Subpart, [and] Subpart 373-1 of this Subpart, and 40 CFR Part 63, subpart EEE, as incorporated by reference in and implemented by subdivisions 200.10(a) and (d) of this Title, that are appropriate for the miscellaneous unit being permitted. Protection of human health and the environment includes, but is not limited to:

Paragraph 373-2.24(b)(1) through paragraph 373-2.27(a)(2) remain unchanged.

Paragraph 373-2.27(a)(3) is amended to read as follows:

(3) For the owner [or] and operator of a facility subject to this section and who received a final permit under RCRA section 3005 or Subpart 373-1 of this Part prior to December 6, 1996, the requirements of this section shall be incorporated into the permit when the permit is reissued in accordance with the requirements of section 621.11 of this Title or reviewed in accordance with the requirements of section 373-1.8 of this Part. Until such date when the owner [or] and operator [receives] receive a final permit incorporating the requirements of this section, the owner and operator [is] are subject to the requirements of section 373-3.27 of this Part.

Paragraph 373-2.27(a)(3) Note through clause 373-2.27(e)(3)(i)(a) remain unchanged.

Clause 373-2.27(e)(3)(i)(b) is amended as follows:

(b) Method 18 or Method 25A in 40 CFR part 60 (see section 370.1(e) of this Title) for organic content. If Method 25A is used, the organic HAP used as the calibration gas must be the single organic HAP representing the largest percent by volume of the emissions. The use of Method 25A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

Clause 373-2.27(e)(3)(i)(c) remains unchanged.

Clause 373-2.27(e)(3)(i)(d) is amended to read as follows:

(d) Total organic mass flow rates shall be determined by the following equation:

(1) For sources utilizing Method 18.

$$E_h = [Q_{sd}] \underline{Q_{2sd}} \times (\text{summation}_{i=1 \text{ to } n} (C_i MW_i)) \times (0.0416) \times (10^{-6})$$

where:

E_h = Total organic mass flow rate, kg/h;

$[Q_{sd}] \underline{Q_{2sd}}$ = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight [or] of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (at 293 K and 760 mm Hg);

10⁻⁶ = Conversion from ppm[, ppm⁻¹].

(2) For sources utilizing Method 25A.

$$\underline{E_h = (Q)(C)(MW)(0.0416)(10^{-6})}$$

where:

E_h = Total organic mass flow rate, kg/h;

Q = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

C = Organic concentration in ppm, dry basis, as determined by Method 25A;

MW = Molecular weight of propane, 44;

0.0416 = conversion factor for molar volume, kg-mol/m³ (at 293 K and 760 mm Hg);

10⁻⁶ = Conversion from ppm.

Clause 373-2.27(e)(3)(i)(e) through clause 373-2.27(e)(4)(i)(b) remain unchanged.

Clause 373-2.27(e)(4)(i)(c) is amended to read as follows:

(c) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method [9060 or 8260] 9060A of SW-846 (incorporated by reference under section 370.1(e) of this Title), or analyzed for its individual organic constituents.

Clause 373-2.27(e)(4)(i)(d) through paragraph 373-2.27(e)(5) remain unchanged.

Paragraph 373-2.27(e)(6) is amended to read as follows:

(6) When an owner or operator and the [Commissioner] department do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the [procedures in Method 8260 of SW-846 (incorporated by reference under subdivision 370.1(e) of this Title) may be used to resolve the dispute] dispute may be resolved by using direct measurement as specified at subparagraph (4)(i) of this subdivision.

Subdivision 373-2.27(f) through paragraph 373-2.28(a)(6) remain unchanged.

New paragraph 373-2.28(a)(7) is adopted (before the note) to read as follows:

(7) Purged coatings and solvents from surface coating operations subject to the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of automobiles and light-duty trucks at 40 CFR Part 63, Subpart III, as incorporated by reference in section 200.10 of this Title, are not subject to the requirements of this section.

Subdivision 373-2.28(a) note through subdivision 373-2.28(k) remain unchanged.

Subdivision 373-2.28(l) through paragraph 373-2.28(m)(1) is amended to read as follows:

(l) 'Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.'

(1) An owner or operator subject to the requirements of subdivision (h) of this section may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(2) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

[(i) An owner or operator must notify the Commissioner that the owner or operator has elected to comply with the requirements of this subdivision.]

[(ii)] (i) A performance test, as specified in paragraph (3) of this subdivision, shall be conducted initially upon designation, annually, and at other times requested by the commissioner.

[(iii)] (ii) If a valve leak is detected, it shall be repaired in accordance with paragraphs (h)(4) and (5) of this section.

(3) Performance tests shall be conducted in the following manner:

(i) All valves subject to the requirements in subdivision (h) of this section within the hazardous waste management unit shall be monitored within one week by the methods specified in paragraph (n)(2) of this section.

(ii) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(iii) The leak percentage shall be determined by dividing the number of valves subject to the requirements in subdivision (h) of this section for which leaks are detected by the total number of valves subject to the requirements in subdivision (h) of this section within the hazardous waste management unit.

[(4) If an owner or operator decides to no longer comply with this subdivision, that person must notify the Commissioner in writing that the work practice standard described in paragraphs 373-2.28(h)(1) through (5) will be followed.]

(m) ‘Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.’

(1) [(i)] An owner or operator subject to the requirements of subdivision (h) of this section may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in subparagraphs (2)(ii) and (iii) of this subdivision.

[(ii) An owner or operator must notify the Commissioner before implementing one of the alternative work practices.]

Paragraph 373-2.28(m)(2) through subparagraph 373-2.28(n)(4)(i) remain unchanged.

Subparagraph 373-2.28(n)(4)(ii) is amended to read as follows:

(ii) Method [9060 or 8260] 9060A of SW-846 (incorporated by reference under section 370.1(e)) of this Title, for computing total organic concentration of the sample, or analyzed for its individual organic constituents; or

Subparagraph 373-2.28(n)(4)(iii) through Subdivision 373-2.28(p)(2) remain unchanged.

Paragraph 373-2.29(a)(1) is amended to read as follows:

(1) The requirements of this section apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either [sections] section 373-2.9, 373-2.10 or 373-2.11 of this Subpart except as section 373-2.1 of this Subpart and paragraph (2) of this subdivision provide otherwise.

Paragraph 373-2.29(a)(2) remains unchanged.

Paragraph 373-2.29(a)(3) is amended to read as follows:

(3) For the owner and operator of a facility subject to this section who received a final permit under this Part, prior to December 6, 1996, the requirements of this section shall be incorporated into the permit when the permit is reissued in accordance with the requirements of Part 621 of this Title or reviewed in accordance with the requirements of section 373-1.8 of this Title. Until such date when the owner and operator [receives] receive a final permit incorporating the requirements of this section, the owner and operator [is] are subject to the requirements of section 373-3.29 of this Title.

Paragraph 373-2.29(a)(4) through subparagraph 373-2.29(g)(6)(iv) remain unchanged.

Paragraph 373-2.29(g)(7) Introductory paragraph is amended to read as follows:

(7) To determine compliance with the [nodetectable] no detectable organic emissions requirement of clause (4)(i)(‘b’) of this subdivision, the procedure specified in [paragraph 373-2.29(d)(4)] subparagraph (d)(2)(iv) of this section shall be used.

Subparagraph 373-3.29(g)(7)(i) through paragraph 373-2.29(j)(9) remain unchanged.

Paragraph 373-2.29(j)(10) introductory language is amended to read as follows:

(10) For each hazardous waste management unit not using air emission controls specified in subdivisions (e) through (h) of this section in accordance with the requirements of subparagraph (a)(2)(vii) of this section, the owner [and] or operator shall record and maintain the following information:

Subparagraph 373-2.29(j)(10)(i) through subdivision 373-2.29(k) remain unchanged.

Subdivision 373-2.30(a) introductory language is amended to read as follows:

(a) Applicability. The requirements of this section apply to owners or operators who store or treat hazardous waste in units designed and operated under subdivision (b) of this section. [These provisions will become effective on February 18, 1993, although the owner or operator may notify the Commissioner of their intent to be bound by this section at an earlier time.] The owner or operator is not subject to the definition of land disposal in section 370.2(b) of this Title provided that the unit:

Paragraph 373-2.30(a)(1) through clause 373-2.30(b)(2)(iii)(‘b’) remain unchanged.

Clause 373-2.30(b)(2)(iii)(c) is amended to read as follows:

(c) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building, and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of section [373-2.10(d)(4)(i)] 373-2.10(d)(5)(i). In addition, the containment building must meet the requirements of paragraph 373-2.10(d)(2) and subparagraphs 373-2.10(d)(3)(i) and (ii) to be considered an acceptable secondary containment system for a tank).

Subparagraph 373-2.30(b)(2)(iv) through 373-2.30(b)(3)(i) remain unchanged.

Subparagraph 373-2.30(b)(3)(ii) though clause 373-2.30(b)(3)(iii)(a) introductory language is amended to read as follows:

(ii) obtain, and keep on-site, certification by [a] an independent, qualified professional engineer registered in New York State that the containment building design meets the requirements of paragraphs (1) through (3) of this subdivision. [For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit;]

(iii) throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, the owner or operator must repair the condition promptly, in accordance with the following procedures:

(a) upon detection of a condition that has [lead] led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

Subclause 373-2.30(b)(3)(iii)(a)(1) through subparagraph 373-2.30(b)(3)(iv) remain unchanged.

Paragraph 373-2.30(b)(4) introductory language is amended to read as follows:

(4) For a containment building[s] that contains both areas [both] with and without secondary containment, the owner or operator must:

Subparagraph 373-2.30(b)(4)(i) through paragraph 373-2.30(b)(5) remain unchanged.

Paragraph 373-2.30(c)(1) is amended to read as follows:

(1) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.,) contaminated

subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless section 371.1(d)(4) of this Title applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in sections 373-2.7 and 373-2.8 of this Subpart.

Paragraph 373-2.30(c)(2) through section 373-2.31 remain unchanged.

Appendix 33 – Groundwater Monitoring List, is amended as follows:

Amend the Title to delete the footnote:

APPENDIX 33--GROUNDWATER MONITORING LIST^[1]

Revise footnote references of the column titles as follows:

Common name^{[2] 1}

CAS RN^{[3] 2}

Chemical abstracts service index name^{[4] 3}

Delete column “Suggested methods”⁵.

Delete column “PQL (ug/L)”⁶

Correct the CAS numbers for the following entries (found alphabetically within the list):

Nitrobenzene [96-95-3] 98-95-3

Phenanthrene [86-01-8] 85-01-8

Revise the footnotes as follows:

[FOOTNOTE: 1 The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.]

[2] ¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3] ² Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

[4] ³ CAS index names are those used in the 9th Cumulative Index.

[FOOTNOTE: 5 Suggested Methods refer to analytical procedure numbers used in the EPA

publication SW-846, "Test Methods for Evaluating Solid Waste," third edition Analytical details can be found in SW-846 and in documentation on file at the EPA. The packed column gas chromatography Methods 8010, 8020, 8030, 8040, 8060, 8080, 8090, 8110, 8120, 8140, 8150, 8240, and 8250 were promulgated methods through Update IIB of SW-846 and, as of Update III, the EPA has replaced these methods with "capillary column GC methods," as the suggested methods.

FOOTNOTE: 6 Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.]

[7] ⁴ Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor-1016 (CAS RN 12674-11-2), Aroclor-1221 (CAS RN 11104-28-2), Aroclor-1232 (CAS RN 11141-16-5), Aroclor-1242 (CAS RN 53469-21-9), Aroclor-1248 (CAS RN 12672-29-6), Aroclor-1254 (CAS RN 11097-69-1), and Aroclor-1260 (CAS RN 11096-82-5). [The PQL shown is an average value for PCB congeners.]

[8] ⁵ This category contains congener chemicals, including tetrachlorodibenzo-p-dioxins (see also 2,3,7,8-TCDD), pentachlorodibenzo-p-dioxins, and hexachlorodibenzo-p-dioxins. [The PQL shown is an average value for PCDD congeners.]

[9] ⁶ This category contains congener chemicals, including tetrachlorodibenzofurans, pentachlorodibenzofurans, and hexachlorodibenzofurans. [The PQL shown is an average value for PCDF congeners.]