

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF MATERIALS MANAGEMENT

625 Broadway

Albany, NY 12233

6 NYCRR SUBPART 373-1

HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITY PERMITTING REQUIREMENTS

As of July 8, 2023

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SUBPART 373-1

**HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL
FACILITY PERMITTING REQUIREMENTS**

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373-1 – Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements

Section 373-1.1 General.

(a) Purpose.

The purpose of this Part is to regulate hazardous waste management facilities located partially or wholly within the State.

(b) Applicability.

(1) This Part regulates the treatment, storage and disposal of hazardous waste. Permit requirements and construction and operation standards are set forth herein. The requirements of this Part are applicable to owners and operators of hazardous waste treatment, storage and disposal facilities.

(2) Other regulations in this Title relating to hazardous waste management are as follows:

Part 364 Waste Transporters.

Part 370 Hazardous Waste Management System: General.

Part 371 Identification and Listing of Hazardous Wastes.

Part 372 Hazardous Waste Manifest System and Related Standards for Generators, Transporters and Facilities.

Part 374 Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

Part 376 Land Disposal Restrictions.

Part 377 Siting of Industrial Hazardous Waste Facilities.

Part 380 Prevention and Control of Environmental Pollution by Radioactive Materials.

(3) The following are regulations in this Title of general applicability which affect the processing of permits for hazardous waste management:

Part 617 State Environmental Quality Review Procedures.

Part 621 Uniform Procedures (Permit Processing Procedures).

Part 624 Permit Hearing Procedures.

(4) Universal waste handlers and transporters (as defined in section 370.2(b) of this Title) handling the wastes listed below are subject to regulation under 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.

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(c) Safeguarding information.

Any requests for the release of information in the custody of the department related to this Part shall be handled according to the provisions of Part 616 of this Title, Access to Records of the DEC, and as discussed in section 370.1(b) of this Title.

(d) Exemptions.

The owners or operators of the following facilities or portions of facilities are exempt from this Part only as provided in this subdivision. Any hazardous waste management unit(s) exempt from permitting under this subdivision is not exempt from the requirements of section 373-2.6 of this Part if the facility is required to obtain a permit under this Part for some other unit(s) at the facility. Exempt facilities may be subject to permitting under Part 360 of this Title.

- (1) Facilities and operations that conduct the activities listed below and manage hazardous waste are exempt from this Part only as provided in this paragraph.
 - (i) Facilities, other than household hazardous waste collection facilities, that manage only hazardous waste received from offsite generators that:
 - ('a') generate less than a total of 100 kilograms of hazardous waste per calendar month and store onsite less than a total of 1,000 kilograms, provided the waste is not acute hazardous waste;
 - ('b') generates in a calendar month any of the following acute hazardous wastes in quantities less than the quantities of hazardous waste specified below:
 - ('1') a total of one kilogram of acute hazardous waste listed in section 371.4(b) and (d)(5) of this Title; or
 - ('2') a total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 371.4(b) and (d)(5) of this Title;
 - (ii) The disposal of waste pesticides by the farmer who generated them. These wastes must be handled in accordance with the requirements of section 372.1(e)(3) of this Title.
 - (iii) The storage in containers or tanks of hazardous waste that is generated onsite, for a period not exceeding 90 days, other than the storage of liquid hazardous wastes in the Counties of Kings, Nassau, Queens and Suffolk, or over the Schenectady/Niskayuna Aquifer System in Schenectady, Saratoga and Albany Counties and the Clinton Street - Ball Park Valley Aquifer System in Broome and Tioga Counties. Storage areas that are exempt must comply with the following requirements:
 - ('a') For storage of liquid hazardous waste in containers, the total amount of hazardous waste stored in containers in exempt storage areas at one time is 8,800 gallons or less. Waste stored in areas exempted by subparagraphs (vi) and (xiv) of this paragraph and characteristic hazardous wastes stored prior to recycling is excluded from this volume. If the amount of liquid hazardous waste stored in containers in these areas exceeds 8,800 gallons, the entire volume of liquid hazardous waste must be stored within an area

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meeting the secondary containment requirements of section 373-2.9(f)(1) of this Part.

- (b) For all references to Subpart 373-3 of this Part in this subparagraph which require retention of documentation in an operating record, the generator must maintain these records as required in Subpart 373-3 of this Part. These records must be furnished to the department upon request, postmarked within five business days of receipt of a written request. A generator must make such records available at all reasonable times for inspection by any officer, employee, or representative of the department who is duly designated by the commissioner.
- (c) The following requirements are met:
 - (1) the waste is placed:
 - (i) in containers and the generator complies with sections 373-3.9, and 373-3.27 through 373-3.29 of this Part; and/or
 - (ii) in tanks and the generator complies with sections 373-3.10, and 373-3.27 through 373-3.29 except for section 373-3.10(h)(3) and (k) of this Part; and/or
 - (iii) in addition, such a generator is exempt from the requirements in sections 373-3.7 and 373-3.8 of this Part, except for section 373-3.7(b) and (e) of this Part;
 - (2) the date on which each period of accumulation begins is clearly marked and visible for inspection on each container;
 - (3) a label or sign stating “Hazardous Waste” must identify all areas, tanks and containers used to accumulate hazardous waste. In addition, tanks and containers must be marked with other words to identify their contents;
 - (4) each container is properly labeled and marked according to section 372.2(a)(5)-(6) of this Title;
 - (5) the generator complies with the requirements for personnel training in section 373-3.2(g) of this Part, for preparedness and prevention in section 373-3.3 of this Part, and contingency plans and emergency procedures in section 373-3.4 of this Part and with all applicable requirements under Part 376 of this Title; and
 - (6) (Reserved)
- (d) (Reserved)
- (e) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than one kilogram of acute hazardous waste listed in section 371.4(b) and (d)(5) of this Title, in a calendar month, or greater than 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 371.4(b) and (d)(5) of this Title, in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days in the storage area is subject to the requirements of

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Subparts 373-2 and 373-3 of this Part and the permit requirements of section 373-1.4 of this Subpart unless the generator has been granted an extension to the 90-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the department on a case-by-case basis.

- (iv) The storage in containers or tanks of liquid hazardous waste that is generated onsite in the Counties of Kings, Nassau, Queens and Suffolk, or over the Schenectady/Niskayuna Aquifer System in Schenectady, Saratoga and Albany Counties and the Clinton Street - Ball Park Valley Aquifer System in Broome and Tioga Counties, for periods of 90 days or less. The requirements of this subparagraph do not apply to small-quantity generators, except as provided in clause ('g'). These storage areas must comply with the following requirements whenever any quantity of liquid hazardous waste is stored onsite in tanks, or whenever the total quantity of liquid hazardous waste stored onsite in tanks, or whenever the total quantity of liquid hazardous waste stored onsite in containers exceeds 185 gallons. (Waste stored in areas exempted by subparagraph (vi) or (xiv) of this paragraph and characteristic hazardous waste stored prior to recycling are excluded from this volume.) If less than 185 gallons of liquid hazardous waste are stored in containers onsite, the provisions of section 373-1.1(d)(1)(iii) must be met for that waste in lieu of the requirements of this subparagraph:
- ('a') the facility complies with the requirements of clause (iii)('c') of this paragraph; in addition, the closure plan requirements of section 373-3.7(a)-(f) of this Part must be met;
 - ('b') the facility complies with the requirements of ECL article 17;
 - ('c') the tank and container storage areas are within a secondary containment system:
 - ('1') for container storage exceeding 185 gallons, the containment system must be designed and operated in accordance with section 373-2.9(f)(1) of this Part; and
 - ('2') for tanks, the secondary containment system must be designed and constructed in accordance with the requirements of section 373-3.10(d) of this Part.
 - ('3') by December 31, 1987, existing facilities in the Counties of Kings, Queens, Nassau and Suffolk must satisfy the secondary containment requirements in section 373-2.9(f) of this Part for containers, or section 373-3.10(d)(3)(iv) and (d)(5)(i)('a'), ('b') and ('c') of this Part for tanks. All other secondary containment requirements in section 373-3.10(d) of this Part must be satisfied by the dates specified in section 373-3.10(d)(1).
 - ('4') by December 31, 1988, existing facilities in the Schenectady/Niskayuna and Clinton Street - Ball Park Valley Aquifer Systems must satisfy the secondary containment requirements described in subclause ('3') of this clause. All other secondary containment requirements must be satisfied by the dates specified in section 373-3.10(d)(1) of this Part.

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- (d) For a small quantity generator, the requirements of subclauses ('c')('1') and ('2') of this subparagraph must be met at the time more than 185 gallons of liquid hazardous wastes are accumulated or at the time any liquid hazardous wastes are accumulated in underground storage tanks. (Waste stored in areas exempted by subparagraph (vi) or (xiv) of this paragraph and characteristic hazardous wastes stored prior to recycling are excluded from these volumes.) The storage of hazardous waste must also comply with the requirements of section 372.2(a)(8)(iii) through (v) of this Title.
- (1) By December 22, 1998, existing tank or container storage units, not subject to secondary containment requirements prior to the effective date of these regulations, must be in compliance with the requirements of this clause.
- (2) Tank and container storage units, the construction of installation of which commences on or after the effective date of these regulations, must be in compliance with the requirements of this clause prior to use.
- (e) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in section 371.4(b) and (d)(5) of this Title, in a calendar month, or greater than 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 371.4(b) and (d)(5) of this Title, in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days in the storage area is subject to the requirements of Subparts 373-2 and 373-3 of this Part and the permit requirements of section 373-1.4 of this Subpart unless the generator has been granted an extension to the 90-day period. Such extension may be granted by the department if hazardous wastes must remain onsite for longer than 90 days due to unforeseen, temporary and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the department on a case-by-case basis.
- (v) The onsite storage and treatment of hazardous waste by generators that generate less than 100 kilograms of hazardous waste in any calendar month and store less than 1000 kilograms. The conditionally exempt small quantity generator requirements listed in section 371.1(f) of this Title remain applicable. If at any time the amount of hazardous waste exceeds 1,000 kilograms, this exemption does not apply. This exemption applies to the onsite storage and treatment of acute hazardous wastes only if the generator generates and stores in any calendar month such acute hazardous waste in quantities less than those listed in clause (i)('b') of this paragraph.
- (vi) The storage and recycling of the recyclable materials identified in section 371.1(g)(1)(iii) and (iv) of this Title.
- (vii) The storage of the recyclable materials listed in section 371.1(g)(i)(ii) of this Title provided that Subpart 374-1 of this Title is complied with. (**Note:** Subpart 374-1 will require that the facility also complies with selected sections of this Part.)
- (viii) The recycling of hazardous wastes, provided in section 373-2.2(c) (identification number), 373-2.5(b) or 373-3.5(b) (manifest requirements) of this Part and clause ('d') of this

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subparagraph are complied with. (The storage of hazardous waste prior to recycling is not exempt under this subparagraph.) In addition:

- ('a') this exemption is available to:
 - ('1') commercial facilities that reclaim precious metals, as defined in section 374-1.6 of this Title; and
 - ('2') mobile or transportable commercial facilities which operate on the generator's site, if a containment area, which meets the requirements of section 373-2.9(f) of this Part, is provided for the reclaiming facility and any associated, temporary container holding or storage area;
- ('b') Boilers and industrial furnaces that burn hazardous wastes for energy recovery are exempt from this Part only as provided in sections 374-1.8(a) and (i) of this Title. This exemption is not available to any other units that burn hazardous wastes for energy recovery;
- ('c') exempted processes that recycle the hazardous wastes listed in section 371.1(g)(1)(ii) of this Title must comply with Part 374 of this Title in lieu of the requirements specified in this subparagraph. (**Note:** Part 374 will require that the facility also complies with selected sections of this Part); and
- ('d') owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous waste are subject to the requirements of sections 373-2.27, 373-2.28, 373-3.27 and 373-3.28 of this Part.
- (ix) The on-site treatment of hazardous waste, by the generator, in the same tanks or containers that are used for accumulation and storage of such wastes. Exempt units must comply with the requirements of subparagraphs (iii) and (iv) of this paragraph and with the requirements of section 372.2(c)(4) of this Title. Any treatment or placement of hazardous waste in a manner that constitutes land disposal, as defined in section 370.2(b) of this Title, does not qualify for this exemption.
- (x) Mobile PCB treatment units other than thermal treatment and incineration units, treating liquid PCB's and PCB contaminated dielectric oils both from electrical equipment, provided that the following conditions are met:
 - ('a') the unit has an appropriate authorization under the Toxic Substances Control Act (TSCA) from the United States Environmental Protection Agency for the PCB wastes being treated by the unit;
 - ('b') prior to commencing work at a site and at all times while handling the waste, the treatment unit is provided with physical barriers to limit access by unauthorized persons and with posted signs reading "Danger PCB work" and "Authorized Personnel Only;"
 - ('c') an impervious secondary containment system such as a synthetic liner is spread over the area on which the treatment unit is located. In addition, this containment system must be designed to contain and collect spills from the unit and its associated pipes and fittings

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without migrating into the surrounding area. After the treatment of PCB waste is complete, this liner must be decontaminated and/or disposed of as hazardous waste;

('d')

('1') all containers of PCB treatment wastes generated in the treatment of PCB oil are stored on impervious surfaces with a containment system of sufficient capacity to contain 20 percent of the volume of containers stored;

('2') on-site storage of all wastes resulting from the mobile treatment unit shall be limited to forty 55-gallon drums at any one time. These drums must, at all times, be stored within a secure area provided with a fence to limit access of unauthorized personnel;

('3') all of these drums are removed from the site within 30 days of the end of the treatment;

('e') the unit's owner has available at all times in the mobile unit a written contingency plan meeting the requirements of section 373-3.4 of this Part;

('f') 30 days before beginning the PCB oil treatment at a site, the unit's owner must notify the local emergency response agencies and the New York Department of Environmental Conservation Regional Offices (ATTN: Regional Engineer) of the intended PCB treatment at the site with the information on the site, expected duration of treatment, quantity and concentration of the PCB oil to be treated;

('g') the unit's owner complies with the manifest system, recordkeeping and reporting requirements (including reporting of spills) of section 373-3.5 of this Part;

('h') this exemption is not applicable to mobile units located at any one site for more than 30 consecutive days.

(xi) Totally enclosed treatment facilities, as defined in Part 370 of this Title.

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

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

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

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- (2') elementary neutralization units that qualify as containers must be managed in accordance with section 373-3.9 Use and Management of Containers of this Part;
 - (3') all containers and tanks used to treat hazardous waste must be marked with the words "Hazardous Waste" and other words that identify the contents. For underground tanks, the marking must be placed on a sign in the area above the tank and on the fill port; and
 - (4') if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 high TOC subcategory defined in section 376.4(a) of this Title, Table Treatment Standards for Hazardous Wastes) or reactive (D003) waste to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in sections 373-2.2(i)(2) and 373-3.2(h)(2) of this Part.
- (b) Small quantity generators, as defined in section 370.2(b) of this Title, must meet the requirements of section 372.2(a)(8)(iii)(‘e’) of this Title for these units, and subclauses (‘a’)(‘2’), (‘3’), and (‘4’) of this subparagraph.
- (c) Conditionally exempt small quantity generators, as defined in section 371.1(f) of this Title, must meet the requirements of subparagraph (v) of this paragraph, provided the waste is managed immediately upon generation in the unit.
- (xiii)
- (a) Treatment or containment activities during immediate response to any of the following situations:
 - (1') a discharge of a hazardous waste;
 - (2') an imminent and substantial threat of a discharge of hazardous waste;
 - (3') a discharge of a material which, when discharged, becomes a hazardous waste; or
 - (4') an immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in section 370.2(b) of this Title.
 - (b) An owner or operator of a facility otherwise regulated by this Subpart must comply with all applicable requirements of sections 373-2.3, 373-2.4, 373-3.3 and 373-3.4 of this Part.
 - (c) Any person who is covered by clause (‘a’) of this subparagraph, and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over, is subject to all applicable requirements of this Part for those activities.
 - (d) In the case of emergency responses involving military munitions, the responding military emergency response specialist’s organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

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- (xiv) Accumulation areas are exempt, provided that they are used to accumulate waste in accordance with the requirements of section 372.2(a)(8)(i) of this Title.
- (xv) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of section 372.2(a)(4) of this Title at a transfer facility for a period of 10 calendar days or less is exempt.
- (xvi) (Reserved)
- (xvii) The addition of absorbent material to waste in a container or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and sections 373-2.2(i)(2) and 373-2.9(b)-(c) are complied with.
- (xviii) Household hazardous waste collection facilities which accept hazardous waste from conditionally exempt small quantity generators or farmers who meet the requirements of section 372.1(e)(3)(iv) of this Title, provided that the program sponsor or owner/operator complies with the requirements of Subpart 362-4 of this Part.
- (xix) The placement on drip pads of hazardous waste that is generated onsite, for a period not exceeding 90 days, provided the generator complies with section 373-3.23 of this Part and maintains the following records at the facility:

- ('a') a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and
- ('b') documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

In addition, such a generator is exempt from the requirements in sections 373-3.7 and 373-3.8 of this Part, except for section 373-3.7(b) and (e) of this Part. Such a generator must also comply with the requirements for owners and operators in sections 373-3.3, 373-3.4, and 373-3.2(g) of this Part and with section 376.1(g)(1)(iv) of this Title.

- (xx) The placement in containment buildings of hazardous waste that is generated onsite, for a period not exceeding 90 days, provided the generator complies with section 373-3.30 of this Part, and has placed its professional engineer certification that the building complies with the design standards specified in section 373-3.30(b) in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:
 - ('a') a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or
 - ('b') documentation that the unit is emptied at least once every 90 days.

In addition, such a generator is exempt from the requirements in sections 373-3.7 and 373-3.8 of this Part, except for section 373-3.7(b) and (e) of this Part. Such a generator must also

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comply with the requirements for owners and operators in sections 373-3.3, 373-3.4, and 373-3.2(g) of this Part and with section 376.1(g)(1)(iv) of this Title.

(2) The following facilities are exempt from this Part under the given conditions listed:

- (i) A barge or other vessel which accepts hazardous waste for ocean disposal is exempt, if the owner or operator:
 - ('a') has a permit for ocean dumping issued pursuant to 40 CFR part 220 (Ocean Dumping, authorized by the Marine Protection, Research and Sanctuaries Act, 33 USCA 1420, *et seq.*) (see section 370.1(e) of this Title); and
 - ('b') complies with the hazardous waste regulations in the following sections of this Title:
 - ('1') 373-2.2(c), identification number;
 - ('2') 373-2.5(b) or 373-3.5(b) (manifest requirements);
 - ('3') 373-2.5(c)(1) and (2)(i), operating record;
 - ('4') 373-2.5(e), annual report; and
 - ('5') 373-2.5(f), unmanifested waste report.

Note: Part 373 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea.

- (ii) Facilities which dispose of hazardous waste by injection well, if the owner or operator:
 - ('a') has a permit for underground injection issued under 40 CFR part 144, subpart C, or part 145, subpart C (see section 370.1(e) of this Title);
 - ('b') complies with the conditions of that permit and the requirements of 40 CFR 144.14 (requirements for wells managing hazardous wastes) (see section 370.1(e) of this Title);
 - ('c') has a SPDES permit issued under Part 750 of this Title and complies with the conditions of that permit and the requirements of Part 750 of this Title, State Pollutant Discharge Elimination System; and
 - ('d') for UIC permits issued after November 8, 1984:
 - ('1') complies with section 373-2.6(1) of this Part; and
 - ('2') where the UIC well is the only unit at a facility which requires a RCRA permit, complies with section 373-1.5(a)(4) of this Subpart.

Note: Part 373 regulations apply to the treatment or storage of hazardous waste before it is injected underground.

- (iii) A POTW which accepts hazardous waste for treatment if the owner or operator:
 - ('a') has a State Pollutant Discharge Elimination System (SPDES) permit issued for a discharge to surface waters only;

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Note: Discharges from a POTW which have a SPDES permit and discharge to ground water are not exempt.

- (b) complies with the hazardous waste regulations in the following sections of this Title:
 - (1) 373-2.2(c), identification number;
 - (2) 373-2.5(b) or 373-3.5(b) (manifest requirements);
 - (3) 373-2.5(c)(1) and (2)(i), operating record;
 - (4) 373-2.5(e), annual report;
 - (5) 373-2.5(f), unmanifested waste report;
 - (6) 373-2.6(1), corrective action for solid waste management units, for SPDES permits issued after November 8, 1984; and
- (c) meets all Federal, State and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe or similar conveyance.

(e) **Variances.**

The department may, upon written application from any person who is subject to this Part, grant a variance from one or more specific provisions of this Part under the following conditions:

- (1) Any application for a variance must:
 - (i) identify the specific provisions of this Part from which a variance is sought;
 - (ii) demonstrate that compliance with the identified provisions would, on the basis of conditions unique and peculiar to the applicant's particular situation, tend to impose a substantial financial, technological or safety burden on the applicant or the public; and
 - (iii) demonstrate that the proposed activity will have no significant adverse impact on the public health, safety or welfare, the environment or natural resources.
- (2) The commissioner will not grant any variance which would result in regulatory controls less stringent than those in the RCRA-delegated program.
- (3) In granting any variance, the commissioner may impose specific conditions necessary to assure that the subject activity will have no significant adverse impact on the public health, safety or welfare, the environment or natural resources.

(f) **Uniform procedures.**

The procedures applicable to the submittal and processing of applications for permits, permit renewals and permit modification, and the procedures applicable to the suspension and revocation of permits, pursuant to this Part, are set forth in this Subpart and in Part 621 of this Title.

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(g) Enforcement.

Without limitation to any other civil or criminal sanctions that may be applicable, a person who violates any of the provisions of this Part or of any permit issued hereto, or any order issued by the commissioner, will be liable for civil, administrative and criminal penalties given in article 71, title 27 of the ECL. Such a person shall also be subject to any penalties, sanctions or orders resulting from any other applicable provision of article 71 of the ECL. The commissioner or his/her representative is authorized to enter and inspect any property or premises for the purpose of ascertaining compliance or noncompliance with this Part.

(h) 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, will not be affected.

(i) Terms used in this Part are defined in Part 370 of this title.

Section 373-1.2 Requirements for permits.

- (a)** No person shall operate an existing hazardous waste management facility without a permit issued pursuant to this Part or without interim status pursuant to this Part.
- (b)** A person that operates an existing hazardous waste management facility without a permit issued pursuant to this Part must meet the requirements of Subpart 373-3 of this Part and the applicable interim status provisions of this Subpart.
- (c)** No person shall begin physical construction of or operate a new hazardous waste management facility without a permit issued pursuant to this Part.
- (d)** Owners and operators of hazardous waste management facilities must have a Part 373 permit during the active life (including the closure period) of the unit, and, for any unit which closes after January 26, 1983, during any post-closure care period required under section 373-2.7(g) of this Part and during any compliance period specified under section 373-2.6(g) of this Part, including any extension of the compliance period under section 373-2.6(g)(3) of this Part. An RCRA part B permit issued by the United States Environmental Protection Agency under 40 CFR parts 270 and 124 does not relieve an owner or operator of the responsibility for obtaining a permit pursuant to this Part. Facilities which currently have a permit issued pursuant to Part 360 of this Title for the management of hazardous waste and qualify for the extension allowed under the State Administrative Procedure Act (SAPA), have authorization to operate until final administrative and judicial disposition of a permit application are made. Both of these facilities must also comply with the requirements of Subpart 373-3 of this Part and the applicable interim status provisions of this Subpart except section 373-1.3(g).
- (e) Scope of the Part 373 permit requirement.**

The ECL and RCRA require a permit for the treatment, storage, and disposal of any hazardous waste as identified or listed in Part 371 of this Title. The terms treatment, storage, disposal, and hazardous waste are defined in section 370.2(b) of this Title. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of

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surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to section 373-3.7(f)(1) of this Part) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under paragraphs (1) and (2) of this subdivision, or obtain an enforceable document in lieu of a post-closure permit, as provided under paragraph (3) of this subdivision. If a post-closure permit is required, the permit must address applicable Subpart 373-2 (Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-Closure Care Requirements) of this Part. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this Part.

- (1) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Subpart 373-3 of this Part standards must obtain a post-closure permit unless they can demonstrate to the commissioner that the closure met the standards for closure by removal or decontamination in section 373-2.11(f), 373-2.13(h)(5) or 373-2.12(h) of this Part, respectively. The demonstration may be made in the following ways:
 - (i) If the owner or operator has submitted a Part 373 application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that Subpart 373-2 closure by removal standards were met. If the commissioner believes that Subpart 373-2 standards were met, he or she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (2) of this subdivision.
 - (ii) If the owner or operator has not submitted a Part 373 application for a post-closure permit, the owner or operator may petition the commissioner for a determination that a post-closure permit is not required because the closure met the applicable Subpart 373-2 closure standards.
 - ('a') The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under the Subpart 373-2 closure by removal standard.
 - ('b') The commissioner shall approve or deny the petition according to the procedures outlined in paragraph (2) of this subdivision.
- (2) Procedures for closure equivalency determination.
 - (i) If a facility owner or operator seeks an equivalency demonstration under paragraph (1) of this subdivision, the commissioner will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The commissioner will also, in response to a request or at his or her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Subpart 373-3 closure to a Subpart 373-2 closure. The commissioner will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)
 - (ii) The commissioner will determine whether the Subpart 373-3 closure met Subpart 373-2

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closure by removal or decontamination requirements within 90 days of its receipt. If the commissioner finds that the closure did not meet the applicable Subpart 373-2 standards, he or she will provide the owner or operator with a written statement of the reasons why the closure failed to meet Subpart 373-2 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The commissioner will review any additional information submitted and make a final determination within 60 days.

- (iii) If the commissioner determines that the facility did not close in accordance with Subpart 373-2 closure by removal standards, the facility is subject to post-closure permitting requirements.
- (3) Enforceable documents for post-closure care. At the discretion of the department, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of section 373-3.7(k) of this Part. ***‘Enforceable document’*** means an order, a plan or other document issued by the department under article 27 or 71 of the Environmental Conservation Law (ECL), including, but not limited to a corrective action order, a CERCLA or State inactive hazardous waste site remedial order or a closure or post-closure plan, and enforceable under article 71 of the ECL.

Section 373-1.3 Interim status.

(a) General.

New York State’s hazardous waste management facility permitting program consists of a phase called “interim status” for qualifying facilities and a phase that constitutes the formal permit process. ***‘Interim status’*** is a condition under which facilities may operate prior to completing permit processing requirements. It is a temporary measure designed to phase existing facilities into compliance with permit requirements. Only certain facilities will be eligible to receive interim status. All others, including new facilities, must obtain permits before commencing operation. Operation during interim status is conditioned upon compliance with performance standards set forth in Subpart 373-3 of this Part. Interim status may be modified, suspended or revoked in a manner similar to a permit.

(b) Eligibility.

The owners and operators of the following types of facilities are eligible for interim status:

- (1) Owners or operators of existing hazardous waste management facilities who submitted part A of their RCRA permit application to the regional administrator no later than:
 - (i) six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR part 265 or 266 (see section 370.1(e) of this Title); or
 - (ii) 30 days after the date they first became subject to the standards set forth in 40 CFR part 265 or 266 (see section 370.1(e) of this Title), whichever occurred first.

Note: For facilities which had to comply with 40 CFR part 265 because they handle a waste listed in EPA’s May 19, 1980, part 261 regulations (45 FR 33006, *et seq.*), the deadline for submitting an application was November 19, 1980. Where other existing facilities had to begin to comply with 40 CFR part 265 or 266 at a later date because of revisions to 40 CFR

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part 260, 261, 265 or 266, the administrator specified in the preamble to those revisions when those facilities had to submit a part A application.

(iii) for generators generating greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and treats, stores or disposes of these wastes onsite, by March 24, 1987.

- (2) Facilities which were not required to submit a part A of their RCRA permit application to EPA, but which are subject to the permit requirements of this Part and submit an EPA part A application to the regional permit administrator in whose jurisdiction the facility is located, and the director, within 30 days of the effective date of this Part.
- (3) Facilities that first become subject to the permit requirements of this Part due to a change in Part 371, 373 or 374 of this Title and who submit an EPA part A application to the regional permit administrator in whose jurisdiction the facility is located, and the commissioner, within 30 days of the effective date of the change in Part 371, 373 or 374.
- (4) Facilities that have an RCRA part B permit issued by EPA but do not have a Part 373 permit.
- (5) Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a Part 373 permit application in accordance with the dates specified in subdivision (h) of this section. Any owner or operator of a land disposal facility in existence on the effective date of a change to Part 370, *et seq.* of this Title that requires the facility to have a Part 373 permit must submit a Part 373 permit application in accordance with the dates specified in subdivision (h).

(c) **Qualifying for interim status.**

- (1) Any person who owns or operates an existing HWM facility or a facility in existence on the effective date of statutory or regulatory amendments under the ECL and its regulations that render the facility subject to the requirement to have a Part 373 permit will have interim status and will be treated as having interim status, provided that:
 - (i) the facility is among the categories specified in subdivision (b) of this section; and
 - (ii) the owner or operator has complied with the requirements of subdivision (d) of this section governing submission of interim status applications.
- (2) When the commissioner determines on examination or reexamination of an interim status application that it fails to meet the standards of this Part, the commissioner may commence proceedings to revoke interim status.
- (3) Paragraph (1) of this subdivision does not apply to any facility which has been previously denied a Part 373 or RCRA part B permit or if authority to operate the facility under this Part or RCRA has been previously terminated.

(d) **General procedures for interim status application.**

- (1) Applicant. Whenever the owner and the operator of a facility are different persons, the operator is responsible for submitting the required application for interim status, except that the owner is also

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responsible for signing the application. The operator must also receive the owner's permission to conduct all regulated activities, including adequate agreement for site access during the post-closure period for disposal facilities.

- (2) Forms. The part A of the USEPA RCRA permit application (see section 370.1(e) of this Title) is the application form for New York State interim status pursuant to this Part.
- (3) Submission of applications. The application shall be submitted to the regional permit administrator in the Department of Environmental Conservation region in which the facility is located and to the Director, Division of Hazardous Substances Regulation.

Note: If the applicant submitted the application to USEPA Region II prior to July 14, 1985, then the requirements of paragraph (3) of this subdivision have been satisfied.

- (4) Signatories to interim status applications and reports.
 - (i) Applications. All applications must be signed as follows:
 - ('a') for a corporation: by a responsible corporate officer. For the purpose of this section, a **'responsible corporate officer'** means:
 - ('1') a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation; or
 - ('2') the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedure; or
 - ('b') for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - ('c') for a municipality, State, Federal or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a **'principal executive officer'** of a governmental agency includes:
 - ('1') the chief executive officer of the agency; or
 - ('2') a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
 - (ii) Reports. All reports required for interim status and other information requested by the commissioner must be signed by a person described in paragraph (4) of this subdivision, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - ('a') the authorization is made in writing by a person described in paragraph (4) of this subdivision;

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(b) the authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) the written authorization is submitted to the commissioner.

(iii) Changes to authorization. If an authorization under subparagraph (ii) of this paragraph is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph (ii) must be submitted to the commissioner prior to or together with any reports, information or applications to be signed by an authorized representative.

(iv) Certification. Any person signing a document under subparagraph (i) or (ii) of this paragraph must make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(e) Contents of the application for interim status.

The application form for interim status must include the following specific information:

- (1) the activities conducted by the applicant which require a permit under this Part;
- (2) name, mailing address and location, including latitude and longitude of the facility for which the application is submitted;
- (3) up to four standard industrial classification (SIC) codes which best reflect the principal products or services provided by the facility;
- (4) the operator’s names, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;
- (5) the name, address and phone number of the owner of the facility;
- (6) whether the facility is located on Indian lands;
- (7) an indication of whether the facility is new or existing and whether it is a first or revised application;
- (8) for existing facilities:
 - (i) a scale drawing of the facility showing the location of all past, present and future treatment, storage and disposal areas; and

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- (ii) photographs of the facility, clearly delineating all existing structures; existing treatment, storage and disposal areas; and sites of future treatment, storage and disposal areas.
- (9) a description of the processes to be used for treating, storing and disposing of hazardous waste, and the design capacity of these items;
- (10) a specification of the hazardous wastes listed or designated under Part 371 of this Title to be treated, stored or disposed of at the facility, an estimate of the quantity of such wastes to be treated, stored or disposed of annually, and a general description of the processes to be used for such wastes;
- (11) a listing of all permits or construction approvals received or applied for under any of the following programs:
 - (i) Hazardous Waste Management program under RCRA (see section 370.1(e) of this Title);
 - (ii) UIC program under the SDWA (see section 370.1(e));
 - (iii) SPDES under ECL article 17;
 - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act and 40 CFR 52.21 as administered by the Department of Environmental Conservation;
 - (v) nonattainment program under the Clean Air Act (see section 370.1(e)) and Part 231 of this Title;
 - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act and 40 CFR Part 61 as administered by the Department of Environmental Conservation under delegation from USEPA;
 - (vii) ocean dumping permits under the Marine Protection Research and Sanctuaries Act (see section 370.1(e));
 - (viii) dredge or fill permits under section 404 of the CWA (see section 370.1(e)); or
 - (ix) other relevant environmental permits, including other Federal, State and local permits;
- (12) a topographic map extending one mile beyond the property boundaries of the site, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies and drinking water wells listed in public records or otherwise known to the applicant within one quarter mile of the facility property boundary; and
- (13) a brief description of the nature of the business.

(f) Operation during interim status.

- (1) During the interim status period the facility must not:
 - (i) treat, store or dispose of hazardous waste not specified in part A of the permit application;
 - (ii) employ processes not specified in the interim status application; or
 - (iii) exceed the design capacities specified in the interim status application.

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- (2) Interim status standards. During interim status, owners or operators must comply with the interim status standards of Subpart 373-3 of this Part and, in the case of owners or operators that have an RCRA part B permit issued by EPA, comply with the requirements of the EPA part B permit.

(g) Changes during interim status.

- (1) Except as provided in paragraph (2) of this subdivision, the owner or operator of an interim status facility may make the following changes at the facility:
- (i) treatment, storage, or disposal of new hazardous wastes not previously identified in the interim status application (and, in the case of newly listed or identified wastes, addition of the units being used to treat, store, or dispose of the hazardous wastes on the effective date of the listing or identification) if the owner or operator submits a revised interim status application prior to such treatment, storage, or disposal;
 - (ii) increases in the design capacity of processes used at the facility if the owner or operator submits a revised interim status application prior to such a change (along with a justification explaining the need for the change) and the commissioner approves the changes because:
 - ('a') there is a lack of available treatment, storage, or disposal capacity at other hazardous waste management facilities; or
 - ('b') the change is necessary to comply with a Federal, State, or local requirement;
 - (iii) changes in the processes for the treatment, storage, or disposal of hazardous waste or addition of processes if the owner or operator submits a revised interim status application prior to such change (along with a justification explaining the need for the change) and the commissioner approves the change because:
 - ('a') the change is necessary to prevent a threat to human health and the environment because of an emergency situation; or
 - ('b') the change is necessary to comply with a Federal, State, or local requirement;
 - (iv) changes in the ownership or operational control of a facility if the new owner or operator submits a revised interim status application no later than 90 days prior to the scheduled change. When a transfer of operational control of a facility occurs, the old owner or operator shall comply with the requirements of section 373-3.8 of this Part (Financial requirements), until the new owner or operator has demonstrated to the commissioner that he/she is complying with the requirements of that section. The new owner or operator must demonstrate compliance with section 373-3.8 of this Part requirements within six months of the date of the change in ownership or operational control of the facility. Upon demonstration to the commissioner by the new owner or operator of compliance with section 373-3.8 of this Part, the commissioner shall notify the old owner or operator in writing that he/she no longer needs to comply with section 373-3.8 of this Part as of the date of demonstration. All other interim status duties are transferred effective immediately upon the date of the change in ownership or operational control of the facility;
 - (v) changes made in accordance with an interim status corrective action order issued by the USEPA under section 3008(h) or other Federal authority, by the commissioner under section

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71-2727(3) of the ECL or by a court in a judicial action brought by the USEPA or by New York State. Changes under this paragraph are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility;

- (vi) addition or newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

(2) Except as specifically allowed under this paragraph, changes listed under paragraph (1) of this subdivision may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50 percent of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

- (i) changes made solely for the purposes of complying with the requirements of section 373-3.10(d) of this Part for tanks and ancillary equipment;
- (ii) if necessary to comply with Federal, State, or local requirements, changes to an existing unit, changes solely involving tanks or containers, or addition of replacement surface impoundments that satisfy the standards of section 373-2.11, 373-2.14, 373-3.11 or 373-3.14 of this Part;
- (iii) changes that are necessary to allow owners or operators to continue handling newly listed or identified hazardous wastes that have been treated, stored, or disposed of at the facility prior to the effective date of the rule establishing the new listing or identification;
- (iv) changes during closure of a facility or of a unit within a facility made in accordance with an approved closure plan;
- (v) changes necessary to comply with an interim status corrective action order issued by the USEPA under section 3008(h) or other Federal authority, by the commissioner under section 71-2727(3) of the ECL, or by a court in a judicial proceeding brought by the USEPA or by New York State, provided that such changes are limited to the treatment, storage, or disposal of solid waste from releases that originate within the boundary of the facility;
- (vi) changes to treat or store, in tanks, containers or containment buildings, hazardous wastes subject to land disposal restrictions imposed by Part 376 of this Title or RCRA section 3004, provided that such changes are made solely for the purpose of complying with Part 376 or RCRA section 3004;
- (vii) addition of newly regulated units under subparagraph (1)(vi) of this subdivision; and
- (viii) changes necessary to comply with standards under 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors, as incorporated by reference in section 370.1(e) of this Title.

(h) Termination of interim status.

- (1) Interim status terminates when final administrative disposition of a permit application, except an

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application for a remedial action plan (RAP) under section 373-1.11 of this Subpart, is made.

- (2) Failure to furnish a requested Part 373 permit application on time, or to furnish in full the information required by the permit application, is grounds for termination of interim status under this subdivision.
 - (3) The commissioner may revoke the interim status of any facility or operation upon a showing of a violation of any law, rule or regulation related to interim status, or for any other reason that would serve as grounds for revocation of a permit. The procedures governing such revocation shall be the same as those governing the revocation of permits as provided for in Parts 621 and 624 of this Title.
 - (4) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, interim status terminates on November 8, 1985, unless:
 - (i) the owner or operator submits Part B of the USEPA RCRA permit application to the regional administrator prior to that date; and
 - (ii) the owner or operator certifies that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.
 - (5) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the ECL and its regulations that require the facility to have a Part 373 permit and which is granted interim status, interim status terminates 12 months after the date on which the facility first becomes subject to such permit requirements unless the owner or operator of such facility:
 - (i) submits a Part 373 application for the facility within 12 months after the date on which the facility first became subject to such permit requirement; and
 - (ii) certifies that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.
 - (6) For owners or operators of any land disposal unit that is granted authority to operate under subparagraph (g)(1)(i), (ii) or (iii) of this section, on the date 12 months after the effective date of such requirement unless the owner or operator certifies that such unit is in compliance with all applicable ground-water monitoring and financial responsibility requirements.
 - (7) For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part 373 permit application for the incinerator facility by November 8, 1986.
 - (8) For owners or operators of any facility (other than a land disposal or an incinerator facility) which has achieved interim status prior to November 8, 1984, interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part 373 application for the facility by November 8, 1988.
- (i) Updating interim status applications.**
- (1) If any owner or operator of a hazardous waste management facility has filed an interim status application and has not yet filed for a Part 373 permit, the owner or operator must file an amended interim status application (EPA RCRA part A):

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- (i) with the regional permit administrator in whose jurisdiction the facility is located, and the director, no later than the effective date of revised regulations under Part 371 of this Title, listing or identifying additional hazardous wastes if the facility is treating, storing or disposing of any of those newly listed or identified wastes;
 - (ii) as necessary to comply with provisions of subdivision (g) of this section for changes during interim status. Revised EPA RCRA part A applications for New York State interim status must be filed with the regional permit administrator of jurisdiction and the director.
- (2) The owner or operator of a facility who fails to comply with the updating requirements of paragraph (1) of this subdivision shall not receive interim status for the wastes not covered by duly filed interim status applications (EPA RCRA part A's).

373-1.4 Permit application requirements.

(a) General.

- (1) These requirements apply to the owner or operator of a hazardous waste management facility who is required by this Part to apply for a permit to construct or operate a facility. At any time after promulgation of this Part, the owner or operator of an existing hazardous waste management facility which has interim status may be required to submit a Part 373 permit application. Any owner or operator will be allowed at least six months from the date of request to submit the permit application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit a Part 373 permit application at any time. Procedures for application, issuance and administration of research, development and demonstration permits are found exclusively in section 373-1.9(c) of this Subpart. The expanded public participation requirements are included in section 373-1.10 of this Subpart.
- (2) Permit applicant. Whenever the owner and the operator of a facility are different persons, both the owner and the operator will be issued a permit for the facility. The operator is responsible for obtaining the required permit, but the owner is also required to sign the permit application. The operator must also receive the owner's permission to conduct all regulated activities, including adequate agreement for site access during the post-closure period for disposal facilities. Failure to furnish a requested Part 373 permit application on time, or to furnish in full the information required by the permit application, is grounds for termination of interim status under section 373-1.3(h) of this Subpart and constitutes a violation of this Subpart.
- (3) Forms. Applications for permits pursuant to this Part must be submitted on forms prescribed by the commissioner.
- (4) Submission of applications. Applications must be submitted as described in this section and section 373-1.3(c)-(h) of this Subpart to the regional permit administrator in the region in which the facility is located or proposed. An application for a Part 373 permit for a new hazardous waste management facility may be filed any time after promulgation of the standards in Subpart 373-2 of this Part, however, all applications must be submitted at least 180 days before physical construction is expected to commence.
- (5) Signatories to permit applications and reports.

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- (i) Applications. All permit applications must be signed as follows:
 - ('a') for a corporation: by a responsible corporate officer. For the purpose of this section, a **'responsible corporate officer'** means:
 - ('1') a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation; or
 - ('2') the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - ('b') for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
 - ('c') for a municipality, State, Federal or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a **'principal executive officer'** of a governmental agency includes:
 - ('1') the chief executive officer of the agency; or
 - ('2') a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.
- (ii) Reports. All reports required by permits and other information requested by the commissioner must be signed by a person described in subparagraph (i) of this paragraph, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - ('a') the authorization is made in writing by a person described in subparagraph (i) of this paragraph;
 - ('b') the authorization specifies either an individual or a position having responsibility for overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and
 - ('c') the written authorization is submitted to the commissioner.
- (iii) Changes to authorization. If an authorization under subparagraph (ii) of this paragraph is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph (ii) must be submitted to the commissioner prior to or together with any reports, information or applications to be signed by an authorized representative.
- (iv) Certification.
 - ('a') Any person signing a document under subparagraph (i) or (ii) of this paragraph shall

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make the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

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

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

(b) Completeness.

Prior to commencing review of any application, the commissioner must determine that the application is complete. However, the commissioner may deny a permit for the active life of a hazardous waste management facility or unit before receiving a complete application for a permit. In order for an application to be determined complete, the applicant must:

- (1) satisfy the general requirements for complete applications contained in Part 621 of this Title (Uniform Procedures Regulations);
- (2) include all information required, both general and specific to the type of facility under this Part;
- (3) include any supplemental information requested by the commissioner in a notice of incompleteness; and
- (4) submit the exposure information described in section 373-1.5(d)(10) and (h)(10) of this Subpart.

(c) Siting certificate requirements.

Certain facilities will require a certificate of environmental safety and public necessity pursuant to title 11 of article 27 of the ECL and Part 377 of this Title.

(d) Draft permits for RCRA delegated permits.

- (1) In the case of RCRA delegated permits, once an application is complete, the commissioner will issue a draft permit or a notice of intent to deny the application.
- (2) A draft permit shall contain the following information:

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- (i) all permit conditions applicable to the specific facility as set forth in section 373-1.6(a) of this Subpart;
 - (ii) all monitoring requirements set forth in section 373-1.6(b);
 - (iii) all required conditions as set forth in section 373-1.6(c); and
 - (iv) all compliance schedule requirements set forth in section 373-1.6(d).
- (3) All draft permits prepared under this subdivision shall be accompanied by a statement of basis or fact sheet based on the administrative record publicly noticed and made available for public comment as set forth in Part 621 of this Title.

(e) Statement of basis.

The department shall prepare a statement of basis for every draft permit for which a fact sheet under subdivision (f) of this section is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

(f) Fact sheet.

- (1) A fact sheet shall be prepared for every draft permit for a major HWM facility and for every draft permit which the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The commissioner shall send this fact sheet to the applicant and, on request, to any other person.
- (2) The fact sheet shall include, when applicable:
- (i) a brief description of the type of facility or activity which is the subject of the draft permit;
 - (ii) the type and quantity of wastes, fluids or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted or discharged;
 - (iii) a brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;
 - (iv) reasons why any requested variances or alternatives to required standards do or do not appear justified;
 - (v) a description of the procedures for reaching a final decision on the draft permit, including:
 - ('a') the beginning and ending dates of the comment period and the address where comments will be received;
 - ('b') procedures for requesting a hearing and the nature of that hearing; and
 - ('c') any other procedures by which the public may participate in the final decision; and
 - (vi) name and telephone number of a person to contact for additional information.

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(g) Recordkeeping.

Applicants must keep records of all data used to complete permit applications and any supplemental information submitted under sections 373-1.3, 373-1.4 and 373-1.5 of this Subpart for a period of at least three years from the date the application is signed.

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

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

- (i) particular site-specific considerations including unique dispersion patterns, proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), and other relevant considerations;
- (ii) identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;
- (iii) identities and quantities of non-dioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);
- (iv) identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;
- (v) presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;
- (vi) volume and types of wastes, for example wastes containing highly toxic constituents;
- (vii) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;
- (viii) adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and
- (ix) such other factors as may be appropriate.

(i) The commissioner may require a permittee or an applicant to submit information in order to establish permit conditions under section 373-1.6(c)(2) of this Subpart.

Section 373-1.5 Contents of permit applications.

(a) General requirements.

- (1) The permit application consists of a completed part A application, the general information requirements of this section, and the specific information requirements in subdivisions of this Subpart applicable to the facility. The information requirements presented in subdivisions (a)-(p) of this section reflect the standards in Subpart 373-2 of this Part. These information requirements are necessary in order for the department to determine compliance with the Subpart 373-2 standards. If the owner and operator of a hazardous waste management facility can demonstrate, to the department's satisfaction, that the information prescribed in this paragraph, other than in the Part A application, cannot be provided to the extent required, the department may make allowance for submission of such information on a case-by-case basis. However, such submission must be sufficient to allow the department to determine compliance with the Subpart 373-2 standards. Information requirements in this section must be submitted to the department and signed in accordance with requirements in section 373-1.4(a)(5) of this Subpart. Certain technical data, such as design drawings and specifications, and engineering studies and reports must be certified by a professional engineer registered in New York State. The location of property boundaries must be certified by a person or firm registered to practice land surveying in the State of New York. For post-closure permits, the information specified in subdivision (o) of this section is required in the permit application.
- (2) General information requirements. The following information is required for all HWM facilities:
 - (i) A general description of the facility.
 - (ii) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses must contain all the information that must be known to treat, store or dispose of the wastes properly in accordance with Subpart 373-2 of this Part.
 - (iii) A copy of the waste analysis plan required by section 373-2.2(e)(2) of this Part and, if applicable, paragraph (e)(3) of such section.
 - (iv) A description of the security procedures and equipment required by section 373-2.2(f) of this Part, or a justification demonstrating the reasons for requesting a waiver of this requirement.
 - (v) A copy of the general inspection schedule required by section 373-2.2(g)(2) of this Part. Include where applicable, as part of the inspection schedule, specific requirements in sections 373-2.9(e), 373-2.10(d)(9) and (f), 373-2.11(d), 373-2.12(e), 373-2.13(d), 373-2.14(e), 373-2.24(c), 373-2.27(d), 373-2.28(c), (d) and (i) and 373-2.29(e)-(g) and (i) of this Part.
 - (vi) A justification of any request for a waiver(s) of the preparedness and prevention requirements of section 373-2.3 of this Part.
 - (vii) A copy of the contingency plan required by section 373-2.4 of this Part. Include, where applicable, as part of the contingency plan, specific requirements in section 373-2.11(e) of this Part.
 - (viii) A description of procedures, structures or equipment used at the facility to:

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- ('a') prevent hazards in loading and unloading operations. Physical hazards may be minimized, for example, by using ramps and special forklifts. Procedures and equipment used to prevent or contain spills must take into account the pressure and volume of the transfer lines, and the time needed for an operator to respond to a spill (e.g., failure of a transfer line or connection point);
 - ('b') prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);
 - ('c') prevent contamination of water supplies;
 - ('d') mitigate effects of equipment failure and power outages;
 - ('e') prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and
 - ('f') prevent releases to the atmosphere.
- (ix) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive or incompatible wastes as required to demonstrate compliance with section 373-2.2(i) of this Part, including documentation demonstrating compliance with paragraph (i)(3) of such section.
- (x) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes, if appropriate; describe access road surfacing and load-bearing capacity; show traffic control signals).
- (xi) Facility location information.
- ('a') Owners and operators of all facilities must provide an identification of whether the facility is located within a 100-year flood plain. This identification must indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, constructing, operating or maintaining the facility to withstand washout from a 100-year flood.

Comment: Where maps for the National Flood Insurance program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally determine if a facility is located within or outside of the 100-year flood plain. However, where the FIA map excludes an area (usually areas of the flood plain less than 200 feet in width), these areas must be considered and a determination made as to whether they are in the 100-year flood plain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques, approved by the commissioner, to determine whether the facility is within the 100-year flood plain and, if so located, what the 100-year flood elevation would be.

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- (b) Owners and operators of facilities located in the 100-year flood plain must provide the following information:
 - (1) engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as a consequence of a 100-year flood;
 - (2) structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., floodwalls, dikes) at the facility, and how these will prevent washout;
 - (3) if applicable, and in lieu of subclauses ('1') and ('2') of this clause, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:
 - (i) timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility;
 - (ii) a description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulations under this Part or, if the facility is not located in New York State, in accordance with applicable regulations of the state in which the facility is located;
 - (iii) the planned procedures, equipment and personnel to be used and the means to ensure that such resources will be available in time for use; and
 - (iv) the potential for accidental discharges of the waste during movement.
- (c) Existing facilities not in compliance with section 373-2.2(j) of this Part must provide a plan showing how the facility will be brought into compliance and a schedule for compliance.
- (xii) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with section 373-2.2(h) of this Part. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in subparagraph (h)(1)(iii) of such section.
- (xiii) A copy of the closure plan and, where applicable, the post-closure plan required by sections 373-2.7(c) and (h) and 373-2.10(h) of this Part. Include, where applicable, as part of the plans, specific requirements in sections 373-2.9(i), 373-2.10(h), 373-2.11(f), 373-2.12(h), 373-2.13(h), 373-2.14(g), 373-2.15(h) and 373.24(b) and (d) of this Part.
- (xiv) For hazardous waste disposal units that have been closed, documentation that notices required under section 373-2.7(i) of this Part have been filed.
- (xv) The most recent closure cost estimate for the facility, prepared in accordance with section 373-2.8(c) of this Part, and a copy of the documentation required to demonstrate financial assurance under section 373-2.8(d). For a new facility, a copy of the required documentation

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may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part 373 permit application.

- (xvi) Where applicable, the most recent post-closure cost estimate for the facility, prepared in accordance with section 373-2.8(e) of this Part, plus a copy of the documentation required to demonstrate financial assurance under section 373-2.8(f). For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part 373 permit application.
- (xvii) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of section 373-2.8(h) of this Part. For a new facility, documentation showing the amount of insurance meeting the specification of paragraph (h)(1) of such section and, if applicable, paragraph (h)(2), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage or disposal. A request for a variance in the amount of required coverage, for a new or existing facility, may be submitted as specified in section 373-2.8(h)(3) of this Part.
- (xviii) (Reserved)
- (xix) A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (1-inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet) if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meter (2 feet) if the relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use large contour intervals to adequately show topographic profiles of facilities. The map must clearly show the following:
 - ('a') map scale and date;
 - ('b') 100-year flood plain area;
 - ('c') surface waters, including intermittent streams;
 - ('d') surrounding land uses (residential, commercial, agricultural, recreational);
 - ('e') a wind rose (i.e., prevailing windspeed and direction);
 - ('f') orientation of the map (north arrow);
 - ('g') legal boundaries of the HWM facility site;
 - ('h') access control (fences, gates);
 - ('i') injection and withdrawal wells, both onsite and off-site;
 - ('j') buildings; treatment, storage or disposal operations, or other structure (recreation area, runoff control systems, access and internal roads, storm, sanitary and process sewerage systems, loading and unloading areas, fire control facilities, etc.);

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- (k') barriers for drainage or flood control;
- (l') location of operational units within the HWM facility site, where hazardous waste is (or will be) treated, stored or disposed (include equipment cleanup areas).

Note: For large HWM facilities the commissioner will allow the use of other scales on a case-by-case basis.

- (xx) For land disposal facilities, if a case-by-case extension has been approved under section 376.1(e) of this Title or a petition has been approved under section 376.1(f), a copy of the notice of approval for the extension or petition is required.
 - (xxi) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under section 373-1.10(a)(4) of this Subpart.
- (3) Additional information requirements. The following information regarding protection of ground water is required from owners or operators of hazardous waste surface impoundments, piles, land treatment units and landfills, except as otherwise provided in section 373-2.6(2) of this Part:
- (i) A summary of the ground-water monitoring data obtained during the interim status period under section 373-2.6(a)-(e), where applicable.
 - (ii) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground-water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).
 - (iii) On the topographic map required under subparagraph (2)(xix) of this subdivision, a delineation of the waste management area, the property boundary, the proposed “point of compliance” as defined under section 373-2.6(f) of this Part, the proposed location of ground-water monitoring wells as required under section 373-2.6(h) and, to the extent possible, the information required in subparagraph (ii) of this paragraph.
 - (iv) A description of any plume of contamination that has entered the ground water from a regulated unit, at the time that the application was submitted, that:
 - (a) delineates the extent of the plume on the topographic map required under subparagraph (2)(xix) of this subdivision;
 - (b) identifies the concentration of each Appendix 33 constituent throughout the plume, or identifies the maximum concentrations of each Appendix 33 constituent in the plume.
 - (v) Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of section 373-2.6(h) of this Part.
 - (vi) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data and analysis to establish a detection monitoring program which meets the requirements of section 373-2.6(i) of this Part. This submission must address the following items specified under section 373-2.6(i) of this Part:

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- (a) a proposed list of indicator parameters, waste constituents or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;
 - (b) a proposed ground-water monitoring system;
 - (c) background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and
 - (d) a description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.
- (vii) If hazardous constituents have been detected in the ground water at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of section 373-2.6(j) of this Part. Except as provided in section 373-2.6(i)(8)(v) of this Part, the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of section 373-2.6(k) of this Part, unless the owner or operator obtains written authorization in advance from the commissioner to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with section 373-2.6(j) of this Part, the owner or operator must address the following items:
- (a) a description of the wastes previously handled at the facility
 - (b) a characterization of the contaminated ground water, including concentrations of hazardous constituents;
 - (c) a list of hazardous constituents for which compliance monitoring will be undertaken in accordance with section 373-2.6(h) and (j);
 - (d) proposed concentration limits for each hazardous constituent, based on the criteria set forth in paragraph (e)(1) of such section, including a justification for establishing any alternate concentration limits;
 - (e) detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of subdivision (h) of such section; and
 - (f) a description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground-water monitoring data.
- (viii) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under section 373-2.6(e), table 1 of this Part, or if ground water monitoring conducted at the time of permit application under section 373-2.6(a) through (e) of this Part at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator must submit sufficient information, supporting data and analyses to establish a corrective action program which meets the requirements of section 373-2.6(k) of this Part. However, an owner

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or operator is not required to submit information to establish a corrective action program if the owner or operator demonstrates to the commissioner that alternate concentration limits will protect human health and the environment after considering the criteria listed in section 373-2.6(e) of this Part. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of section 373-2.6(j) of this Part and subparagraph (3)(vi) of this subdivision. To demonstrate compliance with section 373-2.6(k), the owner or operator must address, at a minimum, the following items:

- (a) a characterization of the contaminated ground water, including concentrations of hazardous constituents;
- (b) the concentration limit for each hazardous constituent found in the ground water, as set forth in section 373-2.6(e);
- (c) detailed plans and an engineering report describing the corrective action to be taken;
- (d) a description of how the ground-water monitoring program will demonstrate the adequacy of the corrective action; and
- (e) the permit may contain a schedule for submittal of the information required in clauses ('c') and ('d') of this subparagraph provided the owner or operator obtains written authorization from the commissioner prior to submittal of the complete permit application.

(4) Information requirements for solid waste management units.

- (i) The following information is required for each solid waste management unit at a facility seeking a permit:
 - (a) the location of the unit on the topographic map required under subparagraph (2)(xix) of this subdivision;
 - (b) designation of type of unit;
 - (c) general dimensions and structural description (supply any available drawings);
 - (d) when the unit was operated;
 - (e) specification of all wastes that have been managed at the unit, to the extent available.
- (ii) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.
- (iii) The owner or operator must conduct and provide the results of sampling and analysis of groundwater, landsurface and subsurface strata, surface water, or air, which may include the installation of wells, where the commissioner ascertains it is necessary to complete a RCRA facility assessment that will determine if a more complete investigation is necessary.

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(b) Specific information requirements for containers.

Except as otherwise provided in section 373-2.9(a) of this Part, owners or operators of facilities that store containers of hazardous waste must provide the following additional information:

- (1) A description of the containment system to demonstrate compliance with section 373-2.9(f) of this Part. Show at least the following:
 - (i) basic design parameters, dimensions, and materials of construction;
 - (ii) how the design promotes drainage or how containers are kept from contact with standing liquids in the containment system;
 - (iii) capacity of the containment system relative to the number and volume of containers to be stored;
 - (iv) provisions for preventing or managing run-on; and
 - (v) how accumulated liquids can be analyzed and removed to prevent overflow.
- (2) For storage areas that store containers holding wastes that do not contain free liquids, a demonstration of compliance with section 373-2.9(f)(2) of this Part, including:
 - (i) test procedures and results or other information to show that the wastes do not contain free liquids; and
 - (ii) a description of how the storage area is designed or operated to drain and remove liquids or how containers are kept from contact with standing liquids.
- (3) Sketches, drawings or data demonstrating compliance with section 373-2.9(g) of this Part (location of buffer zone and containers holding ignitable or reactive wastes) and paragraph (h)(3) of such section (location of incompatible wastes), where applicable.
- (4) Where incompatible wastes are stored or otherwise managed in containers, a description of the procedures used to ensure compliance with sections 373-2.9(h)(1)-(2) and 373-2.2(i)(2)-(3) of this Part.
- (5) Information on air emission control equipment, as required in subdivision (n) of this section.

(c) Specific information requirements for tank systems.

Except as otherwise provided in section 373-2.10(a) of this Part, owners and operators of facilities that use tanks to store or treat hazardous waste must provide the following additional information:

- (1) a written assessment that is reviewed and certified by an independent, qualified professional engineer registered in New York State as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under section 373-2.10(b) and (c) of this Part;
- (2) dimensions and capacity of each tank;
- (3) description of feed systems, safety cutoffs, bypass systems, and pressure controls (e.g., vents);
- (4) a diagram of piping, instrumentation, and process flow for each tank system;

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- (5) a description of materials and equipment used to provide external corrosion protection, as required under section 373-2.10(c)(1)(iii)('b') of this Part;
- (6) for new tank systems, a detailed description of how the tank systems will be installed in compliance with section 373-2.10(c)(2)-(5) of this Part;
- (7) detailed plans and description of how the secondary containment system for each tank system is or will be designated, constructed and operated to meet the requirements of section 373-2.10(d)(1)-(6) of this Part;
- (8) for tank systems for which a variance from the requirements of section 373-2.10(d) of this Part is sought (as provided by section 373-2.10(d)(7) of this Part):
 - (i) detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous waste or hazardous constituents into the ground water or surface water during the life of the facility; or
 - (ii) a detailed assessment of the substantial present or potential hazards posed to human health or the environment should a release enter the environment;
- (9) description of controls and practices to prevent spills and overflows, as required under section 373-2.10(e)(2) of this Part;
- (10) for tank systems in which ignitable, reactive or incompatible wastes are to be stored or treated, a description of how operating procedures and tank system and facility design will achieve compliance with the requirements of section 373-2.10(i) and (j) of this Part; and
- (11) information on air emission control equipment, as required in subdivision (n) of this section.

(d) Specific information requirements for surface impoundments.

Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of facilities that store, treat or dispose of hazardous waste in surface impoundments must provide the following additional information:

- (1) a list of the hazardous wastes placed or to be placed in each surface impoundment;
- (2) detailed plans and an engineering report describing how the surface impoundment is designed and is or will be constructed, operated and maintained to meet the requirements of sections 373-2.2(k), 373-2.11(b), (j) and (k) of this Part. This submission must address the following items:
 - (i) the inner liner system (except for an existing portion of a surface impoundment). If an exemption from the requirement for a liner is sought as provided by section 373-2.11(b)(2) of this Part, submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;
 - (ii) the double liner and leak (leachate) detection, collection, and removal system, if the surface impoundment must meet the requirements of section 373-2.11(b)(3) of this Part. If an

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exemption from the requirements for double liners and a leak detection, collection and removal system or alternative design is sought as provided by section 373-2.11(b)(4), (5), or (6) of this Part, submit appropriate information;

- (iii) if the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system and surface impoundment;
 - (iv) the construction quality assurance (CQA) plan if required under section 373-2.2(k) of this Part;
 - (v) proposed action leakage rate, with rationale, if required under section 373-2.11(j) of this Part, and response action plan, if required under section 373-2.11(k) of this Part;
 - (vi) prevention of overtopping; and
 - (vii) structural integrity of dikes;
- (3) (Reserved)
- (4) a description of how each surface impoundment, including the double liner system, leak detection system, cover system and appurtenances for control of over-topping, will be inspected in order to meet the requirements of section 373-2.11(d)(1), (2), and (4) of this Part. This information should be included in the inspection plan submitted under subparagraph (a) (2)(v) of this section;
- (5) a certification by an engineer, licensed in the State of New York, which attests to the structural integrity of each dike, as required under section 373-2.11(d)(3) of this Part. For new units, the owner or operator must submit a statement by a qualified engineer that such a certification will be provided upon completion of construction in accordance with the plans and specifications;
- (6) a description of the procedure to be used for removing a surface impoundment from service, as required under section 373-2.11(e)(2)-(3) of this Part. This information should be included in the contingency plan submitted under section 373-2.11(e)(1) and (2) of this Part;
- (7) a description of how hazardous waste residues and contaminated materials will be removed from the unit at closure, as required under section 373-2.11(f)(1)(i) of this Part. For any wastes not to be removed from the unit upon closure, the owner or operator must submit detailed plans and an engineering report describing how section 373-2.11(f)(1)(ii) and (2) of this Part will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under subparagraph (a)(2)(xiii) of this section;
- (8) if ignitable or reactive wastes are to be placed in a surface impoundment, an explanation of how section 373-2.11(g) of this Part will be complied with; and
- (9) if incompatible wastes, or incompatible wastes and materials, will be placed in a surface impoundment, an explanation of how section 373-2.11(h) of this Part will be complied with.
- (10) Exposure information.
- (i) Any Part 373 permit application submitted by an owner or operator of a facility that stores, treats or disposes hazardous waste in a surface impoundment must be accompanied by

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information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, the information must address:

- (a) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation of wastes to or from the unit;
 - (b) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under clause ('a') of this subparagraph; and
 - (c) the potential magnitude and nature of the human exposure resulting from such releases.
- (ii) Owners and operators of a surface impoundment who submitted a Part 373 permit application prior to the effective date of this Part (July 1, 1986) must submit the exposure information required in subparagraph (i) of this paragraph.
- (11) A waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027 describing how the surface impoundment is or will be designed, constructed, operated and maintained to meet the requirements of section 373-2.11(i) of this Part. This submission must address the following items as specified in section 373-2.11(i):
- (i) the volume and the physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
 - (ii) the attenuative properties of underlying and surrounding soils or other materials;
 - (iii) the mobilizing properties of other materials codisposed with these wastes; and
 - (iv) the effectiveness of additional treatment, design or monitoring techniques.
- (12) Information on air emission control equipment, as required in subdivision (n) of this section.

(e) **Specific information requirements for waste piles.**

Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of facilities that place or treat hazardous waste in waste piles must provide the following additional information:

- (1) a list of hazardous wastes placed or to be placed in each waste pile;
- (2) if an exemption is sought to section 373-2.12(b) of this Part and section 373-2.6 as provided by section 373-2.12(a)(3) or section 373-2.6(a)(2)(ii), an explanation of how the standards of section 373-2.12(a)(3) will be complied with; or detailed plans and an engineering report describing how the requirements to section 373-2.6(a)(2)(ii) will be met;
- (3) detailed plans and an engineering report describing how the waste pile is designed and is or will be constructed, operated and maintained to meet the requirements of sections 373-2.2(k), 373-2.12(b), (j) and (k) of this Part. This submission must address the following items as specified in such subdivisions:
 - (i)
 - (a) the liner system (except for an existing portion of a waste pile)—if the waste pile must

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meet the requirements of section 373-2.12(b)(1) of this Part. If an exemption from the requirement for a liner is sought, as provided by section 373-2.12(b)(2), the owner or operator must submit detailed plans and engineering and hydrogeologic reports, as applicable, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituents into the ground water or surface water at any future time;

- (b) the double liner and leak (leachate) detection, collection, and removal system, if the waste pile must meet the requirements of section 373-2.12(b)(3) of this Part. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternate design is sought as provided by section 373-2.12(b)(4), (5) or (6) of this Part, submit appropriate information;
 - (c) if the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
 - (d) the construction quality assurance (CQA) plan if required under section 373-2.2(k) of this Part;
 - (e) proposed action leakage rate, with rationale, if required under section 373-2.12(j) of this Part, and response action plan, if required under section 373-2.12(k) of this Part;
- (ii) control of run-on;
 - (iii) control of runoff;
 - (iv) management of collection and holding units associated with run-on and runoff control systems; and
 - (v) control of wind dispersal of particulate matter, where applicable;
- (4) (Reserved)
 - (5) a description of how each waste pile, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of section 373-2.12(e)(1), (2) and (3) of this Part. This information should be included in the inspection plan submitted under section 373-1.5(a)(2)(v) of this Subpart;
 - (6) if treatment is carried out on or in the pile, details of the process and equipment used, and the nature and quality of the residuals;
 - (7) if ignitable or reactive wastes are to be placed in a waste pile, an explanation of how the requirements of section 373-2.12(f) of this Part will be complied with;
 - (8) if incompatible wastes, or incompatible wastes and materials, will be placed in a waste pile, an explanation of how section 373-2.12(g) of this Part will be complied with;
 - (9) a description of how hazardous waste residues and contaminated materials will be removed from the waste pile at closure, as required under section 373-2.12(h)(1) of this Part. For any waste not to

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be removed from the waste pile upon closure, the owner or operator must submit detailed plans and an engineering report describing how section 373-2.14(g)(1)-(2) of this Part will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under section 373-1.5(a)(2)(xiii) of this Subpart; and

- (10) a waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027 describing how a waste pile that is not enclosed (as defined in section 373-2.12(a)(3) of this Part) is or will be designed, constructed, operated and maintained to meet the requirements of section 373-2.12(i). This submission must address the following items as specified in section 373-2.12(i):
 - (i) the volume and the physical and chemical characteristics of the wastes to be placed in the waste pile, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
 - (ii) the attenuative properties of underlying and surrounding soils or other materials;
 - (iii) the mobilizing properties of other materials codisposed with these wastes; and
 - (iv) the effectiveness of additional treatment, design or monitoring techniques.

(f) Specific information requirements for incinerators.

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

- (1) When seeking an exemption under section 373-2.15(a)(3) or (4) of this Part (ignitable, corrosive or reactive wastes only):
 - (i) documentation that the waste is listed as a hazardous waste in section 371.4 of this Title; solely because it is ignitable (Hazard Code I) or corrosive (Hazard Code C) or both; or
 - (ii) documentation that the waste is listed as a hazardous waste in section 371.4 solely because it is reactive (Hazard Code R) for characteristics other than those listed in section 371.3(d)(1)(iv)-(v), and will not be burned when other hazardous wastes are present in the combustion zone; or
 - (iii) documentation that the waste is a hazardous waste solely because it possesses the characteristic of ignitability, corrosivity, or both, as determined by the tests for characteristics of hazardous waste under section 371.3; or
 - (iv) documentation that the waste is a hazardous waste solely because it possesses the reactivity characteristics listed in section 371.3(d)(1)(i), (ii), (iii), (vi), (vii) or (viii) of this Title, and that it will not be burned when other hazardous wastes are present in the combustion zone.
- (2) Submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with section 373-1.9(a)(2)(ii) of this Subpart.
- (3) In lieu of a trial burn, the applicant may submit the following information:
 - (i) An analysis of each waste or mixture of wastes to be burned, including:

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- ('a') heat value of the waste in the form and composition in which it will be burned;
 - ('b') viscosity (if applicable), or description of physical form of the waste;
 - ('c') an identification of any hazardous organic constituents listed in Appendix 23 of this Title that are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Appendix 23 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion stated. The waste analysis must rely on appropriate analytical techniques that are ELAP certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives;
 - ('d') an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods that are ELAP certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives;
 - ('e') a quantification of those hazardous constituents in the waste which may be designated as principal organic hazardous constituents (POHC's), based on data submitted from other trial or operational burns which demonstrate compliance with the performance standards in section 373-2.15(d) of this Part.
- (ii) A detailed engineering description of the incinerator including:
- ('a') manufacturer's name and model number of the incinerator;
 - ('b') type of incinerator;
 - ('c') linear dimension of incinerator, including cross-sectional area of combustion chamber;
 - ('d') description of auxiliary fuel system (type/feed);
 - ('e') capacity of prime mover;
 - ('f') description of automatic waste feed cutoff system(s);
 - ('g') gas stack monitoring and pollution control monitoring system;
 - ('h') nozzle and burner design;
 - ('i') construction materials; and
 - ('j') location and description of temperature, pressure and flow-indicating devices and control devices.
- (iii) A description and analysis of the waste to be burned, compared with the waste for which data from operational or trial burns are provided, to support the contention that a trial burn is not needed. The data should include those items listed in subparagraph (3)(i) of this subdivision.

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This analysis should specify POHC's which the applicant has identified in the waste for which a permit is sought, and any differences from the POHC's in the waste for which burn data are provided.

- (iv) The design and operating conditions of the incinerator to be used, compared with that for which comparative burn data are available.
 - (v) A description of the results submitted from any previously conducted trial burn(s), including:
 - ('a') sampling and analysis techniques used to calculate performance standards in section 373-2.15(d) of this Part; and
 - ('b') methods and results of monitoring temperatures, waste feed rates, carbon monoxide, and an appropriate indicator of combustion gas velocity (including a statement concerning the precision and accuracy of this measurement).
 - (vi) The expected incinerator operation information to demonstrate compliance with section 373-2.15(d) and (f) of this Part, including:
 - ('a') expected carbon monoxide (CO) level in the stack exhaust gas;
 - ('b') waste feed rate;
 - ('c') combustion zone temperature;
 - ('d') indication of combustion gas velocity;
 - ('e') expected stack gas volume, flow rate and temperature;
 - ('f') computed residence time for waste in the combustion zone;
 - ('g') expected hydrochloric acid removal efficiency;
 - ('h') expected fugitive emissions and their control procedures; and
 - ('i') proposed waste feed cutoff limits, based on identified significant operating parameters.
 - (vii) Such supplemental information the commissioner finds necessary to achieve the purposes of this paragraph.
 - (viii) Waste analysis data, including that submitted in subparagraph (i) of this paragraph, sufficient to allow the commissioner to specify as permit principal organic hazardous constituents (permit POHC's) those constituents for which destruction and removal efficiencies will be required.
- (4) The commissioner may approve a permit application without a trial burn if the commissioner finds that:
- (i) the wastes are sufficiently similar; and
 - (ii) the incinerator is sufficiently similar, and the data from other trial burns are adequate to specify (under section 373-2.15(f) of this Part) operating conditions that will ensure that the performance standards in subdivision (d) of such section will be met by the incinerator.

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(5)

- (i) Except as set forth in subparagraphs (ii) and (iii) of this paragraph, the requirements of this Subpart do not apply to a hazardous waste incineration unit when the owner or operator of the hazardous waste incineration unit that demonstrates compliance with the air emission standards and limitations in 40 CFR Part 63, subpart EEE, as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) of subpart EEE, documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title).
- (ii) The department may request additional information related to the hazardous waste incineration unit in accordance with sections 373-1.4(h) and (i) of this Subpart, and impose permit conditions as necessary to protect human health and the environment in accordance with section 373-1.6(c)(2) of this Subpart.
- (iii) If the owner or operator of a hazardous waste incineration unit elects to comply with section 373-1.12(a)(1)(i)('a') of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with sections 373-2.15(f)(1) and (3) of this Part.

(g) Specific information requirements for land treatment facilities.

Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of facilities that use land treatment to dispose of hazardous waste must provide the following additional information:

- (1) a description of plans to conduct a treatment demonstration as required under section 373-2.13(c) of this Part. The description must include the following information:
 - (i) the wastes for which the demonstration will be made and the potential hazardous constituents in the waste;
 - (ii) the data sources to be used to make the demonstration (e.g., literature, laboratory data, field data or operating data);
 - (iii) any specific laboratory or field test that will be conducted, including:
 - ('a') the type of test (e.g., column leaching, degradation);
 - ('b') materials and methods, including analytical procedures;
 - ('c') expected time for completion; and
 - ('d') characteristics of the unit that will be simulated in the demonstration, including treatment zone characteristics, climatic conditions and operating practices;
- (2) a description of a land treatment program, as required under section 373-2.13(b) of this Part. This information must be submitted with the plans for the treatment demonstration, and updated following the treatment demonstration. The land treatment program must address the following items:

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- (i) the wastes to be land-treated;
 - (ii) design measures and operating practices necessary to maximize treatment in accordance with section 373-2.13(d)(1) of this Part, including:
 - ('a') waste application method and rate;
 - ('b') measures to control soil pH;
 - ('c') enhancement of microbial or chemical reactions; and
 - ('d') control of moisture content;
 - (iii) provisions for unsaturated zone monitoring, including:
 - ('a') sampling equipment, procedures and frequency;
 - ('b') procedures for selecting sampling locations;
 - ('c') analytical procedures;
 - ('d') chain of custody control;
 - ('e') procedures for establishing background values;
 - ('f') statistical methods for interpreting results; and
 - ('g') the justification for any hazardous constituents recommended for selection as principal hazardous constituents, in accordance with the criteria for such selection in section 373-2.13(f)(1) of this Title;
 - (iv) a list of hazardous constituents reasonably expected to be in, or derived from, the wastes to be land-treated, based on waste analysis performed pursuant to section 373-2.2(e) of this Part; and
 - (v) the proposed dimensions of the treatment zone;
- (3) a description of how the unit is or will be designed, constructed, operated and maintained in order to meet the requirements of section 373-2.13(d) of this Part. This submission must address the following items:
- (i) control of run-on;
 - (ii) collection and control of runoff;
 - (iii) minimization of runoff of hazardous constituents from the treatment zone;
 - (iv) management of collection and holding facilities associated with run-on and runoff control systems;
 - (v) periodic inspection of the unit. This information should be included in the inspection plan submitted under subparagraph (a)(2)(v) of this section; and
 - (vi) control of wind dispersal of particulate matter, if applicable;

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- (4) the requirements of section 373-2.13(e) of this Part prohibit the growth of food chain crops on any facility that is or has been used as a land treatment facility for hazardous waste. Therefore, information concerning the growth of food chain crops is not applicable for a permit application for a land treatment facility;
- (5) if ignitable or reactive wastes will be placed in or on the treatment zone, an explanation of how the requirements of section 373-2.13(i) of this Part will be complied with;
- (6) if incompatible wastes, or incompatible wastes and materials, will be placed in or on the same treatment zone, an explanation of how section 373-2.13(j) of this Part will be complied with; and
- (7) a waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027 describing how a land treatment facility is or will be designed, constructed, operated and maintained to meet the requirements of section 373-2.13(k) of this Part. This submission must address the following items as specified in section 373-2.13(k):
 - (i) the volume and physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
 - (ii) the attenuative properties of underlying and surrounding soils or other materials;
 - (iii) the mobilizing properties of other materials codisposed with these wastes; and
 - (iv) the effectiveness of additional treatment, design or monitoring techniques.

(h) Specific information requirements for landfills.

Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of facilities that dispose of hazardous waste in landfills must provide the following additional information:

- (1) a list of the hazardous wastes placed or to be placed in each landfill or landfill cell;
- (2) detailed plans and an engineering report describing how the landfill is designed and is or will be constructed, operated and maintained to comply with the requirements of sections 373-2.2(k), 373-2.14(c), (e) and (n) of this Part. This submission must address the following items:
 - (i)
 - ('a') the liner system (except for an existing portion of a landfill), if the landfill must meet the requirements of section 373-2.14(c)(2) of this Part. If an exemption from the requirements for a liner and a leachate collection and removal system is sought as provided by section 373-2.14(c)(2) of this Part, submit detailed plans and engineering and hydrogeologic reports, as appropriate, describing alternate design and operating practices that will, in conjunction with location aspects, prevent the migration of any hazardous constituent into the ground water or surface water at any future time;
 - ('b') the double liner and leak (leachate) detection, collection, and removal system, if the landfill must meet the requirements of section 373-2.14(c)(3) of this Part. If an exemption from the requirements for double liners and a leak detection, collection, and removal system or alternate design is sought as provided by section 373-2.14(c)(4), (5), or (6) of this Part, submit appropriate information;

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- (c) if the leak detection system is located in a saturated zone, submit detailed plans and an engineering report explaining the leak detection system design and operation, and the location of the saturated zone in relation to the leak detection system;
 - (d) the construction quality assurance (CQA) plan if required under section 373-2.2(k) of this Part;
 - (e) proposed action leakage rate, with rationale, if required under section 373-2.14(n) of this Part, and response action plan, if required under section 373-2.14(e) of this Part;
 - (ii) control of run-on;
 - (iii) control of runoff;
 - (iv) management of collection and holding facilities associated with run-on and runoff control systems; and
 - (v) control of wind dispersal of particulate matter, where applicable;
- (3) (Reserved)
- (4) a description of how each landfill, including the double liner system, leachate collection and removal system, leak detection system, cover system, and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of section 373-2.14(e)(1), (2) and (3) of this Part. This information should be included in the inspection plan submitted under subparagraph (a)(2)(v) of this section;
- (5) detailed plans and an engineering report describing the final cover which will be applied to each landfill or landfill cell at closure in accordance with section 373-2.14(g)(1) of this Part, and a description of how each landfill will be maintained and monitored after closure in accordance with section 373-2.14(g)(2). This information should be included in the closure and post-closure plans submitted under subparagraph (a)(2)(xiii) of this section;
- (6) if ignitable or reactive wastes will be landslide, an explanation of how the standards of section 373-2.14(h) of this Part will be complied with;
- (7) if incompatible wastes, or incompatible wastes and materials, will be landfilled, an explanation of how section 373-2.14(i) of this Part will be complied with; and
- (8) (Reserved)
- (9) if containers of hazardous waste are to be landfilled, an explanation of how the requirements of section 373-2.14(k) or (i), as applicable, of this Part will be complied with.
- (10) Exposure information.
- (i) Any Part 373 permit application submitted by an owner or operator of a facility that stores, treats or disposes of hazardous waste in a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

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- (a) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation of wastes to or from the unit;
- (b) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under clause ('a') of this subparagraph; and
- (c) the potential magnitude and nature of the human exposure resulting from such releases.

(ii) Owners and operators of a landfill who submitted a Part 373 permit application prior to the effective date of this Part (July 1, 1986) must submit the exposure information required in subparagraph (i) of this paragraph.

(11) A waste management plan for EPA hazardous waste numbers F020, F021, F022, F023, F026 and F027 describing how a landfill is or will be designed, constructed, operated and maintained to meet the requirements of section 373-2.14(m) of this Part. This submission must address the following items as specified in section 373-2.14(m):

- (i) the volume and the physical and chemical characteristics of the wastes, including their potential to migrate through soil or to volatilize or escape into the atmosphere;
- (ii) the attenuative properties of underlying and surrounding soils or other materials;
- (iii) the mobilizing properties of other materials codisposed with these wastes; and
- (iv) the effectiveness of additional treatment, design or monitoring techniques.

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

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

(1) Trial burns.

- (i) General. Except as provided below, owners and operators that are subject to the standards to control organic emissions provided by section 374-1.8(e) of this Title, standards to control particulate matter provided by section 374-1.8(f) of this Title, standards to control metals emissions provided by section 374-1.8(g) of this Title, or standards to control hydrogen chloride or chlorine gas emissions provided by section 374-1.8(h) of this Title must conduct a trial burn to demonstrate conformance with those standards and must submit a trial burn plan or the results of a trial burn, including all required determinations, in accordance with section 373-1.9(d) of this Subpart.

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- (a) A trail burn to demonstrate conformance with a particular emission standard may be waived under provisions of section 374-1.8(e) through (h) of this Title and subparagraphs (1)(ii) through (v) of this subdivision; and
 - (b) the owner or operator may submit data in lieu of a trial burn, as prescribed in subparagraph (1)(vi) of this subdivision.
- (ii) Waiver of trail burn for DRE.
- (a) Boilers operated under special operating requirements. When seeking to be permitted under section 374-1.8(e)(1)(iv) and (k) of this Title that automatically waive the DRE trail burn, the owner or operator of a boiler must submit documentation that the boiler operates under the special operating requirements provided by section 374-1.8(k) of this Title.
 - (b) Boilers and industrial furnaces burning low risk waste. When seeking to be permitted under the provisions for low risk waste provided by section 374-1.8(e)(1)(v) and (j)(1) of this Title that waive the DRE trial burn, the owner or operator must submit:
 - (1) documentation that the device is operated in conformance with the requirements of section 374-1.8(j)(1)(i) of this Title;
 - (2) results of analyses of each waste to be burned, documenting the concentrations of nonmetal compounds listed in Appendix 23 of this Title, except for those constituents that would reasonably not be expected to be in the waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained. The analysis must rely on appropriate analytical techniques that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives.
 - (3) documentation of hazardous waste firing rates and calculations of reasonable, worst-case emission rates of each constituent identified in subclause ('2') of this clause using procedures provided by section 374-1.8(j)(1)(ii)(b) of this Title;
 - (4) results of emissions dispersion modeling for emissions identified in subclause ('3') of this clause using modeling procedures prescribed by section 374-1.8(g)(8) of this Title. The commissioner will review the emission modelling conducted by the applicant to determine conformance with these procedures. The commissioner will either approve the modeling or determine that alternate or supplementary modeling is appropriate; and
 - (5) documentation that the maximum annual average ground level concentration of each constituent identified in subclause ('2') of this clause quantified in conformance with subclause ('4') of this clause does not exceed the allowable ambient level established in Appendices 44 or 45 of section 374-1.8 of this Title. The acceptable ambient concentration for emitted constituents for which a

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specific reference air concentration has not been established in Appendix IV of 40 CFR part 266 or risk-specific dose has not been established in Appendix IV of 40 CFR part 266 or risk-specific dose has not been established in Appendix V of 40 CFR part 266 is 0.1 micrograms per cubic meter, as noted in the footnote to Appendix IV of 40 CFR part 266.

- (iii) Waiver of trial burn for metals. When seeking to be permitted under the Tier I (or adjusted Tier I) metals feed rate screening limits provided by section 374-1.8(g)(2) and (5) of this Title that control metals emissions without requiring a trial burn, the owner or operator must submit:
 - ('a') documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;
 - ('b') documentation of the concentration of each metal controlled by section 374-1.8(g)(2) or (5) of this Title in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of each metal;
 - ('c') documentation of how the applicant will ensure that the Tier I feed rate screening limits provided by section 374-1.8(g)(2) or (5) of this Title will not be exceeded during the averaging period provided by that paragraph;
 - ('d') documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as provided by section 374-1.8(g)(2)(iii) through (v) of this Title;
 - ('e') documentation of compliance with the provisions of section 374-1.8(g)(2)(vi) of this Title, if applicable, for facilities with multiple stacks;
 - ('f') documentation that the facility does not fail the criteria provided by section 374-1.8(g)(2)(vii) of this Title for eligibility to comply with the screening limits; and
 - ('g') proposed sampling and metals analysis plan for the hazardous waste, other fuels, and industrial furnace feedstocks.
- (iv) Waiver of trial burn for particulate matter. When seeking to be permitted under the low risk waste provisions of section 374-1.8(j)(2) of this Title which waives the particulate standard (and trial burn to demonstrate conformance with the particulate standard), applicants must submit documentation supporting conformance with clause (ii)(‘b’) and subparagraph (iii) of this paragraph.
- (v) Waiver of trial burn for HCl and cl₂ . When seeking to be permitted under the Tier I (or adjusted Tier I) feed rate screening limits for the total chloride and chlorine provided by section 374-1.8(h)(2)(i) and (h)(5) of this Title that controls emissions of hydrogen chloride (HCl) and chlorine gas (cl₂) without requiring a trial burn, the owner or operator must submit:
 - ('a') documentation of the feed rate of hazardous waste, other fuels, and industrial furnace feed stocks;

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- (b) documentation of the levels of total chloride and chlorine in the hazardous waste, other fuels, and industrial furnace feedstocks, and calculations of the total feed rate of total chloride and chlorine;
 - (c) documentation of how the applicant will ensure that the Tier I (or adjusted Tier I) feed rate screening limits provided by section 374-1.8(h)(2)(i) or (5) of this Title will not be exceeded during the averaging period by that paragraph;
 - (d) documentation to support the determination of the terrain-adjusted effective stack height, good engineering practice stack height, terrain type, and land use as proved by section 374-1.8(h)(2)(iii) of this Title;
 - (e) documentation of compliance with the provisions of section 374-1.8(h)(2)(iv) of this Title, if applicable, for facilities with multiple stacks;
 - (f) documentation that the facility does not fail the criteria provided by section 374-1.8(h)(2)(iii) of this Title for eligibility to comply with the screening limits; and
 - (g) proposed sampling and analysis plan for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.
- (vi) Data in lieu of trial burn. The owner or operator may seek an exemption from the trial burn requirements to demonstrate conformance with section 374-1.8(e) through (h) of this Title and section 373-1.9(d) of this Subpart by providing the information required by section 373-1.9(d) of this Subpart from previous compliance testing of the device in conformance with section 374-1.8(d) of this Title, or from compliance testing or trial or operational burns of similar boilers or industrial furnaces burning similar hazardous wastes under similar conditions. If data from a similar device is used to support a trial burn waiver, the design and operating information required by section 373-1.9(d) of this Subpart must be provided for both the similar device and the device to which the data is to be applied, and a comparison of the design and operating information must be provided. The commissioner shall approve a permit application without a trial burn if the commissioner finds that the hazardous wastes are sufficiently similar, the devices are sufficiently similar, the operating conditions are sufficiently similar, and the data from other compliance tests, trial burns, or operational burns are adequate to specify (under section 374-1.8(c) of this Title) operating conditions that will ensure conformance with section 374-1.8(c)(3) of this Title. In addition, the following information shall be submitted:
- (a) For a waiver from any trial burn:
 - (1) a description and analysis of the hazardous waste to be burned compared with the hazardous waste for which data from compliance testing, or operational or trial burns are provided to support the contention that a trial burn is not needed;
 - (2) the design and operating conditions of the boiler or industrial furnace to be used, compared with that for which comparative burn data are available; and
 - (3) such supplemental information as the commissioner finds necessary to achieve the purposes of this paragraph.

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- (b') For a waiver of the DRE trial burn, the basis for selection of POHC's used in the other trial or operational burns which demonstrate compliance with the DRE performance standard in section 374-1.8(e)(1) of this Title. This analysis should specify the constituents in Appendix 23 of this Title, that the applicant has identified in the hazardous waste for which a permit is sought, and any differences from the POHC's in the hazardous waste for which burn data are provided.
- (2) Alternative HC limit for industrial furnaces with organic matter in raw materials. Owners and operators of industrial furnaces requesting an alternative HC limit under section 374-1.8(e)(6) of this Title shall submit the following information at a minimum:
- (i) documentation that the furnace is designed and operated to minimize HC emissions from fuels and raw materials;
 - (ii) documentation of the proposed baseline flue gas HC (and CO) concentration, including data on HC (and CO) levels during tests when the facility produces normal products under normal operating conditions from normal raw materials while burning normal fuels and when not burning hazardous waste;
 - (iii) test burn protocol to confirm the baseline HC (and CO) level including information on the type and flow rate of all feedstreams, point of introduction of all feedstreams, total organic carbon content (or other appropriate measure of organic content) of all nonfuel feedstreams, and operating conditions that affect combustion of fuel(s) and destruction of hydrocarbon emissions from nonfuel sources;
 - (iv) trial burn plan to:
 - ('a') demonstrate that flue gas HC (and CO) concentrations when burning hazardous waste do not exceed the baseline HC (and CO) level; and
 - ('b') identify the types and concentrations of organic compounds listed in Appendix 23 of this Title, that are emitted when burning hazardous waste in conformance with procedures prescribed by the commissioner;
 - (v) implementation plan to monitor over time changes in the operation of the facility that could reduce the baseline HC level and procedures to periodically confirm the baseline HC level; and
 - (vi) such other information as the commissioner finds necessary to achieve the purposes of this paragraph.
- (3) Alternative metals implementation approach. When seeking to be permitted under an alternative metals implementation approach under section 374-1.8(g)(6) of this Title, the owner or operator must submit documentation specifying how the approach ensures compliance with the metals emissions standards of section 374-1.8(g)(3) or (4) of this Title and how the approach can be effectively implemented and monitored. Further, the owner or operator shall provide such other information that the commissioner finds necessary to achieve the purposes of this paragraph.
- (4) Automatic waste feed cutoff system. Owners and operators shall submit information describing the

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automatic waste feed cutoff system, including any pre-alarm systems that may be used.

- (5) Direct transfer. Owners and operators that use direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in section 374-1.8(l) of this Title) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by section 374-1.8(l) of this Title.
- (6) Residues. Owners and operators that claim that their residues are excluded from regulation under the provisions of section 374-1.8(m) of this Title must submit information adequate to demonstrate conformance with those provisions.
- (7) The requirements of this subdivision continue to apply as follows:
 - (i) The department may request additional information related to the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace in accordance with sections 373-1.4(h) and (i) of this Subpart, and impose permit conditions as necessary to protect human health and the environment in accordance with section 373-1.6(c)(2) of this Subpart.
 - (ii) If the owner or operator elects to comply with section 373-1.12(a)(1)(i)(‘a’) of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with sections 374-1.8(c)(5)(i) and (ii)(‘c’) of this Title.
 - (iii) If the boiler or industrial furnace is an area source and the owner or operator elects to comply with the sections 374-1.8(f), (g) and (h) standards of this Title and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals.

(j) Specific information requirements for miscellaneous units.

Except as otherwise provided in section 373-2.24(a) of this Part, owners and operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units must provide the following additional information:

- (1) A detailed description of the unit being used or proposed for use, including the following:
 - (i) physical characteristics, materials of construction, and dimensions of the unit;
 - (ii) detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of section 373-2.24(b) and (c) of this Part; and
 - (iii) for disposal units, a detailed description of the plans to comply with the post-closure requirements of section 373-2.24(d) of this Part.
- (2) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of section 373-2.24(b) of this Part. If the applicant can demonstrate that he or she does not violate the environmental performance standards of section 373-2.24(b) of this Part and the commissioner agrees with such demonstration, preliminary hydrologic,

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geologic, and meteorologic assessments will suffice.

- (3) Information on the potential pathways of exposure of humans or environmental receptors to hazardous waste or hazardous constituents and on the potential magnitude and nature of such exposures.
- (4) For any treatment unit, a report on a demonstration of the effectiveness of the treatment based on laboratory or field data.
- (5) Any additional information determined by the commissioner to be necessary for evaluation of compliance of the unit with the environmental performance standards of section 373-2.24(b) of this Part.

(k) Specific information requirements for process vents.

Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of facilities that have process vents to which section 373-2.27 of this Part applies must provide the following additional information.

- (1) For facilities that cannot install a closed-vent system and control device to comply with the provisions of section 373-2.27 of this Part on the effective date that the facility becomes subject to the provisions of section 373-2.27 or 373-3.37 of this Part, an implementation schedule as specified in section 373-2.27(d)(1)(ii) of this Part.
- (2) Documentation of compliance with the process vent standards in section 373-2.27(c) of this Part, including:
 - (i) information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan);
 - (ii) information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur; and
 - (iii) information and data used to determine whether or not a process vent is subject to the requirements of section 373-2.27(c) of this Part.
- (3) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of section 373-2.27 of this Part, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in section 373-2.27(f)(2)(iii) of this Part.

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- (4) Documentation of compliance with section 373-2.27(d) of this Part, including:
- (i) a list of all information references and sources used in preparing the documentation;
 - (ii) records, including the dates, of each compliance test required by section 373-2.27(d)(11) of this Part;
 - (iii) a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “APTI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in section 370.1(e) of this Title) or other engineering texts acceptable to the department that present basic control device information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in section 373-2.27(f)(2)(iv)(‘c’) of this Part;
 - (iv) a statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur; and
 - (v) a statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of section 373-2.27(c)(1) of this Part for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

(l) Specific information requirements for equipment.

Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of facilities that have equipment to which section 373-2.1(a) of this Part applies must provide the following additional information:

- (1) For each piece of equipment to which section 373-2.28 of this Part applies:
- (i) equipment identification number and hazardous waste management unit identification;
 - (ii) approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan);
 - (iii) type of equipment (e.g., a pump or pipeline valve);
 - (iv) percent by weight total organics in the hazardous waste stream at the equipment;
 - (v) hazardous waste state at the equipment (e.g., gas/vapor or liquid); and
 - (vi) method of compliance with the standard (e.g., “monthly leak detection and repair” or “equipped with dual mechanical seals”).
- (2) For facilities that cannot install a closed-vent system and control device to comply with the provisions of section 373-2.28 of this Part on the effective date that the facility becomes subject to the provisions of section 373-2.28 or 373-3.28 of this Part, an implementation schedule as specified in section 373-2.27(d)(1)(ii) of this part.

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- (3) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in section 373-2.27(f)(2)(iii) of this Part.
- (4) Documentation that demonstrates compliance with the equipment standards in section 373-2.28(c)-(j) of this Part. This documentation shall contain the records required under section 373-2.28(o) of this Part. The commissioner may request further documentation before deciding if compliance has been demonstrated.
- (5) Documentation to demonstrate compliance with section 373-2.28(k) of this Part shall include the following information:
 - (i) a list of all information references and sources used in preparing the documentation;
 - (ii) records, including the dates, of each compliance test required by section 373-2.27(d)(10) of this Part;
 - (iii) a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of “ATPI Course 415: Control of Gaseous Emissions” (incorporated by reference as specified in section 370.1(e) of this Title) or other engineering texts acceptable to the department that present basic control device information. The design analysis must address the vent stream characteristics and control device operation parameters as specified in section 373-2.27(f)(2)(iv)(‘c’) of this Part;
 - (iv) a statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur; and
 - (v) a statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

(m) Special information requirements for drip pads.

Except as otherwise provided by section 373-2.1(a) of this Part, owners and operators of hazardous waste treatment, storage, or disposal facilities that collect, store, or treat hazardous waste on drip pads must provide the following additional information:

- (1) A list of hazardous wastes placed or to be placed on each drip pad.
- (2) If an exemption is sought under section 373-2.6 of this Part, as provided by section 373-2.6(a) of this Part, detailed plans and an engineering report describing how the requirements of section 373-2.6(a)(2)(v) of this Part will be met.
- (3) Detailed plans and an engineering report describing how the drip pad is or will be designed, constructed, operated and maintained to meet the requirements of section 373-2.23(d) of this Part, including the as-built drawings and specifications. This submission must address the following items as specified in section 373-2.23(b) of this Part:

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- (i) the design characteristics of the drip pad;
- (ii) the liner system;
- (iii) the leakage detection system, including the leak detection system and how it is designed to detect the failure of the drip pad or the presence of any releases of hazardous waste or accumulated liquid at the earliest practicable time;
- (iv) practices designed to maintain drip pads;
- (v) the associated collection system;
- (vi) control of run-on to the drip pad;
- (vii) control of run-off from the drip pad;
- (viii) the interval at which drippage and other materials will be removed from the associated collection system and a statement demonstrating that the interval will be sufficient to prevent overflow onto the drip pad;
- (ix) procedures for cleaning up the drip pad at least once every seven days to ensure the removal of any accumulated residues of waste or other materials, including but not limited to rinsing, washing with detergents or other appropriate solvents, or steam cleaning, and provisions for documenting the date, time, and cleaning procedure used each time the pad is cleaned;
- (x) operating practices and procedures that will be followed to ensure that tracking of hazardous waste or waste constituents off the drip pad due to activities by personnel or equipment is minimized;
- (xi) procedures, including recordkeeping practices, for ensuring that, after removal from the treatment vessel, treated wood from pressure and nonpressure processes is held on the drip pad until drippage has ceased;
- (xii) provisions for ensuring that collection and holding units associated with the run-on and runoff control systems are emptied or otherwise managed as soon as possible after storms to maintain design capacity of the system;
- (xiii) if treatment is carried out on the drip pad, details of the process equipment used, and the nature and quality of the residuals;
- (xiv) a description of how each drip pad, including appurtenances for control of run-on and runoff, will be inspected in order to meet the requirements of section 373-2.23(d) of this Part. This information should be included in the inspection plan submitted under subparagraph (a)(2)(v) of this section;
- (xv) a certification signed by an independent qualified, professional engineer registered in New York State, stating that the drip pad design meets the requirements of section 373-2.23(d)(1) through (6) of this Part; and
- (xvi) a description of how hazardous waste residues and contaminated materials will be removed from the drip pad at closure, as required under section 373-2.23(f)(1) of this Part. For any

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waste not to be removed from the drip pad upon closure, the owner or operator must submit detailed plans and an engineering report describing how section 373-2.14(g)(1) and (2) of this Part will be complied with. This information should be included in the closure plan and, where applicable, the post-closure plan submitted under subparagraph (a)(2)(xiii) of this section.

(n) **Specific requirements for air emission controls for tanks, surface impoundments, and containers.**

- (1) Except as otherwise provided in section 373-2.1(a) of this Part, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of section 373-2.29 of this Part shall provide the following additional information:
 - (i) Documentation for each floating roof cover installed on a tank subject to section 373-2.29(e)(4)(i) or (ii) of this Part that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications, as listed in section 373-2.29(e)(5)(i) or (6)(i) of this Part.
 - (ii) Identification of each container area subject to the requirements of section 373-2.29 of this Part and certification by the owner or operator that the requirements of this section are met.
 - (iii) Documentation for each enclosure used to control air pollutant emissions from tanks or containers in accordance with the requirements of section 373-2.29(e)(4)(v) or (g)(5)(i)(‘b’) of this Part that includes records for the most recent set of calculations and measurements performed by the owner or operator to verify that the enclosure meets the criteria of a permanent total enclosure as specified in “Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure” under 40 CFR 52.741, appendix B, as incorporated by reference in section 370.1(e) of this Title.
 - (iv) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of section 373-2.29(f)(3) of this Part that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in section 373-2.29(f)(3)(i) of this Part.
 - (v) Documentation for each closed-vent system and control device installed in accordance with the requirements of section 373-2.29(h) of this Part that includes design and performance information, as specified in paragraphs (k)(3) and (4) of this section.
 - (vi) An emission monitoring plan for both Method 21 in 40 CFR part 60, appendix A, as incorporated by reference in section 370.1(e) of this Title, and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliance.
 - (vii) When an owner or operator of a facility subject to section 373-3.29 of this Part cannot comply with section 373-2.29 of this Part, by the date of permit issuance, the schedule of implementation required under section 373-3.29(c) of this Part.

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(o) Requirements for post-closure permits.

For post-closure permits, the owner or operator is required to submit the information specified in subparagraphs (a)(2)(i), (iv), (v), (vi), (xi), (xiii), (xiv), (xvi), and (xix) and paragraphs (a)(3) and (4) of this section unless the department determines that additional information from subdivision (a), (c), (d), (e), (g), or (h) of this section is necessary. The owner or operator is required to submit the same information when an alternative authority is used in lieu of a post-closure permit as provided in section 373-1.2(e)(3) of this Subpart.

(p) Permit denial.

The commissioner may, pursuant to the procedures in Part 621 of this Title, deny the permit application either in its entirety or as to the active life of a hazardous waste management facility or unit only.

Section 373-1.6 Permit conditions.

(a) Conditions applicable to all permits.

The following conditions apply to all Part 373 permits, and will be incorporated into the permits either expressly or by reference. If incorporated by reference, a specification to these regulations must be given in the permit.

- (1) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of ECL article 27, title 9, and is grounds:
 - (i) for enforcement action;
 - (ii) for permit termination, revocation and reissuance, or modification; or
 - (iii) for denial of a permit renewal application.
- (2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.
- (3) Need to halt or reduce activity not a defense. It will not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (4) Duty to mitigate. In the event of noncompliance with the permit, the permittee must take all reasonable steps to minimize releases to the environment and must carry out such measurements as are reasonable to prevent significant adverse impacts on human health and the environment.
- (5) Proper operation and maintenance. The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. ***‘Proper operation and maintenance’*** includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

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- (6) Permit actions. This permit may be modified, suspended or revoked for cause. The filing of a request by the permittee for a permit modification, suspension or revocation, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- (7) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.
- (8) Duty to provide information. The permittee must furnish to the commissioner, within a reasonable time, any relevant information which the commissioner may request to determine whether cause exists for modifying, suspending or revoking this permit, or to determine compliance with this permit. The permittee must also furnish to the commissioner, upon request, copies of records required to be kept by this permit.
- (9) Inspection and entry. The permittee must allow the commissioner or an authorized representative, upon the presentation of identification, to:
 - (i) enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (ii) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (iii) inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
 - (iv) sample or monitor at reasonable times, for the purposes of assuring permit compliance, or as otherwise authorized by the ECL, any substances or parameters at any location.
- (10) Monitoring and records.
 - (i) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.
 - (ii) The permittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by section 373-2.5(c)(2)(ix) of this Part, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the commissioner at any time. The permittee must maintain records of all ground-water quality and ground-water surface elevations, for the active life of the facility, and for the post-closure care period as well.
 - (iii) Records for monitoring information must include:
 - ('a') the date, exact place and time of sampling or measurements;
 - ('b') the name(s) of the individual(s) who performed the sampling or measurements;
 - ('c') the date(s) analyses were performed;

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- (d) the name(s) of the individual(s) who performed the analyses;
 - (e) the analytical techniques or methods used; and
 - (f) the results of such analyses.
- (11) Signatory requirements. All applications, reports or information submitted to the commissioner must be signed and certified (see section 373-1.4(a)(5) of this Subpart).
- (12) Reporting requirements.
- (i) Planned changes. The permittee must give notice to the commissioner as soon as possible of any planned physical alterations or additions to the permitted facility.
 - (ii) Anticipated noncompliance. The permittee must give advance notice to the commissioner of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not treat, store or dispose of hazardous waste; and for a facility being modified, the permittee may not treat, store or dispose of hazardous waste in the modified portion of the facility except as provided in section 373-1.7 of this Subpart, until:
 - (a) the permittee has submitted to the department by certified mail or hand delivery, a letter signed by the permittee and a professional engineer registered in New York State stating that the facility has been constructed or modified in compliance with the permit; and
 - (b) the commissioner has:
 - (1) inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or
 - (2) if, within 15 days of the date of submission of the letter in clause ('a') of this subparagraph, the permittee has not received notice from the commissioner of his or her intent to inspect, the prior inspection is waived and the permittee may commence treatment, storage or disposal of hazardous waste.
 - (iii) Transfers. This permit is not transferable to any person except after notice to the commissioner. The commissioner may require modification or suspension of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under this Part. (*Note:* see section 373-1.7(a) of this Subpart.)
 - (iv) Monitoring reports. Monitoring results must be reported at the intervals specified elsewhere in this permit.
 - (v) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.
 - (vi) Twenty-four-hour reporting.

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- (a) The permittee must orally report any noncompliance that may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances, including:
 - (1) information concerning release of any hazardous waste that may cause an endangerment to public drinking water supplies; and
 - (2) any information of a release or discharge of hazardous waste or of a fire or explosion from the HWM facility, which could threaten the environment or human health outside the facility.
- (b) The description of the occurrence and its cause must include:
 - (1) names, address and telephone number of the operator;
 - (2) name, address and telephone number of the facility;
 - (3) date, time and type of incident;
 - (4) name (chemical and common) and quantity of material(s) involved;
 - (5) the extent of injuries, if any;
 - (6) an assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and
 - (7) estimated quantity and disposition of recovered material that resulted from the incident.
- (c) A written submission must also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The commissioner may waive the five-day written notice requirement in favor of a written report within 15 days.
- (vii) Manifest discrepancy report. If a significant discrepancy in a manifest is discovered, the permittee must attempt to reconcile the discrepancy. If not resolved within 15 days, the permittee must submit a letter report, including a copy of the manifest, to the commissioner (see Part 372 of this Title).
- (viii) Unmanifested waste report. This report must be submitted to the commissioner within 15 days of receipt of unmanifested waste (see section 373-2.5(f) of this Part).
- (ix) Annual report. An annual report must be submitted covering facility activities during the calendar year (see section 373-2.5(e) of this Part).
- (x) Other noncompliance. The permittee shall report all instances of noncompliance not reported under subparagraphs (iv), (v) and (vi) of this paragraph at the time monitoring reports are submitted. The reports shall contain the information listed in subparagraph (vi).

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(xi) Other information. Where the permittee becomes aware that any relevant facts were omitted in a permit application, or incorrect information was submitted in a permit application or in any report to the commissioner, the permittee must promptly submit the correct facts or information.

(13) Information repository. The commissioner may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in section 373-1.10(c)(2) of this Subpart. The information repository will be governed by the provisions in section 373-1.10(c)(3) through (6) of this Subpart.

(b) Requirements for recording and reporting of monitoring results.

All permits must specify:

- (1) requirements concerning the proper use, maintenance and installation when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);
- (2) required monitoring, including type, intervals and frequency sufficient to yield data which are representative of the monitored activity, including, when appropriate, continuous monitoring; and
- (3) applicable reporting requirements based upon the impact of the regulated activity and as specified in Subpart 373-2 of this Part. Reporting must be no less frequent than specified in the above regulations.

(c) Establishing permit conditions.

- (1) In addition to conditions required in all permits (subdivision (a) of this section), the commissioner may establish, as required on a case-by-case basis, conditions in permits regarding section 373-1.8(a) of this Subpart (duration of permits), (d) of this section (schedules of compliance and alternate schedules of compliance), and (b) of this section (monitoring).
- (2) Each permit will include permit conditions necessary to achieve compliance with RCRA and its regulations and article 27, title 9 of the ECL and its regulations, including each of the applicable requirements specified in Subpart 373-2 of this Part and Parts 374 and 376 of this Title. In satisfying this provision, the department may incorporate applicable requirements of Subpart 373-2 of this Part and Parts 374 and 376 of this Title directly into the permit or establish other permit conditions that are based on this Part. The department may impose permit conditions as the department determines necessary to protect human health and the environment. If, as the result of an assessment or other information, the department determines that conditions are necessary in addition to those required under 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title, Subpart 373-2 of this Part, or Subpart 374-1 of this Title, to ensure protection of human health and the environment, the department will include those terms and conditions in a Part 373 permit for a hazardous waste combustion unit.
- (3) New permits, renewal of permits and modified or suspended permits shall incorporate each of the applicable requirements referenced in this section.
- (4) Incorporation. All permit conditions will be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be

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given in the permit. The applicable regulations or requirements would be those which are in effect prior to final issuance of the permit.

(d) Schedules of compliance.

- (1) The permit may, when appropriate, specify a schedule of compliance leading to compliance with this Part.
 - (i) Time for compliance. Any schedules of compliance will require compliance as soon as possible.
 - (ii) Interim dates. Except as provided in clause (2)(i)(‘b’) of this subdivision, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule will establish interim requirements and the dates for their achievement.
 - (‘a’) The time between interim dates will not exceed one year.
 - (‘b’) If the time necessary for completion of any interim requirement is more than one year, and is not readily divisible into stages for completion, the permit will specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.
 - (iii) Reporting. The permit will be written to require that, no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the commissioner, in writing, of its compliance or noncompliance with the interim or final requirements, or submit progress reports if clause (ii)(‘b’) of this paragraph is applicable
- (2) Alternative schedules of compliance. A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of hazardous waste and for treatment and storage HWM facilities, closing pursuant to applicable requirements; and for disposal HWM facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:
 - (i) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
 - (‘a’) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - (‘b’) the permittee must cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
 - (ii) If the decision to cease conducting regulated activities is made before issuance of a permit the term of which would have included the termination date, the permit when issued will contain a schedule leading to termination to ensure timely compliance with applicable requirements.
 - (iii) If the permittee is undecided whether to cease conducting regulated activities, the commissioner may issue or modify a permit to contain two schedules as follows:
 - (‘a’) Both schedules will contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures

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sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities.

- (b) One schedule will lead to timely compliance with applicable requirements.
 - (c) The second schedule will lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements.
 - (d) Each permit containing two schedules will include a requirement that, after the permittee has made a final decision under clause ('a') of this subparagraph, it must follow the schedule leading to termination if the decision is to cease conducting regulated activities.
- (iv) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the commissioner, such as resolution of the board of directors of a corporation.

(e) Effect of a permit.

- (1) Compliance with a permit issued pursuant to this Part during its term constitutes compliance, for purposes of enforcement, with Parts 370 through 374 and 376 of this Title except for those requirements not included in the permit which:
 - (i) become effective by statute;
 - (ii) are promulgated under Part 376 of this Title restricting the placement of hazardous wastes in or on the land;
 - (iii) are promulgated under Subpart 373-2 of this Part regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detections system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of section 373-1.7 of this Subpart for major modifications; or
 - (iv) are promulgated under section 373-3.27, 373-3.28 or 373-3.29 of this Part limiting air emissions.
- (2) A permit may be modified, revoked, and reissued, or terminated during its term for cause as set forth in section 373-1.7(b) of this Subpart.

Section 373-1.7 Permit modifications.

(a) Transfer of permits.

- (1) A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified under subdivision (b) of this section and Part 621 of this Title to identify the new permittee and incorporate such other requirements as may be necessary.
- (2) Changes in the ownership or operational control of a facility may be made as a minor modification with prior written approval of the commissioner in accordance with subdivision (c) of this section.

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The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the commissioner. When a transfer of ownership or operational control occurs, the previous owner or operator shall comply with the requirements of section 373-2.8 (Financial requirements) of this Part until the new owner or operator has demonstrated that he or she is complying with the requirements of that section. The new owner or operator must demonstrate compliance with section 373-2.8 requirements within six months of the date of the change of ownership or operational control of the facility. Upon demonstration to the commissioner by the new owner of compliance with section 373-2.8, the commissioner shall notify the previous owner or operator that he or she no longer needs to comply with section 373-2.8 as of the date of demonstration.

(b) **Modification of permits.**

Every application for modifications to a permit will be processed pursuant to Part 621 of this Title.

(c) **Minor modification of RCRA-delegated permits.**

An application for modification of an RCRA-delegated permit may be processed pursuant to Part 621 of this Title without being treated as a new application for only the following changes under the indicated categories:

- (1) General permit provisions.
 - (i) administrative and informational changes;
 - (ii) correction of typographical errors;
 - (iii) equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls);
 - (iv) changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee to provide for more frequent monitoring, reporting, sampling, or maintenance;
 - (v) schedule of compliance: changes in interim compliance dates, with prior approval of the commissioner;
 - (vi) changes in expiration date of permit to allow earlier permit termination, with prior approval of the commissioner; and
 - (vii) changes in ownership or operational control of a facility, provided the procedures of paragraph (a)(2) of this section are followed.
 - (viii) changes to remove permit conditions that are no longer applicable or that result from the facility opting out pursuant to subparagraph (12)(iv) of this subdivision (i.e., because the standards upon which they are based are no longer applicable to the facility).
- (2) General facility standards.
 - (i) changes to waste sampling or analysis methods:

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- (a) to conform with department guidance or regulations;
 - (b) to incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes;
 - (c) to incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods;
- (ii) changes to analytical quality assurance/control plan to conform with department guidance or regulations;
 - (iii) changes in procedures for maintaining the operating record;
 - (iv) changes in the training plan other than those that affect the type or decrease the amount of training given to employees;
 - (v) contingency plan:
 - (a) replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed;
 - (b) changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan;
 - (vi) construction quality assurance plan:
 - (a) changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unit components meet design specifications.
- Note:** When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.
- (3) Ground-water protection.
 - (i) Changes to wells:
 - (a) replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well;
 - (ii) changes in ground-water sampling or analysis procedures or monitoring schedule, with prior approval of the commissioner;
 - (iii) changes in statistical procedure for determining whether a statistically significant change in ground-water quality between upgradient and downgradient wells has occurred, with prior approval of the commissioner.
 - (4) Closure.
 - (i) Changes to the closure plan:
 - (a) changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the commissioner;

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- (b') changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the commissioner;
 - (c') changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the commissioner;
 - (d') changes in procedures for decontamination of facility equipment or structures, with prior approval of the commissioner.
- (ii) Addition of the following new units to be used temporarily for closure activities:
- (a') tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the commissioner.
- (5) Post-closure.
- (i) changes in name, address, or phone number of contact in post-closure plan;
 - (ii) changes to the expected year of final closure, where other permit conditions are not changed.
- (6) Containers.
- (i) Modification or addition of container units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards with prior approval of the commissioner. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).
 - (ii) Addition of a roof to a container unit without alteration of the containment system.
 - (iii) Storage or treatment of different wastes in containers:
 - (a') that require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028);
 - (b') that do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).
- (7) Tanks.
- (i) After prior approval of the commissioner, addition of a new tank that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.
 - (ii) Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards, with prior approval of the commissioner. This modification may also involve addition of new

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waste codes. It is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

(iii) Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10 percent of the replaced tank provided:

('a') the capacity difference is no more than 1,500 gallons;

('b') the facility's permitted tank capacity is not increased; and

('c') the replacement tank meets the same conditions in the permit.

(iv) Management of different wastes in tanks:

('a') that require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards. The modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

('b') that do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

Note: see subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(8) Surface impoundments.

(i) Treatment, storage, or disposal of different wastes in surface impoundments:

('a') that are wastes restricted from land disposal that meet the applicable treatment standards, and provided that the unit meets the minimum technological requirements stated in both 40 CFR 268.5(h)(2) and section 376.1(e)(8)(ii) of this Title. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028);

('b') that are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in both 40 CFR 268.5(h)(2) and section 376.1(e)(8)(ii) of this Title, and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

(ii) Modifications of unconstructed units to comply with section 373-2.11(b)(3), (d)(4), (j) and (k) of this Part.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

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(9) Enclosed waste piles. For all waste piles except those complying with section 373-2.12(a)(3) of this Part, modifications are treated the same as for all landfill. The following modifications are applicable only to waste piles complying with section 373-2.12(a)(3).

- (i) Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(10) Landfills and unenclosed waste piles.

- (i) Landfill different wastes:

- (a) that are wastes restricted from land disposal that meet the applicable treatment standards, and provided that the landfill unit meets the minimum technological requirements stated in both 40 CFR 268.5(h)(2) and section 376.1(e)(8)(ii) of this Title. This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028);

- (b) that are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in both 40 CFR 268.5(h)(2) and section 376.1(e)(8)(ii) of this Title, and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, F021, F022, F023, F026, F027, and F028).

- (ii) Modifications of unconstructed units to comply with sections 373-2.12(b)(3), (e), (j) and (k), 373-2.14(c)(3), (e)(3), (n) and (o) of this Part.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(11) Land treatment.

- (i) Modification of a land treatment unit management practice to decrease rate of waste application.
- (ii) Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the commissioner's prior approval has been received.
- (iii) Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the commissioner.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

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- (12) Incinerators, boilers and industrial furnaces.
- (i) Shakedown and trial burn:
 - ('a') authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the commissioner;
 - ('b') changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the commissioner;
 - ('c') changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the commissioner.
 - (ii) Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.
 - (iii) Technology changes needed to meet standards under 40 CFR part 63 (subpart EEE, National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title, provided the procedures of subdivision (j) of this section are followed.
 - (iv) Transition from Part 373 permit provisions to 40 CFR part 63 subpart EEE. Changes to Part 373 permit provisions needed to support transition to 40 CFR part 63 (subpart EEE, National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), as incorporated and implemented by sections 200.10(a) and (d) of this Title, provided the procedures of subdivision (k) of this section are followed.
- (13) Containment buildings.
- (i) Replacement of a containment building that meets the same design standards provided:
 - ('a') the unit capacity is not increased; and
 - ('b') the replacement containment building meets the same conditions specified in the permit.
- (14) Temporary authorizations.
- (i) Conduct, for a term of not more than 180 days, or, if extended, for not more than a total of 360 days, of a modification which is a major modification (not otherwise a minor modification) and which meets the criteria given in subdivision (f) of this section.
- (15) Other modifications.
- (i) In the case of modifications not explicitly listed as minor or major, the permittee may submit a request for permit modification and request that it be classified and administered as a modification under Part 621 (Uniform Procedures) of this Title, and as a minor or major modification under this Part. This request must include information supporting the requested classification.
 - (ii) The department shall determine whether the request qualifies to be administered as a modification or an application for a new permit in accordance with section 621.11 (Uniform

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Procedures) of this Title. In making this determination, the department shall consider the degree to which the proposed changes are similar to those listed above and the following criteria:

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

(d) Major modifications.

Major modifications include, but are not limited to, the following:

- (1) General permit provisions.
 - (i) Extension of final compliance date.
- (2) Groundwater protection.
 - (i) Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs), as specified in the groundwater protection standard.
 - (ii) Compliance monitoring program:
 - (a) Addition of compliance monitoring program as required by section 373-2.6(i)(8)(iv) and (j)(10)(iii) of this Part.
 - (iii) Corrective action program:
 - (a) Addition of a corrective action program as required by section 373-2.6(j)(11) and (k) of this Part.
- (3) Closure.
 - (i) Creation of a new landfill unit as part of closure.
 - (ii) Addition of the following new units to be used temporarily for closure activities:
 - (a) surface impoundments;
 - (b) incinerators; and
 - (c) waste piles that do not comply with section 373-2.12(a)(3) of this Part.
- (4) Post-closure.
 - (i) Reduction in the post-closure care period.
- (5) Containers.
 - (i) Modification or addition of container units resulting in greater than 25 percent increase in the facility's container storage capacity, except as provided in subparagraph (c)(6)(i) and clause (c)(6)(iii)(a) of this section.

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- (ii) Storage of different wastes in containers, except as provided in subparagraph (c)(6)(iii) of this section, that require additional or different management practices from those authorized in the permit.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(6) Tanks.

- (i) Modification or addition of tank units resulting in greater than 25 percent increase in the facility's tank capacity, except as provided in subparagraphs (c)(7)(i) and (ii) of this section.

- (ii) Management of different wastes in tanks:

- (a) that require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in clause (c)(7)(iv)(a) of this section.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(7) Surface impoundments.

- (i) Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.

- (ii) Replacement of a surface impoundment unit.

- (iii) Treatment, storage, or disposal of different wastes in surface impoundments that require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.

- (iv) Changes in response action plan:

- (a) increase in action leakage rate;

- (b) change in a specific response reducing its frequency or effectiveness.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(8) Enclosed waste piles. For all waste piles except those complying with section 373-2.12(a)(3) of this Part, modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with section 373-2.12(a)(3) of this Part.

- (i) Modification or addition of waste pile units resulting in greater than 25 percent increase in the facility's waste pile storage or treatment capacity.

- (ii) Storage or treatment of different wastes in waste piles that require additional or different management practices or different design of the unit.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

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- (9) Landfills and unenclosed waste piles.
- (i) Modification or addition of landfill units that result in increasing the facility's disposal capacity.
 - (ii) Replacement of a landfill.
 - (iii) Addition or modification of a liner, leachate collection system, leachate detection system, runoff control, or final cover system.
 - (iv) Landfill different wastes that require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.
 - (v) Changes in response action plan:
 - ('a') increase in action leakage rate;
 - ('b') change in a specific response reducing its frequency or effectiveness.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

- (10) Land treatment.
- (i) Lateral expansion of or other modification of a land treatment unit to increase areal extent.
 - (ii) Modify run-off control system.
 - (iii) Management of different wastes in land treatment units that require a change in permit operating conditions or unit design specifications.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.
 - (iv) Modification of a land treatment unit management practice to increase rate or change method of waste application.
 - (v) Modification of a land treatment unit management practice to grow food chain crops, to add or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.
 - (vi) Modification of operating practice due to detection of releases from the land treatment unit pursuant to section 373-2.13(f)(7)(ii) of this Part.
 - (vii) Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, number of sampling points, or replace unsaturated zone monitoring devices or components of devices with devices or components that have specifications different from permit requirements.
 - (viii) Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.

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(11) Incinerators, boilers, and industrial furnaces.

- (i) Changes to increase by more than 25 percent any of the following limits authorized in the permit: a thermal feed rate limit, a feedstream feed rate limit, a chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The commissioner will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means acceptable to the commissioner.
- (ii) Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size or geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove hydrogen chloride, chlorine, metals, or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The commissioner will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means acceptable to the commissioner.
- (iii) Operating requirements:
 - ('a') Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The commissioner will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means acceptable to the commissioner.
 - ('b') Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.
- (iv) Burning different wastes if the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The commissioner will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means acceptable to the commissioner.

Note: See subdivision (g) of this section for modification procedures to be used for the management of newly listed or identified wastes.

(12) Containment buildings.

- (i) Modification or addition of containment building units resulting in greater than 25 percent increase in the facility's containment building storage treatment capacity.
- (ii) Storage or treatment of different wastes in containment buildings that require additional or different management practices.

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(13) Corrective action.

(i) Approval of a corrective action management unit pursuant to section 373-2.19(a) of this Part.

(e) Announcement of determination.

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

(f) Temporary authorizations.

(1) Upon request of the permittee, the commissioner may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with this subdivision. Temporary authorizations must have a term of not more than 180 days.

(2)

(i) The permittee may request a temporary authorization for any modification which would otherwise be a major modification that meets the criteria in clause (3)(ii)(‘a’) or (‘b’) of this subdivision; or that meets the criteria in clauses (3)(ii)(‘c’) through (‘e’) of this subdivision and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(ii) The temporary authorization request must include:

(‘a’) a description of the activities to be conducted under the temporary authorization;

(‘b’) an explanation of why the temporary authorization is necessary; and

(‘c’) sufficient information to ensure compliance with the Part 373 standards.

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

(3) The commissioner shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the commissioner must find:

(i) The authorized activities are in compliance with the Part 373 standards.

(ii) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(‘a’) to facilitate timely implementation of closure or corrective action activities;

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- (b) to allow treatment or storage in tanks or containers, or in containment buildings, in accordance with the Land Disposal Restrictions contained in 40 CFR part 268 and Part 376 of this Title;
- (c) to prevent disruption of ongoing waste management activities;
- (d) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or
- (e) to facilitate other changes to protect human health and the environment.

- (4) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested major permit modification for the activity covered in the temporary authorization, and the commissioner determines that the reissued temporary authorization involving a major permit modification request is warranted to allow the authorized activities to continue while the modification procedures are conducted.

(g) Newly regulated wastes and units.

- (1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 6 NYCRR Part 371, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units, if:
- (i) the unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste, or regulating the unit;
 - (ii) the permittee submits a minor modification request on or before the date on which the waste or unit becomes subject to the new requirements;
 - (iii) the permittee is in compliance with the standards of Subparts 373-1 and 373-3 (Interim Status standards) and Subpart 374-1 of this Title;
 - (iv) the permittee also submits a complete major permit modification request within 180 days of the effective date of the rule listing or identifying the waste or subjecting the unit to article 27, title 9 of the ECL, and 6 NYCRR Part 370 *et seq.*, management standards; and
 - (v) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable requirements of Subpart 373-3 of this Part for ground-water monitoring and financial responsibility on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with all these requirements, he or she shall lose authority to operate under this section.

(h) Military hazardous waste munitions treatment and disposal.

The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

- (1) the facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject

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to hazardous waste regulatory requirements;

- (2) on or before the date when the waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a minor modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and
- (3) the permittee submits a complete major modification request within 180 days of the date when the waste military munitions became subject to hazardous waste regulatory requirements.

(i) Permit modification list.

The commissioner must maintain a list of all approved permit modifications and must publish a notice once a year in the *Environmental Notice Bulletin* that an updated list is available for review.

(j) Combustion facility changes to meet part 63 MACT standards.

The following procedures apply to hazardous waste combustion facility permit modifications requested under subparagraph (c)(12)(iii) of this section.

- (1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 of subpart EEE that were in effect prior to October 11, 2000 (see 40 CFR part 63 sections 1200 through 1499, revised as of July 1, 2000, as incorporated by reference in section 370.1(e)(2)(vi) of this Title,) in order to request a permit modification under this Subpart for the purpose of technology changes needed to meet the standards under 40 CFR part 63, subpart EEE, sections 1203, 1204 and 1205, as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title.
- (2) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) of subpart EEE, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR part 63, subpart EEE, sections 1215, 1216, 1217, 1218, 1219, 1220, and 1221 standards, as incorporated by reference and implemented by subdivisions 200.10(a) and (d) of this Title.

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

- (1) The owner or operator may request that the department waive specific Part 373 operation and emissions limits by submitting a minor modification request under subparagraph (c)(12)(iv) of this section. The owner or operator must:
 - (i) identify the specific of Part 373 permit operating and emissions limits which the owner or operator is requesting to waive;
 - (ii) provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between Part 373 permit and MACT compliance; and
 - (iii) discuss how the revised provisions will be sufficiently protective of human health and the environment.
- (2) To request this modification in conjunction with MACT performance testing where the permit

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

- (i) submit the modification request to the department at the same time as they submit the test plans to the department; and
- (ii) the department will approve or deny the request contingent upon approval of the test plans.

Section 373-1.8 Expiration and continuation of permits.

(a) Duration of permits.

- (1) Hazardous waste facility permits for land disposal facilities and incinerators shall be effective for a fixed term not to exceed five years. Hazardous waste facility permits for all other units shall be effective for a fixed term not to exceed 10 years.
- (2) The term of a permit shall not be extended by modification beyond the maximum duration specified in this section.
- (3) The commissioner may issue any permit for a duration that is less than the full allowable term under this section.

(b) Renewal applications.

Complete applications for a permit renewal must be submitted at least 180 days before the expiration date of the existing permit. See also section 373-1.10 of this Subpart.

Section 373-1.9 Special forms of permits.

(a) Hazardous waste incinerator permits.

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

- (1) For the purposes of determining operational readiness following completion of physical construction, the commissioner must establish permit conditions, including but not limited to allowable waste feeds and operating conditions, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to bring the incinerator to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time for treatment of hazardous waste. The commissioner may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The

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permit may be modified to reflect the extension according to section 373-1.7(c) of this Subpart (minor modifications of permit).

- (i) Applicants must submit a statement with the permit application which suggests the conditions necessary to operate in compliance with the performance standards of section 373-2.15(d) of this part during this period. This statement must include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters identified in section 373-2.15(f).
 - (ii) The commissioner will review this statement and any other relevant information submitted with the permit application, and specify requirements for this period sufficient to meet the performance standards of section 373-2.15(d).
- (2) For the purposes of determining feasibility of compliance with the performance standards of section 373-2.15(d) of this Part and of determining adequate operating conditions under subdivision (f) of such section, the commissioner must establish conditions in the permit for a new hazardous waste incinerator to be effective during the trial burn.
- (i) Applicants must propose a trial burn plan, prepared under subparagraph (ii) of this paragraph, with the permit application.
 - (ii) The trial burn plan must include the following information:
 - ('a') an analysis of each waste or mixture of wastes to be burned, that includes:
 - ('1') heat value of the waste in the form and composition it will be burned;
 - ('2') viscosity (if applicable), or description of the physical form of the waste;
 - ('3') an identification of any hazardous organic constituents listed in Appendix 23 of this Title that are present in the waste to be burned, except that the applicant need not analyze for constituents listed in Appendix 23 which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis for the exclusion stated. The waste analysis must rely on appropriate analytical techniques that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives; and
 - ('4') an approximate quantification of the hazardous constituents identified in the waste, within the precision produced by appropriate analytical methods that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives.
 - ('b') a detailed engineering description of the incinerator for which the permit is sought, including:
 - ('1') manufacturer's name and model number of the incinerator (if available);

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- (2) type of incinerator;
 - (3) linear dimensions of the incinerator unit, including the cross-sectional area of the combustion chamber;
 - (4) description of the auxiliary fuel system (type/feed);
 - (5) capacity of prime mover;
 - (6) description of automatic waste feed cutoff system;
 - (7) stack gas monitoring and pollution control equipment;
 - (8) nozzle and burner design;
 - (9) construction materials;
 - (10) location and description of temperature, pressure and flow indicating and control devices; and
 - (11) flow sheets;
- (c) a detailed description of sampling and monitoring procedures, including sampling and monitoring location in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;
 - (d) a detailed test schedule for each waste for which the trial is planned, including date(s), duration, quantity of waste to be burned, and other factors relevant to the commissioner's decision under subparagraph (v) of this paragraph;
 - (e) a detailed test protocol, including, for each waste identified, the ranges of temperature, waste feed rate, combustion gas velocity, use of auxiliary fuel, and any other relevant parameters that will be varied to affect the destruction and removal efficiency of the incinerator;
 - (f) a description of, and planned operating conditions for, any emission control equipment which will be used;
 - (g) procedures for rapidly stopping waste feed, shutting down the incinerator, and controlling emissions in the event of an equipment malfunction; and
 - (h) other information the commissioner finds necessary to determine to approve the trial burn plan in light of the purposes of this paragraph and the criteria in subparagraph (v) of this paragraph.
- (iii) The commissioner, in reviewing the trial burn plan, will evaluate the sufficiency of the information provided, and may require that the applicant supplement this information, if necessary, to achieve the purposes of this paragraph.
 - (iv) Based on the waste analysis data in the trial burn plan, the commissioner will specify as trial principle organic hazardous constituents (POHC's), those constituents for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be

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specified by the commissioner based on his or her estimate of the difficulty of incineration of the constituents identified in the waste analysis, their concentration or mass in the waste feed, and for wastes listed in section 371.4 of this Title, the hazardous waste organic constituent(s) identified in Appendix 22, *infra*, as the basis for listing.

- (v) The commissioner shall approve a trial burn plan if the commissioner finds that:
 - ('a') the trial burn is likely to determine whether the incinerator performance standards required by section 373-2.15(d) of this Part can be met;
 - ('b') the trial burn itself will not present an imminent hazard to human health or the environment;
 - ('c') the trial burn will help the commissioner to determine operating requirements to be specified under section 373-2.15(f) of this Part; and
 - ('d') the information sought in clauses ('a') and ('b') of this subparagraph cannot reasonably be developed through other means.
- (vi) The commissioner must send a notice to all persons on the facility mailing list as set forth in section 621.7 of this Title and to the appropriate units of local government as set forth in section 621.7 of this Title announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the commissioner has issued such notice.
 - ('a') This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.
 - ('b') This notice must contain:
 - ('1') the name and telephone number of the applicant's contact person;
 - ('2') the name and telephone number of the permitting agency's contact office;
 - ('3') the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
 - ('4') an expected time period for commencement and completion of the trial burn.
- (vii) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:
 - ('a') a quantitative analysis of the trial POHC's in the waste feed to the incinerator;
 - ('b') a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHC's, oxygen and hydrogen chloride (HCl);
 - ('c') a quantitative analysis of the scrubber water (if any), ash residues and other residues, for the purpose of estimating the fate of the trial POHC's;
 - ('d') a computation of destruction and removal efficiency (DRE), in accordance with the

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DRE formula specified in section 373-2.15(d)(1) of this Part;

- (e) if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (4 pounds per hour), a computation of HCl removal efficiency in accordance with section 373-2.15(d)(2);
 - (f) a computation of particulate emissions, in accordance with section 373-2.15(d)(3);
 - (g) an identification of sources of fugitive emissions and their means of control;
 - (h) a measurement of average, maximum and minimum temperatures and combustion gas velocity;
 - (i) a continuous measurement of carbon monoxide (CO) in the exhaust gas; and
 - (j) other information as the commissioner may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in section 373-2.15(d) and to establish the operating conditions required by section 373-2.15(f) as necessary to meet that performance standard.
- (viii) The applicant must submit a certification to the commissioner that the trial burn has been conducted in accordance with the approved trial burn plan, and must submit the results of all the determinations required in subparagraph (vi) of this paragraph. This submission must be made within 90 days of completion of the trial burn, or later if approved by the commissioner.
- (ix) All data collected during any trial burn must be submitted to the commissioner following the completion of the trial burn.
- (x) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 373-1.4(a)(5) of this Subpart.
- (xi) Based on the results of the trial burn, the commissioner shall set the operating requirements in the final permit according to section 373-2.15(f) of this Part. The permit modification shall proceed as a minor modification according to section 373-1.7(c) of this Subpart.
- (3) For the purposes of allowing operation of a new hazardous waste incinerator, following completion of the trial burn and prior to final modification of the permit conditions to reflect the trial burn results, the commissioner may establish permit conditions, including, but not limited to, allowable waste feeds and operating conditions sufficient to meet the requirements of section 373-2.15(f) of this Part, in the permit to a new hazardous waste incinerator. These permit conditions will be effective for the minimum time required to complete sample analysis, data computation and submission of the trial burn results by the applicant, and modification of the facility permit by the commissioner.
- (i) Applicants must submit a statement with the permit application, identifying the conditions necessary to operate in compliance with the performance standards of section 373-2.15(d) of this Part, during this period. This statement should include, at a minimum, restrictions on waste constituents, waste feed rates and the operating parameters in section 373-2.15(f).

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(ii) The commissioner will review this statement and any other relevant information submitted with the permit application, and specify those requirements for this period most likely to meet the performance standards of section 373-2.15(d) of this Part.

(4) For the purposes of determining feasibility of compliance with the performance standards of section 373-2.15(d) of this Part, and of determining adequate operating conditions under section 373-2.15(f) of this Part, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with section 373-1.5(f)(2) of this Subpart and subparagraphs (2)(ii) through (v) and (vii) through (x) of this subdivision or, instead, submit other information as specified in section 373-1.5(f)(3) of this Subpart. The commissioner must announce an intention to approve the trial burn plan in accordance with the timing and distribution requirements of subparagraph (2)(vi) of this subdivision. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under section 373-1.5(f)(1) of this Subpart are exempt from compliance with section 373-2.15(d) and (f) of this Part and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in subparagraph (2)(vii) of this subdivision, with the permit application. If the completion of this process conflicts with the date set for submission of the permit application, the applicant must contact the commissioner to establish a later date for submission of the application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with the permit application, the commissioner will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

(5)

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

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

(b) Permits for land treatment demonstrations using field test or laboratory analyses.

(1) To allow an owner or operator to meet the treatment demonstration requirements of section 373-2.13(c) of this Part, the commissioner may issue a treatment demonstration permit. The permit must contain only those requirements necessary to meet the standards in section 373-2.13(c)(3). The permit may be issued either as a treatment or disposal permit covering only the field test or

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laboratory analyses, or as a two-phase facility permit covering the field tests, or laboratory analyses, and design, construction, operation and maintenance of the land treatment unit.

- (i) The commissioner may issue a two-phase facility permit if the commissioner finds that, based on information submitted in the application although incomplete or inconclusive, substantial information already exists upon which to base the issuance of a facility permit.
 - (ii) If the commissioner finds that not enough information exists upon which the commissioner can establish permit conditions to attempt to provide for compliance with all of the requirements of section 373-2.13 of this Part, a treatment demonstration permit must be issued covering only the field test or laboratory analyses.
- (2) If the commissioner finds that a phased permit may be issued, the first phase of the facility permit must contain conditions for conducting the field tests or laboratory analyses. These permit conditions will include design and operating parameters (including the duration of the tests or analyses and, in the case of field tests, the horizontal and vertical dimensions of the treatment zone), monitoring procedures, post-demonstration cleanup activities, and any other conditions the commissioner finds necessary under section 373-2.13(c)(3) of this Part. The commissioner will include conditions in the second phase of the facility permit in an attempt to meet all section 373-2.13 requirements pertaining to unit design, construction, operation and maintenance. The commissioner will establish these conditions in the second phase of the permit based upon the substantial but incomplete or inconclusive information contained in the permit application.
- (3) When the owner or operator of a facility with a two-phase permit has completed the treatment demonstration, the owner or operator must submit to the commissioner a certification, signed by a person authorized to sign a permit application or report under section 373-1.4(a)(5) of this Subpart, that the field tests or laboratory analyses have been carried out in accordance with the conditions specified in the permit for conducting such tests or analyses. The owner or operator must also submit all data collected during the field tests or laboratory analyses within 90 days of completion of those tests or analyses, unless the commissioner approves a later date.
- (4) If the commissioner determines that the results of the field tests or laboratory analyses meet the requirements of section 373-2.13(c) of this Part, the second phase of the permit will be modified to incorporate any requirements necessary for operation of the facility in compliance with section 373-2.13, based upon the results of the field tests or laboratory analyses.
 - (i) This permit modification may proceed as a minor modification under section 373-1.7(c) of this Subpart, provided any such change is minor, or otherwise must proceed as a modification under section 373-1.7.
 - (ii) If no modifications of the second phase of the permit are necessary, or if only minor modifications are necessary and have been made, the commissioner will give notice of his or her final decision to the permit applicant and to each person who submitted written comments on the phased permit or who requested notice of the final decision of the second phase of the permit.
 - (iii) If modifications under section 373-1.7(b) of this Subpart are necessary, the second phase of the permit shall become effective only after those modifications have been made.

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(c) Research, development, and demonstration permits.

- (1) The commissioner may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part 373 or Part 374. This permit must include terms and conditions to assure protection of human health and the environment. The permits:
 - (i) must provide for the construction of facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (4) of this subdivision;
 - (ii) must provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the commissioner deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and
 - (iii) must include such requirements as the commissioner deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the commissioner deems necessary regarding testing and providing of information to the commissioner with respect to the operation of the facility.
- (2) For the purpose of expediting review and issuance of permits under this section, the commissioner may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in this Subpart and Parts 621 and 624 of this Title except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.
- (3) The commissioner may order an immediate termination of all operations at the facility at any time the commissioner determines that termination is necessary to protect human health and the environment, provided that nothing in this Part shall preclude or affect the commissioner's authority to issue summary abatement orders under section 71-0301 of the Environmental Conservation Law, or to take emergency actions summarily suspending a permit under subdivision 3 of section 401 of the State Administrative Procedure Act.
- (4) Permits issued under this subdivision may be renewed not more than three times. Each renewal period will not exceed one year.

(d) Permits for boilers and industrial furnaces burning hazardous waste.

Except as set forth in paragraph (8) of this subdivision, the standards of this Subpart do not apply to a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that becomes subject to Part 373 permit requirements after October 12, 2005, or no longer apply to a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace when the owner or operator of the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 40 CFR 63.1207(j))

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and 63.1210(d) of subpart EEE, documenting compliance with all applicable requirements of 40 CFR part 63, subpart EEE as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title).

- (1) General. Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of section 374-1.8(d) of this Title) are subject to paragraphs (2) through (6) of this subdivision. Boilers and industrial furnaces operating under the interim status standards of section 374-1.8(d) of this Title are subject to paragraph (7) of this subdivision.
- (2) Permit operating periods for new boilers and industrial furnaces. A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:
 - (i) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the commissioner must establish permit conditions for the pretrial burn period, including but not limited to, allowable hazardous waste feed rates and operating conditions. The commissioner may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to section 373-1.7 of this Subpart.
 - ('a') Applicants must submit a statement, with the Part 373 permit application, that proposes conditions necessary to operate in compliance with the standards of section 374-1.8(e) through (h) of this Title during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in section 374-1.8(c)(5) of this Subpart.
 - ('b') The commissioner will review this statement and any other relevant information submitted with the Part 373 permit application and specify requirements for this period sufficient to meet the performance standards of section 374-1.8(e) through (h) of this Title based on his/her engineering judgment.
 - (ii) Trial burn period. For the duration of the trial burn, the commissioner must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of section 374-1.8(e) through (h) of this Title, and determining adequate operating conditions under section 374-1.8(e) through (h) of this Title, and determining adequate operating conditions under section 374-1.8(c)(5) of this Title. Applicants must propose a trial burn plan, prepared under paragraph (3) of this subdivision, to be submitted with the Part 373 permit application.
 - (iii) Post-trial burn period.
 - ('a') For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the commissioner to reflect the trial burn results, the commissioner will establish the operating requirements most likely to ensure compliance with the performance standards of section 374-1.8(e) through (h) of this

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Subpart based on his/her engineering judgment.

- (b') Applicants must submit a statement, with the Part 373 application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of section 374-1.8(e) through (h) of this Subpart. This statement should include, at a minimum, restrictions on the operating requirements provided by section 374-1.8(c)(5) of this Subpart.
 - (c') The commissioner will review this statement and any other relevant information submitted with the Part 373 permit application and specify requirements for this period sufficient to meet the performance standards of section 374-1.8(e) through (h) of this Subpart based on his/her engineering judgment.
 - (iv) Final permit period. For the final period of operation, the commissioner will develop operating requirements in conformance with section 374-1.8(c)(5) of this Subpart that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of section 374-1.8(e) through (h) of this Subpart. Based on the trial burn results, the commissioner shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to section 373-1.7 of this Subpart.
- (3) Requirements for trial burn plans. The trial burn plan must include the following information. The commissioner, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided, and may require the applicant to supplement this information, if necessary, to achieve the purposes of this paragraph:
- (i) an analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:
 - (a') heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;
 - (b') viscosity or description of the physical form of the feed stream;
 - (ii) an analysis of each hazardous waste, as fired, including:
 - (a') an identification of any hazardous organic constituents listed in Appendix 23 of this Title, that are present in the feed stream, except that the applicant need not analyze for constituents listed in Appendix 23 that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The waste analysis must be conducted in accordance with appropriate analytical techniques that are ELAP-certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives;
 - (b') an approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by appropriate analytical methods that are ELAP-

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certified analytical methods. If ELAP certified methods are not available, analysis should be performed using EPA standard methods. If neither of those are available, the department will evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives;

- (c) a description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios;
- (iii) a detailed engineering description of the boiler or industrial furnace, including:
 - (a) manufacturer's name and model number of the boiler or industrial furnace;
 - (b) type of boiler or industrial furnace;
 - (c) maximum design capacity in appropriate units;
 - (d) description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;
 - (e) capacity of hazardous waste feed system;
 - (f) description of automatic hazardous waste feed cutoff system(s);
 - (g) description of any air pollution control system; and
 - (h) description of stack gas monitoring and any pollution control monitoring systems;
- (iv) a detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis;
- (v) a detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the commissioner's decision under subparagraph (2)(ii) of this subdivision;
- (vi) a detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in section 374-1.8(e) through (h) of this Subpart;
- (vii) a description of, and planned operating conditions for, any emission control equipment that will be used;
- (viii) procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction;
- (ix) such other information as the commissioner reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this paragraph and the criteria in subparagraph (2)(ii) of this subdivision.

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- (4) Trial burn procedures.
- (i) A trial burn must be conducted to demonstrate conformance with the standards of section 374-1.8(e) through (h) of this Subpart under an approved trial burn plan.
 - (ii) The commissioner shall approve a trial burn plan if he/she finds that:
 - ('a') the trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of section 374-1.8(e) through (h) of this Subpart;
 - ('b') the trial burn itself will not present an imminent hazard to human health and the environment;
 - ('c') the trial burn will help the commissioner to determine operating requirements to be specified under section 374-1.8(c)(5) of this Title; and
 - ('d') the information sought in the trial burn cannot reasonably be developed through other means.
 - (iii) The commissioner must send a notice to all persons on the facility mailing list as set forth in section 621.7 of this Title and to the appropriate units of local government as set forth in section 621.7 of this Title announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the commissioner has issued such notice.
 - ('a') This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.
 - ('b') This notice must contain:
 - ('1') the name and telephone number of applicant's contact person;
 - ('2') the name and telephone number of the permitting agency contact office;
 - ('3') the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and
 - ('4') an expected time period for commencement and completion of the trial burn.
 - (iv) The applicant must submit to the commissioner a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in paragraph (3) of this subdivision. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the commissioner.
 - (v) All data collected during any trial burn must be submitted to the commissioner following completion of the trial burn.
 - (vi) All submissions required by this paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under section 373-1.4(a)(5) of this Subpart.

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- (5) Special procedures for DRE trial burns. When a DRE trial burn is required under section 374-1.8(e)(1) of this Subpart, the commissioner will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial principal organic hazardous constituents (POHC's) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHC's will be specified by the commissioner based on information including an estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in section 371.4 of this Title, the hazardous waste organic constituent(s) identified in Appendix 22, *infra*, as the basis for listing.
- (6) Determinations based on trial burn. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:
- (i) a quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);
 - (ii) when a DRE trial burn is required under section 374-1.8(e)(1) of this Title:
 - ('a') a quantitative analysis of the trial POHC's in the hazardous waste feed;
 - ('b') a quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHC's; and
 - ('c') a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in section 374-1.8(e)(1) of this Title;
 - (iii) when a trial burn for chlorinated dioxins and furans is required under section 374-1.8(e)(5) of this Subpart, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo- p-dioxins and furans, and a computation showing conformance with the emission standard;
 - (iv) when a trial burn for particulate matter, metals, or HCl/Cl₂ is required under section 374-1.8(f), (g)(3), (4), (h)(2)(ii) or (h)(3) of this Subpart, a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl₂), and computations showing conformance with the applicable emission performance standards;
 - (v) when a trial burn for DRE, metals, or HCl/Cl₂ is required under section 374-1.8(e)(1), (g)(3) or (4), (h)(2)(ii) or (h)(3) of this Subpart, a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHC's, metals, and chlorine/chloride;
 - (vi) an identification of sources of fugitive emissions and their means of control;
 - (vii) a continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and
 - (viii) such other information as the commissioner may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in section 374-1.8(e) through

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(h) of this Title and to establish the operating conditions required by section 374-1.8(c)(5) of this Title as necessary to meet those performance standards.

- (7) Interim status boilers and industrial furnaces. For the purpose of determining feasibility of compliance with the performance standards of section 374-1.8(e) through (h) of this Title and of determining adequate operating conditions under section 374-1.8(d) of this Title, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of section 374-1.8(d) of this Title must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this subdivision or submit other information as specified in section 373-1.5(i)(1)(vi) of this Subpart. The commissioner must announce an intention to approve the trial burn plan in accordance with the timing and distribution requirements of subparagraph (4)(iii) of this subdivision. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the Part 373 permit application must complete the trial burn and submit the results specified in paragraph (6) of this subdivision with the Part 373 permit application. If completion of this process conflicts with the date set for submission of the Part 373 application, the applicant must contact the commissioner to establish a later date for submission of the Part 373 application or the trial burn results. If the applicant submits a trial burn plan with the Part 373 permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the commissioner.
- (8) The requirements of this subdivision continue to apply as follows:
- (i) The department may request additional information related to the cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace in accordance with sections 373-1.4(h) and (i) of this Subpart, and impose permit conditions as necessary to protect human health and the environment in accordance with section 373-1.6(c)(2) of this Subpart.
 - (ii) If the owner or operator elects to comply with section 373-1.12(a)(1)(i)(‘a’) of this Subpart to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, then the owner or operator must comply with those provisions that the department determines are necessary to ensure compliance with sections 374-1.8(c)(5)(i) and (ii)(‘c’) of this Subpart.
 - (iii) If the boiler or industrial furnace is an area source and the owner or operator elects to comply with the sections 374-1.8(f), (g) and (h) standards of this Subpart and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals.

(e) Remedial action plans (RAPs).

Remedial action plans (RAPs) are special forms of permits that are regulated under section 373-1.11 of this Subpart.

Section 373-1.10 Expanded public participation.

(a) Pre-application public meeting and notice.

- (1) Applicability. The requirements of this subdivision shall apply to all Part 373 permit applications seeking initial permits for hazardous waste management units. The requirements of this subdivision shall also apply to Part 373 permit applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this subdivision, a *'significant change'* is any change that would qualify as a major permit modification under section 373-1.7(d) of this Subpart or would substantially alter the facility or its operation. The requirements of this subdivision do not apply to permit modifications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility, or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.
- (2) (Reserved).
- (3) Prior to the submission of a Part 373 permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.
- (4) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (3) of this subdivision, and copies of any written comments or materials submitted at the meeting, to the department as a part of the Part 373 application, in accordance with section 373-1.5(a)(2) of this Subpart.
- (5) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain and provide to the department upon request, documentation of the notice.
 - (i) The applicant shall provide public notice in all of the following forms:
 - ('a') A newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in subparagraph (ii) of this paragraph, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the commissioner shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the commissioner determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.
 - ('b') A visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in subparagraph (ii) of this paragraph. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.
 - ('c') A broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in subparagraph (ii) of this paragraph, at least once on at least one local

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radio station or television station. The applicant may employ another medium with prior approval of the commissioner.

- (d) A notice to the permitting agency. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of local government, in accordance with section 621.7 of this Title.
- (ii) The notices required under subparagraph (i) of this paragraph must include:
 - (a) the date, time, and location of the meeting;
 - (b) a brief description of the purpose of the meeting;
 - (c) a brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;
 - (d) a statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and
 - (e) the name, address, and telephone number of a contact person for the applicant.

(b) Public notice requirements at the application stage.

- (1) Applicability. The requirements of this subdivision shall apply to all Part 373 permit applications seeking initial permits for hazardous waste management units. The requirements of this subdivision shall also apply to Part 373 permit applications seeking renewal of permits for such units under section 373-1.8 of this Subpart. The requirements of this subdivision do not apply to permit modifications under section 373-1.7 of this Subpart or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.
- (2) Notification at application submittal.
 - (i) The commissioner shall provide public notice as set forth in section 621.7 of this Title, and notice to appropriate units of local government as set forth in section 621.7 of this Title, that a Part 373 permit application has been submitted to the department and is available for review.
 - (ii) The notice shall be published within a reasonable period of time after the application is received by the commissioner. The notice must include:
 - (a) the name and telephone number of the applicant's contact person;
 - (b) the name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;
 - (c) an address to which people can write in order to be put on the facility mailing list;
 - (d) the location where copies of the permit application and any supporting documents can be viewed and copied;

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- (e) a brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and
- (f) the date that the application was submitted.

- (3) Concurrent with the notice required under paragraph (2) of this subdivision, the commissioner must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the department's office.

(c) Information repository.

- (1) Applicability. The requirements of this subdivision apply to all applications seeking Part 373 permits for hazardous waste management units.
- (2) The commissioner may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the commissioner shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the commissioner determines, at any time after submittal of a permit application, that there is a need for a repository, then the commissioner shall notify the facility that it must establish and maintain an information repository. (See section 373-1.6(a)(13) of this Subpart for similar provisions relating to the information repository during the life of a permit.)
- (3) The information repository shall contain all documents, reports, data, and information deemed necessary by the commissioner to fulfill the purposes for which the repository is established. The commissioner shall have the discretion to limit the contents of the repository.
- (4) The information repository shall be located and maintained at a site chosen by the facility. If the commissioner finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the commissioner shall specify a more appropriate site.
- (5) The commissioner shall specify requirements for informing the public about the information repository. At a minimum, the commissioner shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.
- (6) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the commissioner. The commissioner may close the repository at his or her discretion, based on the factors in paragraph (2) of this subdivision.

Section 373-1.11 Remedial action plans (RAPs).

(a) Why is this section written in a special format?

This section is written in a special format to make it easier to understand the regulatory requirements. Like other State regulations, this establishes enforceable legal requirements. For this section, "I" and "you" refer to the owner/operator.

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(b) General information.

(1) What is a RAP?

- (i) A RAP is a special form of a Part 373 permit that you, as an owner or operator, may obtain, instead of a permit issued under this Subpart except section 373-1.3 of this Subpart and this section, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in section 370.2(b) of this Title) at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under paragraph (g)(1) of this section.
- (ii) The requirements in this Subpart 373-1 except sections 373-1.3 of this Subpart and this section do not apply to RAPs unless those requirements for traditional Part 373 permits are specifically required under subdivisions (b) through (g) of this section. The definitions in section 370.2 of this Title apply to RAPs.
- (iii) Notwithstanding any other provision of this Subpart, any document that meets the requirements in this paragraph constitutes a treatment, storage or disposal facility permit under section 27-0913 of the Environmental Conservation Law.
- (iv) A RAP may be:
 - ('a') a stand-alone document that includes only the information and conditions required by this section; or
 - ('b') part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this section.
- (v) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.
- (vi) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

(2) When do I need a RAP?

- (i) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a Part 373 permit under section 373-1.1 of this Subpart, you must either obtain:
 - ('a') a State permit according to this Subpart except section 373-1.3 of this Subpart and this section; or
 - ('b') a RAP according to this section.
- (ii) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this section.
- (iii) You may obtain a RAP for managing hazardous remediation waste at an already permitted

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Part 373 facility. You must have these RAPs approved as a modification to your existing permit according to the requirements of section 373-1.7 of this Subpart instead of the requirements in this section. When you submit an application for such a modification, however, the information requirements in sections 373-1.5 and 373-1.9 of this Subpart do not apply; instead, you must submit the information required under paragraph (c)(4) of this section. When your permit is modified, the RAP becomes part of the State permit.

- (iv) Every application for modifications to a permit will be processed pursuant to Part 621 of this Title. When your permit (including the RAP portion) is renewed, modified, revoked or suspended or when it expires, the entire permit will be processed according to the applicable requirements in Part 621 of this Title. At that time, the applicable requirements of subdivision (e) of this section also apply to the RAP portion of the permit.
- (3) Does my RAP grant me any rights or relieve me of any obligations? Compliance with a RAP issued pursuant to this section during its term constitutes compliance, for purposes of enforcement, except as described in section 373-1.6(e) of this Subpart.

(c) **Applying for a RAP.**

- (1) How do I apply for a RAP? To apply for a RAP, you must complete an application, sign it, and submit it to the regional permit administrator according to the requirements in this section.
- (2) Who must obtain a RAP? When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.
- (3) Who must sign the application and any required reports for a RAP? Both the owner and the operator must sign the RAP application and any required reports according to section 373-1.4(a)(5) of this Subpart. In the application, both the owner and the operator must also make the certification required under section 373-1.4(a)(5)(iv)('a') of this Subpart. However, the owner may choose the alternative certification under section 373-1.4(a)(5)(iv)('b') of this Subpart if the operator certifies under section 373-1.4(a)(5)(iv)('a') of this Subpart.
- (4) What must I include in my application for a RAP? You must include the following information in your application for a RAP:
 - (i) the name, address, and EPA identification number of the remediation waste management site;
 - (ii) the name, address, and telephone number of the owner and operator;
 - (iii) the latitude and longitude of the site;
 - (iv) the United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;
 - (v) a scaled drawing of the remediation waste management site showing:
 - ('a') the remediation waste management site boundaries;
 - ('b') any significant physical structures; and

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- (c) the boundary of all areas on-site where remediation waste is to be treated, stored or disposed;
 - (vi) a specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include information on:
 - (a) constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;
 - (b) an estimate of the quantity of these wastes; and
 - (c) a description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of Part 376 of this Title, as applicable;
 - (vii) enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of Subparts 373-2, 374-1, and Part 376 of this Title;
 - (viii) such information as may be necessary to enable the department to carry out the department's duties under other State laws as is required for traditional Part 373 permits under Part 621 of this Title; and
 - (ix) any other information the department decides is necessary for demonstrating compliance with this Subpart or for determining any additional RAP conditions that are necessary to protect human health and the environment.
- (5) What if I want to keep this information confidential? Section 616.7 of this Title allows you to claim as confidential any or all of the information you submit to the department under this section. You must assert any such claim at the time that you submit your RAP application or other submissions by stamping the words "confidential business information" on each page containing such information. If you do assert a claim at the time you submit the information, the department will treat the information according to the procedures in Part 616 of this Title. If you do not assert a claim at the time you submit the information, the department may make the information available to the public without further notice to you. The department will deny any requests for confidentiality of your name and/or address.
- (6) To whom must I submit my RAP application? You must submit your application for a RAP to the regional permit administrator for approval.
- (7) If I submit my RAP application as part of another document, what must I do? If you submit your application for a RAP as a part of another document, you must clearly identify the components of that document that constitute your RAP application.

(d) Getting a RAP approved.

- (1) What is the process for approving or denying my application for a RAP?
 - (i) If the department tentatively finds that your RAP application includes all of the information

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required by paragraph (c)(4) of this section and that your proposed remediation waste management activities meet the regulatory standards, the department will make a tentative decision to approve your RAP application. The department will then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to this section.

- (ii) If the department tentatively finds that your RAP application does not include all of the information required by paragraph (c)(4) of this section or that your proposed remediation waste management activities do not meet the regulatory standards, the department may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the department requests, or to correct any deficiencies in your RAP application, the department may make a tentative decision to deny your RAP application. After making this tentative decision, the department will prepare a notice of intent to deny your RAP application (notice of intent to deny) and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this section. The department may deny the RAP application either in its entirety or in part.
 - (iii) The processes outlined in this subdivision are consistent with and are to be read in conjunction with Part 621 of this Title.
- (2) What must the department include in a draft RAP? If the department prepares a draft RAP, it must include the:
- (i) information required in subparagraphs (c)(4)(i) through (vi) of this section;
 - (ii) the following terms and conditions:
 - ('a') terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of Subparts 373-2, 374-1, and Part 376 of this Title (including any recordkeeping and reporting requirements). In satisfying this provision, the department may incorporate, expressly or by reference, applicable requirements of Subparts 373-2, 374-1, and Part 376 of this Title into the RAP or establish site- specific conditions as required or allowed by Subparts 373-2, 374-1, and Part 376 of this Title;
 - ('b') terms and conditions in section 373-1.6(a) of this Subpart;
 - ('c') terms and conditions for modifying, revoking, suspending, and renewing your RAP, as provided in paragraph (e)(1) of this section; and
 - ('d') any additional terms or conditions that the department determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and
 - (iii) if the draft RAP is part of another document, as described in clause (b)(1)(iv)('b') of this section, the department must clearly identify the components of that document that constitute the draft RAP.

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- (3) What else must the department prepare in addition to the draft RAP or notice of intent to deny? Once the department has prepared the draft RAP or notice of intent to deny, the department must then:
- (i) prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;
 - (ii) compile an administrative record, including:
 - ('a') the RAP application, and any supporting data furnished by the applicant;
 - ('b') the draft RAP or notice of intent to deny;
 - ('c') the statement of basis and all documents cited therein (material readily available at the issuing office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and
 - ('d') any other documents that support the decision to approve or deny the RAP; and
 - (iii) make information contained in the administrative record available for review by the public upon request.
- (4) What are the procedures for public comment on the draft RAP or notice of intent to deny?
- (i) Consistent with the requirements of Part 621 of this Title, the following must be done:
 - ('a') the department must send notice to you of the department's intention to approve or deny your RAP application, and send you a copy of the statement of basis;
 - ('b') you must publish a notice of the department's intention to approve or deny your RAP application in a major local newspaper of general circulation;
 - ('c') you must broadcast the department's intention to approve or deny your RAP application over a local radio station;
 - ('d') the department shall send a notice of the department's intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site and to individuals who have requested to be notified of completeness for your application or for all RAPS. The department shall also publish notice of complete application in the Environmental Notice Bulletin, pursuant to Part 621 of this Title; and
 - ('e') the department may provide or require you to provide other reasonable public notice of complete application and opportunity for public comment, pursuant to Part 621 of this Title.
 - (ii) The notice required by subparagraph (i) of this paragraph must provide at least 45 days from the date of publication for the submittal of written public comment to the department.
 - (iii) The notice required by subparagraph (i) of this paragraph must include:

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- ('a') the name and address of the office processing the RAP application;
 - ('b') the name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;
 - ('c') a brief description of the activity the RAP will regulate;
 - ('d') the name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;
 - ('e') a brief description of the comment procedures in this subdivision, and any other procedures by which the public may participate in the RAP decision;
 - ('f') if a legislative hearing is scheduled, the date, time, location and purpose of the legislative hearing;
 - ('g') if a legislative hearing is not scheduled, a statement of procedures to request a legislative hearing;
 - ('h') the location of the administrative record, and times when it will be open for public inspection; and
 - ('i') any additional information the department considers necessary or proper.
- (iv) If, within the comment period, the department receives written notice of opposition to the department's intention to approve or deny your RAP application and a request for a hearing, the department must, in accordance with Part 621 of this Title, hold a legislative hearing in accordance with the process as set forth in Part 624 of this Title to receive unsworn statements relating to the approval or denial of your RAP application. The department may also determine on the department's own initiative that a legislative hearing is appropriate. The legislative hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the department must schedule this legislative hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in subparagraph (i) of this paragraph. This notice must, at a minimum, include the information required by subparagraph (iii) of this paragraph and:
- ('a') reference to the date of any previous public notices relating to the RAP application;
 - ('b') the date, time and place of the hearing; and
 - ('c') a brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- (v) The determination to hold an adjudicatory public hearing will be made pursuant to Part 621 of this Title. Public notice for an adjudicatory hearing must be given according to the requirements in subparagraph (i) of this paragraph. This notice must, at a minimum, include the information required by subparagraph (iii) of this paragraph.
- (5) How will the department make a final decision on my RAP application?

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- (i) The department must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.
- (ii) If the department determines that your RAP includes the information and terms and conditions required in paragraph (2) of this subdivision, then the department will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.
- (iii) If the department determines that your RAP does not include the information required in paragraph (2) of this subdivision, then the department will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.
- (iv) If the department's final decision is that the tentative decision to deny the RAP application was incorrect, the department will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this section.
- (v) When the department issues its final RAP decision, it shall include notice of opportunity and procedures for requesting an adjudicatory hearing pursuant to Part 621 of this Title if an adjudicatory hearing has not been held. If an adjudicatory hearing is held, public notice for an adjudicatory hearing must be given according to the requirements in subparagraph (4)(i) of this subdivision. This notice must, at a minimum, include the information required by subparagraph (4)(iii) of this subdivision. The final decision on the RAP application will be made pursuant to and using the procedures of Part 624 of this Title.
- (vi) Before issuing the final RAP decision, the department must compile an administrative record. Material readily available at the issuing office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see subparagraph (3)(ii) of this subdivision) and:
 - ('a') all comments received during the public comment period;
 - ('b') tapes or transcripts of any hearings;
 - ('c') any written materials submitted at these hearings;
 - ('d') the responses to comments;
 - ('e') any new material placed in the record since the draft RAP was issued;
 - ('f') any other documents supporting the RAP; and
 - ('g') a copy of the final RAP.
- (vii) The department must make information contained in the administrative record available for review by the public upon request.

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- (6) May the decision to approve or deny my RAP application be administratively appealed?
- (i) If an adjudicatory hearing has been held, the decision on your RAP application is final. If an adjudicatory hearing has not been held, you can request an adjudicatory hearing after the department's decision to approve or deny your RAP application, pursuant to Part 621 of this Title. Public notice for an adjudicatory hearing must be given according to the requirements in subparagraph (4)(i) of this subdivision. This notice must, at a minimum, include the information required by subparagraph (4)(iii) of this subdivision. The process for adjudicatory hearings for RAPs is set forth in Part 624 of this Title.
 - (ii) Once the decision on your RAP application is final, you or an interested party could seek judicial review of the department's actions, pursuant to article 78 of Civil Practice Law and Rules (CPLR).
- (7) When does my RAP become effective? Your RAP becomes effective 30 days after the department notifies you and all commenters that your RAP is approved unless the department specifies a later effective date in the decision.
- (8) When may I begin physical construction of new units permitted under the RAP? You must not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

(e) How may my RAP be renewed, modified, revoked, or suspended?

- (1) After my RAP is issued, how may it be renewed, modified, revoked or suspended?
- (i) The procedures for renewing, modifying, revoking, or suspending a RAP are set forth in Part 621 of this Title.
 - (ii) Any interested party may request that the remedial action plan permit be modified, revoked, or suspended at any time at the request of the interested party, including the applicant, or upon the initiative of the department, on any of the grounds set forth in Part 621 of this Title.
 - (iii) In addition to subparagraph (ii) of this paragraph, the department may modify your final RAP if one or more of the following exist:
 - ('a') you made material and substantial alterations or additions to the activity that justify applying different conditions;
 - ('b') the department finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;
 - ('c') the standards or regulations on which the RAP was based have changed because of new or amended statutes, standards or regulations, or by judicial decision after the RAP was issued;
 - ('d') if your RAP includes any schedules of compliance, the department may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as owner/operator have little or no control and for which there is no reasonably available remedy;

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- (e') you are not in compliance with the conditions of your RAP;
 - (f') you failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;
 - (g') the department has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or
 - (h') you have notified the department (as required in the RAP under section 373-1.7(a)(1) of this Subpart) of a proposed transfer of a RAP.
- (iv) In addition to subparagraph (ii) of this paragraph, the department may revoke or suspend your final RAP if one or more of the reasons listed in clauses (iii)(e') through (h') of this paragraph exist.
 - (v) Notwithstanding any other provision in this paragraph, when the department reviews a RAP for a land disposal facility under paragraph (3) of this subdivision, the department may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 370 through 374, 376 and 621 of this Title.
 - (vi) The department will not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.
 - (vii) To renew an existing RAP, a complete application for permit renewal must be submitted at least 180 days before the expiration date of the existing RAP as required by Part 621 of this Title.
- (2) May the decision to approve or deny a modification, revocation, suspension, or renewal of my RAP be administratively appealed?
- (i) Paragraph (d)(6) of this section applies to modification, revocation, suspension, or renewal of your RAP. The process to request an adjudicatory hearing is provided in Part 621 of this Title. Public notice for an adjudicatory hearing must be given according to the requirements in subparagraph (d)(4)(i) of this section. This notice must, at a minimum, include the information required by subparagraph (d)(4)(iii) of this section. The process for adjudicatory hearings for RAPs is set forth in Part 624 of this Title.
 - (ii) Once the decision on your RAP application is final, you or an interested party could seek judicial review of the department's action pursuant to article 78 of Civil Practice Law and Rules (CPLR).
- (3) When will my RAP expire? RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the department in fixed increments of no more than 10 years. In addition, the department must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the department must follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable requirements in RCRA sections 3004 and 3005.
- (4) What happens if I have applied correctly for a RAP renewal and met timely submittal requirements

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but have not received approval by the time my old RAP expires? If you have submitted a timely and complete application for a RAP renewal pursuant to Part 621 of this Title, but the department, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

(f) **Operating under your RAP.**

- (1) What records must I maintain concerning my RAP? You are required to keep records of:
 - (i) all data used to complete RAP applications and any supplemental information that you submit for a period of at least three years from the date the application is signed; and
 - (ii) any operating and/or other records the department requires you to maintain as a condition of your RAP.
- (2) How are time periods in the requirements in this Subpart and my RAP computed?
 - (i) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event.
 - (ii) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event.
 - (iii) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day.
 - (iv) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon the party or interested person by mail, three days must be added to the prescribed term.
- (3) How may I transfer my RAP to a new owner or operator?
 - (i) If you wish to transfer your RAP to a new owner or operator, you must follow the requirements specified in section 373-1.7(a) of this Subpart, and incorporate any other necessary requirements. These modifications do not constitute significant modifications for purposes of paragraph (e)(1) of this section. The new owner/operator must submit a revised RAP application no later than 180 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.
 - (ii) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in section 373-2.8 (Financial requirements) of this Part until the new owner or operator has demonstrated that the new owner or operator is complying with the requirements in that section. The new owner or operator must demonstrate compliance with section 373-2.8 of this Part within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with section 373-2.8 of this Part to the department, the department will notify you that you no longer need to comply with section 373-2.8 of this Part as of the date of demonstration.

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(g) Obtaining a RAP for an off-site location.

- (1) May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?
 - (i) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.
 - (ii) If the department determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the department may approve a RAP for this alternative location.
 - (iii) You must request the RAP, and the department will approve or deny the RAP, according to the procedures and requirements in this section and Part 621 of this Title.
 - (iv) A RAP for an alternative location must also meet the following requirements, which the department must include in the RAP for such locations:
 - ('a') the RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;
 - ('b') the RAP is subject to the expanded public participation requirements in section 373-1.10(a), (b), and (c) of this Subpart;
 - ('c') the RAP is subject to the public notice requirements in Part 621 of this Title.
 - (v) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:
 - ('a') exclusion from facility-wide corrective action under section 373-2.6(l) of this Part; and
 - ('b') application of section 373-2.1(a)(9) of this Part in lieu of sections 373-2.2, 373-2.3, and 373-2.4 of this Part.

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

- (a) Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.
 - (1) Facilities with existing permits.
 - (i) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a Part 373-permitted incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the department address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to sections 373-2.15(a)(3) and 374-

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1.8(a)(2) of this Title:

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

- ('1') Retain permit conditions that address releases during startup, shutdown, and malfunction events, including releases from emergency safety vents, as these events are defined in the facility's startup, shutdown, and malfunction plan required under 40 CFR part 63, section 1206(c)(2) of subpart EEE, as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title; and
- ('2') Limit applicability of the permit conditions identified in subclause ('1') of this clause to the period when the facility is operating under its startup, shutdown, and malfunction plan.

('b') revise relevant permit conditions.

('1') Under this option, the department will:

- ('i') Identify a subset of relevant existing permit requirements, or develop alternative permit requirements, that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history.
 - ('ii') Retain or add the permit requirements identified in item ('i') of this subclause to the permit to apply only when the facility is operating under its startup, shutdown, and malfunction plan.
- ('2') Changes that may significantly increase emissions.
- ('i') The owner or operator must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The owner or operator must notify the department of such changes within five days of making such changes. The owner or operator must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.
 - ('ii') The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:
 - (A) upon permit renewal, or

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- (B) by modifying the permit under section 373-1.7 of this Subpart, if warranted;
 - (C) remove permit conditions. Under this option:
 - (I) the owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR part 63, subpart EEE, section 1206(c)(2), has been approved by the department under 40 CFR part 63, subpart EEE, section 1206(c)(2)(ii)(B), as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title; and
 - (II) the department will remove permit conditions that are no longer applicable according to sections 373-2.15(a)(3) and 374-1.8(a)(2) of this Title.
- (ii) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the department a Notification of Compliance documenting compliance with the standards of 40 CFR part 63, subpart EEE, as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title, may request in the application to reissue the permit for the combustion unit that the department control emissions from startup, shutdown, and malfunction events under any of the following options:
- ('a') Part 373 option A.
 - ('1') Under this option, the department will:
 - ('i') Include, in the permit, conditions that ensure compliance with sections 373-2.15(f)(1) and (3) of this Part or sections 374-1.8(c)(5)(i) and (ii)('c') of this Title to minimize emissions of toxic compounds from startup, shutdown, and malfunction events, including releases from emergency safety vents; and
 - ('ii') Specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan; or
 - ('b') Part 373 option B.
 - ('1') Under this option, the department will:
 - ('i') include, in the permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan, design, and operating history; and
 - ('ii') specify that these permit requirements apply only when the facility is operating under its startup, shutdown, and malfunction plan.

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(2) Changes that may significantly increase emissions.

- (i) The owner or operator must notify the department in writing of changes to the startup, shutdown, and malfunction plan or changes to the design of the source that may significantly increase emissions of toxic compounds from startup, shutdown, or malfunction events, including releases from emergency safety vents. The owner or operator must notify the department of such changes within five days of making such changes. The owner or operator must identify in the notification recommended revisions to permit conditions necessary as a result of the changes to ensure that emissions of toxic compounds are minimized during these events.
- (ii) The department may revise permit conditions as a result of these changes to ensure that emissions of toxic compounds are minimized during startup, shutdown, or malfunction events, including releases from emergency safety vents either:
 - (A) upon permit renewal; or
 - (B) by modifying the permit under section 373-1.7 of this Subpart, if warranted; or
 - (C) CAA option. Under this option:
 - (I) The owner or operator must document that the startup, shutdown, and malfunction plan required under 40 CFR part 63, subpart EEE, section 1206(c)(2) has been approved by the department under 40 CFR part 63, subpart EEE, section 1206(c)(2)(ii)(B), as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title; and
 - (II) The department will omit, from the permit, conditions that are not applicable under sections 373-2.15(a)(3) and 374-1.8(a)(2) of this Title.

(2) Interim status facilities.

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

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of this Title relevant to control of emissions from startup, shutdown, and malfunction events. Those standards and requirements apply only during startup, shutdown, and malfunction events; or

- (b) CAA option. Under this option, the owner or operator is exempt from the interim status standards of Subpart 373-3 or 374-1 of this Title relevant to control of emissions of toxic compounds during startup, shutdown, and malfunction events upon submission of written notification and documentation to the department that the startup, shutdown, and malfunction plan required under 40 CFR part 63, subpart EEE, section 1206(c)(2), as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title has been approved by the department under 40 CFR part 63, subpart EEE, section 1206(c)(2)(ii)(B), as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title.
 - (ii) Operations under a subsequent Part 373 permit. When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of Subpart 373-3 of this Part or 374-1 of this Title submits a Part 373 permit application, the owner or operator may request that the department control emissions from startup, shutdown, and malfunction events under any of the options provided by clauses (1)(ii)(‘a’), (‘b’) or (‘c’) of this subdivision.
- (3) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that became subject to Part 373 permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:
- (i) Comply with the requirements specified in 40 CFR part 63, subpart EEE section 1206(c)(2) as incorporated by reference and implemented by sections 200.10(a) and (d) of this Title; or
 - (ii) Request to include in the Part 373 permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source’s startup, shutdown, and malfunction plan and design. The department will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.