

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF MATERIALS MANAGEMENT

625 Broadway

Albany, NY 12233

**6 NYCRR SUBPART 374-1**

**STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS  
WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE  
MANAGEMENT FACILITIES**

As of July 8, 2023

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# SUBPART 374-1

## STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

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## **374-1 – Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities**

### **Section 374-1.1 General.**

#### **(a) Applicability.**

This Subpart contains requirements for generators and transporters of the hazardous wastes identified in section 371.1(g)(1)(ii) of this Title and for owners and operators of facilities managing the hazardous wastes identified in section 373-1.1(d)(1)(vii) and (viii) of this Title that are required to comply with this Subpart.

### **Section 374-1.2 Reserved.**

### **Section 374-1.3 Recyclable materials used in a manner constituting disposal.**

#### **(a) Applicability.**

- (1) The regulations of this section apply to recyclable materials that are applied to or placed on the land:
  - (i) without mixing with any other substance(s); or
  - (ii) after mixing or combination with any other substance(s). These materials will be referred to throughout this Subpart as “materials used in a manner that constitutes disposal.”
- (2) Products produced for the general public’s use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if:
  - (i) the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means; and
  - (ii) such products meet the applicable treatment standards in section 376.4 of this Title (or applicable prohibition levels in section 376.3(h) or RCRA section 3004(d) (see section 370.1(e) of this Title), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain; and
  - (iii) the recycler complies with section 376.1(g)(2)(vi) of this Title.
- (3) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062 and F006, in a manner constituting disposal are not covered by the exemption in paragraph (2) of this subdivision and remain subject to regulation.
- (4) Fertilizers that contain recyclable materials are not subject to regulation provided that:
  - (i) they are zinc fertilizers excluded from the definition of solid waste according to section 371.1(e)(1)(xx) of this Title; or
  - (ii) they meet the applicable treatment standards in section 376.4 of this Title for each hazardous waste that they contain.

#### **(b) Standards applicable to generators and transporters of materials used in a manner that constitutes disposal.**

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the requirements of Part 372 of this Title.

### 374-1.3(c)

**(c) Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.**

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of sections 373-2.1 through 373-2.12, sections 373-3.1 through 373-3.12, and Subpart 373.1 of this Title.

**(d) Standards applicable to users of materials that are used in a manner that constitutes disposal.**

- (1) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of sections 373-2.1 through 373-2.14, sections 373-3.1 through 373-3.14, Subpart 373-1 and Part 376 of this Title. (These requirements do not apply to products which contain these recyclable materials under the provisions of paragraph (a)(2) of this section.)
- (2) The use of any material which is contaminated with dioxin or any other hazardous waste for dust suppression or road treatment is prohibited.

**Section 374-1.4 Reserved.**

**Section 374-1.5 Reserved.**

**Section 374-1.6 Recyclable materials utilized for precious metal recovery.**

**(a) Applicability and requirements.**

- (1) The regulations of this section apply to hazardous wastes that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these. These hazardous wastes will be referred to throughout this section as recyclable materials.
- (2) Persons who generate, transport or store recyclable materials that are regulated under this section are subject to the following requirements:
  - (i) notification requirements under Part 372 of this Title;
  - (ii) section 372.2(b) (for generators), section 372.3 (for transporters), and section 373-3.5(b) (for persons who store) of this Title; and
  - (iii) for precious metals exported to or imported from designated OECD member countries for recovery, section 372.5(h) of this Title. For precious metals exported to or imported from non-OECD countries for recovery, section 372.5 of this Title.
- (3) Persons who store recyclable materials that are regulated under this section must keep the following records to document that they are not accumulating these materials speculatively (as defined in section 371.1(a) of this Title):
  - (i) the volume of recyclable materials stored at the beginning of the calendar year;
  - (ii) the amount of recyclable materials generated or received during the calendar year; and
  - (iii) the amount of recyclable materials remaining at the end of the calendar year.
- (4) Recyclable materials regulated under this section that are accumulated speculatively (as defined in section 371.1(a) of this Title) are subject to all applicable provisions of Parts 372 and 373 of this Title.

**374-1.7(a)**

**Section 374-1.7 Spent lead-acid batteries being reclaimed.**

**(a) Applicability and requirements.**

- (1) Are spent lead-acid batteries exempt from hazardous waste management requirements? If you generate, collect, transport, store, or regenerate lead-acid batteries for reclamation purposes, you may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the “Universal Waste” rule in Subpart 374-3 of this Part.

**374-1.7(a)**

<i><b>If your batteries...</b></i>	<i><b>And if you...</b></i>	<i><b>Then you...</b></i>	<i><b>And you...</b></i>
(i) Will be reclaimed through regeneration (such as by electrolyte replacement).		are exempt from Part 372 (except section 372.2(a)(2)), 373, 374-1, 376 and 621 of this Title, and the notification requirements at section 3010 of RCRA.	are subject to Part 371 and section 372.2(a)(2) of this Title.
(ii) Will be reclaimed other than through regeneration.	generate, collect, and/or transport these batteries.	are exempt from Parts 372 (except section 372(a)(2)), 373, 374-1, and 621 of this Title, and the notification requirements at section 3010 of RCRA.	are subject to Part 371 and section 372.2(a)(2), and applicable provisions under Part 376 of this Title.
(iii) Will be reclaimed other than through regeneration.	store these batteries but you aren't the reclaimer.	are exempt from Parts 372 (except section 372(a)(2)), 373, 374-1, and 621 of this Title, and the notification requirements at section 3010 of RCRA.	are subject to Part 371 and section 372.2(a)(2), and applicable provisions under Part 376 of this Title.
(iv) Will be reclaimed other than through regeneration.	store these batteries before you reclaim them.	must comply with section 374-1.7(a)(2) and as appropriate other provisions described in 374.-1.7(a)(2).	are subject to Part 371 and section 372.2(a)(2), and applicable provisions under Part 376 of this Title.
(v) Will be reclaimed other than through regeneration.	don't store these batteries before you reclaim them.	are exempt from Parts 372 (except section 372(a)(2)), 373, 374-1, and 621 of this Title, and the notification requirements at section 3010 of RCRA.	are subject to Part 371 and section 372.2(a)(2), and applicable provisions under Part 376 of this Title.
(vi) Will be reclaimed through regeneration or any other means.	export those batteries for reclamation in a foreign country.	are exempt from Part 373, Subpart 374-1, and Parts 376 and 621 of this Title, and the notification requirements at section 3010 of RCRA(see section 370.1(e) of this Title). You are also exempt from Part 372, except paragraph 372.2(a)(2), and except for the applicable requirements in either: (1) section 372.5(h); or (2) sections 372.5(c) "Notification of Intent to Export", 372.5(f) "Annual Reports" (except 372.5(f)(1)(v)), and 372.5(g) "Recordkeeping."	are subject to Part 371 and paragraph 372.2(a)(2) of this Title, and either must comply with 372.5(h) (if shipping to one of the OECD countries specified in subparagraph 372.5(h)(1)(i)), or must: ( 'a' ) Comply with the requirements applicable to a primary exporter in 372.5(c), 372.5(f) (except 372.5(f)(1)(v)), and 372.5(g); and ( 'b' ) Export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in section 372.5 of this Title; and ( 'c' ) Provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export.
(vii) Will be reclaimed through regeneration or any other means.	transport those batteries into the U.S. to export them for reclamation in a foreign country.	are exempt from section 372.3, Part 373, Subpart 374-1, and Parts 376 and 621 of this Title, and the notification requirements at section 3010 of RCRA(see section 370.1(e) of this Title).	must comply with the applicable requirements of 372.5(h) (if shipping to one of the OECD countries specified in subparagraph 372.5(h)(1)(i)), or must comply with the following: ( 'a' ) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgement of Consent; ( 'b' ) you must ensure that a copy of the EPA Acknowledgement of Consent accompanies the shipment; and ( 'c' ) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

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- (2) If I store spent lead-acid batteries before I reclaim them but not through regeneration, which requirements apply? The requirements of subparagraph (1)(ii) of this subdivision apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your Part 373 permit status.
- (i) For interim status facilities, you must comply with:
    - ('a') notification requirements under section 3010 of RCRA;
    - ('b') all applicable provisions in section 373-3.1 of this Title;
    - ('c') all applicable provisions in sections 373-3.2 except subdivision (d) (waste analysis) of this Title;
    - ('d') all applicable provisions in sections 373-3.4 and 373-3.5 of this Title;
    - ('e') all applicable provisions in section 373-3.5 except subdivision (b) (dealing with the use of the manifest and manifest discrepancies), of this Title;
    - ('f') all applicable provisions in sections 373-3.6 through 373-3.12 of this Title; and
    - ('g') all applicable provisions in Subpart 373-1 and Part 621 of this Title.
  - (ii) For permitted facilities:
    - ('a') notification requirements under section 3010 of RCRA;
    - ('b') all applicable provisions in section 373-2.1 of this Title;
    - ('c') all applicable provisions in section 373-2.2 except subdivision (e) (waste analysis) of this Title;
    - ('d') all applicable provisions in sections 373-2.3 and 373-2.4 of this Title;
    - ('e') all applicable provisions in section 373-2.5 except subdivision (b) (dealing with the use of the manifest and manifest discrepancies), of this Title;
    - ('f') all applicable provisions in sections 373-2.6 through 373-3.12 of this Title; and
    - ('g') all applicable provisions in Subpart 373-1 and Part 621 of this Title.

### Section 374-1.8 Hazardous waste burned in boilers and industrial furnaces.

#### (a) Applicability.

- (1) The regulations of this section apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in section 370.2(b) of this Title) irrespective of the purpose of burning or processing, except as provided by paragraphs (2), (3), (4), (7) and (8) of this subdivision. In this section, the term burn means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of subdivisions (e) through (h) of this section apply to facilities operating under interim status or under a Part 373 permit as specified in subdivisions (c) and (d) of this section.

**Note:** Additional regulations governing construction and operation of incinerators for purposes of air pollution control are set forth in Parts 200, 201, 212, 219, 225, 227 and 257 of this Title.

- (2) Integration of the MACT standards.
- (i) Except as set forth in subparagraphs (ii) through (vi) of this paragraph, the requirements of this section do not apply to a hazardous waste boiler or industrial furnace unit when the owner or operator of the hazardous waste boiler or industrial furnace 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

### 374-1.8(a)

- 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) Part 373 permit conditions that were based on the standards of this Subpart will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.
  - (iii) the following requirements remain in effect for startup, shutdown, and malfunction events if the owner or operator elects to comply with subparagraph 373-1.12(a)(1)(i) of this Part to minimize emissions of toxic compounds from these events:
    - ('a') subparagraph 374-1.8(c)(5)(i) of this section requiring that a boiler or industrial furnace operate in accordance with operating requirements specified in the permit; and
    - ('b') clause 374-1.8(c)(5)(ii)('c') of this section requiring compliance with the emission standards and operating requirements during startup and shutdown if hazardous waste is in the combustion chamber, except for particular hazardous wastes.
  - (iv) The following standards continue to apply:
    - ('a') The closure requirements of subparagraph (c)(5)(xi) of this section and 374-1.8(d)(12) of this section;
    - ('b') The standards for direct transfer of subdivision 374-1.8(l) of this section;
    - ('c') The standards for regulation of residues of subdivision 374-1.8(m) of this section; and
    - ('d') The applicable requirements of sections (1) through (8), (28) and (29) of Subparts 373-2 and 373-3 of this Title.
  - (v) If the owner or operator of a boiler or hydrochloric acid production furnace that is an area source under 40 CFR 63.2, as incorporated by reference and implemented by section 200.10 of this Title, and elects not to comply with the emission standards under 40 CFR 63.1216, 63.1217, and 63.1218 as incorporated by reference and implemented by section 200.10 of this Title, for particulate matter, semivolatile and low volatile metals, and total chlorine, they also remain subject to:
    - ('a') subdivision (f) of this section - standards to control particulate matter;
    - ('b') subdivision (g) of this section - standards to control metals emissions, except for mercury; and
    - ('c') subdivision (h) of this section - standards to control hydrogen chloride and chlorine gas.
  - (vi) The particulate matter standard of subdivision (f) of this section remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR sections 63.1216(e) and 63.1217(e), as incorporated by reference and implemented by section 200.10 of this Title.
- (3) The following hazardous wastes and facilities are not subject to regulation under this section:
- (i) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in section 371.3 of this Title. Such used oil is subject to regulation under Subpart 374-2 of this Title;
  - (ii) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery;
  - (iii) hazardous wastes that are exempt from regulation under section 371.1(e) and (g)(1)(iii)('c') and ('d') of this Title, and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under section 371.1(f) of this Title; and

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- (iv) coke ovens, if the only hazardous waste burned is EPA hazardous waste no. K087, decanter tank tar sludge from coking operations.
- (4) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces, but not including cement kilns, aggregate kilns, or halogen acid furnaces burning hazardous waste) that process hazardous waste solely for metal recovery are conditionally exempt from regulation under this section, except for subdivisions (b) and (m) of this section.
  - (i) To be exempt from subdivisions (c) through (l) of this section, an owner or operator of a metal recovery furnace or mercury recovery furnace must comply with the following requirements, except that an owner or operator of a lead or a nickel-chromium recovery furnace, or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must comply with the requirements of subparagraph (iii) of this paragraph. In addition to these requirements, owners or operators of lead recovery furnaces that are subject to regulation under the Secondary Lead Smelting NESHAP must comply with the requirements of paragraph (8) of this subdivision.
    - ('a') Provide a one-time written notice to the commissioner indicating the following:
      - ('1') the owner or operator claims exemption under this paragraph;
      - ('2') the hazardous waste is burned solely for metal recovery consistent with the provisions of subparagraph (ii) of this paragraph;
      - ('3') the hazardous waste contains recoverable levels of metals; and
      - ('4') the owner or operator will comply with the sampling and analysis and recordkeeping requirements of this subparagraph;
    - ('b') sample and analyze the hazardous waste and other feedstocks as necessary to comply with the requirements of this paragraph by using 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; and
    - ('c') maintain at the facility for at least three years records to document compliance with the provisions of this paragraph including limits on levels of toxic organic constituents and Btu value of the waste, and levels of recoverable metals in the hazardous waste compared to normal nonhazardous waste feedstocks.
  - (ii) A hazardous waste meeting either of the following criteria is not processed solely for metal recovery:
    - ('a') the hazardous waste has a total concentration of organic compounds listed in Appendix 23 of this Title (see Part 371) exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of organic compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 500 ppm limit is prohibited. Documentation that the waste has not been impermissibly diluted must be retained in the records required by clause (i)('c') of this paragraph; or
    - ('b') the hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending for dilution to meet the 5,000 Btu/lb limit is prohibited.

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Documentation that the waste has not been impermissibly diluted must be retained in the records required by clause (i)(‘c’) of this paragraph.

- (iii) To be exempt from subdivisions (c) through (l), an owner or operator of a lead or nickel-chromium or mercury recovery furnace (except for owners or operators of lead recovery furnaces subject to regulation under the Secondary Lead Smelting NESHAP) or a metal recovery furnace that burns baghouse bags used to capture metallic dusts emitted by steel manufacturing, must provide a one-time written notice to the commissioner identifying each hazardous waste burned and specifying whether the owner or operator claims an exemption for each waste under this subparagraph or subparagraph (i) of this paragraph. The owner or operator must comply with the requirements of subparagraph (i) of this paragraph for those wastes claimed to be exempt under that subparagraph and must comply with the requirements below for those wastes claimed to be exempt under this subparagraph.
  - (‘a’) the hazardous wastes listed in Appendices 51, 52 and 53 of this Title and baghouse bags used to capture metallic dusts emitted by steel manufacturing are exempt from the requirements of subparagraph (i) of this paragraph, provided that:
    - (‘1’) a waste listed in Appendix 51 of this Title must contain recoverable levels of lead. A waste listed in Appendix 52 of this Title must contain recoverable levels of nickel or chromium, a waste listed in Appendix 53 of this Title must contain recoverable levels of mercury and contain less than 500 parts per million of Appendix 23 organic constituents, and baghouse bags used to capture metallic dusts emitted by steel manufacturing must contain recoverable levels of metal; and
    - (‘2’) the waste does not exhibit the toxicity characteristic of section 371.3(e) of this Title for an organic constituent; and
    - (‘3’) the waste is not a hazardous waste listed in section 371.4 of this Title because it is listed for an organic constituent, as identified in Appendix 22 of this Title (see Part 371 of this Title); and
    - (‘4’) the owner or operator certifies in the one-time notice that hazardous waste is burned under the provisions of this subparagraph and that sampling and analysis will be conducted or other information will be obtained as necessary to ensure continued compliance with these requirements. Sampling and analysis shall be conducted according to clause (i)(‘b’) of this paragraph. Records to document compliance with this subparagraph shall be kept for at least three years;
  - (‘b’) the commissioner may decide, on a case-by-case basis, that the toxic organic constituents in a material listed in Appendix 51, 52 or 53 of this Title that contains a total concentration of more than 500 ppm toxic organic compounds, listed in Appendix 23 of this Title (see Part 371 of this Title), may pose a hazard to human health and the environment when burned in a metal recovery furnace exempt from the requirements of this section. In that situation, after adequate notice and opportunity for comment, the metal recovery furnace will become subject to the requirements of this section when burning that material. In making the hazard determination, the commissioner will consider the following factors:
    - (‘1’) the concentration and toxicity of organic constituents in the material; and
    - (‘2’) the level of destruction of toxic organic constituents provided by the furnace; and

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- (3') whether the acceptable ambient levels established in Appendix 44 or 45 of this Title may be exceeded for any toxic organic compound that may be emitted, based on dispersion modeling to predict the maximum annual average off-site ground level concentration.
- (5) The standards for direct transfer operations under subdivision (l) of this section, apply only to facilities subject to the permit standards of subdivision (c) of this section, or the interim status standards of subdivision (d) of this section.
- (6) The management standards for residues under subdivision (m) of this section apply to any boiler or industrial furnace burning hazardous waste.
- (7) Owners and operators of smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, sintering machines, roasters, and foundry furnaces) that process hazardous waste for recovery of economically significant amounts of the precious metals gold, silver, platinum, palladium, iridium, osmium, rhodium, or ruthenium, or any combination of these, are conditionally exempt from regulation under this section, except for subdivision (m) of this section. To be exempt from subdivisions (b) through (l) of this section, an owner or operator must:
- (i) provide a one-time written notice to the commissioner indicating the following:
    - ('a') the owner or operator claims exemption under this paragraph;
    - ('b') the hazardous waste is burned for legitimate recovery of precious metal; and
    - ('c') the owner or operator will comply with the sampling and analysis and recordkeeping requirements of this paragraph; and
  - (ii) sample and analyze the hazardous waste as necessary to document that the waste contains economically significant amounts of the metals and that the treatment recovers economically significant amounts of precious metal; and
  - (iii) maintain at the facility for at least three years records to document that all hazardous wastes burned are burned for recovery of economically significant amounts of precious metal.
- (8) Owners or operators of lead recovery furnaces that process hazardous waste for recovery of lead and that are subject to regulation under the Secondary Lead Smelting NESHAP, are conditionally exempt from regulation under this section, except for subdivision (b) of this section. To be conditionally exempt, an owner or operator must provide a one-time notice to the department identifying each hazardous waste burned and specifying that the owner or operator claims an exemption under this paragraph. The notice also must state that the waste burned has a total concentration of non-metal compounds listed in Appendix 23 of Part 371 of this Title of less than 500 ppm by weight, as fired and as provided in clause (4)(ii)('a') of this subdivision, or is listed in Appendix 51 of this Title.

#### **(b) Management prior to burning.**

- (1) **Generators.** Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to section 372.2 of this Title.
- (2) **Transporters.** Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to section 372.3 of this Title.
- (3) **Storage and Treatment Facilities.**
  - (i) Owners and operators of facilities that store or treat hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of Subparts 373-1, 373-2 and 373-3 of this Title, except as provided by subparagraph (ii) of this paragraph. These standards apply to storage and treatment by the burner, as well as to storage and treatment facilities

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operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

- (ii) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of subdivision (i) of this section, hazardous waste that they generate, are exempt from the regulations of Subparts 373-1, 373-2 and 373-3 of this Title applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in subparagraph (i) of this paragraph.

#### (c) Permit standards for burners.

##### (1) Applicability.

- (i) General. Owners and operators of boilers and industrial furnaces burning hazardous waste and not operating under interim status must comply with the requirements of this subdivision and sections 373-1.5(i) and 373-1.9(d) of this Title, unless exempt under the small quantity burner exemption of subdivision (i) of this section.
- (ii) Applicability of Subpart 373-2 standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions of Subpart 373-2 of this Title, except as provided otherwise by this section:
  - ('a') in section 373-2.1 (General), subdivision (c);
  - ('b') in section 373-2.2 (General facility standards), subdivisions (b) through (j);
  - ('c') in section 373-2.3 (Preparedness and prevention), subdivisions (b) through (g);
  - ('d') in section 373-2.4 (Contingency plan and emergency procedures), subdivisions (b) through (g);
  - ('e') in section 373-2.5 (Manifest system, recordkeeping, and reporting), the applicable provisions of subdivisions (b) through (g);
  - ('f') in section 373-2.6 (Releases from solid waste management units), subdivisions (a) and (l);
  - ('g') in section 373-2.7 (Closure and post-closure), subdivisions (b) through (f);
  - ('h') in section 373-2.8 (Financial requirements), subdivisions (b), (c), (d), (h), (i) and (j), except that the State and the Federal government are exempt from the requirements of section 373-2.8; and
  - ('i') section 373-2.28 (Air emission standards for equipment leaks), except paragraph (a)(1).

##### (2) Hazardous waste analysis.

- (i) The owner or operator must provide an analysis of the hazardous waste that quantifies the concentration of any constituent identified in Appendix 23 of this Title (see Part 371 of this Title) that may reasonably be expected to be in the waste. Such constituents must be identified and quantified, if present, at levels detectable by using 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. The Appendix 23 of this Title constituents excluded from this analysis must be identified and the basis for their exclusion explained. This analysis will be used to provide all information required by this section and sections 373-1.5(i) and 373-1.9(d) of this Title and to enable the permit writer to prescribe such permit conditions as

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necessary to protect human health and the environment. Such analysis must be included as a portion of the Part 373 permit application, or, for facilities operating under the interim status standards of this section, as a portion of the trial burn plan that may be submitted before the Part 373 permit application under provisions of section 373-1.9(d)(7) of this Title, as well as any other analysis required by the permit authority in preparing the permit. Owners and operators of boilers and industrial furnaces not operating under the interim status standards must provide the information required by section 373-1.5(i) or 373-1.9(d)(3) of this Title in the Part 373 permit application to the greatest extent possible.

- (ii) Throughout normal operation, the owner or operator must conduct sampling and analysis, as necessary, to ensure that the hazardous waste, other fuels, and industrial furnace feedstocks fired into the boiler or industrial furnace are within the physical and chemical composition limits specified in the permit.
- (3) Emissions standards. Owners and operators must comply with emissions standards provided by subdivisions (e) through (h) of this section.
- (4) Permits.
  - (i) The owner or operator may burn only hazardous wastes specified in the facility permit and only under the operating conditions specified under paragraph (5) of this subdivision, except in approved trial burns under the conditions specified in section 373-1.9(d) of this Title.
  - (ii) Hazardous wastes not specified in the permit may not be burned until operating conditions have been specified under a new permit or permit modification, as applicable. Operating requirements for new wastes may be based on either trial burn results or alternative data included with the Part 373 permit application under section 373-1.5(i) of this Title.
  - (iii) Boilers and industrial furnaces operating under the interim status standards of subdivision (d) of this section are permitted under procedures provided by section 373-1.9(d)(7) of this Title.
  - (iv) A permit for a new boiler or industrial furnace (those boilers and industrial furnaces not operating under the interim status standards) must establish appropriate conditions for each of the applicable requirements of this subdivision, including, but not limited to, allowable hazardous waste firing rates and operating conditions necessary to meet the requirements of paragraph (5) of this subdivision, in order to comply with the following standards:
    - ('a') 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 device to a point of operational readiness to conduct a trial burn, not to exceed a duration of 720 hours operating time when burning hazardous waste, the operating requirements must be those most likely to ensure compliance with the emission standards of subdivisions (e) through (h) of this section, based on the commissioner's engineering judgment. If the applicant is seeking a waiver from a trial burn to demonstrate conformance with a particular emission standard, the operating requirements during this initial period of operation shall include those specified by the applicable provisions of subdivisions (e) through (h) of this section. The commissioner may extend the duration of this period for up to 720 additional hours when the applicant demonstrates good cause for the extension.
    - ('b') For the duration of the trial burn, the operating requirements must be sufficient to demonstrate compliance with the emissions standards of subdivisions (e) through (h) of this section and must be in accordance with the approved trial burn plan.

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- (c) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, submission of the trial burn results by the applicant, review of the trial burn results and modification of the facility permit by the commissioner to reflect the trial burn results, the operating requirements must be those most likely to ensure compliance with the emission standards of subdivisions (e) through (h) of this section based on the commissioner's engineering judgment.
  - (d) For the remaining duration of the permit, the operating requirements must be those demonstrated in a trial burn or by alternative data specified in section 373-1.5(i) of this Title, as sufficient to ensure compliance with the emissions standards of subdivisions (e) through (h) of this section.
- (5) Operating requirements.
- (i) General. A boiler or industrial furnace burning hazardous waste must be operated in accordance with the operating requirements specified in the permit at all times where there is hazardous waste in the unit.
  - (ii) Requirements to ensure compliance with the organic emissions standards.
    - (a) DRE standard. Operating conditions will be specified either on a case-by-case basis for each hazardous waste burned as those demonstrated (in a trial burn or by alternative data as specified in section 373-1.5(i) of this Title) to be sufficient to comply with the destruction and removal efficiency (DRE) performance standard of paragraph (e)(1) of this section, or as those special operating requirements provided by subparagraph (e)(1)(iv) of this section for the waiver of the DRE trial burn. When the DRE trial burn is not waived under subparagraph (e)(1)(iv) of this section, each set of operating requirements will specify the composition of the hazardous waste (including acceptable variations in the physical and chemical properties of the hazardous waste which will not affect compliance with the DRE performance standard) to which the operating requirements apply. For each such hazardous waste, the permit will specify acceptable operating limits, including, but not limited to, the following conditions, as appropriate:
      - (1) feed rate of hazardous waste and other feeds measured and specified as prescribed in subparagraph (vi) of this paragraph;
      - (2) minimum and maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subparagraph (vi) of this paragraph;
      - (3) appropriate controls of the hazardous waste firing system;
      - (4) allowable variation in boiler and industrial furnace system design or operating procedures;
      - (5) minimum combustion gas temperature measured at a location indicative of combustion chamber temperature, measured and specified as prescribed in subparagraph (vi) of this paragraph;
      - (6) an appropriate indicator of combustion gas velocity, measured and specified as prescribed in subparagraph (vi) of this paragraph, unless documentation is provided under section 373-1.9(d) of this Title demonstrating adequate combustion gas residence time; and
      - (7) such other operating requirements as are necessary to ensure that the DRE performance standard of paragraph (e)(1) of this section is met.

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- (b) Carbon monoxide and hydrocarbon standards. The permit must incorporate a carbon monoxide (CO) limit and, as appropriate, a hydrocarbon (HC) limit as provided by paragraphs (e)(2) through (6) of this section. The permit limits will be specified as follows:
    - (1) when complying with the CO standard of subparagraph (e)(2)(i) of this section, the permit limit is 100 ppmv;
    - (2) when complying with the alternative CO standard under paragraph (e)(3) of this section, the permit limit for CO is based on the trial burn and is established as the average over all valid runs of the highest hourly rolling average CO level of each run, and the permit limit for HC is 20 ppmv (as defined in subparagraph (e)(3)(i) of this section, except as provided in paragraph (e)(6) of this section.
    - (3) when complying with the alternative HC limit for industrial furnaces under paragraph (e)(6) of this section, the permit limit for HC and CO is the baseline level when hazardous waste is not burned as specified by that paragraph.
  - (c) Start-up and shut-down. During start-up and shut-down of the boiler or industrial furnace, hazardous waste (except waste fed solely as an ingredient under the Tier 1 (or adjusted Tier 1) feed rate screening limits for metals and chloride/chlorine, and except low risk waste exempt from the trial burn requirements under subparagraph (e)(1)(v) and subdivisions (f), (g) and (h) of this section) must not be fed into the device unless the device is operating within the conditions of operation specified in the permit.
- (iii) Requirements to ensure conformance with the particulate standard.
- (a) Except as provided in clauses ('b') and ('c') of this subparagraph, the permit shall specify the following operating requirements to ensure conformance with the particulate standard specified in subdivision (f) of this section:
    - (1) total ash feed rate to the device from hazardous waste, other fuels, and industrial furnace feedstocks, measured and specified as prescribed in subparagraph (vi) of this paragraph;
    - (2) maximum device production rate when producing normal product expressed in appropriate units, and measured and specified as prescribed in subparagraph (vi) of this paragraph;
    - (3) appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
    - (4) allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and
    - (5) such other operating requirements as are necessary to ensure that the particulate standard in paragraph (f)(1) of this section is met.
  - (b) Permit conditions to ensure conformance with the particulate matter standard shall not be provided for facilities exempt from the particulate matter standard under paragraph (f)(2) of this section.
  - (c) For cement kilns and light-weight aggregate kilns, permit conditions to ensure compliance with the particulate standard shall not limit the ash content of hazardous waste or other feed materials.
- (iv) Requirements to ensure conformance with the metals emissions standard.

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- ('a') For conformance with the Tier I (or adjusted Tier I) metals feed rate screening limits of paragraphs (g)(2) or (5) of this section, the permit shall specify the following operating requirements:
  - ('1') total feed rate of each metal in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified under provisions of subparagraph (vi) of this paragraph;
  - ('2') total feed rate of hazardous waste measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - ('3') a sampling and metals analysis program for the hazardous waste, other fuels, and industrial furnace feedstocks.
- ('b') For conformance with the Tier II metals emission rate screening limits under paragraph (g)(3) of this section and the Tier III metals controls under paragraph (g)(4) of this section, the permit shall specify the following operating requirements:
  - ('1') maximum emission rate for each metal specified as the average emission rate during the trial burn;
  - ('2') feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in clause (vi) ('a') of this paragraph;
  - ('3') feed rate of each metal in the following feedstreams, measured and specified as prescribed in subparagraph (vi) of this paragraph:
    - ('i') total feed streams;
    - ('ii') total hazardous waste feed; and
    - ('iii') total pumpable hazardous waste feed;
  - ('4') total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - ('5') maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - ('6') maximum flue gas temperature at the inlet to the particulate matter air pollution control system, measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - ('7') maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - ('8') appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
  - ('9') allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and
  - ('10') such other operating requirements as are necessary to ensure that the metals standards under paragraphs (g)(3) or (4) of this section are met.
- ('c') For conformance with an alternative implementation approach approved by the commissioner under paragraph (g)(6) of this section, the permit will specify the following operating requirements:
  - ('1') maximum emission rate for each metal specified as the average emission rate during the trial burn;

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- (2) feed rate of total hazardous waste and pumpable hazardous waste, each measured and specified as prescribed in clause (vi) ('a') of this paragraph;
  - (3) feed rate of each metal in the following feedstreams, measured and specified as prescribed in subparagraph (vi) of this paragraph:
    - (i) total hazardous waste feed; and
    - (ii) total pumpable hazardous waste feed;
  - (4) total feed rate of chlorine and chloride in total feed streams measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - (5) maximum combustion gas temperature measured at a location indicative of combustion chamber temperature, and measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - (6) maximum flue gas temperature at the inlet to the particulate matter air pollution control system, measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - (7) maximum device production rate when producing normal product expressed in appropriate units and measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - (8) appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
  - (9) allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and
  - (10) such other operating requirements as are necessary to ensure that the metals standards under paragraph (g)(3) or (4) of this section are met.
- (v) Requirements to ensure conformance with the hydrogen chloride and chlorine gas standards.
- (a) For conformance with the Tier I total chloride and chlorine feed rate screening limits of subparagraph (h)(2)(i) of this section, the permit will specify the following operating requirements:
    - (1) feed rate of total chloride and chlorine in hazardous waste, other fuels, and industrial furnace feedstocks measured and specified as prescribed in subparagraph (vi) of this paragraph;
    - (2) feed rate of total hazardous waste measured and specified as prescribed in subparagraph (vi) of this paragraph; and
    - (3) a sampling and analysis program for total chloride and chlorine for the hazardous waste, other fuels, and industrial furnace feedstocks.
  - (b) For conformance with the Tier II HCl and Cl<sub>2</sub> emission rate screening limits under subparagraph (h)(2)(ii) of this section and the Tier III HCl and Cl<sub>2</sub> controls under paragraph (h)(3) of this section, the permit will specify the following operating requirements:
    - (1) maximum emission rate for HCl and for Cl<sub>2</sub> specified as the average emission rate during the trial burn;
    - (2) feed rate of total hazardous waste measured and specified as prescribed in subparagraph (vi) of this paragraph;
    - (3) total feed rate of chlorine and chloride in total feed streams, measured and specified as prescribed in subparagraph (vi) of this paragraph;

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- (4') maximum device production rate when producing normal product expressed in appropriate units, measured and specified as prescribed in subparagraph (vi) of this paragraph;
  - (5') appropriate controls on operation and maintenance of the hazardous waste firing system and any air pollution control system;
  - (6') allowable variation in boiler and industrial furnace system design including any air pollution control system or operating procedures; and
  - (7') such other operating requirements as are necessary to ensure that the HCl and Cl<sub>2</sub> standards under subparagraph (h)(2)(ii) or paragraph (h)(3) of this section are met.
- (vi) Measuring parameters and establishing limits based on trial burn data.
- ('a) General requirements. As specified in subparagraphs (ii) through (v) of this paragraph, each operating parameter shall be measured, and permit limits on the parameter shall be established according to either of the following procedures:
    - (1') Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the permit limit specified as the time-weighted average during all valid runs of the trial burn; or
    - (2') Hourly rolling average.
      - (i) The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:
        - (A) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.
        - (B) An hourly rolling average is the arithmetic mean of the 60 most recent one-minute average values recorded by the continuous monitoring system.
      - (ii) The permit limit for the parameter shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average value for each run.
  - ('b) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (i.e., arsenic, beryllium, cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by clause ('a') of this subparagraph or on (up to) a 24-hour rolling average basis. If the owner or operator elects to use an average period from two to 24 hours:
    - (1') the feed rate of each metal shall be limited at any time to 10 times the feed rate that would be allowed on an hourly rolling average basis;
    - (2') the continuous monitor shall meet the following specifications:
      - (i) a continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.
      - (ii) the rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages

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- recorded during the 60-minute period beginning at one minute after the beginning of the preceding clock hour; and
- (3') the permit limit for the feed rate of each metal shall be established based on trial burn data as the average over all valid test runs of the highest hourly rolling average feed rate for each run.
- (c') Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of clauses ('a') and ('b') of this subparagraph.
  - (d') Conduct of trial burn testing.
    - (1') If compliance with all applicable emissions standards of subdivisions (e) through (h) of this section is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.
    - (2') Prior to obtaining test data for purposes of demonstrating compliance with the emissions standards of subdivisions (e) through (h) of this section or establishing limits on operating parameters under this Subpart, the facility must operate under trial burn conditions for a sufficient period to reach steady-state operations. The commissioner may determine, however, that industrial furnaces that recycle collected particulate matter back into the furnace and that comply with an alternative implementation approach for metals under paragraph (g)(6) of this section need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals emissions.
    - (3') Trial burn data on the level of an operating parameter for which a limit must be established in the permit must be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl<sub>2</sub>, organic compounds) for which the parameter must be established as specified by this paragraph.
  - (vii) General requirements.
    - (a') Fugitive emissions. Fugitive emissions must be controlled by:
      - (1') keeping the combustion zone totally sealed against fugitive emissions; or
      - (2') maintaining the combustion zone pressure lower than atmospheric pressure; or
      - (3') an alternate means of control demonstrated (with the Part 373 permit application) to provide fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure.
    - (b') Automatic waste feed cutoff. A boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when operating conditions deviate from those established under this subdivision. The commissioner may limit the number of cutoffs per an operating period on a case-by-case basis. In addition:
      - (1') the permit limit for (the indicator of) minimum combustion chamber temperature must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber;

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- (2') exhaust gases must be ducted to the air pollution control system operated in accordance with the permit requirements while hazardous waste or hazardous waste residues remain in the combustion chamber; and
  - (3') operating parameters for which permit limits are established must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the permit limits. For parameters that may be monitored on an instantaneous basis, the commissioner will establish a minimum period of time after a waste feed cutoff during which the parameter must not exceed the permit limit before the hazardous waste feed may be restarted.
- (c') Changes. A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits as specified in the permit.
- (viii) Monitoring and Inspections.
- (a') The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:
    - (1') if specified by the permit, feed rates and composition of hazardous waste, other fuels, and industrial furnace feedstocks, and feed rates of ash, metals, and total chloride and chlorine;
    - (2') if specified by the permit, carbon monoxide (CO), hydrocarbons (HC), and oxygen on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with operating requirements specified in clause (ii)(b') of this paragraph. CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in Appendix 49 of this Title; and
    - (3') upon the request of the commissioner, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feedstocks as appropriate), residues, and exhaust emissions must be conducted to verify that the operating requirements established in the permit achieve the applicable standards of subdivisions (e) through (h) of this section.
  - (b') All monitors shall record data in units corresponding to the permit limit unless otherwise specified in the permit.
  - (c') The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when it contains hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.
  - (d') The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the applicant demonstrates to the commissioner that weekly inspections will unduly restrict or upset operations, and that less frequent inspections will be adequate. At a minimum, operational testing must be conducted at least once every 30 days.
  - (e') These monitoring and inspection data must be recorded and the records must be placed in the operating record required by section 373-2.5(c) of this Title.

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- (ix) Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator must comply with subdivision (l) of this section.
- (x) Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this subdivision until closure of the facility.
- (xi) Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace.

#### (d) Interim status standards for burners.

- (1) Purpose, scope, applicability.
  - (i) General.
    - ('a') The purpose of this subdivision is to establish minimum national standards for owners and operators of existing boilers and industrial furnaces that burn hazardous waste where such standards define the acceptable management of hazardous waste during the period of interim status. The standards of this subdivision apply to owners and operators of existing facilities until either a Part 373 permit is issued, which includes the standards and requirements of paragraph (c)(4) of this section, or until closure responsibilities identified in this subdivision are fulfilled.
    - ('b') *Existing* or *in existence* means a boiler or industrial furnace that, on or before August 21, 1991, is either in operation burning or processing hazardous waste, or for which construction (including the ancillary facilities to burn or to process the hazardous waste) has commenced. A facility has commenced construction if the owner or operator has obtained the Federal, State, and local approvals or permits necessary to begin physical construction; and either:
      - ('1') a continuous on-site, physical construction program has begun; or
      - ('2') the owner or operator has entered into contractual obligations (which cannot be canceled or modified without substantial loss) for physical construction of the facility to be completed within a reasonable time.
    - ('c') If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the facility must comply with the applicable regulations dealing with permit modifications in section 373-1.7 of this Title or changes in interim status in section 373-1.3(g) of this Title.
  - (ii) Exemptions. The requirements of this subdivision do not apply to hazardous waste and facilities exempt under paragraph (a)(2), or subdivision (i) of this section.
  - (iii) Prohibition on burning dioxin-listed wastes. The following hazardous wastes listed for dioxin and hazardous waste derived from any of these wastes may not be burned in a boiler or industrial furnace operating under interim status: F020, F021, F022, F023, F026, and F027.
  - (iv) Applicability of Subpart 373-3 of this Title standards. Owners and operators of boilers and industrial furnaces that burn hazardous waste and are operating under interim status are subject to the following provisions of Subpart 373-3 of this Title, except as provided otherwise by this subdivision:
    - ('a') in section 373-3.1 (General), subdivision (b);
    - ('b') in section 373-3.2 (General facility standards), subdivisions (b) through (h);
    - ('c') in section 373-3.3 (Preparedness and prevention), subdivisions (b) through (g);

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- (d) in section 373-3.4 (Contingency plan and emergency procedures), subdivisions (b) through (g);
  - (e) in section 373-3.5 (Manifest system, recordkeeping, and reporting), subdivisions (b) through (g), except that subdivisions (b) and (f) do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources;
  - (f) in section 373-3.7 (Closure and post-closure), subdivisions (b) through (f);
  - (g) in section 373-3.8 (Financial requirements), subdivisions (b), (c), (d), (h) and (i), except that the State and the Federal government are exempt from the requirements of section 373-3.8; and
  - (h) section 373-3.28 (Air emission standards for equipment leaks), except paragraph (a)(1).
- (v) Special requirements for furnaces. The following controls apply during interim status to industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see clause ('b') of this subparagraph) at any location other than the hot end where products are normally discharged or where fuels are normally fired:
- (a) Controls.
    - (1) the hazardous waste shall be fed at a location where combustion gas temperatures area at least 1800 degrees F;
    - (2) the owner or operator must determine that adequate oxygen is present in combustion gases to combust organic constituents in the waste and retain documentation of such determination in the facility record;
    - (3) for cement kiln systems, the hazardous waste shall be fed into the kiln; and
    - (4) the hydrocarbon controls of paragraph (e)(3) of this section or subparagraph (3)(v) of this subdivision apply upon certification of compliance under paragraph (3) of this subdivision irrespective of the CO level achieved during the compliance test.
  - (b) Burning hazardous waste solely as an ingredient. A hazardous waste is burned for a purpose other than solely as an ingredient if it meets either of these criteria:
    - (1) the hazardous waste has a total concentration of nonmetal compounds listed in Appendix 23 of this Title (see Part 371) exceeding 500 ppm by weight, as-fired, and so is considered to be burned for destruction. The concentration of nonmetal compounds in a waste as-generated may be reduced to the 500 ppm limit by bona fide treatment that removes or destroys nonmetal constituents. Blending for dilution to meet the 500 ppm limit is prohibited. Documentation that the waste has not been impermissibly diluted must be retained in the facility record; or
    - (2) the hazardous waste has a heating value of 5,000 Btu/lb or more, as-fired, and so is considered to be burned as fuel. The heating value of a waste as-generated may be reduced to below the 5,000 Btu/lb limit by bona fide treatment that removes or destroys organic constituents. Blending to augment the heating value to meet the 5,000 Btu/lb limit is prohibited. Documentation that the waste has not been impermissibly blended must be retained in the facility record.
- (vi) Restrictions on burning hazardous waste that is not a fuel. Prior to certification of compliance under paragraph (3) of this subdivision, owners and operators shall not feed, to a boiler or industrial furnace, hazardous waste that has a heating value less than 5,000 Btu/lb, as-generated, (except that the heating value of a waste as-generated may be increased above the 5,000 Btu/lb limit by bona fide treatment; however, blending to augment the heating value to

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meet the 5,000 Btu/lb limit is prohibited. Records must be kept to document that impermissible blending has not occurred), except that:

- (a) hazardous waste may be burned solely as an ingredient; or
  - (b) hazardous waste may be burned for purposes of compliance testing (or testing prior to compliance testing) for a total period of time not to exceed 720 hours; or
  - (c) such waste may be burned if the commissioner has documentation to show that, prior to August 21, 1991:
    - (1) the boiler or industrial furnace is operating under the interim status standards for incinerators provided by section 373-3.15 of this Title, or the interim status standards for thermal treatment units provided by section 373-3.16 this Title; and
    - (2) the boiler or industrial furnace met the interim status eligibility requirements under subdivision 373-1.3(c) of this Title for sections 373-3.15 or 373-3.16 of this Title; and
    - (3) hazardous waste with a heating value less than 5,000 Btu/lb was burned prior to that date; or
  - (d) such waste may be burned in a halogen acid furnace if the waste was burned as an excluded ingredient under section 371.1(c)(6) of this Title prior to February 21, 1991 and documentation is kept on file supporting this claim.
- (vii) Direct transfer to the burner. If hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit, the owner and operator must comply with subdivision (1) of this section.
- (2) Certification of precompliance.
- (i) General. The owner or operator must have provided complete and accurate information, specified in subparagraph (ii) of this paragraph, to the EPA administrator on or before August 21, 1991, and must have established limits for the operating parameters specified in subparagraph (iii) of this paragraph. Such information is termed a certification of precompliance and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in subparagraph (iii) of this paragraph, the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, and HCl and Cl<sub>2</sub> are not likely to exceed the limits provided by subdivisions (f) through (h) of this section. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under subparagraph (iii) of this paragraph until the owner or operator submits a revised certification of precompliance under subparagraph (viii) of this paragraph or a certification of compliance under paragraph (3) of this subdivision, or until a permit is issued.
  - (ii) Information required. The following information must be submitted with the certification of precompliance to support the determination that the limits established for the operating parameters identified in subparagraph (iii) of this paragraph are not likely to result in an exceedance of the allowable emission rates for particulate matter, metals, and HCl and Cl<sub>2</sub>:
    - (a) General facility information:
      - (1) EPA facility ID number;
      - (2) facility name, contact person, telephone number, and address;
      - (3) description of boilers and industrial furnaces burning hazardous waste, including type and capacity of device;

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- (4') a scaled plot plan showing the entire facility and location of the boilers and industrial furnaces burning hazardous waste; and
  - (5') a description of the air pollution control system on each device burning hazardous waste, including the temperature of the flue gas at the inlet to the particulate matter control system.
- (b') Except for facilities complying with the Tier I or adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by paragraphs (g)(2) or (5) of this section, and subparagraph (h)(2)(i) or paragraph (h)(5) of this section, respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by subdivision (g) of this section, and hydrogen chloride and chlorine, and the following information to support such determinations:
- (1') the feed rate (lb/hr) of ash, chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feedstream (hazardous waste, other fuels, industrial furnace feedstocks);
  - (2') the estimated partitioning factor to the combustion gas for the materials identified in subclause ('1') of this clause and the basis for the estimate and an estimate of the partitioning to HCl and Cl<sub>2</sub> of total chloride and chlorine in feed materials. To estimate the partitioning factor, the owner or operator must use either best engineering judgment or the procedures specified in Appendix 49 of this Title;
  - (3') for industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions standards under subclause (3)(iii)(b)(1') of this subdivision, the estimated enrichment factor for each metal. To estimate the enrichment factor, the owner or operator must use either best engineering judgment or the procedures specified in "Alternative Methodology for Implementing Metals Controls" in Appendix 49 of this Title;
  - (4') if best engineering judgment is used to estimate partitioning factors or enrichment factors under subclauses ('2') or ('3') of this clause respectively, the basis for the judgment. When best engineering judgment is used to develop or evaluate data or information and make determinations under this subdivision, the determinations must be made by a professional engineer registered in New York State and a certification of his/her determinations in accordance with section 373-1.4(a)(5)(iv) of this Title must be provided in the certification of precompliance.
- (c') For facilities complying with the Tier I or adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by paragraphs (g)(2) or (5) of this section and subparagraph (h)(2)(i) or paragraph (h)(5) of this section, the feed rate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feed stream (hazardous waste, other fuels, industrial furnace feedstocks).
- (d') For facilities complying with the Tier II or Tier III emission limits for metals or HCl and Cl<sub>2</sub> (under paragraphs (g)(3) or (4) or subparagraph (h)(2)(ii) or paragraph (h)(3) of this section), the estimated controlled (outlet of the air pollution control system) emissions rates of particulate matter, each metal controlled by subdivision (g) of this

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section, and HCl and Cl<sub>2</sub>, and the following information to support such determinations:

- (1') the estimated air pollution control system (APCS) removal efficiency for particulate matter, HCl, Cl<sub>2</sub>, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium;
  - (2') to estimate APCS removal efficiency, the owner or operator must use either best engineering judgment or the procedures prescribed in Appendix 49 of this Title;
  - (3') if best engineering judgment is used to estimate APCS removal efficiency, the basis for the judgment. Use of best engineering judgment must be in conformance with provisions of subclause ('b')(4') of this subparagraph.
- (e') Determination of allowable emissions rates for HCl, Cl<sub>2</sub>, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium, and the following information to support such determinations:
- (1') For all facilities:
    - (i') physical stack height;
    - (ii') good engineering practice stack height as defined by 40 CFR 51.100(ii);
    - (iii') maximum flue gas flow rate;
    - (iv') maximum flue gas temperature;
    - (v') attach a US Geological Service topographic map (or equivalent) showing the facility location and surrounding land within five km of the facility;
    - (vi') identify terrain-type: complex or noncomplex; and
    - (vii') identify land use: urban or rural.
  - (2') For owners and operators using Tier III site specific dispersion modeling to determine allowable levels under paragraphs (g)(4) or (h)(3) of this section, or adjusted Tier I feed rate screening limits under paragraphs (g)(5) or (h)(5) of this section:
    - (i') dispersion model and version used;
    - (ii') source of meteorological data;
    - (iii') the dilution factor in micrograms per cubic meter per gram per second of emissions for the maximum annual average off-site (unless on-site is required) ground level concentration (MEI location); and
    - (iv') indicate the MEI location on the map required under item ('1')('v') of this clause;
- (f') For facilities complying with the Tier II or III emissions rate controls for metals or HCl and Cl<sub>2</sub>, a comparison of the estimated controlled emissions rates determined under clause ('d') of this subparagraph with the allowable emission rates determined under clause ('e') of this subparagraph.
- (g') For facilities complying with the Tier I (or adjusted Tier I) feed rate screening limits for metals or total chloride and chlorine, a comparison of actual feed rates of each metal and total chlorine and chloride determined under clause ('c') of this subparagraph to the Tier I allowable feed rates.
- (h') For industrial furnaces that feed hazardous waste for any purpose other than solely as an ingredient (as defined by clause (1)(v)(b') of this subdivision) at any location other than the product discharge end of the device, documentation of compliance with the requirements of subclauses (1)(v)(a')(1'), (2') and (3') of this subdivision.

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- (i) For industrial furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions standards under subclause (3)(iii)(‘b’)(‘1’) of this subdivision:
  - (1) the applicable particulate matter standard in lb/hr; and
  - (2) the precompliance limit on the concentration of each metal in collected PM.
- (iii) Limits on operating conditions. The owner and operator shall establish limits on the following parameters consistent with the determinations made under subparagraph (ii) of this paragraph and certify (under provisions of subparagraph (ix) of this paragraph) to the commissioner that the facility will operate within the limits during interim status when there is hazardous waste in the unit until revised certification of precompliance under subparagraph (viii) of this paragraph or certification of compliance under paragraph (3) of this subdivision:
  - (a) feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section) pumpable hazardous waste;
  - (b) feed rate of each metal in the following feed streams:
    - (1) total feed streams, except that industrial furnaces that comply with the alternative metals implementation approach under subparagraph (iv) of this paragraph must specify limits on the concentration of each metal in collected particulate matter in lieu of feed rate limits for total feedstreams;
    - (2) total hazardous waste feed, unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section; and
    - (3) total pumpable hazardous waste feed, unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section;
  - (c) total feed rate of chlorine and chloride in total feed streams;
  - (d) total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited; and
  - (e) maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or adjusted Tier I feed rate screening limits for chlorine under subparagraph (h)(2)(i) or paragraph (h)(5) of this section and for all metals under paragraphs (g)(2) or (5) of this section, and the uncontrolled particulate emissions do not exceed the standard under subdivision (f) of this section.
- (iv) Operating requirements for furnaces that recycle PM. Owners and operators of furnaces that recycle collected particulate matter (PM) back into the furnace and that will certify compliance with the metals emissions controls under subclause (3)(iii)(‘b’)(‘1’) of this subdivision must comply with the special operating requirements provided in “Alternative Methodology for Implementing Metals Controls” in Appendix 49 of this Title.
- (v) Measurement of feed rates and production rate.
  - (a) General requirements. Limits on each of the parameters specified in subparagraph (iii) of this paragraph (except for limits on metals concentrations in collected particulate matter (PM) for industrial furnaces that recycle collected PM) shall be established and continuously monitored under either of the following methods:

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- (1') instantaneous limits. A limit for a parameter may be established and continuously monitored and recorded on an instantaneous basis (i.e., the value that occurs at any time) not to be exceeded at any time; or
- (2') hourly rolling average limits. A limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:
  - (i) a continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.
  - (ii) an hourly rolling average is the arithmetic mean of the 60 most recent one-minute average values recorded by the continuous monitoring system.
- (b') Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (arsenic, beryllium, cadmium, and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subclause ('a')(2') of this subparagraph or on (up to) a 24-hour rolling average basis. If the owner or operator elects to use an averaging period from two to 24 hours:
  - (1') the feed rate of each metal shall be limited at any time to 10 times the feed rate that would be allowed on a hourly rolling average basis;
  - (2') the continuous monitor shall meet the following specifications:
    - (i) a continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.
    - (ii) the rolling average for the selected averaging period is defined as the arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60-minute period beginning at one minute after the beginning of preceding clock hour.
- (c') Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of clauses ('a') and ('b') of this subparagraph.
- (vi) Public notice requirements at precompliance. On or before August 21, 1991 the owner or operator must have submitted a notice with the following information for publication in a major local newspaper of general circulation and sent a copy of the notice to the appropriate units of State and local government. The owner and operator must have provided to the EPA administrator with the certification of precompliance evidence of submitting the notice for publication. The notice, which shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 CFR 266.103(b)", must have included:
  - (a') name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;
  - (b') date that the certification of precompliance was submitted to the EPA administrator;

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- (c) brief description of the regulatory process required to comply with the interim status requirements of this subdivision including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl<sub>2</sub>;
  - (d) types and quantities of hazardous waste burned, including, but not limited to, source, whether solids or liquids, as well as an appropriate description of the waste;
  - (e) type of device(s) in which the hazardous waste is burned, including a physical description and maximum production rate of each device;
  - (f) types and quantities of other fuels and industrial furnace feedstocks fed to each unit;
  - (g) brief description of the basis for this certification of precompliance as specified in subparagraph (ii) of this paragraph;
  - (h) locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall, at a minimum, include:
    - (1) the administrative record kept by the Agency office where the supporting documentation was submitted or another location designated by the EPA administrator; and
    - (2) the EPA correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the EPA administrator, State and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and Department site visit reports submitted to the owner or operator;
  - (i) notification of the establishment of a facility mailing list, whereby interested parties shall notify the agency that they wish to be placed on the mailing list to receive future information and notices about this facility; and
  - (j) location (mailing address) of the applicable EPA regional office, hazardous waste division, where further information can be obtained on EPA regulation of hazardous waste burning.
- (vii) Monitoring other operating parameters. When the monitoring systems for the operating parameters listed in clauses (3)(i)(‘e’) through (‘m’) of this subdivision are installed and operating in conformance with vendor specifications or (for CO, HC, and oxygen) specifications provided by Appendix 49 of this Title, as appropriate, the parameters shall be continuously monitored and records shall be maintained in the operating record.
- (viii) Revised certification of precompliance. The owner or operator may revise, at any time, the information and operating conditions documented under subparagraphs (ii) and (iii) of this paragraph in the certification of precompliance by submitting a revised certification of precompliance under procedures provided by those paragraphs.
- (a) The public notice requirements of subparagraph (vi) of this paragraph do not apply to recertifications.
  - (b) The owner and operator must operate the facility within the limits established for the operating parameters under subparagraph (iii) of this paragraph until a revised certification is submitted under this subparagraph or a certification of compliance is submitted under paragraph (3) of this subdivision.

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- (ix) Certification of precompliance statement. The owner or operator must have included the following signed statement with the certification of precompliance submitted to the EPA administrator:

“I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of section 266.103(b) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, 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.

I also acknowledge that the operating limits established in this certification pursuant to section 266.103(b)(3) and (4) are enforceable limits at which the facility can legally operate during interim status until: (1) A revised certification of precompliance is submitted, (2) a certification of compliance is submitted, or (3) an operating permit is issued.”

- (3) Certification of compliance. The owner or operator shall conduct emissions testing to document compliance with the emissions standards of paragraphs (e)(2) through (5) and subdivisions (f), (g) and (h) of this section and subclause (1)(v)(‘a’)(‘4’) of this subdivision, under the procedures prescribed by this paragraph, except under extensions of time provided by subparagraph (vii) of this paragraph. Based on the compliance test, the owner or operator shall have submitted to the EPA administrator on or before August 21, 1992 a complete and accurate certification of compliance (under 40 CFR Part 266.103(c) (4)) with those emission standards establishing limits on the operating parameters specified in subparagraph (i) of this paragraph.
- (i) Limits on operating conditions. The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in clause (iv)(‘d’) of this paragraph) or as otherwise specified and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of paragraphs (e)(2) through (5) and subdivisions (f), (g) and (h) of this section and subclause (1)(v)(‘a’)(‘4’) of this subdivision at all times when there is hazardous waste in the unit.
- (‘a’) Feed rate of total hazardous waste and (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs(g)(2) or (5) of this section), pumpable hazardous waste.
- (‘b’) Feed rate of each metal in the following feedstreams:
- (‘1’) total feedstreams, except that:
- (‘i’) facilities that comply with Tier I or adjusted Tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under paragraphs (g)(2) or (5) of this section; and

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- (ii) industrial furnaces that must comply with the alternative metals implementation approach under clause (iii)(‘b’) of this paragraph must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total feedstreams;
- (2) total hazardous waste feed (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g) (2) or (5) of this section); and
- (3) total pumpable hazardous waste feed (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section);
- (c) total feed rate of chlorine and chloride in total feed streams, except that facilities that comply with Tier I or adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under subparagraph (h)(2)(i) or paragraph (h)(5) of this section;
- (d) total feed rate of ash in total feed streams, except that the ash feed rate for cement kilns and light-weight aggregate kilns is not limited;
- (e) carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas. When complying with the CO controls of paragraph (e)(2) of this section, the CO limit is 100 ppmv, and when complying with the HC controls of paragraph (e)(3) of this section, the HC limit is 20 ppmv. When complying with the CO controls of paragraph (e)(3) of this section, the CO limit is established based on the compliance test;
- (f) maximum production rate of the device in appropriate units when producing normal product, (unless complying with the Tier I or adjusted Tier I feed rate screening limits for chlorine under subparagraph (h)(2) (i) or paragraph (h)(5) of this section and for all metals under paragraphs (g)(2) or (5) of this section, and the uncontrolled particulate emissions do not exceed the standard under subdivision (f) of this section);
- (g) maximum combustion chamber temperature where the temperature measurement is as close to the combustion zone as possible and is upstream of any quench water injection (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section);
- (h) maximum flue gas temperature entering a particulate matter control device (unless complying with Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section and the total chlorine and chloride feed rate screening limits under paragraphs (h)(2) or (5) of this section);
- (i) for systems using wet scrubbers, including wet ionizing scrubbers (unless complying with Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section and the total chlorine and chloride feed rate screening limits under subparagraph (h)(2)(i) or paragraph (h)(5) of this section):
  - (1) minimum liquid to flue gas ratio;
  - (2) minimum scrubber blowdown from the system or maximum suspended solids content of scrubber water; and
  - (3) minimum pH level of the scrubber water;
- (j) for systems using venturi scrubbers, the minimum differential gas pressure across the venturi (unless complying with the Tier I or adjusted Tier I metals feed rate screening

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- limits under paragraphs (g)(2) or (5) of this section and the total chlorine and chloride feed rate screening limits under subparagraph (h)(2)(i) or paragraph (h)(5) of this section);
- (k) for systems using dry scrubbers (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section and the total chlorine and chloride feed rate screening limits under subparagraph (h)(2)(i) or paragraph (h)(5) of this section):
    - (1) minimum caustic feed rate; and
    - (2) maximum flue gas flow rate;
  - (l) for systems using wet ionizing scrubbers or electrostatic precipitators (unless complying with the Tier I or adjusted Tier I metals feed rate screening limits under paragraphs (g)(2) or (5) of this section and the total chlorine and chloride feed rate screening limits under subparagraph (h)(2)(i) or paragraph (h)(5) of this section):
    - (1) minimum electrical power in kilovolt amperes (kVA) to the precipitator plates; and
    - (2) maximum flue gas flow rate;
  - (m) for systems using fabric filters (baghouses), the minimum pressure drop (unless complying with the Tier I or adjusted Tier I metal feed rate screening limits under paragraphs (g)(2) or (5) of this section and the total chlorine and chloride feed rate screening limits under subparagraph (h)(2)(i) or paragraph (h)(5) of this section).
- (ii) Prior notice of compliance testing. At least 30 days prior to the compliance testing required by subparagraph (iii) of this paragraph, the owner or operator shall notify the commissioner and submit the following information:
- (a) general facility information including:
    - (1) EPA facility ID number;
    - (2) facility name, contact person, telephone number, and address;
    - (3) person responsible for conducting compliance test, including company name, address, and telephone number, and a statement of qualifications;
    - (4) planned date of the compliance test;
  - (b) specific information on each device to be tested including:
    - (1) description of boiler or industrial furnace;
    - (2) a scaled plot plan showing the entire facility and location of the boiler or industrial furnace;
    - (3) a description of the air pollution control system;
    - (4) identification of the continuous emission monitors that are installed, including:
      - (i) carbon monoxide monitor;
      - (ii) oxygen monitor;
      - (iii) hydrocarbon monitor, specifying the minimum temperature of the system and, if the temperature is less than 150° C, an explanation of why a heated system is not used (see subparagraph (v) of this paragraph) and a brief description of the sample gas conditioning system;
    - (5) indication of whether the stack is shared with another device that will be in operation during the compliance test;
    - (6) other information useful to an understanding of the system design or operation;

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- (c) information on the testing planned, including a complete copy of the test protocol and quality assurance/quality control (QA/QC) plan, and a summary description for each test providing the following information, at a minimum:
  - (1) purpose of the test (e.g., demonstrate compliance with emissions of particulate matter); and
  - (2) planned operating conditions, including levels for each pertinent parameter specified in subparagraph (i) of this paragraph.
- (iii) Compliance testing.
  - (a) General. Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under paragraph (2) of this subdivision and under conditions established in the notification of compliance testing required by subparagraph (ii) of this paragraph. The owner or operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar onsite unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The commissioner shall provide a written approval to use compliance test data in lieu of testing a similar unit if the commissioner finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of this paragraph.
  - (b) Special requirements for industrial furnaces that recycle collected PM. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system must comply with one of the following procedures for testing to determine compliance with the metals standards of paragraphs (g)(3) or (4) of this section:
    - (1) the special testing requirements prescribed in “Alternative Method for Implementing Metals Controls” in Appendix 49 of this Title; or
    - (2) stack emissions testing for a minimum of six hours each day while hazardous waste is burned during interim status. The testing must be conducted when burning normal hazardous waste for that day at normal feed rates for that day and when the air pollution control system is operated under normal conditions. During interim status, hazardous waste analysis for metals content must be sufficient for the owner or operator to determine if changes in metals content may affect the ability of the facility to meet the metals emissions standards established under paragraphs (g)(3) or (4) of this section. Under this option, operating limits (under subparagraph (i) of this paragraph) must be established during compliance testing under this subparagraph only on the following parameters:
      - (i) feed rate of total hazardous waste;
      - (ii) total feed rate of chlorine and chloride in total feed streams;
      - (iii) total feed rate of ash in total field streams, except that the ash feed rate for cement kilns and lightweight aggregate kilns is not limited.
      - (iv) carbon monoxide concentration, and where required, hydrocarbon concentration in stack gas;
      - (v) maximum production rate of the device in appropriate units when producing normal product; or

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- (3') conduct compliance testing to determine compliance with the metals standards to establish limits on the operating parameters of subparagraph (i) of this paragraph only after the kiln system has been conditioned to enable it to reach equilibrium with respect to metals fed into the system and metals emissions. During conditioning, hazardous waste and raw materials having the same metals content as will be fed during the compliance test must be fed at the feed rates that will be fed during the compliance test.
- ('c') Conduct of compliance testing.
  - (1') If compliance with all applicable emissions standards of subdivisions (e) through (h) of this section is not demonstrated simultaneously during a set of test runs, the operating conditions of additional test runs required to demonstrate compliance with remaining emissions standards must be as close as possible to the original operating conditions.
  - (2') Prior to obtaining test data for purposes of demonstrating compliance with the applicable emissions standards of subdivisions (e) through (h) of this section or establishing limits on operating parameters under this subdivision, the facility must operate under compliance test conditions for a sufficient period to reach steady-state operations. Industrial furnaces that recycle collected particulate matter back into the furnace and that comply with subclauses ('b')(1') or (2') of this subparagraph, however, need not reach steady state conditions with respect to the flow of metals in the system prior to beginning compliance testing for metals.
  - (3') Compliance test data on the level of an operating parameter, for which a limit must be established in the certification of compliance, must be obtained during emissions sampling for the pollutant(s) (i.e., metals, PM, HCl/Cl<sub>2</sub>, organic compounds) for which the parameter must be established as specified by subparagraph (i) of this paragraph.
- (iv) Certification of compliance. Within 90 days of completing compliance testing, the owner or operator must certify to the commissioner compliance with the emissions standards of paragraphs (e)(2), (3) and (5) and subdivisions (f), (g) and (h) of this section and subclause (1)(v)(a)(4') of this subdivision. The certification of compliance must include the following information:
  - ('a') General facility and testing information including:
    - (1') EPA facility ID number;
    - (2') facility name, contact person, telephone number, and address;
    - (3') person responsible for conducting compliance testing, including company name, address, and telephone number, and a statement of qualifications;
    - (4') date(s) of each compliance test;
    - (5') description of boiler or industrial furnace tested;
    - (6') person responsible for quality assurance/quality control (QA/QC), title, and telephone number, and statement that procedures prescribed in the QA/QC plan submitted under section 374-1.8(d)(3)(ii)(c') of this Subpart have been followed, or a description of any changes and an explanation of why changes were necessary;
    - (7') description of any changes in the unit configuration prior to or during testing that would alter any of the information submitted in the prior notice of compliance

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- testing under subparagraph (ii) of this paragraph, and an explanation of why the changes were necessary;
- (8) description of any changes in the planned test conditions prior to or during the testing that alter any of the information submitted in the prior notice of compliance testing under subparagraph (ii) of this paragraph, and an explanation of why the changes were necessary; and
  - (9) the complete report on results of emissions testing.
- (b) Specific information on each test, including:
- (1) purpose(s) of test (e.g., demonstrate conformance with the emissions limits for particulate matter, metals, HCl, Cl<sub>2</sub>, and CO);
  - (2) summary of test results for each run and for each test including the following information:
    - (i) date of run;
    - (ii) duration of run;
    - (iii) time-weighted average and highest hourly rolling average CO level for each run and for the test;
    - (iv) highest hourly rolling average HC level, if HC monitoring is required for each run and for the test;
    - (v) if dioxin and furan testing is required under paragraph (e)(5) of this section, time-weighted average emissions for each run and for the test of chlorinated dioxin and furan emissions, and the predicted maximum annual average ground level concentration of the toxicity equivalency factor;
    - (vi) time-weighted average particulate matter emissions for each run and for the test;
    - (vii) time-weighted average HCl and Cl<sub>2</sub> emissions for each run and for the test;
    - (viii) time-weighted average emissions for the metals subject to regulation under subdivision (g) of this section for each run and for the test; and
    - (ix) QA/QC results.
- (c) Comparison of the actual emissions during each test with the emissions limits prescribed by paragraphs (e)(2), (3) and (5) and subdivisions (f), (g) and (h) of this section and established for the facility in the certification of precompliance under paragraph (2) of this subdivision.
- (d) Determination of operating limits based on all valid runs of the compliance test for each applicable parameter listed in subparagraph (i) of this paragraph using either of the following procedures:
- (1) Instantaneous limits. A parameter may be measured and recorded on an instantaneous basis (i.e., the value that occurs at any time) and the operating limit specified as the time-weighted average during all runs of the compliance test; or
  - (2) hourly rolling average basis.
    - (i) The limit for a parameter may be established and continuously monitored on an hourly rolling average basis defined as follows:
      - (A) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds.

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- (B) An hourly rolling average is the arithmetic mean of the 60 most recent one-minute average values recorded by the continuous monitoring system.
- (ii) The operating limit for the parameter shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average value for each run.
- (3) Rolling average limits for carcinogenic metals and lead. Feed rate limits for the carcinogenic metals (i.e., arsenic, beryllium, cadmium and chromium) and lead may be established either on an hourly rolling average basis as prescribed by subclause ('2') of this clause or on (up to) a 24-hour rolling average basis. If the owner or operator elects to use an averaging period from two to 24 hours:
  - (i) the feed rate of each metal shall be limited at any time to 10 times the feed rate that would be allowed on an hourly rolling average basis;
  - (ii) the continuous monitor shall meet the following specifications:
    - (A) A continuous monitor is one which continuously samples the regulated parameter without interruption, and evaluates the detector response at least once each 15 seconds, and computes and records the average value at least every 60 seconds;
    - (B) The rolling average for the selected averaging period is defined as arithmetic mean of one hour block averages for the averaging period. A one hour block average is the arithmetic mean of the one minute averages recorded during the 60-minute period beginning at one minute after the beginning of preceding clock hour; and
  - (iii) the operating limit for the feed rate of each metal shall be established based on compliance test data as the average over all test runs of the highest hourly rolling average feed rate for each run.
- (4) Feed rate limits for metals, total chloride and chlorine, and ash. Feed rate limits for metals, total chlorine and chloride, and ash are established and monitored by knowing the concentration of the substance (i.e., metals, chloride/chlorine, and ash) in each feedstream and the flow rate of the feedstream. To monitor the feed rate of these substances, the flow rate of each feedstream must be monitored under the continuous monitoring requirements of subclauses ('1') through ('3') of this clause.
- (e) Certification of compliance statement. The following statement shall accompany the certification of compliance:

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information and supporting documentation. Copies of all emissions tests, dispersion modeling results and other information used to determine conformance with the requirements of 6 NYCRR section 374-1.8(d)(3) are available at the facility and can be obtained from the facility contact person listed above. Based on my inquiry of the person or persons who manages the facility, 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

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there are significant penalties for submitting false information, including the possibility of fine and Imprisonment for knowing violations.

I also acknowledge that the operating conditions established in this certification pursuant to 6 NYCRR section 374 1.8(d)(3)(iv)(‘d’) are enforceable limits at which the facility can legally operate during interim status until a revised certification of compliance is submitted.”

- (v) Special requirements for HC monitoring systems. When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by paragraph (e)(3) of this section or subclause (1)(v)(‘a’)(‘4’) of this subdivision, a conditioned gas monitoring system may be used in conformance with specifications provided in Appendix 49 of this Title provided that the owner or operator submits a certification of compliance without using extensions of time provided by subparagraph (vii) of this paragraph.
- (vi) Special operating requirements for industrial furnaces that recycle collected PM. Owners and operators of industrial furnaces that recycle back into the furnace particulate matter (PM) from the air pollution control system must:
  - (‘a’) when complying with the requirements of subclause (iii)(‘b’)(‘1’) of this paragraph, comply with the operating requirements prescribed in “Alternative Method to Implement the Metals Controls” in Appendix 49 of this Title; and
  - (‘b’) when complying with the requirements of subclause (iii)(‘b’)(‘2’) of this paragraph, comply with the operating requirements prescribed by that subclause.
- (vii) Extensions of time.
  - (‘a’) If the owner or operator did not submit a complete certification of compliance to the EPA administrator for all of the applicable emissions standards of subdivisions (e) through (h) by August 21, 1992, he/she must either:
    - (‘1’) stop burning hazardous waste and begin closure activities under paragraph (12) of this subdivision for the hazardous waste portion of the facility; or
    - (‘2’) limit hazardous waste burning only for purposes of compliance testing (and pretesting to prepare for compliance testing) a total period of 720 hours for the period of time beginning August 21, 1992, submit a notification to the EPA administrator by August 21, 1992 stating that the facility is operating under restricted interim status and intends to resume burning hazardous waste, and submit a complete certification of compliance by August 23, 1993; or
    - (‘3’) obtain a case-by-case extension of time under clause (‘b’) of this subparagraph.
  - (‘b’) The owner or operator may request a case-by-case extension of time to extend any time limit provided by paragraph (3) of this subdivision if compliance with the time limit is not practicable for reasons beyond the control of the owner or operator.
    - (‘1’) In granting an extension, the commissioner may apply conditions as the facts warrant to ensure timely compliance with the requirements of this subdivision and that the facility operates in a manner that does not pose a hazard to human health and the environment.
    - (‘2’) When an owner or operator requests an extension of time to enable the facility to comply with the alternative hydrocarbon provisions of paragraph (e)(6) of this

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section and obtain a Part 373 operating permit because the facility cannot meet the HC limit of paragraph (e)(3) of this section:

- (i) the commissioner shall, in considering whether to grant the extension:
    - (A) determine whether the owner and operator have submitted in a timely manner a complete Part 373 permit application that includes information required under section 373-1.5(i)(2) of this Title; and
    - (B) consider whether the owner and operator have made a good faith effort to certify compliance with all other emission controls, including the controls on dioxins and furans of paragraph (e)(5) of this section and the controls on PM, metals, and HCl/Cl<sub>2</sub>.
  - (ii) If an extension is granted, the commissioner shall, as a condition of the extension, require the facility to operate under flue gas concentration limits on CO and HC that, based on available information, including information in the Part 373 permit application, are baseline CO and HC levels as defined by subparagraph (e)(6)(i) of this section.
  - (3) The commissioner will not grant an extension which would result in regulatory controls less stringent than those in the RCRA-delegated program.
- (viii) Revised certification of compliance. The owner or operator may submit at any time a revised certification of compliance (recertification of compliance) under the following procedures:
- (a) prior to submittal of a revised certification of compliance, hazardous waste may not be burned for more than a total of 720 hours under operating conditions that exceed those established under a current certification of compliance, and such burning may be conducted only for purposes of determining whether the facility can operate under revised conditions and continue to meet the applicable emissions standards of subdivisions (e) through (h) of this section;
  - (b) at least 30 days prior to first burning hazardous waste under operating conditions that exceed those established under a current certification of compliance, the owner or operator shall notify the commissioner and submit the following information:
    - (1) EPA facility ID number, and facility name, contact person, telephone number, and address;
    - (2) operating conditions that the owner or operator is seeking to revise, and a description of the changes in facility design or operation that prompted the need to seek to revise the operating conditions;
    - (3) a determination that when operating under the revised operating conditions, the applicable emissions standards of subdivisions (e) through (h) of this section are not likely to be exceeded. To document this determination, the owner or operator shall submit the applicable information required under subparagraph (2)(ii) of this subdivision; and
    - (4) complete emissions testing protocol for any pretesting and for a new compliance test to determine compliance with the applicable emissions standards of subdivisions (e) through (h) of this section when operating under revised operating conditions. The protocol shall include a schedule of pre-testing and compliance testing. If the owner and operator revises the scheduled date for the compliance test, he/she shall notify the commissioner, in writing, at least 30 days prior to the revised date of the compliance test;

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- (c) conduct a compliance test under the revised operating conditions and the protocol submitted to the commissioner to determine compliance with the applicable emissions standards of subdivisions (e) through (h) of this section; and
  - (d) submit a revised certification of compliance under subparagraph (iv) of this paragraph.
- (4) Periodic recertifications. The owner or operator must conduct compliance testing and submit to the department a recertification of compliance under provisions of paragraph (3) of this subdivision within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of subparagraph (3)(viii) of this subdivision.
- (5) Noncompliance with certification schedule. If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (2)-(4) of this subdivision, hazardous waste burning must terminate on the date that the deadline is missed, closure activities must begin under paragraph (12) of this subdivision, and hazardous waste burning may not resume except under an operating permit issued under section 373-1.9(d) of this Title. For purposes of compliance with the closure provisions of paragraph (12) of this subdivision and section 373-3.7(c)(4)(ii) and (d) of this Title the boiler or industrial furnace has received the known final volume of hazardous waste on the date that the deadline is missed.
- (6) Start-up and shut-down. Hazardous waste (except waste fed solely as an ingredient under the Tier I (or adjusted Tier I) feed rate screening limits for metals and chloride/chlorine) must not be fed into the device during start-up and shut-down of the boiler or industrial furnace, unless the device is operating within the conditions of operation specified in the certification of compliance.
- (7) Automatic waste feed cutoff. During the compliance test required by subparagraph (3)(iii) of this subdivision, and upon certification of compliance under paragraph (3) of this subdivision, a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in clauses (3)(i) ('a') and ('e') through ('m') of this subdivision deviate from those established in the certification of compliance. In addition:
- (i) to minimize emissions of organic compounds, the minimum combustion chamber temperature (or the indicator of combustion chamber temperature) that occurred during the compliance test must be maintained while hazardous waste or hazardous waste residues remain in the combustion chamber, with the minimum temperature during the compliance test defined as either:
    - ('a') if compliance with the combustion chamber temperature limit is based on an hourly rolling average, the minimum temperature during the compliance test is considered to be the average over all runs of the lowest hourly rolling average for each run; or
    - ('b') if compliance with the combustion chamber temperature limit is based on an instantaneous temperature measurement, the minimum temperature during the compliance test is considered to be the time-weighted average temperature during all runs of the test; and
  - (ii) operating parameters limited by the certification of compliance must continue to be monitored during the cutoff, and the hazardous waste feed shall not be restarted until the levels of those parameters comply with the limits established in the certification of compliance.
- (8) Fugitive emissions. Fugitive emissions must be controlled by:
- (i) keeping the combustion zone totally sealed against fugitive emissions; or
  - (ii) maintaining the combustion zone pressure lower than atmospheric pressure; or

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- (iii) an alternate means of control that the owner or operator can demonstrate provides fugitive emissions control equivalent to maintenance of combustion zone pressure lower than atmospheric pressure. Support for such demonstration shall be included in the operating record.
- (9) Changes. A boiler or industrial furnace must cease burning hazardous waste when changes in combustion properties, or feed rates of the hazardous waste, other fuels, or industrial furnace feedstocks, or changes in the boiler or industrial furnace design or operating conditions deviate from the limits specified in the certification of compliance.
- (10) Monitoring and inspections.
  - (i) The owner or operator must monitor and record the following, at a minimum, while burning hazardous waste:
    - ('a') feed rates and composition of hazardous waste, other fuels, and industrial furnace feed stocks, and feed rates of ash, metals, and total chloride and chlorine as necessary to ensure conformance with the certification of precompliance or certification of compliance;
    - ('b') carbon monoxide (CO), oxygen, and if applicable, hydrocarbons (HC), on a continuous basis at a common point in the boiler or industrial furnace downstream of the combustion zone and prior to release of stack gases to the atmosphere in accordance with the operating limits specified in the certification of compliance. CO, HC, and oxygen monitors must be installed, operated, and maintained in accordance with methods specified in Appendix 49 of this Title;
    - ('c') upon the request of the commissioner, sampling and analysis of the hazardous waste (and other fuels and industrial furnace feed stocks as appropriate) and the stack gas emissions must be conducted to verify that the operating conditions established in the certification of precompliance or certification of compliance achieve the applicable standards of subdivisions (e) through (h) of this section.
  - (ii) The boiler or industrial furnace and associated equipment (pumps, valves, pipes, fuel storage tanks, etc.) must be subjected to thorough visual inspection when they contain hazardous waste, at least daily for leaks, spills, fugitive emissions, and signs of tampering.
  - (iii) The automatic hazardous waste feed cutoff system and associated alarms must be tested at least once every seven days when hazardous waste is burned to verify operability, unless the owner or operator can demonstrate that weekly inspections will unduly restrict or upset operations and that less frequent inspections will be adequate. Support for such demonstration shall be included in the operating record. At a minimum, operational testing must be conducted at least once every 30 days.
  - (iv) These monitoring and inspection data must be recorded and the records must be placed in the operating log.
- (11) Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this subdivision until closure of the boiler or industrial furnace unit.
- (12) Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including, but not limited to, ash, scrubber waters, and scrubber sludges) from the boiler or industrial furnace and must comply with section 373-3.7(b) through (f) of this Title.

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**(e) Standards to control organic emissions.**

(1) DRE standard.

- (i) General. Except as provided in subparagraph (iii) of this paragraph, a boiler or industrial furnace burning hazardous waste must achieve a destruction and removal efficiency (DRE) of 99.99 percent for all organic hazardous constituents in the waste feed. To demonstrate conformance with this requirement, 99.99 percent DRE must be demonstrated during a trial burn for each principal organic hazardous constituent (POHC) designated (under subparagraph (ii) of this paragraph) in its permit for each waste feed. DRE is determined for each POHC from the following equation:

$$\text{DRE} = (1 - (W_{\text{out}}/W_{\text{in}})) \times 100$$

Where:

$W_{\text{in}}$  = Mass feed rate of one principal organic hazardous constituent (POHC) in the hazardous waste fired to the boiler or industrial furnace; and

$W_{\text{out}}$  = Mass emission rate of the same POHC present in stack gas prior to release to the atmosphere.

- (ii) Designation of POHCs. Principal organic hazardous constituents (POHCs) are those compounds for which compliance with the DRF requirements of this subdivision shall be demonstrated in a trial burn in conformance with procedures prescribed in section 373-1.9(d) of this Title. One or more POHCs shall be designated by the commissioner for each waste feed to be burned. POHCs shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with the Part 373 permit application. POHCs are most likely to be selected from among those compounds listed in Appendix 23 of this Title (see Part 371 of this Title) that are also present in the normal waste feed. However, if the applicant demonstrates to the commissioner's satisfaction that a compound not listed in Appendix 23 of this Title or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this subdivision, that compound may be designated as a POHC. Such POHCs need not be toxic or organic compounds.
- (iii) Dioxin-listed waste. A boiler or industrial furnace burning hazardous waste containing (or derived from) EPA hazardous wastes numbers F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999 percent for each POHC designated (under subparagraph (ii) of this paragraph) in its permit. This performance must be demonstrated on POHCs that are more difficult to burn than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in subparagraph (i) of this paragraph. In addition, the owner or operator of the boiler or industrial furnace must notify the commissioner of intent to burn EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.
- (iv) Automatic waiver of DRE trial burn. Owners and operators of boilers operated under the special operating requirements provided by subdivision (k) of this section are considered to be

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in compliance with the DRE standard of subparagraph (i) of this paragraph and are exempt from the DRE trial burn.

- (v) Low risk waste. Owners and operators of boilers or industrial furnaces that burn hazardous waste in compliance with the requirements of paragraph (j)(1) of this section are considered to be in compliance with the DRE standard of subparagraph (i) of this paragraph and are exempt from the DRE trial burn.
- (2) Carbon monoxide standard.
- (i) Except as provided in paragraph (3) of this subdivision, the stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste cannot exceed 100 ppmv on an hourly rolling average basis (i.e., over any 60 minute period), continuously corrected to seven percent oxygen, dry gas basis.
  - (ii) CO and oxygen shall be continuously monitored in conformance with “Performance Specifications for Continuous Emission Monitoring of Carbon Monoxide and Oxygen for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste” in Appendix 49 of this Title.
  - (iii) Compliance with the 100 ppmv CO limit must be demonstrated during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). To demonstrate compliance, the highest hourly rolling average CO level during any valid run of the trial burn or compliance test must not exceed 100 ppmv.
- (3) Alternative carbon monoxide standard.
- (i) The stack gas concentration of carbon monoxide (CO) from a boiler or industrial furnace burning hazardous waste may exceed the 100 ppmv limit provided that stack gas concentrations of hydrocarbons (HC) do not exceed 20 ppmv, except as provided by paragraph (6) of this subdivision for certain industrial furnaces.
  - (ii) HC limits must be established under this subdivision on an hourly rolling average basis (i.e., over any 60 minute period), reported as propane, and continuously corrected to seven percent oxygen, dry gas basis.
  - (iii) HC shall be continuously monitored in conformance with “Performance Specifications for Continuous Emission Monitoring of Hydrocarbons for Incinerators, Boilers, and Industrial Furnaces Burning Hazardous Waste” in Appendix 49 of this Title. CO and oxygen shall be continuously monitored in conformance with subparagraph (2)(ii) of this subdivision.
  - (iv) The alternative CO standard is established based on CO data during the trial burn (for a new facility) and the compliance test (for an interim status facility). The alternative CO standard is the average over all valid runs of the highest hourly average CO level for each run. The CO limit is implemented on an hourly rolling average basis, and continuously corrected to seven percent oxygen, dry gas basis.
- (4) Special requirements for furnaces. Owners and operators of industrial furnaces (e.g., kilns, cupolas) that feed hazardous waste for a purpose other than solely as an ingredient (see clause (d)(1)(v) (‘b’) of this section) at any location other than the end where products are normally discharged and where fuels are normally fired must comply with the hydrocarbon limits provided by paragraphs (3) or (6) of this subdivision, irrespective of whether stack gas CO concentrations meet the 100 ppmv limit of paragraph (2) of this subdivision.
- (5) Controls for dioxins and furans. Owners and operators of boilers and industrial furnaces that are equipped with a dry particulate matter control device that operates within the temperature range of 450-750° F, and industrial furnaces operating under an alternative hydrocarbon limit established

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under paragraph (6) of this subdivision must conduct a site-specific risk assessment as follows to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk to the hypothetical maximum exposed individual (MEI) exceeding 1 in 100,000:

- (i) during the trial burn (for new facilities or an interim status facility applying for a permit) or compliance test (for interim status facilities), determine emission rates of the tetra-octa congeners of chlorinated dibenzo-p-dioxins and dibenzofurans (CDDs/CDFs) using Method 0023A, Sampling Method for Polychlorinated Dibenzop-Dioxins and Polychlorinated Dibenzofurans Emissions from Stationary Sources, EPA Publication SW-846, as incorporated by reference in section 370.1(e) of this Title;
  - (ii) estimate the 2,3,7,8-TCDD toxicity equivalence of the tetra-octa CDDs/CDFs congeners using “Procedures for Estimating the Toxicity Equivalence of Chlorinated Dibenzop-Dioxin and Dibenzofuran Congeners” in Appendix 49 of this Title. Multiply the emission rates of CDD/CDF congeners with a toxicity equivalence greater than zero (see the procedure) by the calculated toxicity equivalence factor to estimate the equivalent emission rate of 2,3,7,8-TCDD;
  - (iii) conduct dispersion modeling using methods recommended in appendix W of 40 CFR part 51 (Guideline on Air Quality Models (Revised) and its supplements) as incorporated by reference in section 370.1(e) of this Title, the “Hazardous Waste Combustion Air Quality Screening Procedure,” which is provided in Appendix 49 of this Title, or in Screening Procedures for Estimating the Air Quality Impact of Stationary Sources as incorporated by reference in section 370.1(e) of this Title, to predict the maximum annual average off-site ground level concentration of 2,3,7,8-TCDD equivalents determined under subparagraph (5)(ii) of this subdivision. The maximum annual average concentration must be used when a person resides on-site; and
  - (iv) the ratio of the predicted maximum annual average ground level concentration of 2,3,7,8-TCDD equivalents to the risk-specific dose for 2,3,7,8-TCDD provided in Appendix 45 of this Title ( $2.2 \times 10^{-7}$ ) shall not exceed 1.0.
- (6) Reserved.
- (7) Monitoring CO and HC in the by-pass duct of a cement kiln. Cement kilns may comply with the carbon monoxide and hydrocarbon limits provided by paragraphs (2), (3) and (4) of this subdivision by monitoring in the by-pass duct provided that:
- (i) hazardous waste is fired only into the kiln and not at any location downstream from the kiln exit relative to the direction of gas flow; and
  - (ii) the by-pass duct diverts a minimum of 10 percent of kiln off-gas into the duct.
- (8) Use of emissions test data to demonstrate compliance and establish operating limits. Compliance with the requirements of this subdivision must be demonstrated simultaneously by emissions testing or during separate runs under identical operating conditions. Further, data to demonstrate compliance with the CO and HC limits of this subdivision or to establish alternative CO or HC limits under this subdivision must be obtained during the time that DRE testing, and where applicable, CDD/CDF testing under paragraph (5) of this subdivision and comprehensive organic emissions testing under paragraph (6) of this subdivision is conducted.
- (9) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under subdivision (c) of this section) will be regarded as compliance with this subdivision. However, evidence that compliance with those permit conditions is insufficient to

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ensure compliance with the requirements of this subdivision may be information justifying modification or revocation and reissuance of a permit under section 373-1.7(b) of this Title.

#### (f) Standards to control particulate matter.

- (1) A boiler or industrial furnace burning hazardous waste may not emit particulate matter in excess of 180 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) after correction to a stack gas concentration of seven percent oxygen, using procedures prescribed in 40 CFR part 60, appendix A, methods 1 through 5 (see section 370.1(e) of this Title), and Appendix 49 of this Title.
- (2) An owner or operator meeting the requirements of paragraph (j)(2) of this section for the low risk waste exemption is exempt from the particulate matter standard.
- (3) Oxygen correction.
  - (i) Measured pollutant levels must be corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times 14 / (E - Y)$$

Where:

$P_c$  is the corrected concentration of the pollutant in the stack gas,

$P_m$  is the measured concentration of the pollutant in the stack gas,

$E$  is the oxygen concentration on a dry basis in the combustion air fed to the device, and

$Y$  is the measured oxygen concentration on a dry basis in the stack.

- (ii) For devices that feed normal combustion air,  $E$  will equal 21 percent. For devices that feed oxygen-enriched air for combustion (that is, air with an oxygen concentration exceeding 21 percent), the value of  $E$  will be the concentration of oxygen in the enriched air.
  - (iii) Compliance with all emission standards provided by this section must be based on correcting to 7 percent oxygen using this procedure.
- (4) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under subdivision (c) of this section) will be regarded as compliance with this subdivision. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this subdivision may be information justifying modification or revocation and re-issuance of a permit under section 373-1.7(b) of this Title.

#### (g) Standards to control metals emissions.

- (1) General. The owner or operator must comply with the metals standards provided by paragraph (2), (3), (4), (5) or (6) of this subdivision for each metal listed in paragraph (2) of this subdivision that is present in the hazardous waste at detectable levels by using 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

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evaluate and approve proposals to use other methods to ensure that resulting data will meet data quality objectives.

- (2) Tier I feed rate screening limits. Feed rate screening limits for metals are specified in Appendix 41 of this Title as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subparagraph (vii) of this paragraph.
- (i) Noncarcinogenic metals. The feed rates of antimony, barium, lead, mercury, thallium, and silver in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks, shall not exceed the screening limits specified in Appendix 41 of this Title.
- (a) The feed rate screening limits for antimony, barium, mercury, thallium, and silver are based on either:
- (1) an hourly rolling average as defined in subclause (c)(5)(vi)(a)(2) of this section; or
- (2) an instantaneous limit not to be exceeded at any time.
- (b) The feed rate screening limit for lead is based on one of the following:
- (1) an hourly rolling average as defined in subclause (c)(5)(vi)(a)(2) of this section;
- (2) an averaging period of two to 24 hours as defined in clause (c)(5)(vi)(b) of this section with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis; or
- (3) an instantaneous limit not to be exceeded at any time.
- (ii) Carcinogenic metals.
- (a) The feed rates of arsenic, cadmium, beryllium, and chromium in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed values derived from the screening limits specified in Appendix 41 of this Title. The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in Appendix 41 of this Title shall not exceed 1.0, as provided by the following equation:

$$\text{Sum from } i = 1 \text{ to } n \text{ of } \frac{\text{AFR}_{(i)}}{\text{FRSL}_{(i)}} < 1.0$$

where:

n = number of carcinogenic metals

AFR = actual feed rate to the device for metal “i”

FRSL = feed rate screening limit provided by Appendix 41 of this Title for metal “i”

- (b) The feed rate screening limits for the carcinogenic metals are based on either:
- (1) an hourly rolling average; or
- (2) an averaging period of two to 24 hours as defined in clause (c)(5)(vi)(b) of this section with an instantaneous feed rate limit not to exceed 10 times the feed rate that would be allowed on an hourly rolling average basis.

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(iii) Terrain-adjusted effective stack height (TESH).

('a') The terrain-adjusted effective stack height is determined according to the following equation:

$$\text{TESH} = \text{Ha} + \text{Hl} - \text{Tr}$$

where:

Ha = actual physical stack height

Hl = plume rise as determined from Appendix 46 of this Title as a function of stack flow rate and stack gas exhaust temperature

Tr = terrain rise within five kilometers of the stack

('b') The stack height (Ha) may not exceed good engineering practice as specified in 40 CFR 51.100(ii) (see section 370.1(e) of this Title).

('c') If the TESH for a particular facility is not listed in the table in the appendices, the nearest lower TESH listed in the table shall be used. If the TESH is four meters or less, a value of four meters shall be used.

(iv) Terrain type. The screening limits are a function of whether the facility is located in noncomplex or complex terrain. A device located where any part of the surrounding terrain within five kilometers of the stack equals or exceeds the elevation of the physical stack height (Ha) is considered to be in complex terrain and the screening limits for complex terrain apply. Terrain measurements are to be made from U.S. Geological Survey 7.5-minute topographic maps of the area surrounding the facility.

(v) Land use. The screening limits are a function of whether the facility is located in an area where the land use is urban or rural. To determine whether land use in the vicinity of the facility is urban or rural, procedures provided in Appendix 49 or 50 of this Title shall be used.

(vi) Multiple stacks. Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls of metals emissions under a Part 373 operating permit or interim status controls must comply with the screening limits for all such units assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics. The worst-case stack is determined from the following equation as applied to each stack:

$$K = \text{HVT}$$

where:

K = a parameter accounting for relative influence of stack height and plume rise;

H = physical stack height (meters);

V = stack gas flow rate (m<sup>3</sup>/second); and

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T = exhaust temperature (degrees K).

The stack with the lowest value of K is the worst-case stack.

- (vii) Criteria for facilities not eligible for screening limits. If any criteria below are met, the Tier I and Tier II screening limits do not apply. Owners and operators of such facilities must comply with either the Tier III standards provided by paragraph (4) of this subdivision or with the adjusted Tier I feed rate screening limits provided by paragraph (5) of this subdivision.
  - ('a') the device is located in a narrow valley less than one kilometer wide;
  - ('b') the device has a stack taller than 20 meters and is located such that the terrain rises to the physical height within one kilometer of the facility;
  - ('c') the device has a stack taller than 20 meters and is located within five kilometers of a shoreline of a large body of water such as an ocean or large lake;
  - ('d') the physical stack height of any stack is less than 2.5 times the height of any building within five building heights or five projected building widths of the stack and the distance from the stack to the closest boundary is within five building heights or five projected building widths of the associated building; or
  - ('e') the commissioner determines that standards based on site-specific dispersion modeling are required.
- (viii) Implementation. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate screening limits are not exceeded.
- (3) Tier II emission rate screening limits. Emission rate screening limits are specified in Appendix 41 of this Title as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. Criteria for facilities that are not eligible to comply with the screening limits are provided in subparagraph (2)(vii) of this subdivision.
  - (i) Noncarcinogenic metals. The emission rates of antimony, barium, lead, mercury, thallium, and silver shall not exceed the screening limits specified in Appendix 41 of this Title.
  - (ii) Carcinogenic metals. The emission rates of arsenic, cadmium, beryllium, and chromium shall not exceed values derived from the screening limits specified in Appendix 41 of this Title. The emission rate of each of these metals is limited to a level such that the sum of the ratios of the actual emission rate to the emission rate screening limit specified in Appendix 41 of this Title shall not exceed 1.0, as provided by the following equation:

$$\text{Sum from } i = 1 \text{ to } n \text{ of } \frac{\text{AER}_{(i)}}{\text{ERSL}_{(i)}} < 1.0$$

where:

n = number of carcinogenic metals

AER = actual emission rate for metal “i”

ERSL = emission rate screening limit provided by Appendix 41 of this Title for metal “i”

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- (iii) Implementation. The emission rate limits must be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by clauses (2)(i)(‘a’), (‘b’) and (ii)(‘b’) of this subdivision. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under subdivision (c) or (d) of this section are not exceeded.
- (iv) Definitions and limitations. The definitions and limitations provided by paragraph (2) of this subdivision for the following terms also apply to the Tier II emission rate screening limits provided by paragraph (3) of this subdivision: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.
- (v) Multiple stacks.
  - (‘a’) Owners and operators of facilities with more than one onsite stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a Part 373 operating permit or interim status controls must comply with the emissions screening limits for any such stacks assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.
  - (‘b’) The worst-case stack is determined by procedures provided in subparagraph (2)(vi) of this subdivision.
  - (‘c’) For each metal, the total emissions of the metal from those stacks shall not exceed the screening limit for the worst-case stack.
- (4) Tier III and Adjusted Tier I site-specific risk assessment. The requirements of this paragraph apply to facilities complying with either the Tier III or adjusted Tier I controls, except where specified otherwise.
  - (i) General. Conformance with the Tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the Tier III or adjusted Tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.
  - (ii) Acceptable ambient levels. Appendices 44 and 45 of this Title list the acceptable ambient levels for purposes of this section. Reference air concentrations (RACs) are listed for the noncarcinogenic metals and 1-5 risk-specific doses (RSDs) are listed for the carcinogenic metals. The RSD for a metal is the acceptable ambient level for that metal provided that only one of the four carcinogenic metals is emitted. If more than one carcinogenic metal is emitted, the acceptable ambient level for the carcinogenic metals is a fraction of the RSD as described in subparagraph (iii) of this paragraph.
  - (iii) Carcinogenic metals. For the carcinogenic metals, arsenic, cadmium, beryllium, and chromium, the sum of the ratios of the predicted maximum annual average off-site ground level concentrations (except that on-site concentrations must be considered if a person resides on site) to the risk-specific dose (RSD) for all carcinogenic metals emitted shall not exceed 1.0 as determined by the following equation:

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$$\text{Sum from } i = 1 \text{ to } n \text{ of } \frac{\text{Predicted Ambient Concentration}_{(i)}}{\text{Risk-Specific Dose}_{(i)}} < 1.0$$

where:

n = number of carcinogenic metals

- (iv) Noncarcinogenic metals. For the noncarcinogenic metals, the predicted maximum annual average off-site ground level concentration for each metal shall not exceed the reference air concentration (RAC).
  - (v) Multiple stacks. Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a Part 373 operating permit or interim status controls must conduct emissions testing (except that facilities complying with adjusted Tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.
  - (vi) Implementation. Under Tier III, the metals controls must be implemented by limiting feed rates of the individual metals to levels during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate averaging periods are the same as provided by clauses (2)(i)(‘a’), (‘b’) and (ii)(‘b’) of this subdivision. The feed rate of metals in each feedstream must be monitored to ensure that the feed rate limits for the feedstreams specified under subdivision (c) or (d) of this section are not exceeded.
- (5) Adjusted Tier I feed rate screening limits. The owner or operator may adjust the feed rate screening limits provided by Appendix 41 of this Title to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit for a metal is determined by back-calculating from the acceptable ambient levels provided by Appendices 44 and 45 of this Title using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit. The feed rate screening limits for carcinogenic metals are implemented as prescribed in subparagraph (2)(ii) of this subdivision.
- (6) Alternative implementation approaches.
- (i) The commissioner may approve on a case-by-case basis approaches to implement the Tier II or Tier III metals emission limits provided by paragraph (3) or (4) of this subdivision alternative to monitoring the feed rate of metals in each feedstream.
  - (ii) The emission limits provided by paragraph (4) of this subdivision must be determined as follows:
    - (‘a’) for each noncarcinogenic metal, by back-calculating from the RAC provided in Appendix 44 of this Title to determine the allowable emission rate for each metal using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with paragraph (8) of this subdivision; and
    - (‘b’) for each carcinogenic metal by:

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- (1') back-calculating from the RSD provided in Appendix 45 of this Title to determine the allowable emission rate for each metal if that metal were the only carcinogenic metal emitted using the dilution factor for the maximum annual average ground level concentration predicted by dispersion modeling in conformance with paragraph (8) of this subdivision; and
- (2') if more than one carcinogenic metal is emitted, selecting an emission limit for each carcinogenic metal not to exceed the emission rate determined by subclause ('1') of this clause such that the sum for all carcinogenic metals of the ratios of the selected emission limit to the emission rate determined by that clause does not exceed 1.0.

(7) Emission testing.

- (i) General. Emission testing for metals shall be conducted using Method 0060, Determinations of Metals in Stack Emissions, EPA Publication SW-846, as incorporated by reference in section 370.1(e) of this Title.
- (ii) Hexavalent chromium. Emissions of chromium are assumed to be hexavalent chromium unless the owner or operator conducts emissions testing to determine hexavalent chromium emissions using procedures prescribed in Method 0061, Determination of Hexavalent Chromium Emissions from Stationary Sources, EPA Publication SW-846, as incorporated by reference in section 370.1(e) of this Title.

(8) Dispersion modeling. Dispersion modeling required under this subdivision shall be conducted according to methods recommended in "Guideline on Air Quality Models (revised)" (appendix W of 40 CFR part 51, as incorporated by reference in section 370.1(e) of this Title, the "Hazardous Waste Combustion Air Quality Screening Procedure" described in Appendix 49 of this Title, or "EPA SCREEN Screening Procedure" as described in "Procedures for Estimating the Air Quality Impact of Stationary Sources" (see section 370.1(e) of this Title) to predict the maximum annual average off-site ground level concentration. However, on-site concentrations must be considered when a person resides on-site.

(9) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under subdivision (c) of this section) will be regarded as compliance with this subdivision. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this subdivision may be information justifying modification or revocation and reissuance of a permit under section 373-1.7(b) of this Title.

**(h) Standards to control hydrogen chloride (HCl) and chlorine gas (Cl<sub>2</sub>) emissions.**

- (1) General. The owner or operator must comply with the hydrogen chloride (HCl) and chlorine (Cl<sub>2</sub>) controls provided by paragraph (2), (3) or (5) of this subdivision.
- (2) Screening limits.
  - (i) Tier I feed rate screening limits. Feed rate screening limits are specified for total chlorine in Appendix 42 of this Title as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feedstreams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the levels specified.
  - (ii) Tier II emission rate screening limits. Emission rate screening limits for HCl and Cl<sub>2</sub> are specified in Appendix 43 of this Title as a function of terrain-adjusted effective stack height

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and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and Cl<sub>2</sub> shall not exceed the levels specified.

- (iii) Definitions and limitations. The definitions and limitations provided by paragraph (g)(2) of this section for the following terms also apply to the screening limits provided by this paragraph: terrain-adjusted effective stack height, good engineering practice stack height, terrain type, land use, and criteria for facilities not eligible to use the screening limits.
- (iv) Multiple stacks. Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl<sub>2</sub> emissions under a Part 373 operating permit or interim status controls must comply with the Tier I and Tier II screening limits for those stacks, assuming all hazardous waste is fed into the device with the worst-case stack based on dispersion characteristics.
  - ('a') The worst-case stack is determined by procedures provided in subparagraph (g)(2)(vi) of this section.
  - ('b') Under Tier I, the total feed rate of chlorine and chloride to all subject devices shall not exceed the screening limit for the worst-case stack.
  - ('c') Under Tier II, the total emissions of HCl and Cl<sub>2</sub> from all subject stacks shall not exceed the screening limit for the worst-case stack.
- (3) Tier III site-specific risk assessments.
  - (i) General. Conformance with the Tier III controls must be demonstrated by emissions testing to determine the emission rate for HCl and Cl<sub>2</sub>, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.
  - (ii) Acceptable ambient levels. Appendix 44 of this Title lists the reference air concentrations (RACs) for HCl (seven micrograms per cubic meter) and Cl<sub>2</sub> (0.4 micrograms per cubic meter).
  - (iii) Multiple stacks. Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on HCl or Cl<sub>2</sub> emissions under a Part 373 operating permit or interim status controls must conduct emissions testing and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels for HCl and Cl<sub>2</sub>.
- (4) Averaging periods. The HCl and Cl<sub>2</sub> controls are implemented by limiting the feed rate of total chlorine and chloride in all feedstreams, including hazardous waste, fuels, and industrial furnace feed stocks. Under Tier I, the feed rate of total chloride and chlorine is limited to the Tier I Screening Limits. Under Tier II and Tier III, the feed rate of total chloride and chlorine is limited to the feed rates during the trial burn (for new facilities or an interim status facility applying for a permit) or the compliance test (for interim status facilities). The feed rate limits are based on either:
  - (i) an hourly rolling average as defined in subparagraph (c)(5)(vi) of this section; or
  - (ii) an instantaneous basis not to be exceeded at any time.
- (5) Adjusted Tier I feed rate screening limits. The owner or operator may adjust the feed rate screening limit provided by Appendix 42 of this Title to account for site-specific dispersion modeling. Under this approach, the adjusted feed rate screening limit is determined by back-calculating from the acceptable ambient level for Cl<sub>2</sub> provided by Appendix 44 of this Title using dispersion modeling to determine the maximum allowable emission rate. This emission rate becomes the adjusted Tier I feed rate screening limit.

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- (6) Emissions testing. Emissions testing for HCl and Cl<sub>2</sub> shall be conducted using the procedures described in Method 0050 or 0051, EPA Publication SW-846, as incorporated by reference in section 370.1(e) of this Title.
- (7) Dispersion modeling. Dispersion modeling shall be conducted according to the provisions of paragraph (g)(8) of this section.
- (8) Enforcement. For the purposes of permit enforcement, compliance with the operating requirements specified in the permit (under subdivision (c) of this section) will be regarded as compliance with this subdivision. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of this subdivision may be information justifying modification or revocation and reissuance of a permit under section 373-1.7(b) of this Title.

**(i) Small quantity on-site burner exemption.**

- (1) Exempt quantities. Owners and operators of facilities that burn hazardous waste in an on-site boiler or industrial furnace are exempt from the requirements of this section provided that:
  - (i) the quantity of hazardous waste burned in a device for a calendar month does not exceed the limits provided in the following table based on the terrain-adjusted effective stack height as defined in subparagraph (g)(2)(iii) of this section:

**Exempt Quantities for Small Quantity Burner Exemption**

<i>Terrain-adjusted effective stack height of device (meters)</i>	<i>Allowable hazardous waste burning rate (gallons/month)</i>
0 to 3.9	0
4.0 to 5.9	13
6.0 to 7.9	18
8.0 to 9.9	27
10.0 to 11.9	40
12.0 to 13.9	48
14.0 to 15.9	59
16.0 to 17.9	69
18.0 to 19.9	76
20.0 to 21.9	84
22.0 to 23.9	93
24.0 to 25.9	100
26.0 to 27.9	110
28.0 to 29.9	130
30.0 to 34.9	140
35.0 to 39.9	170
40.0 to 44.9	210
45.0 to 49.9	260
50.0 to 54.9	330
55.0 to 59.9	400
60.0 to 64.9	490
65.0 to 69.9	610
70.0 to 74.9	680
75.0 to 79.9	760
80.0 to 84.9	850
85.0 to 89.9	960
90.0 to 94.9	1,100
95.0 to 99.9	1,200
100.0 to 104.9	1,300
105.0 to 109.9	1,500
110.0 to 114.9	1,700
115.0 or greater	1,900

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- (ii) the maximum hazardous waste firing rate does not exceed, at any time, one percent of the total fuel requirements for the device (hazardous waste plus other fuel) on a total heat input or mass input basis, whichever results in the lower mass feed rate of hazardous waste;
  - (iii) the hazardous waste has a minimum heating value of 5,000 Btu/lb, as generated; and
  - (iv) the hazardous waste fuel does not contain (and is not derived from) EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027.
- (2) Mixing with nonhazardous fuels. If hazardous waste fuel is mixed with a non-hazardous fuel, the quantity of hazardous waste before such mixing is used to comply with paragraph (1) of this subdivision.
- (3) Multiple stacks. If an owner or operator burns hazardous waste in more than one on-site boiler or industrial furnace exempt under this subdivision, the quantity limits provided by subparagraph (1)(i) of this subdivision are implemented according to the following equation:

$$\text{Sum from } i = 1 \text{ to } n \text{ of } \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} < 1.0$$

where:

n means the number of stacks;

Actual Quantity Burned means the waste quantity burned per month in device “i.”

Allowable Quantity Burned means the maximum allowable exempt quantity for stack “i” from the table in subparagraph (1)(i) of this subdivision.

Hazardous wastes that are subject to the special requirements for small quantity generators under subdivision 371.1(f) of this Title may be burned in an off-site device under the exemption provided by this subdivision, but must be included in the quantity determination for the exemption.

- (4) Notification requirements. The owner or operator of facilities qualifying for the small quantity burner exemption under this subdivision must provide a one-time signed, written notice to the Department indicating the following:
- (i) the combustion unit is operating as a small quantity burner of hazardous waste;
  - (ii) the owner and operator are in compliance with the requirements of this subdivision; and
  - (iii) the maximum quantity of hazardous waste that the facility may burn per month as provided by subparagraph (1)(i) of this subdivision.
- (5) Recordkeeping requirements. The owner or operator must maintain at the facility for at least three years sufficient records documenting compliance with the hazardous waste quantity, firing rate, and heating value limits of this subdivision. At a minimum, these records must indicate the quantity of hazardous waste and other fuel burned in each unit per calendar month, and the heating value of the hazardous waste.

**(j) Low risk waste exemption.**

- (1) Waiver of DRE standard. The DRE standard of paragraph (e)(1) of this section does not apply if the boiler or industrial furnace is operated in conformance with subparagraph (i) of this paragraph and

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the owner or operator demonstrates by procedures prescribed in subparagraph (ii) of this paragraph that the burning will not result in unacceptable adverse health effects.

- (i) The device shall be operated as follows:
  - ('a') a minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the commissioner on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed primary fuel for purposes of this subdivision. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;
  - ('b') primary fuels and hazardous waste fuels shall have a minimum as-fired heating value of 8,000 Btu/lb;
  - ('c') the hazardous waste is fired directly into the primary fuel flame zone of the combustion chamber; and
  - ('d') the device operates in conformance with the carbon monoxide controls provided by subparagraph (e)(2)(i) of this section. Devices subject to the exemption provided by this subdivision are not eligible for the alternative carbon monoxide controls provided by paragraph (e)(3) of this section.
- (ii) Procedures to demonstrate that the hazardous waste burning will not pose unacceptable adverse public health effects are as follows:
  - ('a') identify and quantify those nonmetal compounds listed in Appendix 23 of this Title (see Part 371 of this Title) that could reasonably be expected to be present in the hazardous waste. The constituents excluded from analysis must be identified and the basis for their exclusion explained;
  - ('b') calculate reasonable, worst case emission rates for each constituent identified in clause ('a') of this subparagraph by assuming the device achieves 99.9 percent destruction and removal efficiency. That is, assume that 0.1 percent of the mass weight of each constituent fed to the device is emitted;
  - ('c') for each constituent identified in clause ('a') of this subparagraph, use emissions dispersion modeling to predict the maximum annual average ground level concentration of the constituent.
    - ('1') Dispersion modeling shall be conducted using methods specified in paragraph (g)(8) of this section.
    - ('2') Owners and operators of facilities with more than one on-site stack from a boiler or industrial furnace that is exempt under this subdivision must conduct dispersion modeling of emissions from all stacks exempt under this subdivision to predict ambient levels prescribed by this paragraph.
  - ('d') Ground level concentrations of constituents predicted under clause ('c') of this subparagraph must not exceed the following levels:
    - ('1') or the noncarcinogenic compounds listed in Appendix 44 of this Title, the levels established in Appendix 44 of this Title;
    - ('2') for the carcinogenic compounds listed in Appendix 45 of this Title, the sum for all constituents of the ratios of the actual ground level concentration to the level established in Appendix 45 of this Title cannot exceed 1.0; and

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(3) for constituents not listed in Appendix 44 or 45 of this Title, 0.1 micrograms per cubic meter.

- (2) Waiver of particulate matter standard. The particulate matter standard of subdivision (f) of this section does not apply if:
- (i) the DRE standard is waived under paragraph (1) of this subdivision; and
  - (ii) the owner or operator complies with the Tier I or adjusted Tier I metals feed rate screening limits provided by paragraph (g)(2) or (5) of this section.

#### **(k) Waiver of DRE trial burn for boilers.**

Boilers that operate under the special requirements of this subdivision, and that do not burn hazardous waste containing (or derived from) EPA hazardous waste numbers F020, F021, F022, F023, F026, or F027, are considered to be in conformance with the DRE standard of paragraph (e)(1) of this section, and a trial burn to demonstrate DRE is waived. When burning hazardous waste:

- (1) a minimum of 50 percent of fuel fired to the device shall be fossil fuel, fuels derived from fossil fuel, tall oil, or, if approved by the commissioner on a case-by-case basis, other nonhazardous fuel with combustion characteristics comparable to fossil fuel. Such fuels are termed primary fuel for purposes of this subdivision. (Tall oil is a fuel derived from vegetable and rosin fatty acids.) The 50 percent primary fuel firing rate shall be determined on a total heat or mass input basis, whichever results in the greater mass feed rate of primary fuel fired;
- (2) boiler load shall not be less than 40 percent. Boiler load is the ratio at any time of the total heat input to the maximum design heat input;
- (3) primary fuels and hazardous waste fuels shall have a minimum as-fired heating value of 8,000 Btu/lb, and each material fired in a burner where hazardous waste is fired must have a heating value of at least 8,000 Btu/lb, as fired;
- (4) the device shall operate in conformance with the carbon monoxide standard provided by subparagraph (e)(2)(i) of this section. Boilers subject to the waiver of the DRE trial burn provided by this subdivision are not eligible for the alternative carbon monoxide standard provided by paragraph (e)(3) of this section;
- (5) the boiler must be a water tube type boiler that does not feed fuel using a stoker or stoker type mechanism; and
- (6) the hazardous waste shall be fired directly into the primary fuel flame zone of the combustion chamber with an air or steam atomization firing system, mechanical atomization system, or a rotary cup atomization system under the following conditions:
  - (i) viscosity. The viscosity of the hazardous waste fuel as-fired shall not exceed 300 SSU;
  - (ii) particle size. When a high pressure air or steam atomizer, low pressure atomizer, or mechanical atomizer is used, 70 percent of the hazardous waste fuel must pass through a 200 mesh (74 micron) screen, and when a rotary cup atomizer is used, 70 percent of the hazardous waste must pass through a 100 mesh (150 micron) screen;
  - (iii) mechanical atomization systems. Fuel pressure within a mechanical atomization system and fuel flow rate shall be maintained within the design range taking into account the viscosity and volatility of the fuel;
  - (iv) rotary cup atomization systems. Fuel flow rate through a rotary cup atomization system must be maintained within the design range taking into account the viscosity and volatility of the fuel.

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### (l) Standards for direct transfer.

- (1) Applicability. The regulations in this subdivision apply to owners and operators of boilers and industrial furnaces subject to subdivision (c) or (d) of this section if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.
- (2) Definitions.
  - (i) When used in this subdivision, the following terms have the meanings given below:
    - ('a') **Direct transfer equipment** means any device (including but not limited to, such devices as piping, fittings, flanges, valves, and pumps) that is used to distribute, meter, or control the flow of hazardous waste between a container (i.e., transport vehicle) and a boiler or industrial furnace.
    - ('b') **Container** means any portable device in which hazardous waste is transported, stored, treated, or otherwise handled, and includes transport vehicles that are containers themselves (e.g., tank trucks, tanker-trailers, and rail tank cars), and containers placed on or in a transport vehicle.
  - (ii) This subdivision references several requirements provided in sections 373-2.9, 373-2.10, 373-3.9 and 373-3.10 of this Title. For purposes of this subdivision, the term **tank systems** in those referenced requirements means direct transfer equipment as defined in subparagraph (i) of this paragraph.
- (3) General operating requirements.
  - (i) No direct transfer of a pumpable hazardous waste shall be conducted from an open-top container to a boiler or industrial furnace.
  - (ii) Direct transfer equipment used for pumpable hazardous waste shall always be closed, except when necessary to add or remove the waste, and shall not be opened, handled, or stored in a manner that may cause any rupture or leak.
  - (iii) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not:
    - ('a') generate extreme heat or pressure, fire, explosion, or violent reaction;
    - ('b') produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;
    - ('c') produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
    - ('d') damage the structural integrity of the container or direct transfer equipment containing the waste;
    - ('e') adversely affect the capability of the boiler or industrial furnace to meet the standards provided by subdivisions (e) through (h) of this section; or
    - ('f') threaten human health or the environment.
  - (iv) Hazardous waste shall not be placed in direct transfer equipment if it could cause the equipment or its secondary containment system to rupture, leak, corrode, or otherwise fail.
  - (v) The owner or operator of the facility shall use appropriate controls and practices to prevent spills and overflows from the direct transfer equipment or its secondary containment systems. These include, at a minimum:
    - ('a') spill prevention controls (e.g., check valves, dry discount couplings); and
    - ('b') automatic waste feed cutoff to use if a leak or spill occurs from the direct transfer equipment.

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- (4) Areas where direct transfer vehicles (containers) are located. Applying the definition of container under this subdivision, owners and operators must comply with the following requirements:
- (i) the containment requirements of section 373-2.9(f) of this Title;
  - (ii) the use and management requirements of section 373-3.9 of this Title, except for subdivisions (a) and (e) of such section, and except that in lieu of the special requirements of section 373-3.9(f) of this Title for ignitable or reactive waste, the owner or operator may comply with the requirements for the maintenance of protective distances between the waste management area and any public ways, streets, alleys, or an adjacent property line that can be built upon as required in Tables 2-1 through 2-6 of the National Fire Protection Association's (NFPA) "Flammable and Combustible Liquids Code," (see section 370.1(e) of this Title). The owner or operator must obtain and keep on file at the facility a written certification by the local fire marshal that the installation meets the subject NFPA codes; and
  - (iii) the closure requirements of section 373-2.9(i) of this Title.
- (5) Direct transfer equipment. Direct transfer equipment must meet the following requirements:
- (i) Secondary containment. Owners and operators shall comply with the secondary containment requirements of section 373-3.10(d) of this Title, except for paragraphs (d)(1), (4), (5) and (9) of such section.
  - (ii) Reserved.
  - (iii) Inspections and recordkeeping.
    - ('a') The owner or operator must inspect at least once each operating hour when hazardous waste is being transferred from the transport vehicle (container) to the boiler or industrial furnace:
      - ('1') overflow/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;
      - ('2') the above ground portions of the direct transfer equipment to detect corrosion, erosion, or releases of waste (e.g., wet spots, dead vegetation); and
      - ('3') data gathered from monitoring equipment and leak-detection equipment, (e.g., pressure and temperature gauges) to ensure that the direct transfer equipment is being operated according to its design.
    - ('b') The owner or operator must inspect cathodic protection systems, if used, to ensure that they are functioning properly according to the schedule provided by section 373 3.10(f)(2) of this Title.
    - ('c') Records of inspections made under this subparagraph shall be maintained in the operating record at the facility, and available for inspection for at least three years from the date of the inspection.
  - (iv) Design and installation of new ancillary equipment. Owners and operators must comply with the requirements of section 373-3.10(c) of this Title.
  - (v) Response to leaks or spills. Owners and operators must comply with the requirements of section 373-3.10(g) of this Title.
  - (vi) Closure. Owners and operators must comply with the requirements of section 373-3.10(h) of this Title, except for subparagraphs (3)(ii) through (iv) of such section.

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#### (m) Regulation of residues.

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under section 371.1(e)(2)(iv), (vi) or (vii) of this Title unless the device and the owner or operator meet the following requirements:

- (1) the device meets the following criteria:
  - (i) boilers. Boilers must burn at least 50 percent coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;
  - (ii) ore or mineral furnaces. Industrial furnaces subject, to section 371.1(e)(2)(vi) of this Title must process at least 50 percent by weight normal, non-hazardous raw materials;
  - (iii) cement kilns. Cement kilns must process at least 50 percent by weight normal cement-production raw materials;
- (2) the owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:
  - (i) comparison of waste-derived residue with normal residue. The waste-derived residue must not contain Appendix 23 of this Title (see Part 371 of this Title) constituents (toxic constituents) that could reasonably be attributable to the hazardous waste at concentrations significantly higher than in residue generated without burning or processing of hazardous waste, using the following procedure. Toxic compounds that could reasonably be attributable to burning or processing the hazardous waste (constituents of concern) include toxic constituents in the hazardous waste, and the organic compounds listed in Appendix 48 of this Title that may be generated as products of incomplete combustion. For polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, analyses must be performed to determine specific congeners and homologues, and the results converted to 2,3,7,8-TCDD equivalent values using the procedure specified in section 4.0 of 40 CFR Part 266 Appendix IX as incorporated by reference in Appendix 49 of this Title.
    - ('a') normal residue. Concentrations of toxic constituents of concern in normal residue shall be determined based on analyses of a minimum of 10 samples representing a minimum of 10 days of operation. Composite samples may be used to develop a sample for analysis provided that the compositing period does not exceed 24 hours. The upper tolerance limit (at 95 percent confidence with a 95 percent proportion of the sample distribution) of the concentration in the normal residue shall be considered the statistically-derived concentration in the normal residue. If changes in raw materials or fuels reduce the statistically-derived concentrations of the toxic constituents of concern in the normal residue, the statistically-derived concentrations must be revised or statistically-derived concentrations of toxic constituents in normal residue must be established for a new mode of operation with the new raw material or fuel. To determine the upper tolerance limit in the normal residue, the owner or operator shall use statistical procedures prescribed in "Statistical Methodology for Beville Residue Determinations" in Appendix 49 of this Title;
    - ('b') waste-derived residue. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has concentrations of toxic constituents that are higher than the concentrations established for the normal residue under clause ('a') of this subparagraph. If so, hazardous waste burning has significantly affected the residue and the residue shall not be excluded from

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the definition of a hazardous waste. Concentrations of toxic constituents of concern in the waste derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; or

- (ii) comparison of waste-derived residue concentrations with health-based limits;
  - ('a') nonmetal constituents. The concentration of each nonmetal toxic constituent of concern (specified in subparagraph (i) of this paragraph) in the waste-derived residue must not exceed the health-based level specified in Appendix 47 of this Title, or the level of detection, whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix 47 of this Title, then a limit of 0.002 micrograms per kilogram or the level of detection, whichever is higher, must be used. The concentration of each non-metal toxic constituent of concern and the level of detection must be established through the use of 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. The levels specified in Appendix 47 of this Title (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in Note 1 of Appendix 47 of this Title) are administratively stayed under the condition, for those constituents specified in subparagraph (i) of this paragraph, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in section 376.4(d) of this Title for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-faith efforts as defined by applicable EPA guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by section 376.4(d) of this Title for F039 nonwastewaters. In complying with the section 376.4(d) of this Title F039 nonwastewater levels for polychlorinated dibenzo-p-dioxins and polychlorinated dibenzo-furans, (unless the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in section 376.4(d) of this Title for F039 nonwastewaters,) analyses must be performed for total hexachlorodibenzo-p-dioxins, total hexachlorodibenzofurans, total pentachlorodibenzo-p-dioxins, total pentachlorodibenzofurans, total tetrachlorodibenzo-p-dioxins, and total tetrachlorodibenzofurans; and
  - ('b') metal constituents. The concentration of metals in an extract obtained using the Toxicity Characteristic Leaching Procedure of section 371.3(e) of this Title must not exceed the levels specified in Appendix 47 of this Title; and
  - ('c') sampling and analysis. Waste-derived residue shall be sampled and analyzed as often as necessary to determine whether the residue generated during each 24-hour period has

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concentrations of toxic constituents that are higher than the health-based levels. Concentrations of toxic constituents of concern in the waste-derived residue shall be determined based on analysis of one or more samples obtained over a 24-hour period. Multiple samples may be analyzed, and multiple samples may be taken to form a composite sample for analysis provided that the sampling period does not exceed 24 hours. If more than one sample is analyzed to characterize waste-derived residues generated over a 24-hour period, the concentration of each toxic constituent shall be the arithmetic mean of the concentrations in the samples. No results may be disregarded; and

- (3) records sufficient to document compliance with the provisions of this subdivision shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded:
  - (i) levels of constituents in Appendix 23 of this Title that are present in waste-derived residues;
  - (ii) if the waste-derived residue is compared with normal residue under subparagraph (2)(i) of this subdivision:
    - ('a') the levels of constituents in Appendix 23 of this Title that are present in normal residues; and
    - ('b') data and information, including analyses of samples as necessary, obtained to determine if changes in raw materials or fuels would reduce the concentration of toxic constituents of concern in the normal residue.

### Section 374-1.9 Conditional exemption for Low-level mixed waste storage, treatment, transportation and disposal.

#### (a) Terms.

- (1) What definitions apply to this section? This section uses the following special definitions:
  - (i) **Agreement state** means a state, such as New York State, that has entered into an agreement with the NRC under subsection 274b of the Atomic Energy Act of 1954, as amended (68 Stat. 919), as incorporated by reference in section 370.1(e)(7) of this Title, to assume responsibility for regulating within its borders byproduct, source, or special nuclear material in quantities not sufficient to form a critical mass.
  - (ii) **Certified delivery** means certified mail with return receipt requested, or equivalent courier service, or other means, that provides the sender with a receipt confirming delivery.
  - (iii) **Department** refers to the definition in section 370.2(b) of this Title.
  - (iv) **Eligible naturally occurring and/or accelerator-produced radioactive material (NARM)** is NARM that is eligible for the transportation and disposal conditional exemption. It is a NARM waste that contains RCRA hazardous waste, meets the waste acceptance criteria of, and is allowed by State NARM regulations to be disposed of at a low-level radioactive waste disposal facility (LLRWDF) licensed in accordance with 10 CFR part 61 or NRC agreement state equivalent regulations.
  - (v) **Exempted waste** means a waste that meets the eligibility criteria in paragraph (b)(2) of this section and meets all of the conditions in paragraph (b)(3) of this section, or meets the eligibility criteria in paragraph (i)(1) of this section and complies with all the conditions in paragraph (j)(1) of this section. Such waste is conditionally exempted from the regulatory definition of hazardous waste described in section 371.1(d) of this Title.

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- (vi) **Hazardous waste** means any material which is defined to be hazardous waste in accordance with section 371.1(d) of this Title, "Definition of hazardous waste."
- (vii) **Land disposal restriction (LDR) treatment standards** means treatment standards, under Part 376 of this Title, that a RCRA hazardous waste must meet before it can be disposed of in a RCRA hazardous waste land disposal unit.
- (viii) **License** means a license as defined in section 380-2.1 of this Title.
- (ix) **Low-level mixed waste (LLMW)** is a waste that contains both low-level radioactive waste and RCRA hazardous waste.
- (x) **Low-level radioactive waste (LLW)** is a radioactive waste which contains source, special nuclear, or byproduct material, and which is not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material as defined in section 11e(2) of the Atomic Energy Act. (See also definition in section 382.2 of this Title.)
- (xi) **Mixed waste** means a waste that contains both RCRA hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954, as amended.
- (xii) **Naturally occurring and/or accelerator-produced radioactive material (NARM)** means radioactive materials that:
  - ('a') are naturally occurring and are not source, special nuclear, or byproduct materials (as defined by the AEA); or
  - ('b') are produced by an accelerator. NARM is regulated in New York State under State law, or by DOE (as authorized by the AEA) under DOE orders.
- (xiii) **NRC** means the U. S. Nuclear Regulatory Commission.
- (xiv) **We** or **us** within this section, means the department as defined in section 370.2(b) of this Title.
- (xv) **You** means a generator, treater, or other handler of low-level mixed waste or eligible NARM.

#### (b) Storage and treatment conditional exemption and eligibility.

- (1) What does a storage and treatment conditional exemption do? The storage and treatment conditional exemption exempts your low-level mixed waste from the regulatory definition of hazardous waste in section 371.1(d) of this Title if your waste meets the eligibility criteria in paragraph (2) of this subdivision and you meet the conditions in paragraph (3) of this subdivision.
- (2) What wastes are eligible for the storage and treatment conditional exemption? Low-level mixed waste (LLMW), defined in paragraph (a)(1) of this section, is eligible for this conditional exemption if it is generated and managed by you under a single license. (Mixed waste generated at a facility with a different license number and shipped to your facility for storage or treatment requires a permit and is ineligible for this exemption. In addition, NARM waste is ineligible for this exemption.)
- (3) What conditions must you meet for your LLMW to qualify for and maintain a storage and treatment exemption?
  - (i) For your LLMW to qualify for the exemption you must notify us in writing by certified delivery that you are claiming a conditional exemption for the LLMW stored on your facility. The dated notification must include your name, address, RCRA identification number, license number, the waste code(s) and storage unit(s) for which you are seeking an exemption, and a statement that you meet the conditions of this section. Your notification must be signed by your authorized representative who certifies that the information in the notification is true, accurate, and complete. You must notify us of your claim either within 90 days of the

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effective date of this rule, or within 90 days of when a storage unit is first used to store conditionally exempt LLMW.

- (ii) To qualify for and maintain an exemption for your LLMW you must:
  - ('a') store your LLMW waste in tanks or containers in compliance with the requirements of your license that apply to the proper storage of low-level radioactive waste (not including those license requirements that relate solely to recordkeeping);
  - ('b') store your LLMW in tanks or containers in compliance with chemical compatibility requirements of a tank or container in section 373-2.9(h), or 373-2.10(j), or 373-3.9(g), or 373-3.10(j) of this Title;
  - ('c') certify that facility personnel who manage stored conditionally exempt LLMW are trained in a manner that ensures that the conditionally exempt waste is safely managed and includes training in chemical waste management and hazardous materials incidents response that meets the personnel training standards found in section 373-3.2(g)(1)(iii) of this Title;
  - ('d') conduct an inventory of your stored conditionally exempt LLMW at least annually and inspect it at least quarterly for compliance with this section; and
  - ('e') maintain an accurate emergency plan and provide it to all local authorities who may have to respond to a fire, explosion, or release of hazardous waste or hazardous constituents. Your plan must describe emergency response arrangements with local authorities; describe evacuation plans; list the names, addresses, and telephone numbers of all facility personnel qualified to work with local authorities as emergency coordinators; and list emergency equipment.

#### (c) Treatment.

- (1) What waste treatment does the storage and treatment conditional exemption allow? You may treat your low-level mixed waste at your facility within a tank or container in accordance with the terms of your license. Treatment that cannot be done in a tank or container without a RCRA permit (such as incineration) is not allowed under this exemption.

#### (d) Loss of conditional exemption.

- (1) How could you lose the conditional exemption for your LLMW and what action must you take?
  - (i) Your LLMW will automatically lose the storage and treatment conditional exemption if you fail to meet any of the conditions specified in paragraph (b)(3) of this section. When your LLMW loses the exemption, you must immediately manage that waste which failed the condition as RCRA hazardous waste, and the storage unit storing the LLMW immediately becomes subject to RCRA hazardous waste container and/or tank storage requirements.
    - ('a') If you fail to meet any of the conditions specified in paragraph (b)(3) of this section you must report to us and the agency who issued your license, in writing by certified delivery within 30 days of learning of the failure. Your report must be signed by your authorized representative certifying that the information provided is true, accurate, and complete. This report must include:
      - ('1') the specific condition(s) you failed to meet;
      - ('2') a description of the LLMW (including the waste name, hazardous waste codes and quantity) and storage location at the facility; and
      - ('3') the date(s) on which you failed to meet the condition(s).

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- (b) If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify us orally within 24 hours and follow up with a written notification within five days. Failures that may endanger human health or the environment include, but are not limited to, discharge of a CERCLA reportable quantity or other leaking or exploding tanks or containers, or detection of radionuclides above background or hazardous constituents in the leachate collection system of a storage area. If the failure may endanger human health or the environment, you must follow the provisions of your emergency plan.
  - (ii) We may terminate your conditional exemption for your LLMW, or require you to meet additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement(s) of this section.
- (2) If you lose the storage and treatment conditional exemption for your LLMW, can the exemption be reclaimed?
- (i) You may reclaim the storage and treatment exemption for your LLMW if:
    - (a) you again meet the conditions specified in paragraph (b)(3) of this section; and
    - (b) you send us a notice by certified delivery that you are reclaiming the exemption for your LLMW. Your notice must be signed by your authorized representative certifying that the information contained in your notice is true, complete, and accurate. In your notice you must do the following:
      - (1) explain the circumstances of each failure;
      - (2) certify that you have corrected each failure that caused you to lose the exemption for your LLMW and that you again meet all the conditions as of the date you specify;
      - (3) describe plans that you have implemented, listing specific steps you have taken, to ensure the conditions will be met in the future; and
      - (4) include any other information you want us to consider when we review your notice reclaiming the exemption.
  - (ii) We may terminate a reclaimed conditional exemption if we find that your claim is inappropriate based on factors including, but not limited to, the following: you have failed to correct the problem; you explained the circumstances of the failure unsatisfactorily; or you failed to implement a plan with steps to prevent another failure to meet the conditions of paragraph (b)(3) of this section. In reviewing a reclaimed conditional exemption under this section, we may add conditions to the exemption to ensure that waste management during storage and treatment of the LLMW will protect human health and the environment.

**(e) Recordkeeping.**

- (1) What records must you keep at your facility and for how long?
  - (i) In addition to those records required by your license, you must keep records as follows:
    - (a) your initial notification records, return receipts, reports to us of failure(s) to meet the exemption conditions, and all records supporting any reclaim of an exemption;
    - (b) records of your LLMW annual inventories, and quarterly inspections;
    - (c) your certification that facility personnel who manage stored mixed waste are trained in safe management of LLMW including training in chemical waste management and hazardous materials incidents response; and
    - (d) your emergency plan as specified in subparagraph (b)(3)(ii) of this section.

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- (ii) You must maintain records concerning notification, personnel trained, and your emergency plan for as long as you claim this exemption and for three years thereafter, or in accordance with NRC regulations under 10 CFR part 20 (as incorporated by reference in section 380-1.6(a) of this Title), or applicable regulations in 10 NYCRR Part 16, 12 NYCRR Part 38, and article 175 of the New York City Health Code (as incorporated by reference in section 380-1.6(a) of this Title); whichever is longer. You must maintain records concerning your annual inventory and quarterly inspections for three years after the waste is sent for disposal, or in accordance with NRC regulations under 10 CFR part 20 (as incorporated by reference in section 380-1.6(a) of this Title), or applicable regulations in 10 NYCRR Part 16, 12 NYCRR Part 38, and article 175 of the New York City Health Code (as incorporated by reference in section 380-1.6(a) of this Title), whichever is longer.

#### **(f) Reentry into RCRA.**

- (1) When is your LLMW no longer eligible for the storage and treatment conditional exemption?
  - (i) When your LLMW has met the requirements of your license for decay-in-storage and can be disposed of as non-radioactive waste, then the conditional exemption for storage no longer applies. On that date your waste is subject to hazardous waste regulation under the relevant sections of this Part and Parts 370 through 373 and 376 of this Title, and the time period for accumulation of a hazardous waste as specified in section 372.2(a)(8) of this Title begins.
  - (ii) When your conditionally exempt LLMW, which has been generated and stored under a single license number, is removed from storage, it is no longer eligible for the storage and treatment exemption. However, your waste may be eligible for the transportation and disposal conditional exemption at paragraph (h)(1) of this section.

#### **(g) Storage unit closure.**

- (1) Do closure requirements apply to units that stored LLMW prior to the effective date of this section? Interim status and permitted storage units that have been used to store only LLMW prior to the effective date of this section and, after that date, store only LLMW which becomes exempt under this section, are not subject to the closure requirements of Subparts 373-2 and 373-3 of this Title. Storage units (for portions of units) that have been used to store both LLMW and non-mixed hazardous waste prior to the effective date of this section or are used to store both after that date remain subject to closure requirements with respect to the non-mixed hazardous waste.

#### **(h) Transportation and disposal conditional exemption.**

- (1) What does the transportation and disposal condition exemption do? This conditional exemption exempts your waste from the regulatory definition of hazardous waste in section 371.1(d) of this Title if your waste meets the eligibility criteria under paragraph (i)(1) of this section, and you meet the conditions in paragraph (j)(1) of this section.

#### **(i) Eligibility.**

- (1) What wastes are eligible for the transportation and disposal conditional exemption? Eligible waste must be:
  - (i) a low-level mixed waste (LLMW), as defined in paragraph (a)(1) of this section, that meets the waste acceptance criteria of a LLRWDF; and/or
  - (ii) an eligible NARM waste, defined in paragraph (a)(1) of this section.

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### (j) Conditions.

- (1) What are the conditions you must meet for your waste to qualify for and maintain the transportation and disposal conditional exemption? You must meet the following conditions for your eligible waste to qualify for and maintain the exemption:
  - (i) The eligible waste must meet or be treated to meet LDR treatment standards as described in paragraph (2) of this subdivision.
  - (ii) If you are not already subject to Part 381 of this Title manifest and transportation regulations for the shipment of your waste, you must manifest and transport your waste according to Part 381 regulations of this Title as described in paragraph (3) of this subdivision.
  - (iii) The exempted waste must be in containers when it is disposed of in the LLRWDF as described in paragraph (6) of this subdivision.
  - (iv) The exempted waste must be disposed of at a designated LLRWDF as described in paragraph (5) of this subdivision.
- (2) What treatment standards must your eligible waste meet? Your LLMW or eligible NARM waste must meet Land Disposal Restriction (LDR) treatment standards specified in section 376.4 of this Title.
- (3) Are you subject to the manifest and transportation condition in subparagraph (1)(ii) of this subdivision? If you are not already subject to Part 381 of this Title manifest and transportation regulations for the shipment of your waste, you must meet the manifest requirements under section 381.12 of this Title, and the transportation requirements under section 381.11 of this Title to ship the exempted waste.
- (4) When does the transportation and disposal exemption take effect? The exemption becomes effective once all the following have occurred:
  - (i) your eligible waste meets the applicable LDR treatment standards;
  - (ii) you have received return receipts that you have notified us and the LLRWDF as described in paragraph (k)(1) of this section;
  - (iii) you have completed the packaging and preparation for shipment requirements for your waste according to packaging and transportation regulations found under section 381.11 of this Title; and
  - (iv) you have prepared a manifest for your waste according to manifest regulations found under section 381.12 of this Title; and
  - (v) you have placed your waste on a transportation vehicle destined for a LLRWDF licensed by NRC or an NRC agreement state.
- (5) Where must your exempted waste be disposed of? Your exempted waste must be disposed of in a LLRWDF that is regulated and licensed by NRC under 10 CFR part 61 or by an NRC agreement state under equivalent State regulations, including State NARM licensing regulations for eligible NARM.
- (6) What type of container must be used for disposal of exempted waste? Your exempted waste must be placed in containers before it is disposed. The container must be:
  - (i) a carbon steel drum;
  - (ii) an alternative container with equivalent containment performance in the disposal environment as a carbon steel drum; or
  - (iii) a high integrity container as defined by NRC.

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### **(k) Notification.**

- (1) Whom must you notify?
  - (i) You must provide a one time notice to us stating that you are claiming the transportation and disposal conditional exemption prior to the initial shipment of an exempted waste from your facility to a LLRWDF. Your dated written notice must include your facility name, address, phone number, and RCRA ID number, and be sent by certified delivery.
  - (ii) You must notify the LLRWDF receiving your exempted waste by certified delivery before shipment of each exempted waste. You can only ship the exempted waste after you have received the return receipt of your notice to the LLRWDF. This notification must include the following:
    - ('a') a statement that you have claimed the exemption for the waste;
    - ('b') a statement that the eligible waste meets applicable LDR treatment standards;
    - ('c') your facility's name, address, and RCRA ID number;
    - ('d') the RCRA hazardous waste codes prior to the exemption of the waste streams;
    - ('e') a statement that the exempted waste must be placed in a container according to paragraph (j)(6) of this section prior to disposal in order for the waste to remain exempt under the transportation and disposal conditional exemption of this section;
    - ('f') the manifest number of the shipment that will contain the exempted waste; and
    - ('g') a certification that all the information provided is true, complete, and accurate. The statement must be signed by your authorized representative.

### **(l) Recordkeeping.**

- (1) What records must you keep at your facility and for how long? In addition to those records required by your license, you must keep records as follows:
  - (i) You must follow the applicable existing recordkeeping requirements under sections 373-2.5(c), 373-3.5(c), and 376.1(g) of this Title to demonstrate that your waste has met LDR treatment standards prior to your claiming the exemption.
  - (ii) You must keep a copy of all notifications and return receipts required under paragraphs (m)(1) and (2) of this section for three years after the exempted waste is sent for disposal.
  - (iii) You must keep a copy of all notifications and return receipts required under subparagraph (k)(1)(i) of this section for three years after the last exempted waste is sent for disposal.
  - (iv) You must keep a copy of the notification and return receipt required under subparagraph (k)(1)(ii) of this section for three years after the exempted waste is sent for disposal.
  - (v) If you are not already subject to Part 381 of this Title manifest and transportation regulations for the shipment of your waste, you must also keep all other documents related to tracking the exempted waste as required under section 381.12 of this Title, including applicable NARM requirements, in addition to the records specified in subparagraphs (i) through (iv) of this paragraph.

### **(m) Loss of transportation and disposal conditional exemption.**

- (1) How could you lose the transportation and disposal conditional exemption for your waste and what actions must you take?
  - (i) Any waste will automatically lose the transportation and disposal exemption if you fail to manage it in accordance with all of the conditions specified in paragraph (j)(1) of this section.

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- (a) When you fail to meet any of the conditions specified in paragraph (j)(1) of this section for any of your wastes, you must report to us, in writing by certified delivery, within 30 days of learning of the failure. Your report must be signed by your authorized representative certifying that the information provided is true, accurate, and complete. This report must include:
    - (1) the specific condition(s) that you failed to meet for the waste;
    - (2) a description of the waste (including the waste name, hazardous waste codes and quantity) that lost the exemption; and
    - (3) the date(s) on which you failed to meet the condition(s) for the waste.
  - (b) If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify us orally within 24 hours and follow up with a written notification within five days.
- (ii) We may terminate your ability to claim a conditional exemption for your waste, or require you to meet additional conditions to claim a conditional exemption, for serious or repeated noncompliance with any requirement(s) of this section.
- (2) If you lose the transportation and disposal conditional exemption for a waste, can the exemption be reclaimed?
- (i) You may reclaim the transportation and disposal exemption for a waste after you have received a return receipt confirming that we have received your notification of the loss of the exemption specified in subparagraph (1)(i) of this subdivision and if:
    - (a) you again meet the conditions specified in paragraph (j)(1) of this section for the waste; and
    - (b) you send a notice, by certified delivery, to us that you are reclaiming the exemption for the waste. Your notice must be signed by your authorized representative certifying that the information provided is true, accurate, and complete. The notice must:
      - (1) explain the circumstances of each failure;
      - (2) certify that each failure that caused you to lose the exemption for the waste has been corrected and that you again meet all conditions for the waste as of the date you specify;
      - (3) describe plans you have implemented, listing the specific steps that you have taken, to ensure that conditions will be met in the future; and
      - (4) include any other information you want us to consider when we review your notice reclaiming the exemption.
  - (ii) We may terminate a reclaimed conditional exemption if we find that your claim is inappropriate based on factors including, but not limited to: you have failed to correct the problem; you explained the circumstances of the failure unsatisfactorily; or you failed to implement a plan with steps to prevent another failure to meet the conditions of paragraph (j)(1) of this section. In reviewing a reclaimed conditional exemption under this section, we may add conditions to the exemption to ensure that transportation and disposal activities will protect human health and the environment.

**Section 374-1.10 (Reserved)**

**Section 374-1.11 (Reserved)**

**Section 374-1.12 (Reserved)**

**Section 374-1.13 Military munitions.****(a) Applicability.**

- (1) The regulations in this section identify when military munitions become a solid waste, and, if these wastes are also hazardous under this section or Part 371 of this Title, the management standards that apply to these wastes.
- (2) Unless otherwise specified in this section, all applicable requirements in Part 370 through Subpart 374-1 and Part 376 of this Title apply to waste military munitions.

**(b) Definitions.**

In addition to the definitions in section 370.2(b) of this Title, the following definitions apply to this section:

- (1) **Active range** means a military range that is currently in service and is being regularly used for range activities.
- (2) **Chemical agents and munitions** are defined as in 50 U.S.C. section 1521(j)(1), as incorporated by reference in section 370.1(e) of this Title.
- (3) **Director** is as defined in section 370.2(b) of this Title.
- (4) **Explosives or munitions emergency response specialist** is as defined in section 370.2(b) of this Title.
- (5) **Explosives or munitions emergency** is as defined in section 370.2(b) of this Title
- (6) **Explosives or munitions emergency response** is as defined in section 370.2(b) of this Title.
- (7) **Inactive range** means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.
- (8) **Military** means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.
- (9) **Military munitions** is as defined in section 370.2(b) of this Title.
- (10) **Military range** means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.
- (11) **Unexploded ordnance (UXO)** means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

**(c) Definition of solid waste.**

- (1) A military munition is not a solid waste when:
  - (i) Used for its intended purpose, including:
    - (a') use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions); or

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- (b) use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or
  - (c) recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. However, “use for intended purpose” does not include the on-range disposal or burial of unexploded ordnance and contaminants when the burial is not a result of product use.
- (ii) An unused munition, or component thereof, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal as defined in section 371.1(c)(4)(i) of this Title, or burning for energy recovery as defined in section 371.1(c)(4)(ii) of this Title.
- (2) An unused military munition is a solid waste when any of the following occurs:
    - (i) the munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in paragraph (1) of this subdivision), incinerated, or treated prior to disposal;
    - (ii) the munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal;
    - (iii) the munition is deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or
    - (iv) the munition has been declared a solid waste by an authorized military official.
  - (3) A used or fired military munition is a solid waste:
    - (i) when transported off range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or
    - (ii) if recovered, collected, and then disposed of by burial, or landfilling either on or off a range.
  - (4) For purposes of ECL 27-0701.1, a used or fired military munition is a solid waste, and, therefore, is potentially subject to corrective action authorities under ECL 27-0911 and 71-2727.3, or imminent and substantial endangerment authorities under ECL 71-0301, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

#### **(d) Standards applicable to the transportation of solid waste military munitions.**

Waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under Part 371 of this Title are subject to regulation under Parts 370 through 374 and 376 of this Title. In addition, the transporter of the waste must provide oral notice to the department within 24 hours from the time the transporter becomes aware of any loss or theft of the waste military munitions. In addition, a written submission describing the circumstances shall be provided within five days from the time the transporter becomes aware of any loss or theft of the waste military munitions.

#### **(e) Standards applicable to emergency responses.**

Explosives and munitions emergencies involving military munitions or explosives are subject to sections 372.1(b)(3)(i) and (ii) and 373-1.1(d)(1)(xiii) of this Title, or alternatively to section 621.12 of this Title

#### **(f) Standards applicable to the storage of solid waste military munitions.**

- (1) Criteria for hazardous waste regulation of waste non-chemical military munitions in storage.

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- (i) Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste under Part 371 of this Title, are listed or identified as a hazardous waste (and thus are subject to regulation under Parts 370 through 374 and Part 376 of this Title), unless all the following conditions are met:
    - ('a') The waste military munitions are not chemical agents or chemical munitions.
    - ('b') The waste military munitions must be subject to the jurisdiction of the Department of Defense Explosives Safety Board (DDESB).
    - ('c') The waste military munitions must be stored in accordance with the DDESB storage standards applicable to waste military munitions, as incorporated by reference in section 370.1(e) of this Title.
    - ('d') Within 90 days of August 12, 1997 or within 90 days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator must notify the director of the location of any waste storage unit used to store waste military munitions for which the conditional exemption in this subparagraph is claimed.
    - ('e') The owner or operator must provide oral notice to the director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of this subparagraph that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within five days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of this subparagraph.
    - ('f') The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of this subparagraph, and must maintain records of the findings of these inventories and inspections for at least three years.
    - ('g') Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.
    - ('h') The waste military munitions must be stored at a government-owned facility.
  - (ii) The conditional exemption in subparagraph (i) of this paragraph from regulation as hazardous waste shall apply only to the storage of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment or disposal.
  - (iii) The conditional exemption in subparagraph (i) of this paragraph applies only so long as all of the conditions in subparagraph (i) of this paragraph are met.
- (2) Notice of termination of waste storage. The owner or operator must notify the director when a storage unit identified in clause (1)(i)('d') of this subdivision will no longer be used to store waste military munitions.
  - (3) Reinstatement of conditional exemption. If any waste military munition loses its conditional exemption under subparagraph (1)(i) of this subdivision, an application may be filed with the director for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of subparagraph (1)(i) of this subdivision. If the director finds that reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the director may reinstate the conditional exemption under subparagraph

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(1)(i) of this subdivision. If the director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the director may terminate a conditional exemption reinstated by default in the preceding sentence if he/she finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the conditional exemption under subparagraph (1)(i) of this subdivision, the director may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.

- (4) Waste chemical munitions.
  - (i) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under Part 371 of this Title, are listed or identified as a hazardous waste and shall be subject to the applicable regulatory requirements of Parts 370 through 374 and 376 of this Title.
  - (ii) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under Part 371 of this Title, are not subject to the storage prohibition in section 376.5(a) of this Title.
- (5) DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in clause (1)(i)(‘c’) of this subdivision, are DOD 6055.9-STD (“DOD Ammunition and Explosive Safety Standards”), as incorporated by reference in section 370.1(e) of this Title.

**(g) Standards applicable to the treatment and disposal of waste military munitions.**

The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in Parts 370 through 374 and 376 of this Title.

## APPENDICES

### Appendices to Subpart 374-1

#### **APPENDIX 41 – Tier I and Tier II Feed Rate and Emissions Screening Limits for Metals**

Appendix I to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

#### **APPENDIX 42 – Tier I Feed Rate Screening Limits for Total Chlorine and Chloride**

Appendix II to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

#### **APPENDIX 43 – Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride**

Appendix III to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

#### **APPENDIX 44 – Reference Air Concentrations**

Appendix IV to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

#### **APPENDIX 45 – Risk Specific Doses ( $10^{-5}$ )**

Appendix V to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

#### **APPENDIX 46 – Stack Plume Rise**

Appendix VI to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

#### **APPENDIX 47 – Health-Based Limits for Exclusion of Waste-Derived Residues**

Appendix VII to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

## APPENDICES

### **APPENDIX 48 – Organic Compounds for Which Residues Must Be Analyzed**

Appendix VIII to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

### **APPENDIX 49 – Methods Manual for Compliance with the BIF Regulations**

Appendix IX to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

### **APPENDIX 50 – Removed.**

### **APPENDIX 51 – Lead-Bearing Materials that may be Processed in Exempt Lead Smelters**

Appendix XI to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

### **APPENDIX 52 – Nickel or Chromium-Bearing Materials that may be Processed in Exempt Nickel-Chromium Recovery Furnaces**

Appendix XII to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).

### **APPENDIX 53 – Mercury Bearing Wastes that may be Processed in Exempt Mercury Recovery Units**

Appendix XIII to 40 CFR Part 266, as of July 1, 2014, is incorporated by reference as if fully set forth herein (see section 370.1(e) of this Title).