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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK

TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION

CHAPTER IV. QUALITY SERVICES

SUBCHAPTER B. SOLID WASTES

PART 371. IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

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371.1 General.

(a) Purpose and scope.

This Part establishes the procedures for identifying those solid wastes which are subject to regulation as hazardous wastes under Parts 370 through 373, and 376 of this Title. However, even though a given material is defined as a hazardous waste under this Part, it may be exempt from one or more of the substantive provisions of those Parts, as specified in each respectively. Definitions for terms used in this Part are given in Part 370 of this Title. For the purposes of subdivisions (c) and (g) of this section:

(1) A material is *accumulated speculatively* if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that during the calendar year (commencing on January 1st) the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75-percent requirement is to be applied to each material of the same type (*e.g.,* slags from a single smelting process) that is recycled in the same way (*i.e.,* from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under section 372.1(e)(7) of this Title are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation by recycling, however.

(2) *A byproduct* is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a coproduct that is produced for the general public's use and is ordinarily used in the same form as produced by the process.

(3) A material is *reclaimed* if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(4) A material is *recycled* if it is used, reused or reclaimed.

(5) A material is *regenerated* if it is restored to its original physical and chemical properties.

(6) *Scrap metal* is bits and pieces of metal parts (*e.g.,* bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts and soldering (*e.g.,* radiators, scrap automobiles, railroad boxcars), which when worn or superfluous can be recycled.

(7) A *spent material* is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(8) A material is *used* or *reused* if it is either:

(i) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal containing secondary materials); or

(ii) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorus precipitant and sludge conditioner in wastewater treatment).

(9) *Excluded scrap metal* is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) *Processed scrap metal* is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (*i.e.,* sorted), and, fines, drosses and related materials which have been agglomerated.

Note:

Shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (see subparagraph [e][1][xiv] of this section).

(11) *Home scrap metal* is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) *Prompt scrap metal* is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(b) Applicability.

The identification and listing of hazardous wastes given in this Part supersedes any other definition given in any other Part of this Title.

(c) Definition of solid waste.

(1) A *solid waste* is any discarded material that is not excluded under paragraph (e)(1) of this section or that is not excluded by variance granted under section 370.3(d) and (e) of this Title.

(2) A *discarded material* is any material which is:

(i) abandoned as explained in paragraph (3) of this subdivision; or

(ii) recycled as explained in paragraph (4) of this subdivision; or

(iii) considered inherently waste-like as explained in paragraph (5) of this subdivision; or

(iv) a military munition identified as a solid waste in section 374-1.13(c) of this Title.

(3) Materials are solid waste if they are abandoned by being:

(i) disposed of; or

(ii) burned or incinerated; or

(iii) accumulated, stored or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated.

(4) Materials are solid waste if they are recycled—or accumulated, stored or treated before recycling—as specified in subparagraphs (i)-(iv) of this paragraph.

(i) Used in a manner constituting disposal.

(a) Materials noted with an asterisk in column 1 of Table 1 are solid wastes when they are:

(1) applied to or placed on the land in a manner that constitutes disposal; or

(2) contained in products that are applied to the land (in which case the product remains a solid waste).

(b) Commercial products listed in section 371.4(d) of this Part are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery.

(a) Materials noted with an asterisk in column 2 of Table 1 are solid wastes when they are:

(1) burned to recover energy; or

(2) used to produce a fuel or are otherwise contained in fuels (in which case the fuel itself remains a solid waste).

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

(iii) Reclaimed materials noted with an asterisk in column 3 of Table 1 are solid wastes when reclaimed.

(iv) Materials accumulated speculatively noted with an asterisk in column 4 of Table 1 are solid waste when accumulated speculatively.

(5) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(i) Hazardous waste numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026 and F028.

(ii) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in section 371.3 or 371.4 of this Part, except for brominated material that meets the following criteria:

(a) the material must contain a bromine concentration of at least 45 percent;

(b) the material must contain less than a total of one percent of toxic organic compounds listed in Appendix 23; and

(c) the material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(iii) The commissioner will use the following criteria to add waste to that list:

(a) the materials are ordinarily disposed of, burned or incinerated; or

(b) the materials contain toxic constituents listed in Appendix 23, *infra,* and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(c) the materials may pose a substantial hazard to human health and the environment when recycled.

(6) Materials that are not solid waste when recycled.

(i) Materials are not solid waste when they can be shown to be recycled by being:

(a) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(b) used or reused as effective substitutes for commercial products; or

(c) returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land.

(ii) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the process as described in clauses (i)(*a*) through (*c*) of this paragraph:

(a) materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(b) materials burned for energy recovery, used to produce fuel, or contained in fuels; or

(c) materials accumulated speculatively; or

(d) materials listed in subparagraphs (5)(i) and (ii) of this subdivision.

(7) Parties who raise a claim that a certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation, based on the intent to reclaim, recycle or reuse, must notify the department, in writing, before utilizing the exemption or exclusion. Such notification shall give the names and locations of the generating and receiving facilities, if different, identify all exemptions or exclusions that the party is claiming, and describe the activity or activities which are believed to qualify for such exemptions or exclusions. Respondents in actions to enforce regulations, implementing article 27, who raise a claim that a certain material is not a solid or hazardous waste, or is exempt or conditionally exempt from regulation, when intended for reclamation, recycling, or reuse, must demonstrate:

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

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

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

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

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

Table 1

	Use	***Energy***		***Speculative***
	constituting	***recovery/***		***accumula-***
	disposal	***fuel***	***Reclamation***	***tion***
	(1)	*(2)*	*(3)*	*(4)*
Spent materials	*	*	*	*
Sludges listed in 371.4(b) and (c)	*	*	*	*

Sludges exhibiting a characteristic of hazardous waste	*	*	—	*
Byproducts listed in 371.4(b) and (c)	*	*	*	*
Byproducts exhibiting a characteristic of hazardous waste	*	*	—	*
Commercial chemical products listed in 371.4(d)	*	*	—	—
Scrap metal other than excluded scrap metal (see 371.1[a][9])	*	*	*	*

Note:

the terms *spent materials, sludges, by-products,* and *scrap metal* and *processed scrap metal* are defined in subdivision (a) of this section.

(d) Definition of hazardous waste.

(1) A solid waste, as defined in subdivision (c) of this section, is a hazardous waste if:

(i) it is not excluded from regulation as a hazardous waste under paragraph (e)(2) of this section; and

(ii) it meets any of the following criteria:

(a) it exhibits any of the characteristics of hazardous waste identified in section 371.3 of this Part. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under subdivision (e)(2)(vi) of this section and any other solid waste exhibiting a characteristic of hazardous waste under section 371.3 of this Part is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the nonexcluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table 1 in section 371.3(e) of this Part that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(b) It is listed in section 371.4 of this Part and has not been excluded from the lists in section 371.4 under the provisions of section 370.3(a) and (c) of this Title.

(c) [*Reserved*]

(d) It is a mixture of solid waste and one or more hazardous wastes listed in section 371.4 of this Part and has not been excluded from this subparagraph under section 370.3(a) and (c) of this Title, or paragraph (6) or (7) of this subdivision; however, the following mixtures of solid wastes and hazardous wastes listed in section 371.4 of this Part are not hazardous wastes (except by application of clause (*a*) or (*b*) of this subparagraph) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (see section 370.1[e][7][iii] of this Title) (including wastewater at facilities which have eliminated the discharge of wastewater) and:

(1) one or more of the following spent solvents listed in section 371.4(b) of this Part—carbon tetrachloride, tetrachloroethylene, trichloroethylene—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one mg/l; or

(2) one or more of the following spent solvents listed in section 371.4(b) of this Part—methylene chloride, 1,1,1-trichloroethane, chlorbenzene, o-dichlorbenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater), divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system, does not exceed 25 mg/l; or

(3) one of the following wastes listed in section 371.4(c) of this Part, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations (EPA hazardous waste No. K170), spent hydrotreating catalyst, (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or

(4) a discarded commercial chemical product, or chemical intermediate listed in section 371.4(d) of this Part arising from *de minimis* losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, *de minimis* means unintentional and minor losses of hazardous materials which occur unavoidably as a result of normal manufacturing processes. *De minimis* losses include those from normal material handling operation (*e.g.,* spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(5) wastewater resulting from laboratory operations containing any toxic (T) wastes listed in section 371.4 of this Part, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes' combined annualized average concentration does not exceed one mg/l in the headworks of the facility’s wastewater treatment or pretreatment facility. The annualized average flow means the total flow registered for the calendar year divided by the number of operating days of the laboratory. The combined annualized average concentration means the weight of the combination of wastes divided by the annualized average flow. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(6) one or more of the following wastes listed in section 371.4(c) of this Part—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)—provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered,*i.e.,*what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five mg/l; or

(7) wastewaters derived from the treatment of one or more of the following wastes listed in section 371.4(c) of this Part—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156)—provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five milligrams per liter.

(e) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in section 371.4. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW 846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Appendix 23). EPA Publication SW-846, Third Edition, is available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, (202) 783-3238 (document number 955-001-00000-1).

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

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

(2) A solid waste which is not excluded from regulation under subparagraph (1)(i) of this subdivision becomes a hazardous waste when any of the following events occur:

(i) In the case of a waste listed in section 371.4, when the waste first meets the listing description therein.

(ii) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in section 371.4 is first added to the solid waste.

(iii) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in section 371.3.

(3) Unless and until it meets the criteria of paragraph (4) of this subdivision:

(i) A hazardous waste will remain a hazardous waste.

(ii)

(a) Except as otherwise provided in clause (*b*) of this subparagraph, paragraph (6) or (7) of this subdivision, any solid waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation runoff), is a hazardous waste. (However, materials that are reclaimed from solid waste and used beneficially are not solid waste and hence are not hazardous waste under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

(b) The following solid waste is not hazardous even though it is generated from the treatment, storage, or disposal of a hazardous waste, unless it exhibits one or more of the characteristics of hazardous waste:

(1) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332).

(2) Waste from burning any of the materials exempted from regulation by clauses (g)(1)(iii)(*c*) and (*d*) of this section.

(3)

(i) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in the definition for industrial furnace in section 370.2[b] of this Title), that are disposed in solid waste management facilities, provided that these residues meet the generic exclusion levels identified in the tables in this clause for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving

by clear and convincing evidence that the material meets all of the exclusion requirements.

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

	Maximum for any single composite
Constituent	***sample-TCLP (mg/l)***
Antimony	0.10
Arsenic	0.50
Barium	7.6

Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0

Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

	Maximum for any single composite

Constituent	*sample-TCLP (mg/l)*
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050

Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16

Silver	0.30
Thallium	0.020
Zinc	70

(ii) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste management facilities. The notification and certification that is placed in the generator's or treater's files must be updated if the process or operation generating the waste changes and/or if the solid waste management facility receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department no later than the end of the calendar year. The notification must include the following information: the name and address of the solid waste management facility receiving the waste shipments; the EPA hazardous waste number(s) and tractability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows:

"I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(4) Biological treatment sludge from the treatment of one of the following wastes listed in section 371.4(c) of this Part—organic waste (including heavy ends, still bottoms, light

ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156), and wastewaters from the production of carbamates and carbamoyloximes (EPA Hazardous Waste No. K157).

(5) Catalyst inert support media separated from one of the following wastes listed in section 371.4(c) of this Part—spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydroefining catalyst (EPA Hazardous Waste No. K172).

(4) Any solid waste described in paragraph (3) of this subdivision is not a hazardous waste if it meets the following criteria:

(i) In the case of any solid waste, it does not exhibit any of the characteristics of a hazardous waste identified in section 371.3 of this Part. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Part 376 of this Title, even if they no longer exhibit a characteristic at the point of land disposal.)

(ii) In the case of a waste which is a waste listed under section 371.4, contains a waste listed under section 371.4 or is derived from a waste listed under section 371.4, it also has been excluded from paragraph (3) of this subdivision under section 370.3(a) and (c) of this Title. Section 370.3(c) provides for the petitioning for exclusion of a listed waste produced at a particular facility.

(5) Notwithstanding paragraphs (1) through (4) of this subdivision and provided the debris as defined in Part 376 of this Title does not exhibit a characteristic identified at section 371.3 of this Part, the following materials are not subject to regulation under Parts 370 through 374 or 376 of this Title:

(i) hazardous debris as defined in Part 376 of this Title that has been treated using one of the required extraction or destruction technologies specified in Table 1 of section 376.4(g) of this Title; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(ii) debris as defined in Part 376 of this Title that the commissioner, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(6)

(i) A hazardous waste that is listed in section 371.4 of this Part solely because it exhibits one or more characteristics of ignitability as defined under section 371.3(b) of this Part, corrosivity as defined under section 371.3(c) of this Part, or reactivity as defined under

section 371.3(d) of this Part is not a hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in section 371.3 of this Part.

(ii) The exclusion described in subparagraph (i) of this paragraph also pertains to:
(a) any mixture of a solid waste and a hazardous waste listed in section 371.4 of this Part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as related under clause (1)(ii)(*d*) of this subdivision; and

(b) any solid waste generated from treating, storing, or disposing of a hazardous waste listed in section 371.4 of this Part solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under clause (3)(ii)(*a*) of this subdivision.

(iii) Wastes excluded under thus paragraph are subject to Part 376 of this Title (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(iv) Any mixture of a solid waste excluded from regulation under subparagraph (e)(2)(vi) of this section and a hazardous waste listed in section 371.4 of this Part solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under clause (1)(ii)(*d*) of this subdivision is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in section 371.3 of this Part for which the hazardous waste listed in section 371.4 of this Part was listed.

(7)

(i) Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of section 374-1.9 of this Title (Eligible radioactive mixed waste).

(ii) The exemption described in subparagraph (i) of this paragraph also pertains to:

(a) any mixture of a solid waste and an eligible radioactive mixed waste; and

(b) any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

(iii) Waste exempted under this paragraph must meet the eligibility criteria and specified conditions in section 374-1.9(b)(2) and (3) (for storage and treatment) and in section 374-1.9(i)(1) and (j)(1) (for transportation and disposal) of this Title. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

(e) Exclusions.

(1) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this Part:

(i)

(a) domestic sewage; and

(b) any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment. Domestic sewage means untreated sanitary wastes that pass through a sewer system;

(ii) industrial wastewater discharges that are surface water point source discharges subject to permits under article 17 of the Environmental Conservation Law;

Note:

This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(iii) irrigation return flows;

(iv) radioactive materials which are source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended through 1984, 42 USCA 2011 *et seq.* (see section 370.1[e] of this Title);

(v) materials subject to in situ mining techniques which are not removed from the ground as part of the extraction process;

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

(vii) spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in paragraph (a)(1) of this section;

(viii) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(a) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(b) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces or incinerators);

(c) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(d) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal;

(ix)

(a) spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose;

(b) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood; and

(c) prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in clauses (*a*) and (*b*) of this subparagraph, so long as they meet all the following conditions:

(1) the wood preserving waterwaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(2) prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(3) any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(4) any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in section 373-3.23 of this Title, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(5) prior to operating pursuant to this exclusion, the plant owner or operator submits to the commissioner a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: “I have read the applicable regulation

establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than three years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the commissioner for reinstatement. The commissioner may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur;

(x) EPA hazardous waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the toxicity characteristic (TC) specified in section 371.3(e) of this Part when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar; and

(xi) nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery;

(xii)

(a) oil-bearing hazardous secondary materials (*i.e.,* sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units [*i.e.,* cokers]) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in clause (*b*) of this subparagraph, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (*i.e.,* from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under section 371.4 of this Part, are designated as F037 listed wastes when disposed of or intended for disposal;

(b) recovered oil that is recycled in the same manner and with the same conditions as described in clause (*a*) of this subparagraph. Recovered oil is oil that has been

reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in section 371.4 of this Part; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in section 374-2.1 of this Title;

(xiii) excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled;

(xiv) shredded circuit boards being recycled provided that they are:

(a) stored in containers sufficient to prevent a release to the environment prior to recovery; and

(b) free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries;

(xv) condensates derived from the overhead gases from Kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates;

(xvi) comparable fuels or comparable syngas fuels *(i.e.,* comparable/syngas fuels) that meet the requirements of section 371.4(i) of this Part;

(xvii) petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(a) the oil is hazardous only because it exhibits the characteristic of ignitability (as defined in section 371.3[b] of this Part) and/or toxicity for benzene (section 371.3[e] of this Part), (waste code D018); and

(b) the oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An *associated organic chemical manufacturing facility* is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. *Petrochemical recovered oil* is oil that has been reclaimed from secondary materials (*i.e.,* sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes;

(xviii) spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in subdivision (a) of this section.

(2) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:

(i) household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (*e.g.,* refuse-derived fuel) or reused. Household waste means any waste material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas). A resource recovery facility managing municipal waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous waste for the purpose of regulation, if such facility:

(a) receives and burns only:

(1) household waste (from single and multiple dwellings, hotels, motels and other residential sources); and

(2) solid waste from commercial or industrial sources that does not contain hazardous waste; and

(b) does not accept hazardous waste and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility;

(ii) solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(a) the growing and harvesting of agricultural crops; and

(b) the raising of animals, including animal manures;

(iii) mining overburden returned to the mine site;

(iv) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by section 374-1.8(m) of this Title for facilities that burn or process hazardous waste;

(v) drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal energy;

(vi) solid waste from the extraction, beneficiation and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by section 374-1.8(m) of this Title for facilities that burn or process hazardous waste.

(a) For purposes of this subparagraph beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting [and/or autoclaving and/or chlorination]/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(b) For the purposes of this subparagraph, solid waste from the processing of ores and minerals includes only the following wastes as generated:

(1) slag from primary copper processing;

(2) slag from primary lead processing;

(3) red and brown muds from bauxite refining;

(4) phosphogypsum from phosphoric acid production;

(5) slag from elemental phosphorus production;

(6) gasifier ash from coal gasification;

(7) process wastewater from coal gasification;

(8) calcium sulfate wastewater treatment plant sludge from primary copper processing;

(9) slag tailings from primary copper processing;

(10) fluorogypsum from hydrofluoric acid production;

(11) process wastewater from hydrofluoric acid production;

(12) air pollution control dust/sludge from iron blast furnaces;

(13) iron blast furnace slag;

(14) treated residue from roasting/leaching of chrome ore;

(15) process wastewater from primary magnesium processing by the anhydrous process;

(16) process wastewater from phosphoric acid production;

(17) basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(18) basic oxygen furnace and open hearth furnace slag from carbon steel production;

(19) chloride process waste solids from titanium tetrachloride production; and

(20) slag from primary zinc processing;

(21) air pollution control dust/sludge from lightweight aggregate production;

(c) a residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (2) of this subdivision if the owner or operator:

(1) processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and

(2) legitimately reclaims the secondary mineral processing materials;

(vii) cement kiln dust waste, except as provided by section 374-1.8(m) of this Title for facilities that burn or process hazardous waste;

(viii) solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for hazardous waste codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use;

Note:

This exclusion does not apply to manufacturers of arsenical treated wood or wood products.

(ix)

(a) wastes which fail the test for the toxicity characteristic because chromium is present or are listed in section 371.4 due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(1) the chromium in the waste is exclusively (or nearly exclusively) trivalent chromium;

(2) the waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(3) the waste is typically and frequently managed in nonoxidizing environments;

(b) specific wastes which meet the standard in clause (*a*) of this subparagraph (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other hazardous waste characteristic) are:

(1) the following wastes generated by the following subcategories of the leather tanning and finishing industry: chrome (blue) trimmings, chrome (blue) shavings, sewer screenings and wastewater treatment sludges, generated by the subcategories known as hair pulp/chrome tan/retan/wet finish, hair save/chrome tan/retan/wet finish, no beamhouse, through-the blue, and shearling;

(2) buffing dust generated by the subcategories listed in subclause (*1*) of this clause, except for shearling;

(3) waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries; and

(4) wastewater treatment sludges from the production of titanium dioxide pigment using chromium-bearing ores by the chloride process;

(x) petroleum-contaminated media and debris that fail the test for the toxicity characteristic of section 371.3(e) (hazardous waste codes D018 through D043 only) and are subject to the corrective action regulations under 40 CFR part 280;

(xi) non-terne plated used oil filters that are not mixed with wastes listed in section 371.4 of this Part if these oil filters have been gravity hot-drained using one of the following methods:

(a) puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

(b) hot-draining and crushing;

(c) dismantling and hot-draining; or

(d) any other equivalent hot-draining method that will remove used oil;

(xii) used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use; and

(xiii) leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(a) the solid wastes disposed would meet one or more of the listing descriptions for hazardous waste codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, if these wastes had been generated after the effective date of the listing.

(b) the solid wastes described in clause (*a*) of this subparagraph were disposed prior to the effective date of the listing;

(c) the leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(d) discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under section 307(b) or 402 of the Federal Clean Water Act and the State Pollution Discharge Elimination System (SPDES), Parts 750 through 757 of this Title; and

(e) as of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will not longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (*e.g.,* shutdown of wastewater treatment system), provided the impoundment has a double

liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this clause after the emergency ends.

(3) Hazardous wastes which are exempted from certain regulations.

(i) A hazardous waste which is generated in a product or raw material storage tank, in a product or raw material transport vehicle or vessel, in a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste treatment manufacturing unit, is not subject to regulation under Parts 372, 373, and 376 of this Title until it leaves the unit in which it was generated. However, this exemption does not apply if the unit is a surface impoundment, or if the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(4) Samples.

(i) Except as provided in subparagraph (ii) of this paragraph, a sample of solid waste or a sample of water, soil or air, which is collected for the sole purpose of testing to determine its characteristics, or composition, is not subject to any requirements of this Part or of Parts 372, 373, and 376 of this Title, when:

(a) the sample is being transported to a laboratory for the purpose of testing;

(b) the sample is being transported back to the sample collector after testing;

(c) the sample is being stored by the sample collector before transport to a laboratory for testing;

(d) the sample is being stored in a laboratory before testing;

(e) the sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(f) the sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).
(ii) In order to qualify for the exemption in clauses (i)(*a*) and (*b*) of this paragraph, a sample collector shipping samples to a laboratory, or a laboratory returning samples to a sample collector, must:

(a) comply with the New York State Department of Transportation (NYSDOT), U.S. Department of Transportation (USDOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(b) comply with the following requirements if the sample collector determines that NYSDOT, USDOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(1) assure that the following information accompanies the sample:

(i) the sample collector's name, mailing address and telephone number;

(ii) the laboratory's name, mailing address and telephone number;

(iii) the quantity of the sample;

(iv) the date of shipment; and

(v) a description of the sample; and

(2) package the sample so that it does not leak, spill or vaporize from its packaging.

(iii) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subparagraph (i) of this subparagraph.

(iv) Treatability study samples.

(a) Except as provided in clause (*b*) of this subparagraph, persons who generate or collect samples for the purpose of conducting treatability studies, as defined in section 370.2(b) of this Title, are not subject to any requirement of this Part or Part 372 nor are such samples included in the quantity determinations of subdivision (f) of this section and section 372.2(a)(8) of this Part when:

(1) the sample is being collected and prepared for transportation by the generator or sample collector;

(2) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(3) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(b) The exemption in clause (*a*) of this subparagraph is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(1) the generator or sample collector uses (in “treatability studies”) no more than 10,000 kilograms of media contaminated with non-acute hazardous waste, 1,000 kilograms of any non-acute hazardous waste other than contaminated media, 1 kilogram of acute hazardous waste, or 2,500 kilograms of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(2) the mass of each sample shipment does not exceed 10,000 kilograms; the 10,000 kilogram quantity may be all media contaminated with non-acute hazardous waste, or may include 2,500 kilograms of media contaminated with acute hazardous waste, 1,000 kilograms of hazardous waste, and 1 kilogram of acute hazardous waste; and

(3) the sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of item (*i*) or (*ii*) of this subclause are met;

(i) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample;

(A) the name, mailing address, and telephone number of the originator of the sample;

(B) the name, address, and telephone number of the facility that will perform the treatability study;

(C) the quantity of the sample;

(D) the date of shipment; and

(E) a description of the sample, including its EPA hazardous waste number;

(4) the sample is shipped to a laboratory or testing facility which is exempt under subparagraph (v) of this paragraph or has an appropriate RCRA permit or interim status;

(5) the generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

(i) copies of the shipping documents;

(ii) a copy of the contract with the facility conducting the treatability study;

(iii) documentation showing:

(A) the amount of waste shipped under this exemption;

(B) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(C) the date the shipment was made; and

(D) whether or not unused samples and residues were returned to the generator;

(6) the generator reports the information required under item (*5*)(*iii*) of this clause in its annual report.

(c) The commissioner may grant requests, on a case-by-case basis, for up to an additional two years for treatability studies involving bioremediation. The commissioner may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in subclauses (iv)(*b*)(*1*) and (*2*) and clause (v)(*d*) of this paragraph, for up to an additional 5,000 kilograms of media contaminated with non-acute hazardous waste, 500 kilograms of non-acute hazardous waste, 2,500 kilograms of media contaminated with acute hazardous waste and 1 kilogram of acute hazardous waste:

(1) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (*e.g.,* batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(2) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when:

(c) There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(3) The additional quantities and time frames allowed in subclauses (*1*) and (*2*) of this clause are subject to all the provisions in clause (*a*) and subclauses (*b*)(*2*)-(*6*) of this subparagraph. The generator or sample collector must apply to the commissioner and provide in writing the following information:

(i) the reason why the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quanity needed;

(ii) documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(iii) a description of the technical modifications or change in specifications which will be evaluated and the expected results;

(iv) if such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(v) such other information that the commissioner considers necessary.

(v) Samples undergoing treatability studies at laboratories and testing facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatment studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirements of this Part of Parts 370-374 and Part 376, provided that the conditions of clauses (*a*) through (*k*) of this subparagraph are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to clauses (*a*) through (*k*) of this subparagraph. Where a group of MTUs are located at the same site, the limitations specified in (*a*) through (*k*) of this subparagraph apply too the entire group of MTUs collectively as if the group were one MTU.

(a) No less than 45 days before conducting treatability studies, the facility notifies the commissioner in writing that it intends to conduct treatability studies under this paragraph.

(b) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(c) No more than a total of 10,000 kilograms of “as received” media contaminated with non-acute hazardous waste, 2,500 kilograms of media contaminated with acute hazardous waste or 250 kilograms of other “as received” hazardous waste is subject to initiation of treatment in all treatability studies in any single day. “As received” waste refers to the waste as received in the shipment from the generator or sample collector.

(d) The quantity of “as received” hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kilograms, the total of which can include 10,000 kilograms of media contaminated with non-acute hazardous waste, 2,500 kilograms of media contaminated with acute hazardous waste, 1,000 kilograms of non-acute hazardous wastes other than contaminated media, and one kilogram of acute hazardous waste. This quantity limitation does not include treatment materials (including non-hazardous solid waste) added to “as received” hazardous waste.

(e) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kilograms of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(f) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(g) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(1) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(2) the date the shipment was received;

(3) the quantity of waste accepted;

(4) the quantity of "as received" waste in storage each day;
(5) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(6) the date the treatability study was concluded;

(7) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector, or, if sent to a designated facility, the name of the facility, and the EPA identification number.

(h) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(i) The facility prepares and submits a report to the commissioner by March 15th of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(1) the name, address, and EPA identification number of the facility conducting the treatability studies;

(2) the types (by process) of treatability studies conducted;

(3) the names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(4) the total quantity of waste in storage each day;

(5) the quantity and types of waste subjected to treatability studies;

(6) when each treatability study was conducted; and

(7) the final disposition of residues and unused sample from each treatability study.

(j) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under subdivision (d) of this section and, if so are subject to Parts 371-374 and Part 376, unless the residues and unused samples are returned to the sample originator under the subparagraph (4) (iv) of this subdivision exemption.

(k) The facility notifies the commissioner by letter when the facility is no longer planning to conduct any treatability studies at the site.

(f) Special requirements for hazardous waste generated by conditionally exempt small quantity generators.

(1) A generator is a conditionally exempt small quantity generator in a calendar month if no more than 100 kilograms of hazardous waste are generated in that month.

(2) Except as provided in paragraphs (5), (6), (7), and (10) of this subdivision, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Part 372 through Subpart 374-3 and Part 376 of this Title.

(3) When making the quantity determinations of this Part and Part 372 of this Title, the generator must include all hazardous waste that it generates, except hazardous waste that:

(i) is exempt from regulation under paragraphs (e)(3) and (4), subparagraphs (g)(1)(iii), (h)(1)(i) of this section or section 371.4(e) of this Title; or

(ii) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in section 370.2 of this Title; or

(iii) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under subparagraph (g)(3)(ii) of this section; or

(iv) is used oil managed under the requirements of subparagraph (g)(1)(iv) of this section and Subpart 374-2 of this Title; or

(v) is spent lead-acid batteries managed under the requirements of section 374-1.7 of this Title; or

(vi) is universal waste managed under subdivision (j) of this section and Subpart 374-3 of this Title.

(4) In determining the quantity of hazardous waste generated, a generator need not include:

(i) hazardous waste when it is removed from on-site storage;

(ii) hazardous waste produced by on-site treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was counted once; or

(iii) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.
(5) If a conditionally exempt small quantity generator generates acute hazardous waste in quantities greater than that set forth below in a calendar month, all quantities of that waste are subject to regulation under Parts 372, 373, 374, and 376 of this Title:

(i) a total of one kilogram of acute hazardous waste listed in section 371.4(b), (c) and (d)(5) of this Part;

(ii) a total of 100 kilograms of any residue or contaminated soil, waste or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in section 371.4(b), (c) and (d)(5) of this Part.

(6) A conditionally exempt small quantity generator who generates acute hazardous wastes in quantities equal to or less than those set forth in subparagraph (5)(i) or (ii) of this subdivision, may be excluded from full regulation under this subdivision, if the following requirements are complied with:

(i) section 372.2(a)(2) of this Title;

(ii) the conditionally exempt small quantity generator may accumulate acute hazardous waste on-site. If acutely hazardous wastes are accumulated in quantities greater than those set forth in subparagraph (5)(i) or (ii) of this subdivision, all of those accumulated wastes are subject to regulation under Parts 372 through 374, and 376 of this Title. The time period for accumulation of wastes on-site given in section 372.2(a)(8)(ii) of this Title begins when the accumulated wastes exceed the applicable exclusion limit;

(iii) a conditionally exempt small-quantity generator may either treat or dispose of the acute hazardous wastes in an on-site facility, or ensure delivery to an off-site treatment, storage or disposal facility either of which, if located in the U.S., is:

(a) permitted under Part 373 of this Title;

(b) in interim status under Part 373 of this Title;

(c) authorized to manage hazardous waste by a state with a hazardous waste management program approved under RCRA, if located outside New York;

(d) authorized to receive hazardous waste under RCRA;

(e) permitted by New York State pursuant to Part 360 of this Title to manage municipal or industrial solid waste, and authorized to receive such wastes, or permitted, licensed, or registered by a state other than New York to manage municipal solid waste if managed in a solid waste landfill subject to 40 CFR part 258, as incorporated by reference in section 370.1(e) of this Title, or registered by a state to manage industrial solid waste if managed in an industrial waste disposal unit subject to 40 CFR sections 257.5 through 257.30, as incorporated by reference in section 370.1(e) of this Title;
(f) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(g) a facility authorized by the department to receive such wastes, pursuant to Subpart 373-4 of this Title; or

(h) for universal waste managed under Subpart 374-3 of this Title, a universal waste handler or destination facility subject to the requirements of Subpart 374-3 of this Title;

(iv) in ensuring delivery of this waste to an off-site treatment, storage, or disposal facility, generators must:

(a) transport the waste themselves (see section 364.1[e][3][i] of this Title); or

(b) use a transporter authorized under Part 364 of this Title to transport the particular waste(s) offered for shipment to the designated facility.

(7) In order for non-acute hazardous waste generated by a conditionally exempt small-quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this subdivision, the generator must comply with the following requirements:

(i) comply with section 372.2(a)(2) of this Title;

(ii) the conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he or she accumulates at any time more than a total of 1,000 kilograms of their own hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 372 of this Title applicable to generators of between 100 and 1,000 kg of hazardous waste in a calendar month as well as the requirements of Parts 373 and 376 of this Title, and the applicable notification requirements of section 3010 of RCRA. The time period of section 372.2(a)(8)(iii) of this Title for accumulation of wastes on-site begins for conditionally exempt small quantity generators when the accumulated wastes exceed 1,000 kilograms;

(iii) conditionally exempt small quantity generator may either treat or dispose of their hazardous waste in an on-site facility, or ensure delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

(a) permitted under Part 373 of this Title;

(b) in interim status under Part 373 of this Title;

(c) authorized to manage hazardous waste by a state with a hazardous waste management program approved under RCRA, if located outside New York;
(d) authorized to receive hazardous waste under RCRA;

(e) permitted by New York State pursuant to Part 360 of this Title to manage municipal or industrial solid waste, and authorized to receive such wastes, or permitted, licensed or registered by a state other than New York to manage municipal solid waste if managed in a solid waste landfill subject to 40 CFR Part 258, as incorporated by reference in section 370.1(e) of this Title, or registered by a state to manage industrial solid waste if managed in an industrial waste disposal unit subject to 40 CFR sections 257.5 through 257.30, as incorporated by reference in section 370.1(e) of this Title;

(f) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation;

(g) a facility authorized by the department to receive such wastes, pursuant to Subpart 373-4 of this Title; or

(h) for universal waste managed under Subpart 374-3 of this Title, a universal waste handler or destination facility subject to the requirements of Subpart 374-3 of this Title;

(iv) in ensuring delivery of this waste to an off-site treatment, storage, or disposal facility, generators must:

(a) transport the waste themselves (see section 364.1[e] [3][i] of this Title); or

(b) use a transporter authorized under Part 364 of this Title to transport the particular waste(s) offered for shipment to the designated facility.

(8) Hazardous waste subject to the reduced requirements of this subdivision may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitation identified in this subdivision, as long as the mixture meets none of the characteristics of hazardous wastes identified in section 371.3 of this Part, or such mixing occurs at a facility regulated under Subpart 373-4 or permitted under Part 373 of this Title.

(9) If a conditionally exempt small-quantity generator mixes with a hazardous waste that exceeds a quantity exclusion level of this subdivision, the mixture is subject to full regulation under this Title.

(10) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Part 360 and Subpart 374-2 of this Title if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

(g) *Requirements for recyclable materials.*

(1)

(i) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of paragraphs (2) and (3) of this subdivision, except for the materials listed in subparagraphs (ii) and (iii) of this paragraph. Hazardous wastes that are recycled will be known as recyclable materials.

(ii) The following recyclable materials are not subject to the requirements of this subdivision but are regulated under sections 374-1.3 through 374-1.8, Subpart 374-2 and all applicable provisions in Subpart 373-1 and Parts 621 and 624 of this Title:

(a) recyclable materials used in a manner constituting disposal (see section 374-1.3 of this Title);

(b) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under sections 373-2.15 and 373-3.15 of this Title (see section 374-1.8 of this Title);

(c) [*Reserved*]

(d) recyclable materials from which precious metals are reclaimed (see section 374-1.6 of this Title); and

(e) spent lead-acid batteries that are being reclaimed (see section 374-1.7 of this Title).

(iii) The following recyclable materials are not subject to regulation under Part 372 through Subpart 374-3 and Part 376 of this Title provided that the waste is transported by a hauler complying with any applicable waste hauler permit requirements in Part 364 of this Title:

(a) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in section 372.5 of this Title:

(1) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in section 372.5(c), (f)(1)(i)-(iv), (vi), (f)(2), and (g) of this Title, export such materials only upon consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in section 372.5 of this Title, and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export; and

(2) transporters transporting a shipment for export may not accept a shipment if he or she knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(b) scrap metal that is not excluded under subparagraph (e)(1)(xiii) of this section;

(c) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under subparagraph [e] [1][xii] of this section);

(d)

(1) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production, or transportation practices, or produced from oil reclaimed from such hazardous wastes, where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under section 374-2.2(b) of this Title and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(2) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under section 374-2.2(b) of this Title; and

(3) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as a fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under section 374-2.2(b) of this Title.

(iv) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous waste characteristic is not subject to the requirements of Parts 370 through 373, Subpart 374-1 and Part 376 of this Title, but is regulated under Part 364 and Subparts 360-14 and 374-2 of this Title. Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is rerefined, reclaimed, burned for energy recovery, or reprocessed.

(v) Hazardous waste, that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in section 372.5[h][1] of this Title) for purpose of recovery is subject to the requirements of section 372.5 of this Title, if it is subject to either the manifesting requirements of Part 372 of this Title, or to the universal waste management standards of Subpart 374-3 of this Title.

(2) Generators and transporters of recyclable materials are subject to the applicable requirements of Part 372 of this Title and the notification requirements under section 3010 of RCRA (see section 370.1[e] of this Title), except as provided in paragraph (1) of this subdivision.

(3)

(i) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of sections 373-2.1 through 373-2.12, Subpart 373-1, sections 373-3.1 through 373-3.13, Parts 374, 376, 621 and 624 of this Title, sections 373-2.27, 373-2.28, 373-2.29, 373-3.27, 373-3.28 and 373-3.29 of this Title, and the notification requirements under section 3010 of RCRA (see section 370.1[e] of this Title), except as provided in paragraph (1) of this subdivision. (The recycling process itself is exempt from regulation except as provided in paragraph [4] of this subdivision.)

(ii) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in paragraph (1) of this subdivision:

(a) notification requirements under section 3010 of RCRA (see section 370.1[e] of this Title);

(b) sections 373-2.5 and 373-3.5, and section 373-3.5(b) (dealing with the use of the manifest and manifest discrepancies) of this Title; and

(c) paragraph (4) of this subdivision.

(4) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of sections 373-2.27, 373-2.28, 373-3.27 and 373-3.28 of this Title.

(h) *Residues of hazardous waste in empty containers.*

(1)

(i) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subdivision, is not subject to regulation under this Part and Parts 372 through 373, and 376 of this Title. (*Note:* The discarding of the empty drum or inner liner itself may be subject to the disposal requirements of Part 360 and the transportation requirements of Part 364 of this Title.)

(ii) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in paragraph (2) of this subdivision, is subject to regulation under this Part and Parts 372 through 373, and 376 of this Title.

(2)

(i) A container or inner liner removed from a container that has held any hazardous waste, except a waste that is compressed gas or that is identified as an acute hazardous waste listed in section 371.4(b)-(d) of this Part, is empty if:

(a) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container,*e.g.,* pouring, pumping and aspirating; and

(b) no more than 2.54 centimeters (one inch) of residue remains on the bottom of the container or inner liner; or

(c)

(1) no more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(2) no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(ii) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(iii) A container or an inner liner removed from a container that has held an acute hazardous waste listed in section 371.4(b), (c) or (d)(5) of this Part is empty if:

(a) the container or inner liner has been triple-rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(b) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(c) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

Note:

Approaching atmospheric pressure means that the pressure is essentially equal to atmospheric pressure.

(i) Severability.

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

(j) Requirements for universal wastes.

(1) The wastes listed in this section are exempt from regulation under Part 372 through Subpart 374-1 and Part 376 of this Title except as specified in Subpart 374-3 of this Title and, therefore are not fully regulated as hazardous waste. The wastes listed in this subdivision are subject to regulation under Subpart 374-3 of this Title:

(i) batteries as described in section 374-3.1(b) of this Title;

(ii) pesticides as described in section 374-3.1(c) of this Title;

(iii) thermostats as described in section 374-3.1(d) of this Title; and

(iv) lamps as described in section 374-3.1(e) of this Title.

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