

**FedReg5 – Hazardous Waste Management Regulations Rulemaking**  
**List of State Initiated Corrections**

NOTE: New text is underlined, deleted text is in brackets.

**1) General:** Update incorporation by reference dates for federal regulations to July 1, 2014. Correct addresses and URLs. New reference to “Estimating Exposures to Dioxin-Like Compounds” was added.

**2) 370.1(a)(3)** is deleted. It cross references a regulation that is not in effect.

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

**3) 370.1(f)** is reworded to clarify the intent.

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

**4) 370.2(b)(16)** definition for “Bedrock” is deleted.

**5) 370.2(b):** Definitions not used in the regulation are proposed to be deleted, including: “composting facility”; “evidence of security”; “final authorization”; “interim authorization”; “intermediate cover”; “lift”; “lower explosive limit”; “national pollutant discharge elimination system”; and “transit country”.

**6) 370.2(b)(71):** Definition for "facility mailing list" revised to allow electronic contact; and to correct cross reference -621.7(i)(6) should be 621.7(i)(7).

**7) 370.2(b)(126)** definition for “monofill” is deleted. There is no definition in the federal hazardous waste regulation. The definition in the 6 NYCRR Part 360 regulations, which is different from this definition, is a preferred definition, if one is needed.

**8) 370.2(b)(173)** definition of small quantity generator is clarified as follows:

[(173)] (170) "Small quantity generator" means:

(i) a generator who generates less than a total of 1000 kilograms of [non-acute] hazardous waste in a month, of which less than one kilogram or 100 kilograms is acute hazardous waste as defined in subparagraphs 371.1(f)(5)(i) or (ii) of this Title, respectively; and

(ii) a generator who stores less than 6000 kilograms of [this] hazardous waste at any one time, of which less than one kilogram or 100 kilograms is acute hazardous waste as defined in

subparagraphs 371.1(f)(5)(i) or (ii) of this Title, respectively [; or a generator who generates less than one kilogram of acute hazardous waste in a month and stores less than one kilogram of this waste at one time].

9.) **370.2(b)(187)** definition for “TEQ” is added as follows:

( 186) "TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin. U.S. EPA (Environmental Protection Agency), 2010, Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2,3,7,8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds. Risk Assessment Forum, Washington, DC. EPA/600/R-10/005. Incorporated by reference in 370.1(e)(8)(viii).

10.) **Paragraph 371.1(a)(1)** is revised to correct a cross-reference.

11) **Clause 371.1(c)(4)(ii)(b')** is revised to make it identical to federal language:

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

12) **371.1(c)(7)**: 6 NYCRR 371.1(c)(7)(i) is proposed to be revised to require documentation to be maintained on-site as well as provided to the Department. In addition, exemptions are being proposed for generators of certain wastes for which there are duplicative paperwork requirements because of other statutes or regulations. 371.1(c)(7)(ii) is revised to be consistent with federal language.

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

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

(ii) Documentation of claims that materials are not solid wastes or are exempt or conditionally exempt from regulation. Respondents in actions to enforce regulations, implementing Article 27, who raise a claim that a certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation[, **when intended for reclamation, recycling, or reuse,]** must demonstrate:

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

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

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

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

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

**13) 371.1(d)(1)(ii)('e')**: EPA noted in Used Oil authorization process that the phone number for the Government Printing Office is wrong. This will be corrected by deleting the information on obtaining the document from this paragraph and cross-reference to 370.1(e)(8)(i) where this document is incorporated by reference.

(e) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in section 371.4. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, as incorporated by reference in subparagraph 370.1(e)(8)(i) of this Title.) to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix 23). **[EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954, 202-783-3238 (document number 955-001-00000-1).]**

**14) 371.1(d)(1)(ii)('e')(2)**: In the official state register, a spelling error needs correction as follows:

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

**15) 371.1(e)(1)(vi)**: Delete the word “Kraft” from the exclusion to match federal regulations.

(vi) black liquor that is reclaimed in a [**Kraft**] pulping liquor recovery furnace and then used in the [**Kraft**] process unless it is accumulated speculatively as defined in paragraph 371.1(a)(1) of this Part;

**16) 371.1(e)(2)(vi)('b')(21)**: This exemption for air pollution control dust/sludge from lightweight aggregate production is deleted to match federal regulation.

**17) 371.1(f)(2):** Requirements for CESQGs are clarified to state that a conditionally exempt small quantity generator’s hazardous wastes are not subject to the notification requirements of section 3010 of RCRA and to more closely match the federal regulatory references.

(2) Except for those wastes identified [as provided] in paragraphs (5), (6), (7), and (10) of this subdivision, a conditionally exempt small quantity generator’s hazardous wastes are not subject to regulation under Part 372 through Subpart ~~[374-3]~~ 373-3, Subpart 374-1, and Part 376 of this Title and the notification requirements of section 3010 of RCRA (see section 370.1(e) of this Title), provided the generator complies with the requirements of paragraphs (5), (6), (7) and (10) of this subdivision;

**18) 371.1(g):** The language in this subdivision is amended to clarify that it applies to hazardous wastes burned for energy recovery. In the federal regulations, recyclable materials include wastes burned for energy recovery. However, in State statute, burning for energy recovery is defined as disposal, not recovery. When the federal provisions regarding recyclable materials were adopted into State regulation, modification to the regulatory text to take this difference into account was overlooked.

**19) 371.4(d)(6):** Correct the listing for U164 and add the listing for U010 as follows to match federal regulations:

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

**20) 371.4(e)(1):** Definitions for two PCB wastes, B002 and B004, are amended to add “rectifiers” to the list of exceptions, to match TSCA requirements.

**21) 371.4(e)(3)(i):** Add “rectifiers” to the definition of a PCB Article.

**22) 371.4(i)(3)(xii)('a'):** Correct the cross reference from “paragraph (c)(2)” to “subparagraph (3)(ii)”.

**23) Appendix 19:** Delete text and incorporate federal “Appendix I to Part 261 - Representative Sampling Methods” by reference.

**24) 372.1(e)(7):** This regulatory text is deleted as it is redundant with the regulatory requirement found at 371.1(e)(3)(i).

**25) 372.1(e)(8):** Correct term usage.

(8) Exemption for service stations. Used engine lubricating oil retention facilities accepting [waste] used oil [pursuant to] in compliance with ECL 23-2307 are exempt from this Part for that oil.

**26) 372.2(a)(3)(i):** Add USEPA’s web site address for obtaining the Notification of Regulated Waste Activity form (EPA Form 8700-12). <http://www.epa.gov>

**27) 372.2(a)(8)(ii):** This paragraph requires that the date beginning the period of accumulation be clearly marked on tanks and storage areas. This is not required by federal regulation. While a generator must track and be able to document that waste stored in a storage area has been there

less than 90 days, the actual storage area does not need to be marked. Tanks can track the 90 day limit using mass balance of waste put in and taken out of the tank, making a Start Date irrelevant. Reference to storage areas and tanks is proposed to be deleted, making the regulation consistent with federal regulation.

(ii) Except as provided in subparagraphs (iii), (iv), and (v) of this paragraph, a generator may accumulate hazardous waste on-site of generation for a period of 90 days or less under the provisions of subparagraphs 373-1.1(d)(1)(iii), (iv), (xix) and (xx) of this Title. The date upon which each period of accumulation begins must be clearly marked and visible for inspection on all containers[, **tanks, or storage areas**].

**28) 372.2(d):** The project XL for public utilities regulations expired May 24, 2011. These expired regulations are deleted.

**29) 372.3(a)(7)(iii)** The language is unintentionally too restrictive. It was written when consolidation of loads did not allow transfer of material from one container to another, therefore, this case was not addressed. The language is updated to make it clear that any type of consolidation of load must take place in an area with secondary containment.

(iii) if consolidation of loads takes place by any method, including but not limited to moving containers from one transport vehicle to another or containers are removed from transport vehicles prior to being reloaded, the transfer or storage area must be designed to meet secondary containment requirements in accordance with subdivision 373-2.9 (f) of this Title.

**30) 372.5(d)(4):** Correct reference:

(4) The following statement must be added to the end of the first sentence of the certification set forth in [Item 16] Item 15 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

**31) 372.7(d)(5):** Cross reference is corrected.

(5) comply with the testing procedures set forth in section [372.4(b)(2)] 373-2.5(b)(1)(ii) and 373-3.5(b)(1)(ii) of this Part and submit a manifest discrepancy report where required.

**32) 372, Appendix 30, I. Instructions for generators, Item 9 and 9b.** revise the order of items listed in the shipping description to match the new order required by DOT regs, effective January, 2013. (from H. B., Region 4)

Item 9. U.S. DOT Description (Including Identification Number, Proper Shipping Name, Hazard Class or Division, [**Identification Number,**] and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

Item 9b. Enter the Identification Number (UN/NA), U.S. DOT Proper Shipping Name, Hazard Class or Division, [**Identification Number (UN/NA)**] and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable. USDOT requires the word "waste" before or in the shipping name for all hazardous

waste. See 49 CFR 171 thru 173 (see subdivision 370.1(e)). Contact USDOT office for description assistance.

**33) 373-1.1(d)(1)(iii):** Certain requirements of this paragraph do apply to small quantity generators, per 372.2(a)(8)(iii)(‘d’). The statement that they do not is deleted.

(iii) The storage in containers or tanks of hazardous waste that is generated on-site, 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:

**34) 373-1.1(d)(1)(iv)(‘c’):** The requirement to submit written notification to the Regional Office is deleted, and clauses 373-1.1(d)(1)(iv)(‘d’) through (‘h’) are renumbered clauses 373-1.1(d)(1)(iv)(‘a’) through (‘e’).

**[‘a’) Reserved.**

**(‘b’) Reserved.**

**(‘c’) the facility submits a written notification to the appropriate Regional Office stating that it qualifies for this exemption];**

**35) 373-1.1(d)(1)(viii)(‘b’):** Clarify the wording 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.

**36) 373-1.1(d)(1)(xii)** is amended to delete the requirements that exempt units comply with waste analysis plan provisions and the requirement for dating “areas” and batch treatment and equalization units. These provisions require extraneous paperwork efforts which do not offer any added protection to human health or the environment. The exemption is also restructured to specify requirements by generator category.

(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:

[(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 units are managed in accordance with section 373-3.9 Use and Management of Containers [and subdivision 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" 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.]

[(e)] (4) if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in subdivision 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 paragraphs 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. If the storage quantity limits of subparagraph 373-1.1(d)(1)(v) are not met, the requirements of subclauses (a)(2), (a)(3) and (a)(4) of this subparagraph apply.

**37) 373-1.1(d)(1)(xxi):** This provision expired May 24, 2011 and should be deleted.

**38) 373-1.5(a)(2)(viii)(a):** Language is added to assure that hazardous waste tank system loading operations are addressed, as well as unloading operations. Examples are expanded to discuss spills in addition to physical hazards.

(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);

**39) 373-1.6(a)(12)(ii)(a)** is amended to read as follows:

(a) the permittee has submitted to the commissioner 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

**40) 373-1.7(c)(15)(ii)('b')** is added to specifically address federal Class 2 permit modifications in relation to the State major/minor categories for permit modifications.

(ii) The Department shall determine whether the request qualifies to be administered as a modification or an application for a new permit in accordance with section 621.11 (Uniform Procedures) of this Title. In making this determination, the Department shall consider the degree to which the proposed changes are similar to those listed above and the following criteria:

(a) minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

(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.

**41) 373-1.7(e):** Revised to correct cross reference - 621.7(i)(6) should be 621.7(i)(7).

**42) 373-1.7(f)(2)(iii):** Revised to correct cross reference - 621.7(i)(6) should be 621.7(i)(7).

**43) 373-1.10(a)(2)(i):** Reference to definition for facility mailing list changed to the Part 370 definition.

**44) 373-2.1(a)(6) and 373-3.1(a)(6):** Add reference to 371.1(g)(1)(iii) as these facilities would be regulated by this Subpart if one of the conditions listed in 371.1(g)(1)(iii) are not met.

**45) 373-2.2(h)(2):** Correct cross reference in the first sentence, and update expired transition language.

(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 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.

**46) 373-2.4(g)(4)(ii):** Correct the phone number for State spill notification.

**47) 373-2.5(b)(1)(v) and 373-3.5(b)(1)(v):** Clarify that for rejected loads, there should be one new manifest form for each incoming manifest form with a partial or full rejection. Facilities should not lump multiple rejections onto one new manifest form.

(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 subdivision 372.2(b) of this Title and the following instructions:

**48) 373-2.5(b)(1)(vi) and 373-3.5(b)(1)(vi):** Clarify that for rejected loads, there should be one new manifest form for each incoming manifest form with a partial or full rejection. Facilities should not lump multiple rejections onto one new manifest form.

(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 subdivision 372.2(b) of this Title and the following instructions:

**49) 373-2.5(b)(2)(iv) and 373-3.5(b)(2)(iv):** Existing text limits rejected unmanifested shipments to being sent back to the generator, and does not require the use of a manifest for this return shipment. Federal regulations are silent on the question of unmanifested shipments, but requires shipments of hazardous waste initiated by the facility to meet the generator requirements (i.e. to manifest it), and includes under "manifest discrepancies" wastes received using shipping papers as well as manifests and through this, the rejected waste requirements can be interpreted to apply to an unmanifested waste which is transported with a shipping paper.

The text is proposed to be changed 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, instead of the old manifest number, 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 box 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.

**50) 373-2.6(i)(1)** is missing a parenthetical:

"(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 groundwater. The commissioner will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:"

**51) 373-2.6(l)(1):** Text is clarified to make it clear that a facility currently or formerly operating as a treatment storage or disposal facility is subject to this condition, whether or not they applied for a permit.

(l) Corrective action for solid waste management units.

(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.

**52) 373-2.6(l)(2):** Text is clarified to state:

(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.

**53) 373-2.8(a)(5)** is added to clarify that the cost estimate must include all financial assurance obligations:

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

**54) 373-2.8(d)(4)(i) and 373-3.8:** Reference to the "New York State Insurance Department" is changed to "New York State Department of Financial Services".

372-2.8(d)(4) (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 of the New York State Department of [Insurance] Financial Services to conduct the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in New York State.

373-3.8(d)(4)(i) (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. The owner or operator must submit to the [commissioner] department a letter from an insurer stating that the insurer is considering issuance of closure insurance conforming to the requirements of this paragraph to the owner or operator. Within 90 days after the effective date of these regulations, the owner or operator must submit the certificate of insurance to the [commissioner] department or establish other financial assurance as specified in this section. At a minimum, the insurer must be authorized by the 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.

**55) 373-2.8(d)(5)(x) intro; 373-2.8(f)(5)(xi) intro; 373-2.8(h)(1)(ii); 373-2.8(h)(2)(ii) 373-3.8(d)(5)(ix) intro; 373-3.8(f)(5)(x) intro; 373-3.8(h)(1)(ii); 373-3.8(h)(2)(ii)**

Language is clarified to make clear that the requirement that the financial statement of the owner or operator cannot be consolidated with the financial statement of the guarantor applies only to "revenue-oriented" facilities.

“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, hereafter referred to as "guarantee." 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. ....”

**56) 373-2.8(h)(1)(i)(‘b’) and 373-3.8(h)(1)(i)(‘b’):**

The New York State Department of Insurance does not authorize excess or surplus lines insurance providers. The Excess Lines Association (ELANY), an industry advisory association, evaluates the eligibility of provider to sell this insurance in New York. The regulations are clarified to reflect that an insurance provider must be eligible to provide this insurance rather than authorized to provide this insurance.

(‘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 of the New York State Department of Insurance.

**57) 373-2.5(b)(1)(i)(‘b’)(‘5’), 373-2.8(j), 373-2.8(j)(1), 373-2.8(j)(2),373-2.8(j)(3), 373-2.8(j)(5), 373-2.8(j)(7) Section 2(f), 373-2.8(j)(9), 373-2.8(j)(10), 373-2.8(j)(12), 373-2.8(j)(13):** Address and date are corrected throughout.

(Send to: NYSDEC, [**Division of Solid & Hazardous Materials,**] 625 Broadway, Albany, NY 12233-**[7250]1011**)

On this        day of                    , [19]\_\_\_\_,

**58) 373-2.8(j)(1)Section 8(d) and (e):**

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee to the extent insured by an agency of the Federal or State government; [and]

(e) To accept additions to the Fund from sources other than the Settlor of the Trust; and

**59) 373-2.8(j)(2):** Correct a cross reference. (In the department version of regulations this is already corrected. It is in error in the official Department of State regulations.)

(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:

**60) 373-2.10(d)(4)(iii) and 373-3.10(d)(4)(iii):** Revise to change “commissioner” to “Department.”

(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.

**61) 373-2.12(a)(1):** To clarify consistency with federal regulations:

(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.

**62) 373-2.14(g)(1):** The word “over” is changed to “cover”. Typo correction.

**63) 373-2.19(c)(5)(vi)('c')('5'):** Correct spelling: change "hydrological" to "hydrogeological".

**64) 373-2.29(g)(7):** is revised to correct a cross-reference:

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

**65) 373-2.29(j)(10)** is amended to correct a typo:

(10) For each hazardous waste management unit not using air emission controls specified in subdivisions 373-2.29(e) through 373-2.29(h) of this section in accordance with the requirements of 373-2.29(a)(2)(vii) of this section, the owner [and] or operator shall record and maintain the following information:

**66) Appendix 33:** Groundwater Monitoring List: 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

**67) 373-3 Title:** revise to make it match federal title and make it clear that this subpart does not directly apply to generators.

6 NYCRR Subpart 373-3 Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

**68) 373-3.1(a)(6):** There is a reference to “subparagraphs 371.1(g)(1)(ii) and (iv) of this Part” which should be changed to “of this Title”.

**69) 373-3.2(e)(1)(i):** Typo correction.

(i) Physical contact with the waste, structures, or equipment within the active portion of the facility [with] will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

**70) 373-3.4(g)(4)(ii):** Correct the phone number for State spill notification.

**71) 373-3.5(b)(1)(i)(‘b’)(‘5’):** Revised to change the Division listed in the mailing address:

[Division of Solid & Hazardous Materials, Manifest Section] Division of Environmental Remediation.

**72) 373-3.9(b):** Typo correction.

(b) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition or [mange] manage the waste in some other way that complies with the requirements of this Subpart.

**73) 373-3.10(i)(1)(i)(‘b’):** Grammatical clarification to insert the implied “or” between (i) and (ii), as is already done in 373-2.

(i) the waste is treated, rendered, or mixed before or immediately after placement in the tank system so that:

(a) the resulting waste, mixture, or dissolved material no longer meets the definition of ignitable or reactive waste under subdivision 371.3(b) or (d) of this Title; and

(b) paragraph 373 3.2(h)(2) of this Subpart is complied with; or

**74) 373-3.29(a)(3) and (3)(ii):** Amended to correct typos:

(3) For the owner [and] or operator of a facility subject to this section who has received a final permit under Part 373 of this Title, prior to December 6, 1996, the following requirements apply:

(i) The requirements of 6 NYCRR Part 373-2.29 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 Part.

(ii) Until the date 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 Part, the owner [and] or operator is subject to the requirements of this section.

**75) 373-3.29(b)(18)(ii)** is amended to correct a typo:

(ii) When the facility owner [and] or operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

**76) 373-3.29(j)(1)** is revised to correct a cross-reference:

(1) The owner or operator shall inspect and monitor air emission control equipment used to comply with this section in accordance with the applicable requirements specified in subdivision 373-3.29(f) [**and**]through 373-3.29(i) of this section.

**77) 374-1.3(a)(2)** The parenthetical: "...(*i.e.*, hazardous waste constituent)..." is revised to "...(*i.e.*, hazardous waste)..." to match federal language.

**78) 374-1.6(a)(2)(ii)**: The cross reference to 371.1(f), CESQG requirements, is deleted. This regulation will now match federal requirements. CESQG's are exempt from 374-1 requirements pursuant to 371.1(f)(2).

**79) 376.1(g)(2)**: Clarify the applicability of this paragraph by inserting "Requirements for treaters".

(2) Requirements for treaters: Treatment facilities must test their wastes according to the frequency specified in their waste analysis plan as required by subdivision 373-2.2(e) (for permitted TSD's) or 373-3.2(d) (for interim status facilities) of this Title. Such testing must be performed as provided in subparagraphs (i), (ii), and (iii) of this paragraph.

**80) 376.1(g)(3)**: Clarify the applicability of this paragraph by inserting "Requirements for disposal facilities".

(3) Requirements for disposal facilities: Except where the owner or operator is disposing of any waste that is a recyclable material used in a manner constituting disposal pursuant to paragraph 374-1.3(a)(2) of this Title, the owner or operator of any land disposal facility disposing any waste subject to restrictions under this Part must:

**81) 376.4 (a) Table**: Treatment Standards for Hazardous Waste, footnote 3, is amended to clarify text as follows:

3 Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples, except as provided in paragraph 376.4(a)(2) of this section for D004 through D011 wastes.