

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF MATERIALS MANAGEMENT

625 Broadway

Albany, NY 12233

## **6 NYCRR PART 370**

# **HAZARDOUS WASTE MANAGEMENT SYSTEM – GENERAL**

As of July 8, 2023

(Statutory authority: Environmental Conservation Law, art. 1, title 1, art. 3, title 3, §§ 19-0301, 19-0303, 19-0304, 19-0306, 23-2305, 23-2307, 23-2308, art. 27, §§ 27-0105, 27-0106, 27-0305, 27-0905, titles 1, 3, 7, 9, 27-2007, §§ 70-0107, 70-0109, 70-0115, art. 71, § 71-2201, titles 27, 35)

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**PART 370**  
**HAZARDOUS WASTE MANAGEMENT SYSTEM–GENERAL**  
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## 370 – Hazardous Waste Management System – General

### Section 370.1 General

#### (a) Purpose, scope and applicability

- (1) This Part provides definitions of terms and general standards applicable to Parts 370 through 374, and 376 of this Title.
- (2) In this Part:
  - (i) Subdivision (b) of this section sets forth the regulations that the department will use in making information it receives available to the public, and sets forth the requirements that generators, transporters or owners or operators of treatment, storage or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to the department under Parts 370 through 374, and 376 of this Title.
  - (ii) Subdivision (c) of this section establishes rules of grammatical construction for Parts 370 through 374, and 376 of this Title.
  - (iii) Section 370.2 of this Part defines terms which are used in Parts 370 through 374, and 376 of this Title. The definitions for solid and hazardous waste are given in section 371.1 of this Title.
  - (iv) Section 370.3(b) of this Part establishes procedures for petitioning the commissioner to approve testing methods as equivalent to those prescribed in Part 371, Subparts 373-2 and 373-3, and Part 376 of this Title.
  - (v) Section 370.3(c) of this Part establishes procedures for petitioning the department to exclude a waste from a particular facility.

#### (b) Safeguarding information.

- (1) Any request for the release of information in the custody of the department related to this Part or Parts 371 through 374, and 376 of this Title shall be handled according to the provisions of Part 616 of this Title.
- (2) In accordance with section 616.7 of this Title, the department shall hold confidential any information concerning the chemical composition, quantity, method of treatment or disposal of hazardous waste or any information related thereto when shown by any person that such information, if made public, would divulge competitive business information, methods or processes entitled to protection as trade secrets of such persons. However, such information may be disclosed to any officers, employees or authorized representatives of the United States or the state concerned with carrying out RCRA or the State hazardous waste program or when relevant in any proceeding thereunder. In addition, any information required by section 372.5 of this Title which is submitted in notification of intent to export a hazardous waste will be provided to the Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality.

#### (c) Use of number and gender.

As used in Parts 370 through 374, and 376 of this Title:

- (1) words in the masculine gender also include the feminine and neuter genders;
- (2) words in the singular include the plural; and
- (3) words in the plural include the singular.

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### (d) Severability.

If any provision of this Part or its application to any person or circumstance is held invalid, the remainder of this Part, and the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

### (e) References.

The following Federal regulations or technical material are incorporated by reference. These references are available for inspection and copying at department offices, Division of Solid and Hazardous Materials, 625 Broadway, Albany, NY 12233, or can be directly obtained from the sources listed for the given reference.

- (1) American Society for Testing and Materials.
  - (i) Std. D-93-October 1985, "Standard Test Methods for Flash Point by Pensky-Martens Closed Tester".
  - (ii) Std. D-140-January 1981, "Standard Method of Sampling Bituminous Materials".
  - (iii) Std. D-346-February 1981, "Collection and Preparation of Coke Samples for Laboratory Analysis".
  - (iv) Std. D-420-December 1979, "Standard Recommended Practice for Investigating and Sampling Soil and Rock for Engineering Purposes".
  - (v) Std. D-1452-June 1980, "Soil Investigation and Sampling by Auger Borings".
  - (vi) Std. D-2234-September 1982, "Collection of a Gross Sample of Coal".
  - (vii) Std. D-3278-October 1982, "Flash Point of Liquids by Small Scale Closed-Cup Apparatus".
  - (viii) Std. D-1946-June 1982, "Analysis of Reformed Gas by Gas Chromatography".
  - (ix) Std. D-2382-November 1983, "Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High Precision Method)".
  - (x) Std. D-2879-1992, "Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope".
  - (xi) Std. D-4420-October 1989, "Determination of Aromatics in Finished Gasoline by Gas Chromatography".
  - (xii) Std. E-169-February 1987, "General Techniques of Ultraviolet-Visible Quantitative Analysis".
  - (xiii) Std. E-168-1988, "General Techniques of Infrared Quantitative Analysis".
  - (xiv) Std. E-260-June 1985, "Packed Column Gas Chromatography".
  - (xv) Std. G-21-April 1970 (reapproved 1980), "Determining Resistance of Synthetic Polymeric Materials to Fungi".
  - (xvi) Std. G-November 1976 (reapproved 1985), "Determining Resistance of Plastic to Bacteria".
  - (xvii) Std. E-926-1994, "Preparing Refuse-Derived Fuel (RDF) Samples for Analysis of Metals," Test Method C - Bomb, Acid Digestion Method.

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103

- (2) *Code of Federal Regulations (CFR)*.

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- (i) 29 CFR—title 29 of the *Code of Federal Regulations* (Labor), revised as of July 1, 2013:
  - ('a') parts 1900 through end.
- (ii) 33 CFR—title 33 of the *Code of Federal Regulations* (Navigation and Navigable Waters), revised as of July 1, 2014:
  - ('a') part 153.
- (iii) 40 CFR—title 40 of the *Code of Federal Regulations* (Protection of Environment), revised as of July 1, 2014
  - ('a') parts 51, 52, 60, 61, and 63;
  - ('b') parts 112, 124, 144, 146, 148, 165, 220, 257, 258;
  - ('c') parts 260 through 266, 268, 270, 271, 279, and 280, except subpart H- Transfrontier Shipments of Hazardous Waste for Recovery within the OECD of 40 CFR part 262;
  - ('d') part 300;
  - ('e') part 761.
- (iv) 49 CFR—title 49 of the *Code of Federal Regulations* (Transportation), revised as of October 1, 2013:
  - ('a') parts 107 and 171 through 180.
- (v) Reserved.
- (vi) 40 CFR - title 40 of the *Code of Federal Regulations* (Protection of Environment) Part 63 revised as of July 1, 2000, for the purposes of section 373-1.7(j)(1) of this Title.

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

(3) *Federal Register*:

- (i) 45 FR 12746 et seq.—*Federal Register*, February 26, 1980.
- (ii) 70 FR 10775 et seq.—*Federal Register*, March 4, 2005.
- (iii) 70 FR 35034 et seq.—*Federal Register*, June 16, 2005.

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(4) National Association of Corrosion Engineers:

- (i) TM-01-69

National Association of Corrosion Engineers (NACE), P.O. Box 218340, Houston, TX 77218

(5) National Fire Protection Association:

- (i) Flammable and Combustible Liquids Code, 1996

National Fire Protection Association, One Batterymarch Park, Quincy, MA 02269-9101

(6)

- (i) American Petroleum Institute (API) Publication 2517, 3rd Edition, February 1989, Evaporative Loss from External Floating-Roof Tanks, available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

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- (ii) OECD test 301B: (CO<sub>2</sub> Evolution (Modified Sturm Test)). sub OECD Test Guidelines, July 1992, 2001 L Street NorthWest, Suite 615, Washington, DC 1-800-453-6323.
  - (iii) DOD Explosives Safety Board (DDESB) storage standards, DOD 6055.9-STD (DOD Ammunition and Explosive Safety Standards) effective January 1998.
- (7) U.S. Code—Federal laws:
- (i) Atomic Energy Act, 1954 (42 USC 2011 et seq.), USC 1988, volumes 15, 16 and 17, Supplement III (January 3, 1989 to January 1992).
  - (ii) Clean Air Act, 1955 (42 USC 7401-7626), USC 1988 volumes 15, 16 and 17, Supplement III (January 3, 1989 to January 1992).
  - (iii) Clean Water Act, 1977 (33 USC 1251 et seq.), USC 1988, volume 13, Supplement IV (January 3, 1989 to January 1993).
  - (iv) Comprehensive Environmental Response, Compensation and Liability Act, 1980 (42 USC 9601 et seq.), USC 1988, volumes 15, 16 and 17, Supplement III (January 3, 1989 to January 1992).
  - (v) Investment Company Act, 1940 (15 USC 80a-1 and 80a-2), USC 1988, volume 5, Supplement IV (January 3, 1989 to January 1993).
  - (vi) Marine Protection Research and Sanctuaries Act, 1972 (33 USC 1401 et seq.), USC 1988, volume 13, Supplement IV (January 3, 1989 to January 1993).
  - (vii) Resource Conservation and Recovery Act, 1976 (42 USC 6901 et seq.), USC 1988, volumes 15, 16 and 17, Supplement III (January 3, 1989 to January 1992).
  - (viii) Safe Drinking Water Act, 1944 (42 USC 300f to 300j-11), USC 1988, volumes 15, 16 and 17, Supplement III (January 3, 1989 to January 1992).
    - ('a') Underground Injection Control.
  - (ix) Bankruptcy Procedures Act, 1978 (11 USC 101 et seq.) USC 1988, volume 4, Supplement IV (January 3, 1989 to January 1993).
  - (x) Federal Insecticide, Fungicide, Rodenticide Act, October 1988, United States Environmental Protection Agency.
  - (xi) Federal Food, Drug and Cosmetic Act, July 1993.
  - (xii) Internal Revenue Code, 2008 (26 USC 501, “Exemption from tax on corporations, certain trusts, etc”), USC 1988 available online at <https://www.govinfo.gov>.
  - (xiii) War and National Defense, 1988 (50 USC 1521, “Destruction of existing stockpile of lethal chemical agents and munitions”), USC 2008 available online at <https://www.loc.gov>.

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

- (8) United States Environmental Protection Agency:
- (i) “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846 Third Edition, (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), III (December 1996), IIIA (April 1998), and IIIB (November 2004), document number 955-001-00000-1).
  - (ii) “Procedures Manual for Groundwater Monitoring at Solid Waste Disposal Facilities,” (EPA-530/SW-611), August 1977.

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- (iii) "Methods for Chemical Analysis of Water and Wastes," PB84-128677, March 1983.
- (iv) "Samplers and Sampling Procedures for Hazardous Waste Streams," (EPA-600/2-80-018), January 1980.
- (v) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981.
- (vi) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC.
- (vii) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, February 1999.

*Note:* (8)(i) is available online at <https://www.epa.gov/hw-sw846> (8)(i) through (vii) can be obtained from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(9) International Organization for Standardization (ISO):

- (i) "Dental equipment - Amalgam separators," ISO-11143, December 1999. Available from:

American National Standards Institute (ANSI)

25 West 43<sup>rd</sup> Street

New York, NY 10036

(212) 642-4980

<http://webstore.ansi.org>

- (f) Any laboratory tests or sample analyses 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.

## Section 370.2 Definitions

- (a) **The definitions of 'solid waste' and 'hazardous waste' are given in section 371.1(c) and (d) of this Title.**

(b) **Other definitions.**

- (1) **'Aboveground tank'** means a device meeting the definition of tank in this subdivision whereby the entire surface area of the tank is completely above the plane of the adjacent surrounding surface area of the tank (including the tank bottom) is able to be visually inspected.
- (2) **'Accumulation area'** means an area located at or near the point of manufacturer or other activity where the generation of hazardous waste initially occurs and the accumulation is done in accordance with the requirements of section 372.2(a)(8)(i) of this Title.

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- (3) **‘Act’** or **‘RCRA’** means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq. (see section 370.1(e) of this Part).
- (4) **‘Active life of a facility’** means the period from the initial receipt of hazardous waste at the facility until the commissioner receives certification of final closure.
- (5) **‘Active portion’** means that portion of a facility where treatment, storage or disposal operations are being or have been conducted and which is not a closed portion. (See also closed portion and inactive portion.)
- (6) **‘Acute hazardous waste’** means hazardous wastes that meet the listing criteria in section 371.2(b)(1)(ii) of this Title and therefore are either listed in section 371.4(b) of this Title with the assigned hazard code of (H) or are listed in section 371.4(d)(5) of this Title.
- (7) **‘Administrator’** means the Administrator of the U.S. Environmental Protection Agency, or the administrator’s designee.
- (8) **‘Aerosol can,’** also referred to as a ‘universal waste aerosol can,’ means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. Aerosol can does not include gas cylinders such as propane or acetylene.
- (9) **‘Airport’** means a public-use airport open to the public without prior permission and without restrictions within the physical capabilities of available facilities.
- (10) **‘Ancillary equipment’** means any device, including but not limited to such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to storage or treatment tanks, between hazardous waste and storage treatment tanks to a point of disposal onsite or to a point of shipment for disposal offsite.
- (11) **‘Application’** means the department's standard forms for applying for a permit under Part 373 of this Title, including any additions, revisions or modifications to the forms. Application also includes the information required by the department under Part 373.
- (12) **‘Approved program’** or **‘approved state’** means a state which has been approved or authorized by EPA under 40 CFR part 271 (see section 370.1(e) of this Part).
- (13) **‘Aquifer’** means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.
- (14) **‘Architectural coatings’** means paint used for homes and commercial buildings.
- (15) **‘Authorized representative’** means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), such as the plant manager, superintendent or person of equivalent responsibility.
- (16) **‘Authorized treatment, storage or disposal facility’** or **‘authorized facility with respect to a particular hazardous waste’** means a treatment, storage or disposal facility which is authorized, under the laws and regulations of both the Federal government and the state in which it is located, to accept the hazardous waste for treatment, storage or disposal.
- (17) **‘Battery’** means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and



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- mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term **'battery'** also includes an intact, unbroken battery from which the electrolyte has been removed.
- (18) **'Bodily injury'** means injury to the body, sickness or disease, including death resulting from any of these.
- (19) **'Boiler'** means an enclosed device using controlled flame combustion and having the following characteristics:
- (i)
    - ('a') the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids or heated gases;
    - ('b') the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as water-walls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air pre-heaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units;
    - ('c') while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
    - ('d') the unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.); or
  - (ii) the unit is one which the commissioner has determined, on a case-by-case basis, to be a boiler, after considering the standards in section 370.3(f) of this Part.
- (20) **'Carbon regeneration unit'** means any enclosed thermal treatment device used to regenerate spent activated carbon.
- (21) **'Cathode ray tube'** or **'CRT'** means a vacuum tube, composed primarily of glass, which is a visual or video display component of an electronic device.
- (i) A **'used, intact CRT'** means a CRT whose vacuum has not been released.
  - (ii) A **'used, broken CRT'** means glass that has been removed from the housing or casing of a CRT from which the vacuum has been released.
- (22) **'Certification'** means a statement of professional opinion based upon knowledge and belief.
- (23) **'Class A explosive'** defined in 49 CFR 173.53 (see section 370.1(e) of this Part).
- (24) **'Class B explosive'** defined in 49 CFR 173.88 (see section 370.1(e) of this Part).
- (25) **'CFR'** means the Code of Federal Regulations.
- (26) **'Characteristic hazardous waste'** means a waste which is hazardous solely because it possesses at least one of the characteristics given in section 371.3 of this Title.

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- (27) **‘Closed portion’** means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also active portion and inactive portion.)
- (28) **‘Closure’** means the act of securing a hazardous waste management facility pursuant to the requirements of Part 373 of this Title.
- (29) **‘Commercial hazardous waste facilities’** or **‘commercial facilities’** means a facility that receives from offsite any hazardous waste from any person that is not a part of the same trust, firm, joint-stock company, corporation (including a government corporation), partnership, association state, Federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body, except when small quantities of hazardous wastes from public bodies are accepted on an emergency basis with the approval of the commissioner on a no-cost basis. Treatment, storage and disposal units located at commercial facilities are not considered part of the commercial facility if they manage only hazardous waste initially generated onsite resulting from the recycling of characteristic hazardous wastes or the reclamation of precious metals.
- (30) **‘Commissioner’** means the Commissioner of the New York State Department of Environmental Conservation or the commissioner's designee.
- (31) **‘Component’** means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).
- (32) **‘Confined aquifer’** means an aquifer bound above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.
- (33) **‘Consignee’** means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.
- (34) **‘Constituent’** or **‘hazardous waste constituent’** means a constituent which caused the commissioner to list the hazardous waste in section 371.4 of this Title or a constituent listed in table 1 of section 371.3(e) of this Title.
- (35) **‘Container’** means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.
- (36) **‘Containment building’** means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of sections 373-2.30 and 373-3.30 of this Title.
- (37) **‘Contingency plan’** means a document setting out an organized, planned and coordinated course of action to be followed in case of a fire, explosion or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.
- (38) **‘Corrective action management unit (CAMU)’** means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.
- (39) **‘Corrosion expert’** refers to persons who, by reason of their knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a professional engineer

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- registered in New York who has licensing or certification that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.
- (40) **‘Cover material’** means soil and other suitable material acceptable to the department that is used to cover compacted solid waste, including hazardous waste, in a land disposal site.
- (41) **‘CRT collector’** means a person who receives used, intact CRTs for recycling, repair, resale, or donation.
- (42) **‘CRT exporter’** means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.
- (43) **‘CRT glass manufacturer’** means a party that conducts an operation or part of an operation that uses a furnace to manufacture CRT glass.
- (44) **‘CRT processing’** means conducting the following activities:
- (i) Receiving broken or intact CRTs; and
  - (ii) Managing the CRTs by
    - (a) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and/or
    - (b) Sorting or otherwise managing glass removed from CRT monitors.
- (45) **‘CWA’** means the Clean Water Act, 33 USC 1251 et seq. (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act amendments of 1972) (see section 370.1(e) of this Part).
- (46) **‘Daily cover’** means a compacted layer of at least six inches or cover material that is placed on all exposed solid waste, including hazardous waste, in a landfill at the end of each day of operation.
- (47) **‘Department’** means the New York State Department of Environmental Conservation.
- (48) **‘Designated treatment, storage or disposal facility’** or **‘designated facility’** means:
- (i) a hazardous waste treatment, storage or disposal facility which:
    - (a) has received a permit (or interim status) from EPA in accordance with the requirements of 40 CFR parts 270 and 124, or a Part 373 permit of equivalent (or interim status), from an approved state, or is regulated under section 471.1(g)(3)(ii) or 374-1.6 of this Title, or is exempt from permitting pursuant to section 373-1.1(d)(2) of this Title; and
    - (b) has been designated on the manifest by the generator pursuant to section 372.2(b) of this Title.
  - (ii) **‘Designated facility’** also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with section 373-2.5(b)(1)(vi) or 373-3.5(b)(1)(vi) of this Title.
  - (iii) If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.
- (49) **‘Destination facility’** means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 374-3.2(d)(1) and (3) and 374-3.3(d)(1) and (3) of this Title. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

### 370.2(b)

- (50) **‘Dike’** means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids or other materials.
- (51) **‘Dioxins and furans (D/F)’** means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.
- (52) **‘Director’** means the Director of the Division of Hazardous Substance regulation of the New York State Department of Environmental Conservation or the Director's designee.
- (53) **‘Discharge’** or **‘hazardous waste discharge’** means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying or dumping of solid or hazardous waste into or on any land or water.
- (54) **‘Disposal’** means the abandonment, discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste, including hazardous waste, into or onto any lands or waters of the State, so that such waste or hazardous waste or any related constituent thereof may enter the environment, or be emitted to the air, or discharged to any waters, including ground waters thereof. **‘Disposal’** also means the thermal destruction of wastes or hazardous waste and the burning of such wastes as fuel for the purpose of recovering usable energy.
- (55) **‘Disposal facility’** means a facility or part of a facility at which solid waste, including hazardous waste, is intentionally placed into or on any air, land or water, and at which waste will remain after closure. The term disposal facility does not include a correction action management unit into which remediation wastes are placed.
- (56) **‘Disposer state’** means the state in which the designated treatment, storage or disposal facility is located.
- (57) **‘Division’** means the Division of Solid and Hazardous Materials of the New York State Department of Environmental Conservation.
- (58) **‘Drip pad’** is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.
- (59) **‘ECL’** or **‘Environmental Conservation Law’** means chapter 43-B of the Consolidated Laws of New York State, entitled the Environmental Conservation Law.
- (60) **‘Elementary neutralization unit’** means a device which:
  - (i) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in section 371.3(c) of this Title, or are listed in section 371.4 solely because they are corrosive; and
  - (ii) meets the definition of tank, tank system, container, transport vehicle or vessel in this Part.
- (61) **‘Energy recovery’** means the beneficial use or reuse or legitimate recycling or reclamation of solid waste, including hazardous waste, through the combustion of such waste to recover energy.
- (62) **‘Environmental Notice Bulletin (ENB)’** means the publication of the department published pursuant to section 3-0306 of the Environmental Conservation Law.
- (63) **‘Environmental Protection Agency (EPA)’** means the United States Environmental Protection Agency.
- (64) **‘EPA acknowledgment of consent’** means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the

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hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

- (65) **'EPA hazardous waste number'** means the number assigned by the EPA or the commissioner to each hazardous waste listed in section 371.4 of this Title and to each characteristic identified in section 371.3.
- (66) **'EPA identification number'** means the number assigned by EPA or the commissioner to each generator, transporter, and treatment, storage or disposal facility.
- (67) **'Equivalent method'** means any testing or analytical method approved by the commissioner under this Part.
- (68) **'Exception report'** means the report made by the generator if shipment receipt is not acknowledged by the designated facility pursuant to section 372.2(c)(3) of this Title.
- (69) **'Existing hazardous waste management (HWM) facility'** or **'existing facility'** means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if the owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction, and either:
  - (i) a continuous onsite, physical construction program has begun; or
  - (ii) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the facility to be completed within a reasonable time.
- (70) **'Existing portion'** means that land, surface area of an existing waste management unit, included in the original RCRA part. A permit application, on which wastes have been placed prior to the issuance of a permit.
- (71) **'Existing tank system'** or **'existing component'** means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:
  - (i) a continuous onsite physical construction or installation program has begun; or
  - (ii) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for physical construction of the site or installation of the tank system to be completed within a reasonable time frame.
- (72) **'Explosives or munitions emergency'** means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.
- (73) **'Explosives or munitions emergency response'** means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or

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munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

- (74) **‘Explosives or munitions emergency response specialist’** means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.
- (75) **‘Facility’** means:
- (i) all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);
  - (ii) for the purpose of implementing corrective action under section 373-2.6(1) of this Title, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA or article 27, title 9 of the ECL. This definition also applies to facilities implementing corrective action under Subpart 373-2 of this Title, ECL 71-2727(3), or RCRA section 3008(h); and
  - (iii) notwithstanding subparagraph (ii) of this paragraph, a remediation waste management site is not a facility that is subject to section 373-2.6(1), corrective action for solid waste management units, of this Title, but is subject to corrective action requirements if the site is located within such a facility.
- (76) **‘Facility mailing list’** means the contact list for a facility maintained by the department for communicating in accordance with section 621.7(i)(7) of this Title.
- (77) **‘Federal agency’** means any department, agency or other instrumentality of the Federal government, and any independent agency or establishment of the Federal government including any government corporation and the Government Printing Office.
- (78) **‘Federal, State and local approvals’** or **‘permits necessary to begin physical construction’** means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.
- (79) **‘Final closure’** means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements, so that hazardous waste management activities under Subparts 373-2 and 373-3 of this Title are no longer conducted at the facility unless subject to the provisions in section 373.2(a)(8) of this Title.
- (80) **‘Final cover’** means the cover material placed on all surfaces of a landfill where no additional refuse will be deposited within one year. These areas must be designed and constructed in accordance with the requirements of section 373-2.14 of this Title.

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- (81) **'Flood plain'** shall mean any land susceptible to being inundated by water from any source. A 100-year flood plain is that land inundated by a 100-year flood that has a one-percent chance of occurring in any given year.
- (82) **'Food-chain crops'** means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.
- (83) **'Forbidden explosive'** is defined in 49 CFR section 173.51 (see section 370.1(e) of this Part).
- (84) **'Freeboard'** means the vertical distance between the lowest elevation of the top of a tank of surface impoundment dike and the surface of the waste contained therein.
- (85) **'Free liquids'** means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.
- (86) **'Functionally equivalent component'** means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.
- (87) **'Generator'** means any person, by site, whose act or process produces hazardous waste as defined in Part 371 of this Title, or whose act first causes a hazardous waste to become subject to regulation.
- (88) **'Generator state'** means the state which is the point of origin for a hazardous waste shipment.
- (89) **'Ground water'** means those waters in the zone of saturation, including perched water areas.
- (90) **'Hazardous waste'** means a hazardous waste as defined in Part 371 of this Title.
- (91) **'Hazardous waste constituent'** means a constituent that caused the commissioner to list the hazardous waste in section 371.4 of this Title, or a constituent listed in section 371.3(e).
- (92) **'Hazardous waste management'** means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.
- (93) **'Hazardous waste management facility (HWM facility)'** means all contiguous land, and structures, other appurtenances and improvements on the land, used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units. **Note:** A HWM facility does not include any unit which is designated as a CAMU.
- (94) **'Hazardous waste management unit'** is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.
- (95) **'Households'** include, but are not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas. (See **'household hazardous waste.'**)
- (96) **'Household hazardous waste'** means household waste which but for its point of origin would be a hazardous waste under Part 371 of this Title and includes all pesticides as defined in ECL article 33, that originate from a household. (See **'households.'**)
- (97) **'Household hazardous waste collection facility'** means any facility or site authorized, under Subpart 362-4 of this Title, to accept household hazardous waste, or waste from conditionally exempt small quantity generators or eligible farmers on a temporary, periodic, or permanent basis.
- (98) **'Inactive portion'** means that portion of a facility which is not operated after November 19, 1980.

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- (99) **'Incinerator'** means any enclosed device that:
- (i) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer or carbon regeneration unit, nor is listed as an industrial furnace. Air pollution consequences of hazardous waste incinerators are regulated pursuant to Parts 200, 201, 212, 225 and 257 of this Title; or
  - (ii) meets the definition of infrared incinerator or plasma arc incinerator.
- (100) **'Incompatible waste'** means a hazardous waste which is unsuitable for:
- (i) placement in a particular device or facility because it may cause corrosion or decay of contaminant materials; or
  - (ii) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes or gases, or flammable fumes or gases.
- (101) **'Individual generation site'** means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.
- (102) **'Industrial furnace'** means any of the following enclosed devices that are integral components of manufacturing processes and use thermal treatment to accomplish recovery of materials or energy:
- (i) cement kilns;
  - (ii) lime kilns;
  - (iii) aggregate kilns;
  - (iv) phosphate kilns;
  - (v) coke ovens;
  - (vi) blast furnaces;
  - (vii) smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters and foundry furnaces);
  - (viii) titanium dioxide chloride process oxidation reactors;
  - (ix) methane reforming furnaces;
  - (x) pulping liquor recovery furnaces;
  - (xi) combustion devices used in the recovery of sulfur values from spent sulfuric acid;
  - (xii) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20 percent as-generated;
  - (xiii) such other devices as the commissioner may, after notice and comment, add to this list on the basis of one or more of the following factors:
    - ('a') the design and use of the device primarily to accomplish recovery of material products;
    - ('b') the use of the device to burn or reduce raw materials to make a material product;
    - ('c') the use of the device to burn or reduce secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;



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- (d) the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
  - (e) the use of the device in common industrial practice to produce a material product; and
  - (f) other factors, as appropriate.
- (103) **'Infrared incinerator'** means any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- (104) **'Inground tank'** means a device meeting the definition of tank in this subdivision whereby a portion of the tank wall is situated to any degree within the ground thereby preventing visual inspection of that external surface area of the tank that is in the ground.
- (105) **'Injection well'** means a well into which fluids are injected. See also underground injection.
- (106) **'Inner liner'** means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.
- (107) **'In operation'** means a facility which is treating, storing or disposing of hazardous waste.
- (108) **'Installation inspector'** means persons who, by reason of their knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.
- (109) **'Interconnected tanks'** means tanks that have interconnected piping such that equipment failure at any point in the tank system or operator error could result in the release of hazardous waste from more than one tank into the secondary containment system.
- (110) **'International shipment'** means the transportation of hazardous waste into or out of the jurisdiction of the United States.
- (111) **'Lamp,'** also referred to as **'universal waste lamp,'** is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infrared regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.
- (112) **'Land disposal'** means placement of hazardous waste in or on the land, except in a corrective action management unit, and includes but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, an underground mine or cave, or placement in a concrete vault or bunker intended for disposal purposes.
- (113) **'Landfill'** means a disposal facility or part of a facility where solid waste, including hazardous waste, is placed in or on land, and which is not a pile, a land treatment facility, a surface impoundment, or underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.
- (114) **'Landfill cell'** means a discrete volume of a solid or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are lined trenches and pits.

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- (115) **‘Land treatment facility’** means a facility or part of a facility at which solid waste, including hazardous waste, is applied onto or incorporated into the soil surface. Such facilities are disposal facilities if the waste will remain after closure.
- (116) **‘Leachate’** means a liquid, including any suspended components or dissolved compounds in the liquid, which has been in contact with or passed through solid waste, including hazardous waste.
- (117) **‘Leak detection system’** means a system capable of detecting the failure of either the primary or secondary containment structure, or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release or hazardous waste into the secondary containment structure.
- (118) **‘Liner’** means a continuous layer of natural or synthetic materials, beneath or on the sides of a surface impoundment, landfill or landfill cell, which restricts the downward or lateral escape of solid waste, including hazardous waste, any constituents of such waste, or leachate.
- (119) **‘Listed hazardous waste’** means a hazardous waste that is listed in section 371.4 of this Title.
- (120) **‘Management’** or **‘hazardous waste management’** means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.
- (121) **‘Manifest’** means the shipping document EPA form 8700-22 (including, if necessary, EPA form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in Appendix 30 of this Title and the applicable requirements of Parts 372 and 373 of this Title.
- (122) **‘Manifest tracking number’** means the alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in item 4 of the manifest by a registered source (see section 372.2(b)(9) of this Title).
- (123) **‘Mercury-containing equipment’** means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.
- (124) **‘Military munitions’** means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE’s nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

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- (125) **‘Mining overburden returned to the mine site’** means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.
- (126) **‘Miscellaneous unit’** means a hazardous waste management unit where the hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146 (see section 370.1(e) of this Part), containment building, corrective action management unit, unit eligible for a research, development and demonstration permit under section 373-1.9(c) of this Title, or staging pile.
- (127) **‘Movement’** means that volume of hazardous waste transported to a facility in an individual vehicle.
- (128) **‘New hazardous waste management facility’** or **‘new facility’** means a facility which began operation or for which construction commenced after November 19, 1980. See also existing hazardous waste management facility.
- (129) **‘New tank system’** or **‘new tank component’** means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of sections 373-2.10(d)(7)(ii) and 373-3.10(d)(7)(ii) of this Title, a new tank system is one for which construction commences after July 14, 1986. (See also existing tank system.)
- (130) **‘NYCRR’** means the Official Compilation of Codes, Rules and Regulations of the State of New York.
- (131) **‘Offsite’** means any property which is not onsite.
- (132) **‘Onground tank’** means a device meeting the definition of tank in this subdivision whereby the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.
- (133) **‘Onsite’** means:
- (i) the same, geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection and access is by crossing, as opposed to going along, the right-of-way; provided, however, where two portions of the property are rented or leased by different persons, those portions are not on-site with respect to each other but are on-site with respect to portions operated by the property owner; or
  - (ii) geographically contiguous properties, owned and operated by the same person, which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection and access is by crossing, as opposed to going along, the right-of-way; or
  - (iii) noncontiguous properties, owned and operated by the same person, but connected by a right-of-way which that person controls and to which the public does not have access.
- (134) **‘Open burning’** means the combustion of any material in the absence of the following characteristics:
- (i) control of combustion air to maintain adequate temperature for efficient combustion;

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- (ii) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and
  - (iii) control of emissions of the gaseous combustion products. (See also incineration and thermal treatment.)
- (135) **'Operator'** means the person responsible for the overall operation of a facility.
- (136) **'Owner'** means the person who owns a facility or part of a facility.
- (137) **'Paint,'** also referred to as 'universal waste paint,' means interior and exterior architectural and structural coatings, including, but not limited to, primers, sealers, resin (single component), epoxy-based flooring paint (single-component), lacquers, latex, water-based paint, oil-based paint, and bridge paint. Paint does not include other industrial, original equipment or specialty coatings, paint thinners, or paint contaminated applicators, debris or personal protective equipment.
- (138) **'Partial closure'** means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subparts 373-2 and 373-3 of this Title at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.
- (139) **'Permit'** means an authorization, license or equivalent control document issued by New York State Department of Environmental Conservation to implement the requirements of Part 373 of this Title. Permit does not include interim status (section 373-1.3 of this Title), or any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit.
- (140) **'Person'** means an individual, trust, firm, joint-stock company, corporation (including a government corporation), partnership, association, state, Federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body.
- (141) **'Personnel'** or **'facility personnel'** means all persons who work at or oversee the operations of a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Part 373 of this Title.
- (142) **'Pesticide'** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:
- (i) is a new animal drug under FFDCa section 201(w), as incorporated by reference in section 370.1(e) of this Part;
  - (ii) is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or
  - (iii) is an animal feed under FFDCa section 201(x) that bears or contains any substances described by subparagraph (i) or (ii) of this paragraph.
- (143) **'Physical construction'** means excavation, movement of earth, erection of forms or structures, or similar activity to prepare an HWM facility to accept hazardous waste.
- (144) **'Pile'** means any noncontainerized accumulation of solid, nonflowing solid waste, including hazardous waste, that is used for treatment or placement and that is not a containment building.

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- (145) **‘Plasma arc incinerator’** means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.
- (146) **‘Point source’** means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
- (147) **‘Primary exporter’** means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with Part 372 of this Title which specifies a treatment, storage or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.
- (148) **‘Processing facility’** means a combination of structures, machinery or devices utilized to reduce or alter the volume, chemical or physical characteristics of solid waste, including hazardous waste, through processes such as baling or shredding prior to delivery of such waste to a resource recovery facility, sanitary landfill or incinerator, or hazardous waste treatment, storage or disposal facility, and excludes collection vehicles.
- (149) **‘Publicly owned treatment works’** or **‘POTW’** means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality, as defined by section 502 of the Clean Water Act, 33 USC 1362 (see section 370.1(e) of this Part). This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.
- (150) **‘Qualified ground water scientist’** means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by State registration, professional certification, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground water monitoring and containment fate and transport.
- (151) **‘RCRA’** or **‘Resource Conservation and Recovery Act’** means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq. 1988 (see section 370.1(e) of this Part).
- (152) **‘RCRA delegated permit’** means a permit issued by the department for a program for which a comparable permit may be required under the Resource Conservation and Recovery Act (RCRA) of 1976, 42 USC 6901 et seq. 1988 (see section 370.1(e) of this Part for hazardous waste management facilities (HWMF)).
- (153) **‘Receiving country’** means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transport).
- (154) **‘Reclaim, recover or recycle’** means any method, technique or process utilized to separate, process, modify, convert or treat or otherwise prepare hazardous waste so that component materials or substances may be used or reused as raw materials or energy sources.
- (155) **‘Regional permit administrator’** means an employee of the department located in each of the nine regional offices of the department and designated by the commissioner to act on the commissioner's

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behalf in carrying out Part 621 of this Title. Regional permit administrators' addresses and the counties under their jurisdiction can be found in Appendix 1 of this Title.

- (156) **'Regional administrator'** means the regional administrator of the appropriate regional office of the Environmental Protection Agency or the regional administrator's designee.
- (157) **'Remedial action plan (RAP)'** means a special form of Part 373 permit that a facility owner or operator may obtain instead of a permit issued under Subpart 373-1 of this Title, except sections 373-1.3 and 373-1.11 of this Title, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in this subdivision) at a remediation waste management site.
- (158) **'Remediation waste'** means all solid and hazardous waste, and all media (including ground water, surface water, soils and sediments) and debris, that are managed for implementing cleanup.
- (159) **'Remediation waste management site'** means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under section 373-2.6(1) of this Title, but is subject to corrective action requirements if the site is located in such a facility.
- (160) **'Replacement unit'** means a landfill, surface impoundment, or waste pile unit:
- (i) from which all or substantially all of the waste is removed; and
  - (ii) that is subsequently reused to treat, store or dispose of hazardous waste. Replacement unit does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or department-approved corrective action.
- (161) **'Representative sample'** means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.
- (162) **'Resource recovery facility'** means a combination of structures, machinery or devices, utilized to separate, process, modify, convert, treat or prepare collected solid or hazardous waste so that component materials or substances or recoverable material may be used as a raw material or energy source.
- (163) **'Runoff'** means any rainwater, leachate or other liquid that drains over land from any part of a facility.
- (164) **'Run-on'** means any rainwater, leachate or other liquid that drains over land onto any part of a facility.
- (165) **'Sanitary landfill'** means a land disposal site employing an engineered method of disposing of solid wastes on land in a manner that minimizes environmental hazards and meets the design and operation requirements of Part 360 and 363 of this Title.
- (166) **'Saturated zone'** or **'zone of saturation'** means that part of the earth's crust in which all voids are filled with water.
- (167) **'Schedule of compliance'** means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations or milestone events) leading to compliance with the regulations of Parts 370, 371, 372, 373, 374 and 376 of this Title.
- (168) **'Secure landburial facility'** means a land disposal facility meeting the design and operation requirements of Part 373 of this Title for the proper disposal of hazardous wastes, so that such

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wastes are immobilized or otherwise prevented from release to the environment or rendered harmless or decomposed into harmless materials within the facility.

- (169) **'Site'** means the land or water areas where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.
- (170) **'Sludge'** means any solid, semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility. Sludge does not include the treated effluent from a wastewater treatment plant.
- (171) **'Sludge dryer'** means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.
- (172) **'Small quantity generator'** is a generator who generates the following amounts in a calendar month:
- (i) greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2,200 lbs) of non-acute hazardous waste; and
  - (ii) less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in section 371.4(b) or (d)(5) of this Title; and
  - (iii) less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 371.4(b) or (d)(5) of this Title.
- (173) **'Sole source aquifer'** means an aquifer system that the United States Environmental Protection Agency, pursuant to the Safe Drinking Water Act, 42 USC 300h-3(e) (see section 370.1(e) of this Part), has determined to be the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health. The following have been designated sole source aquifers:
- (i) The Clinton Street-Ballpark Valley Aquifer System includes the entire municipalities of Vestal, Johnson City, Endicott, Nichols, Waverly and Owego, New York. Its recharge zone is considered to be one and the same with this area. The streamflow source zone is that portion of the Susquehanna River drainage basin composing the upstream headwaters area for the Broome and Tioga County area.
  - (ii) The Long Island Aquifer System includes the entire Counties of Kings, Queens, Nassau and Suffolk, New York.
  - (iii) The Schenectady/Niskayuna Aquifer System includes the entire municipalities of Ballston, Burnt Hills, Charlton, Glenville, Niskayuna, Rexford, Rotterdam, Schenectady and Scotia, New York.
- (174) **'Solid waste'** or **'waste'** has the meaning defined in Part 371 of this Title.
- (175) **'Solid waste management facility'** means a facility employed beyond the initial solid waste collection process, including but not limited to: storage areas or facilities; transfer stations; rail-haul or barge facilities; processing facilities, including resource recovery facilities, sanitary landfills; secure landburial facilities; incinerators; composting facilities; surface impoundments; and waste oil storage, reprocessing and rerefining facilities.
- (176) **'Sorbent'** means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

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- (177) **'State Pollutant Discharge Elimination System (SPDES)'** means those regulations in Part 750 of this Title prescribing procedures and substantive rules concerning the State Pollutant Discharge Elimination System pursuant to ECL article 17, title 8.
- (178) **'Spill'** means the accidental leaking, pumping, emitting, emptying or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.
- (179) **'Staging pile'** means an accumulation of solid, non-flowing remediation waste (as defined in this subdivision) that is not a containment building and that is used only during remedial operations for temporary storage at the facility. Staging piles must be designated by the department according to the requirements of section 373-2.19(c) of this Title.
- (180) **'State'** means any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of Northern Mariana Islands.
- (181) **'State manifest document number'** means the number found in box A of the manifest.
- (182) **'Storage'** means the holding of hazardous waste on a temporary basis, in such a manner as not to constitute disposal, at the end of which time the hazardous waste is treated, disposed of, or stored elsewhere.
- (183) **'Structural coating'** means paint used for protective or decorative purposes on components that support built structures. Such components include, but are not limited to, bridges, trusses, girders, stringers and bents used to support walkways, roadways, railways or subways.
- (184) **'Sump'** means any pit or reservoir that meets the definition of tank and those troughs and trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, sump means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.
- (185) **'Surface impoundment'** or **'impoundment'** means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with human-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling and aeration pits, ponds and lagoons.
- (186) **'Surface water'** means lakes, bays, sounds, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of New York State and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private.
- (187) **'Tank'** means a stationary device designed to contain an accumulation of solid waste, including hazardous waste, which is constructed primarily of nonearthen material (e.g., wood, concrete, steel, plastic) which provides structural support.
- (188) **'Tank system'** means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.
- (189) **'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.



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- (190) **‘Thermal treatment’** means the treatment of solid waste, including hazardous waste, in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also incinerator and open burning.)
- (191) **‘Thermostat’** means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of section 374-3.2(d)(3)(ii) or 374-3.3(d)(3)(ii) of this Title.
- (192) **‘Title’** means Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- (193) **‘Totally enclosed treatment facility’** means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.
- (194) **‘Transfer facility’** means any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.
- (195) **‘Transit country’** means any foreign country, other than a receiving country, through which a hazardous waste is transported.
- (196) **‘Transporter’** means a person engaged in the offsite transportation of hazardous waste by air, rail, highway or water.
- (197) **‘Transport vehicle.’** See definition of vehicle.
- (198) **‘Treatability study’** means a study in which a hazardous waste is subject to a treatment process to determine:
- (i) whether the waste is amenable to the treatment process;
  - (ii) what pretreatment (if any) is required;
  - (iii) the optimal process conditions needed to achieve the desired treatment;
  - (iv) the efficiency of a treatment process for a specific waste or wastes; or
  - (v) the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of section 371.1(e)(4)(iv) and (v) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effect studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

- (199) **‘Treatment’** means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste to:
- (i) neutralize such waste;
  - (ii) recover energy or material resources from the waste; or
  - (iii) render such waste:
    - (‘a’) nonhazardous or less hazardous;
    - (‘b’) safer to transport, store or dispose of;

## 370.2(b)

- (c) amenable for recovery or storage; or
  - (d) reduced in volume.
- (200) **‘Treatment, storage, or disposal facility (TSD)’** means all contiguous land and structures, other appurtenances and improvements on the land, used for treating, storing or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operations units (e.g., one or more landfills, surface impoundments or combinations of them).
- (201) **‘Treatment zone’** means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed or immobilized.
- (202) **‘UIC’** means the underground injection control program under part C of the Safe Drinking Water Act, including an approved program (see section 370.1(e) of this Part).
- (203) **‘Ultimate disposal method’** means the final method used to treat or dispose of a hazardous waste. The term does not include storage or initial treatments used to prepare a hazardous waste for final disposition. The following are considered ultimate disposal methods: landfills; burning, including thermal treatment; incineration, open burning or energy recovery; treatment which will render the waste nonhazardous or less hazardous, including neutralization; and material recovery which is any method used to reclaim, recover or recycle so that at least 75 percent of component materials or substances may be beneficially used or reused as raw materials.
- (204) **‘Underground injection’** means the subsurface emplacement of fluids through a bored, drilled or driven well or through a dug well, where the depth of the dug well is greater than the largest surface dimensions. (See also injection well.)
- (205) **‘Underground source of drinking water (USDW)’** means an aquifer or its portion:
- (i) which supplies any public water system; or
  - (ii) which contains a sufficient quantity of ground water to supply a public water system; and
    - (a) currently supplies drinking water for human consumption; or
    - (b) contains fewer than 10,000 mg/l total dissolved solids; and
  - (iii) which is not an exempted aquifer.
- (206) **‘Underground tank’** means a device meeting the definition of tank in this subdivision whose entire surface area is totally below the surface of and covered by the ground.
- (207) **‘Unfit-for use tank system’** means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.
- (208) **‘Universal waste’** means any of the following hazardous wastes that are managed under the universal waste requirements of Subpart 374-3 of this Title:
- (i) batteries as described in section 374-3.1(b) of this Title;
  - (ii) pesticides as described in section 374-3.1(c) of this Title;
  - (iii) mercury-containing equipment as described in section 374-3.1(d) of this Title;
  - (iv) lamps as described in section 374-3.1(e) of this Title;
  - (v) aerosol cans as described in section 374-3.1(f) of this Title; and
  - (vi) paint as described in section 374-3.1(g) of this Title.
- (209) **‘Universal waste handler’**
- (i) means:
    - (a) a generator (as defined in this subdivision) of universal waste; or

### 370.2(b)

- (b) the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or foreign destination;
- (ii) does not mean:
  - (a) a person who treats, disposes of, or recycles universal waste (except as provided in sections 374-3.2(d) and 374-3.3(d) of this Title); or
  - (b) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.
- (210) **‘Universal waste transporter’** means a person engaged in off-site transportation of universal waste by air, rail, highway, or water.
- (211) **‘Unsaturated zone’** or **‘zone of aeration’** means the zone between the land surface and the saturated zone.
- (212) **‘Uppermost aquifer’** means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.
- (213) **‘Used engine lubricating oil’** means petroleum-based lubricating oil from internal combustion engines that through use has been contaminated by physical or chemical impurities.
- (214) **‘Used engine lubricating oil retention facility’** means any facility employed to store used lubricating oil by a service establishment or any other person, industrial operation, airport, trucking terminal or State or local government facility that generates at least 500 gallons of used lubricating oil annually.
- (215) **‘Used oil’** means any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities.
- (216) **‘Vehicle’** or **‘transport vehicle’** means any device or contrivance which is required by law to be registered with a state or province, or with the Federal government, for conveyance over public roads and which actually contains or carries a regulated waste. For example, in the case of tractor-trailer combination, the trailer is considered to be the vehicle; in the case of a roll-off container or other removable containment device, it is the mobile flatbed or the undercarriage that is considered to be the vehicle.
- (217) **‘Vessel’** includes every description of watercraft, used or capable of being used as a means of transportation on the water.
- (218) **‘Waste oil’** means used engine lubricating oil and any other oil including, but not limited to, used oil, fuel oil, motor oil, gear oil, cutting oil, transmission fluid, hydraulic fluid, dielectric fluid, oil storage tank residues, animal oil and vegetable oil, which has been contaminated by physical or chemical impurities, through use or accident, and has not subsequently been rerefined. Gasoline and wastes derived from gasoline are not considered waste oil for the purposes of this Part.
- (219) **‘Wastewater treatment unit’** means a device which:
  - (i) is part of a wastewater treatment facility which is a surface water point source discharge subject to regulation under ECL article 17 or is subject to regulation under section 307(b) of the Clean Water Act (see section 370.1(e) of this Part);

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- (ii) receives and treats or stores an influent wastewater which is hazardous waste as defined in section 371.1(d) of this Title, or that generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in section 371.1(d), or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 371.1(d); and
- (iii) meets the definition of tank or tank system in this subdivision.

(220) **‘Water (bulk shipment)’** means the bulk transportation of hazardous waste that is loaded or carried on board a vessel without containers or labels.

(221) **‘Well’** means any shaft or pit dug or bored into the earth, generally cylindrical, and often walled with bricks, tubing or casing to prevent the earth from caving in.

(222) **‘Zone of engineering control’** means an area under the control of the owner or operator, that upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

### (c) **Reserved.\***

\*Text of former section 370.2(c) is now located at section 371.1(a)(1) of this Title.

## Section 370.3 Variances

### (a) **General.**

(1) Any person may petition the commissioner to use an equivalent testing or analytical method, to exclude a waste produced at a particular facility from the requirements of Parts 370 through 374, and 376 of this Title, to be granted a variance from classification as a solid waste or to be granted a variance to be classified as a boiler. This subdivision sets forth general requirements which apply to these petitions. Subdivision (b) of this section sets forth additional requirements for petitions to use a testing or analytical method that varies from the methods specified in Part 371 and Subparts 373-2 and 373-3 of this Title. Subdivision (c) of this section sets forth additional requirements for petitions to exclude a waste at a particular facility from sections 371.1(d) and 371.4 of this Title. Subdivisions (d) and (e) of this section set forth additional requirements for petitions to be granted a variance from classification as a solid waste under section 371.1(c) of this Title. Subdivision (f) of this section sets forth additional requirements for petitions to be granted a variance to be classified as a boiler.

(2) Each petition must be submitted to the commissioner and must include:

- (i) the petitioner's name and address;
- (ii) a statement of the petitioner's interest in the proposed action;
- (iii) a description of the proposed action;
- (iv) a statement of the need and justification of the proposed action, including any supporting tests, studies or other information; and
- (v) the following statement signed by the petitioner or an authorized representative:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that submitting false information

### 370.3(a)

is punishable under section 210.45 of the State Penal Law, including the possibility of fine and imprisonment.”

- (3) The commissioner will determine if sufficient information has been submitted in order to grant or deny a petition.
  - (i) If the commissioner determines that sufficient information has been submitted, a tentative decision will be made to grant or deny a petition. A notice of such tentative decision will be published by the department in the Environmental Notice Bulletin for written public comment. In the case of a petition under subdivisions (d) and (f) of this section, notification of this tentative decision will also be provided by newspaper advertisement and radio broadcast in the locality where the petitioner's facility is located. The public will be provided with a minimum comment period of 30 days.
  - (ii) If the commissioner determines that additional information is needed, the commissioner will notify the petitioner in writing of the needed information.
- (4) Upon the written request of any interested person, the commissioner may then hold a legislative public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The commissioner may in any case decide to initiate a motion to hold a legislative public hearing.
- (5) After evaluating all public comments, the commissioner will make a final decision and shall publish notice of the decision in the Environmental Notice Bulletin.

#### **(b) Petitions for equivalent testing or analytical methods.**

- (1) Any person seeking to add a testing or analytical method to Part 371, Subpart 373-2, or Subpart 373-3 of this Title must first petition the EPA administrator for a regulatory amendment under 40 CFR 260.21 and 40 CFR 260.20, as incorporated by reference in section 370.1(e) of this Part. Upon approval by the EPA administrator, the petitioner must then demonstrate to the commissioner that the proposed method is equal to or superior to the corresponding method prescribed in Part 371 and Subparts 373-2 and 373-3 of this Title, in terms of its sensitivity, accuracy and precision (i.e., reproducibility).
- (2) Each petition must include, in addition to the information required by paragraph (a)(2) of this section:
  - (i) a full description of the proposed method, including all steps and equipment used in the method;
  - (ii) a description of the types of wastes or waste matrices for which the proposed method may be used;
  - (iii) comparative results obtained from using the relevant or corresponding methods prescribed in Part 371 and Subparts 373-2 and 373-3 of this Title;
  - (iv) an assessment of any factors which may interfere with or limit the use of the proposed method; and
  - (v) a description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

### 370.3(c)

#### (c) **Petitions to exclude a waste produced at a particular facility.**

- (1) Any person seeking to exclude a waste from the lists in section 371.4 of this Title at a particular generating facility must first petition the EPA administrator for a regulatory amendment under 40 CFR 260.22 and 40 CFR 260.20, as incorporated by reference in section 370.1(e) of this Part. Upon approval by the EPA administrator, the petitioner may then seek concurrence from the commissioner under this subdivision and subdivision (a) of this section. To be successful:
  - (i) the petitioner must demonstrate to the commissioner that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and based on a complete petition, the commissioner must determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, is a hazardous waste if it fails one of the characteristic tests of section 371.3 of this Title.
- (2) The procedures in this subdivision and subdivision (a) of this section may also be used to petition the commissioner for an exclusion from section 371.1(d)(1)(ii)(‘b’) and (d)(3) of this Title, a waste which is described in those sections and is either a waste listed in section 371.4 or is derived from a waste listed in section 371.4. This exclusion may only be used for a particular generating, storage, treatment or disposal facility. The petitioner must make the same demonstration as required by paragraph (1) of this subdivision. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, the petitioner's demonstration made with respect to the waste mixture as a whole; analysis must be conducted for not only those constituents for which the waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded is still a hazardous waste if it exhibits any of the characteristics identified in section 371.3 of this Title.
- (3) If the waste is listed with codes “I,” “C,” “R” or “E” in section 371.4 of this Title:
  - (i) the petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in section 371.3(b), (c), (d) or (e) of this Title using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in section 371.3(b), (c), (d) or (e) of this Title using any applicable methods prescribed therein; and
  - (ii) based on a complete petition, the commissioner must determine, where there is a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, is a hazardous waste if it fails one of the characteristic tests of section 371.3 of this Title.
- (4) If the waste is listed with code “t” in section 371.4 of this Title:
  - (i)
    - (a) the petitioner must demonstrate that the waste does not contain the constituent or constituents (as defined in Appendix 22, *infra*) that caused the commissioner to list the waste; or

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- (b) the waste, although containing one or more of the hazardous constituents (as defined in Appendix 22, *infra*) that caused the commissioner to list the waste, does not meet the criterion of section 371.2(b)(1)(iii) of this Title when considering the factors in clauses (b)(1)(iii)(a) through (k) of such section under which the waste was listed as hazardous; and
  - (ii) the petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in section 371.3(b)-(e) of this Title using any applicable methods prescribed therein;
  - (iii) based on a complete petition, the commissioner must determine, where there is reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and
  - (iv) a waste which is so excluded, however, is a hazardous waste if it fails one of the characteristic tests of section 371.3 of this Title.
- (5) If the waste is listed with the code “h” in section 371.4 of this Title:
- (i)
    - (a) the petitioner must demonstrate that the waste does not meet the criterion for listing acute hazardous wastes of section 371.2(b)(1)(ii) of this Title; and
    - (b) the waste does not exhibit any of the characteristics defined in section 371.3(b)-(e) of this Title using any applicable methods prescribed therein;
  - (ii) based on a complete petition, the commissioner must determine, where there is reasonable basis to believe, that additional factors (including additional constituents) other than for those which the waste was listed do not warrant retaining the waste as a hazardous waste; and
  - (iii) a waste which so excluded, however, is a hazardous waste if it fails one of the characteristic tests of section 371.3 of this Title.
- (6) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.
- (7) Each petition must include, in addition to the information required by paragraph (a)(2) of this section:
- (i) the name and address of the laboratory facility performing the sampling or tests of the waste;
  - (ii) the names and qualifications of the persons sampling and testing the waste;
  - (iii) the dates of sampling and testing;
  - (iv) the location of the generating facility;
  - (v) a description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;
  - (vi) a description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;
  - (vii) pertinent data on and discussion of the factors delineated in the respective criteria for listing a hazardous waste, where the demonstration is based on the factors in section 371.2(b)(1)(iii) of this Title;
  - (viii) a description of the methodologies and equipment used to obtain the representative sample;

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- (ix) a description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;
- (x) a description of the tests performed (including results);
- (xi) the names and model numbers of the instruments used in performing the tests; and
- (xii) the following statement signed by the generator of the waste or an authorized representative:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that submitting false information under section 210.45 of the State Penal Law, including the possibility of fine and imprisonment.”

- (8) After receiving a petition for an exclusion, the commissioner may request any additional information reasonably required to evaluate the petition.
- (9) An exclusion will only apply to the waste generated by the individual facility covered by the demonstration and will not apply to waste from any other facility.
- (10) The commissioner may exclude only part of the waste for which the demonstration is submitted where there is reason to believe that variability of the waste justifies a partial exclusion.

#### **(d) Variances from classification as a solid waste.**

- (1) In accordance with the standards and criteria in subdivision (e) and the procedures in subdivision (a) of this section, the commissioner may determine on a case-by-case basis that the following recycled materials are not solid wastes:
  - (i) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in section 371.1(a)(1) of this Title);
  - (ii) materials that are reclaimed and then reused by the same person within the original production process in which they were generated; and
  - (iii) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

#### **(e) Standards and criteria for variances from classification as a solid waste.**

- (1) The commissioner may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The commissioner’s decision will be based on the following criteria:
  - (i) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether, because of past practices, market factors, the nature of the material, or contractual arrangements, the recycling is likely to occur;
  - (ii) the reason that the applicant has accumulated the material for one or more years without recycling at least 75 percent of the volume accumulated at the beginning of the year;
  - (iii) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;



### 370.3(e)

- (iv) the extent to which the material is handled to minimize loss; and
  - (v) other relevant factors.
- (2) The department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:
- (i) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
  - (ii) the extent to which the material is handled before reclamation to minimize loss;
  - (iii) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
  - (iv) the location of the reclamation operation in relation to the production process;
  - (v) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
  - (vi) whether the person who generates the material also reclaims it; and
  - (vii) other relevant factors.
- (3) The commissioner may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:
- (i) the degree of processing the material has undergone and the degree of further processing that is required;
  - (ii) the value of the material after it has been reclaimed;
  - (iii) the degree to which the reclaimed material is like an analogous raw material;
  - (iv) the extent to which an end market for the reclaimed material is guaranteed;
  - (v) the extent to which the reclaimed material is handled to minimize loss; and
  - (vi) other relevant factors.

**(f) Variance to be classified as a boiler.**

- (1) In accordance with the standards and criteria in section 370.2(b) of this Part (definition of boiler), and the procedures in subdivision (a) of this section, the commissioner may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in section 370.2(b), after considering the following criteria:
- (i) the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids or heated gases;
  - (ii) the extent to which the combustion chamber and energy recovery equipment are of integral design;
  - (iii) the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
  - (iv) the extent to which exported energy is utilized;

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- (v) the extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids or heated gases; and
- (vi) other relevant factors.

## Section 370.4 Case-By-Case Regulation of Hazardous Waste Recycling Activities

### (a) Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

- (1) The commissioner may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in section 371.1(g)(1)(ii)('d') of this Title should be regulated under Parts 372 and 373 of this Title. The basis for such decision must be that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the commissioner will consider the following factors:
  - (i) the types and amounts of materials accumulated or stored;
  - (ii) the method of accumulation or storage;
  - (iii) the length of time the materials have been accumulated or stored before being reclaimed;
  - (iv) whether any containments are being released into the environment, or are likely to be so released; and
  - (v) other relevant factors.

### (b) Procedures for case-by-case regulation of hazardous waste recycling activities.

- (1) The commissioner will use the following procedures, in addition to the procedures under Part 621 of this Title, when determining whether to regulate hazardous waste recycling activities described in section 371.1(g)(1)(ii)('d') of this Title under the provisions of section 374-1.6 of this Title.
  - (i) If a generator is accumulating the waste, the commissioner will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Parts 372 and 373 of this Title. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commissioner will hold an adjudicatory public hearing. The commissioner will provide notice of the hearing to the public and allow public participation at the hearing. The commissioner will issue a final decision based on the hearing officer's report stating whether or not compliance with Parts 372 and 373 is required. The decision becomes effective 30 days after service.
  - (ii) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Part 373 of this Title. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. The owner or operator of a facility who wishes to challenge the commissioner's decision, may do so in the permit application, in a public hearing held on the draft permit, in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question of whether the commissioner's decision was proper will remain open for consideration during the public comment period discussed under Part 624 of this Title.

## Section 370.5 Rule Making Petitions

### (a) General.

- (1) Any person may petition the commissioner to initiate a regulatory amendment to amend Subpart 374-3 of this Title to include additional hazardous wastes or categories of hazardous waste as universal waste.
- (2) Each petition must be submitted to the commissioner by certified mail and must include:
  - (i) the petitioner's name and address;
  - (ii) a statement of the petitioner's interest in the proposed action;
  - (iii) a description of the proposed action, including (where appropriate) suggested regulatory language; and
  - (iv) a statement of the need and justification of the proposed action, including any supporting tests, studies, or other information.
- (3) The commissioner will make a tentative decision to grant or deny the petition and will publish notice of such tentative decision, either in the form of a notice of proposed rule making or a tentative determination to deny the petition, in the State Register for written public comment.
- (4)
  - (i) Upon the written request of any interested person, the commissioner may hold a legislative public hearing to consider oral comments. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The commissioner may in any case decide to initiate a motion to hold a legislative public hearing.
  - (ii) After evaluating all public comments, the commissioner will make a final decision and shall publish notice of the decision in the State Register.
- (5) If the tentative decision is to publish a notice of proposed rule making, the procedures established in the State Administrative Procedure Act (SAPA), section 202 will be followed.

### (b) Reserved.

### (c) Petitions to amend universal wastes.

- (1) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Subpart 374-3 of this Title may petition for a regulatory amendment under subdivision (a) of this section and section 374-3.7 of this Title.
- (2) To be successful, the petitioner must demonstrate to the satisfaction of the commissioner that regulation under the universal waste regulations of Subpart 374-3 of this Title: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include information required by subdivision (a) of this section. The petition should also address as many of the factors listed in section 374-3.7(b) of this Title as are appropriate for the waste or category of waste addressed in the petition.
- (3) The commissioner will grant or deny a petition using the factors listed in section 374-3.7(b) of this Title. The decision will be based on the weight of evidence showing that regulation under Subpart 374-3 of this Title is appropriate for the waste or category of waste, will improve management

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practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

- (4) The commissioner may request additional information needed to evaluate the merits of the petition.