

## Frequently Asked Questions on Air Toxics Rule Implementation

### General

1. What has changed for obtaining a permit for fumigation operations?

The permit applicability threshold for fumigation operations has been clarified. A permit is required when an operation has the potential to emit 0.1 lb/hour of a fumigant. The previous applicability threshold of 50 pound per hour of raw materials no longer applies to fumigation operations.

2. What fumigants are covered?

Any fumigant, as defined in the rules and transcribed below, is subject to the rule. The most used fumigants, phosphine, sulfuryl fluoride, and methyl bromide, are also listed as Group III, toxic substances.

**“Fumigant”** means a pesticide registered with the EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is through the vapor or gaseous state.

3. What source operations must obtain an air permit?

Commodity fumigation is one source operation, which may occur at a port, a warehouse (sometimes refrigerated) or an industrial facility.

Industrial structures, when fumigated, are also subject to the rule and are defined in the rules and transcribed below.

**“Industrial structure”** means an enclosed space, including a warehouse, container, bin, silo, trailer, storage facility, commodity pallet, any type of fumigation chamber, such as under a tarpaulin, or manufacturing or processing equipment, in which fumigation occurs as a significant source operation. “Industrial structure” does not include a private residence or commercial office or commercial building in which fumigation occurs.

4. Are bakeries and other commercial operations subject to the fumigation rules?

A local bakery, farmstand, supermarket, restaurant or other such retail operation would not need to obtain a permit under these rules. See definition above which excludes residential and commercial operations.

5. What do the new State of the Art (SOTA) thresholds for fumigants mean for me?

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If you are existing operation using a substance above the SOTA threshold, there is nothing that needs to be done. However, once above a threshold, any potential increase in release of that substance would require a SOTA analysis.

If you are a new facility emitting over the 5 TPY threshold, the SOTA analysis would need to be completed.

### 6. What do operative date and effective date mean?

"Operative" means that the adopting agency shall enforce and the affected public shall obey the terms of an effective rule.

"Effective" means that a rule has been duly adopted, filed with the Office of Administrative Law, and in the case of a new rule, amendment, or repeal, promulgated in the New Jersey Register.

### 7. Does the pending appeal of the rulemaking change any deadline or requirements under the new rules?

No

### 8. What does it cost to get an air permit?

A **preconstruction permit** costs is as follows:

• Base Fee	\$2,730
• Addition per piece of equipment	\$640
• 1 <sup>st</sup> Level Risk Assessment	Free
• 2 <sup>nd</sup> Level Risk Assessment	\$5,460
• SOTA/RACT Analysis (if applicable)	\$9,085

A **General Permit** (if/when developed) is as follows:

• Base Fee	\$885
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### 10. Who (what personnel) is required to submit a permit application?

As per N.J.A.C. 7:27-8.1 et seq, either the owner or the operator of a fumigation operation can apply for a permit. The permit holder will be responsible for complying with the permit.

The owner can be the owner of the industrial structure where the fumigation takes place or the owner of the commodity being fumigated. The operator is usually the entity applying the fumigants to the commodity. The owner could be the same entity as the operator.

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### General Permits

1. What is the general standard for a General Permit (GP)?

All permits issued by the Department must contain assurances that the source operation will be in compliance with all rules and standards at all times. Due to this requirement and due to the fact that General Permits (GP) do not afford an opportunity for a Departmental review after issuance, conservative assumptions are made and incorporated into the GP thereby providing the necessary assurances.

2. Will there be a GP considered for this type of operation?

Yes, as was announced at the Industrial Stakeholders Group Meeting on Friday, June 3, 2022, and at the Fumigation information sessions on June 9 and June 15 of 2022, the Department will begin the stakeholding of a potential GP(s). The Department will work with a limited, balanced group of stakeholders to potentially develop a GP for consideration.

### Existing operations

1. I am an existing operation. When do I need to submit an application?

February 3, 2023 is the deadline listed in the rule, but the Department recommends applicants submit as soon as possible.

2. What is meant by an “existing” operation?

For a facility to be considered as “existing” prior to the operative date of the rule, June 3, 2022, a facility should be able to provide proof of fumigation operations at a given location.

The facility’s owner should cooperatively provide records of all dates in which fumigation operations were conducted, as well as the names of and quantities of fumigants used within or up to the last 5 years (if applicable). If the owner of the facility states that the facility was recently acquired, the same records listed above should be requested from the new owner/operator for as long as the facility has been in operation (assuming that fumigation operations have been conducted prior to June 3, 2022).

If these records cannot be obtained and provided, the Department will have to consider the operation as a new operation.

3. I am a NEW operation as of June 4, 2022. When can I start operations?

As the operative date of the rule is June 3, 2022, a facility may not install or operate equipment until an approved permit is obtained from the Department.

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4. I am an existing operation and submitted a permit application. May I continue to operate while my permit application is under review and permit is pending?

The notice of rule adoption states,

“There is no application shield for a facility operating with a pending permit, but the Department will consider whether the facility is working collaboratively with the Department to provide all information necessary to complete the permitting process in determining whether enforcement action is necessary to ensure compliance with the rules’ requirements.”

5. How do I maintain compliance if I don’t have a permit in hand by Feb 3, 2023 (8 months after operative date)?

To maintain compliance, the owner or operator must have submitted an application to the Department by February 3, 2023, and must be working cooperatively with the Department toward a permit issuance. Failure to do so may result in an appropriate enforcement action.

### Application questions

1. What is the best way to get started on the permit application process?

Call and ask for help. Help is available during business hours at 609-292-6716 (PCP Helpline). If you have questions after hours, please email inquiries to [aqppls@dep.nj.gov](mailto:aqppls@dep.nj.gov) and we will strive to reply to inquiries the next day. The Department encourages you to contact us for a preapplication meeting. Meeting at the facility is preferred to allow Department staff to observe the site-specific details for each facility. Alternatively, face to face meetings in our Trenton office are available or virtual meeting where an in-person meeting is not possible.

2. Is there any guidance on how to submit a permit application?

Yes, you can find guidance on how to submit a permit application at the Bureau of Stationary Sources website (<https://www.state.nj.us/dep/aqpp/index.html>) under "Applications and Forms" and "Online Permitting Help".

3. How do I submit a permit application?

If the facility does not yet have an Air ID, you will need to complete the Air Quality Facility ID Request Form. Then, you will prepare an Air Pollution Control Permit Application using RADIUS, a software available for download at the BoSS website. Submit all applications via our online portal, <http://www.njdeponline.com/>. For further assistance, contact the Air Permits for Minor Facilities helpline at 609-292-6716 or the RADIUS helpdesk at 609-633-7259.

4. What do I need to include in a permit application?

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All permit applications require a complete RADIUS application, per the instructions at <https://www.state.nj.us/dep/aqpp/downloads/forms/instruct.pdf>. Applications should include:

- The commodity/structure to be fumigated
- Fumigant name
- Amount of fumigant used/released
- An unlocked excel file demonstrating Potential to Emit calculations
- Facility diagrams with labeled equipment and emission points
- Current contact information
- Technical specifications of the equipment and any control devices
- Documentation of State-of-the-art (SOTA) compliance per N.J.A.C. 7:27-8.12, and
- A first-level risk assessment for any Hazardous Air Pollutants (HAPs) above reporting threshold as defined in N.J.A.C. 7:27-17. The Risk Assessment Guide and Air Regulations are available in the Bureau of Stationary Sources website at <https://www.state.nj.us/dep/aqpp/index.html>.
- Second-level or refined risk assessment may be required dependent upon the first-level risk assessment.
- If the application includes emissions of volatile organic compounds (VOCs), reasonably available control technology (RACT) may be required per N.J.A.C. 7:27-16

### Permit requirements

1. Are all fumigation operations required to install air pollution controls or a stack to obtain a permit?

The rules do NOT require a stack installation or air pollution controls.

However, an applicant must demonstrate that there will be no offsite impacts; it is up to the facility to best determine how to address risk. A new stack or taller stack, an air pollution control device, substituting raw materials, limiting production, increasing exhaust flow are just some of the options that a facility may have to implement to address risk. Ultimately the Department will review the application and determine if risk has been addressed adequately.

To assist facilities in evaluating risk, the Department developed a risk screening worksheet (RSW) available for use by applicants. Please note that when using the RSW there is a minimum stack height assumed in the tool. Applicants are not required to use the RSW.

As mentioned in the applications section, facilities using fumigants that are VOCs may be required to conduct additional analysis, and may be required pursuant to N.J.A.C. 7:27-16 to employ air pollution control devices and associated stacks.

2. If Sulfuryl Fluoride (SF) is used for a fumigation operation how will the Department assess risk in the absence of a reference concentration (Rfc) for SF?

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Reference concentrations included in the Department's technical manual/guidance are presumptive values. The Department recently posted for 30-day public comment a change to the RSW to include a Rfc for SF, based on the recommendation from the Department's Division of Science and Research.

Those facilities with existing applications have been informed of the Rfc the Department intends to use; a process for sharing additional reasonably available scientific information has also been established.

Facilities may use the DRAFT RSW for SF evaluation; the use of the RSW is voluntary.

### Emergency fumigation

#### 1. How do I demonstrate I was required to perform an emergency fumigation?

In the case of imports/exports, the requirement for fumigation will likely be a directive from a federal authority mandating a certain shipment of imports be immediately fumigated for invasive pest control. As the emergency provision is a limited allowance, the facility citing the emergency is strongly encouraged to submit a permit application for future fumigations.

An emergency fumigation could also be required pursuant to food safety laws and guidelines that a facility must follow, e.g., 21 U.S.C. 342, 21 C.F.R. 117.35 and .80. In either case, the reason for "emergency" should be documented and should cite the appropriate State or Federal regulation or requirement. Many facilities likely have these fumigation plans built into their pest management/food safety plans. Facilities that have these operations laid out in plans should immediately submit applications to permit these activities if the fumigation will meet the permit applicability threshold. Again, the emergency provision is a limited allowance; the facility citing the emergency should submit a permit application if any future fumigation subject to the permitting requirements is expected to occur.

#### 2 Does the Department require any specific format for submittal of the advanced notification and post fumigation reports?

The rule does not specify a format for submitting information to the Regional Enforcement Office. However, any notification or report must include all information outlined in N.J.A.C. 7:27-8.2(g)1 and N.J.A.C. 7:27-8.2(g)6.

All notifications, reports, and documentation submitted to the Regional Enforcement Office should be certified by the Responsible Official as defined in N.J.A.C 7:27-1.4 and any additional individual(s) with direct knowledge of the information contained in the certified document(s), as required by N.J.A.C. 7:27-1.39, Certification of information. The referenced air regulations are available at <https://www.state.nj.us/dep/agpp/>.