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## **ENVIRONMENTAL PROTECTION**

### **AIR QUALITY, ENERGY, AND SUSTAINABILITY**

#### **DIVISION OF AIR QUALITY**

##### **Permit and Reporting Requirements for Fumigants and Other Hazardous Air Pollutants**

**Proposed Amendments: N.J.A.C. 7:27-8.1, 8.2, 8.4, 8.5, 8.12, 8.18, 8.20, 8.21, 8.28, 16.1, 16.1A, 16.17, 16.22, 17.1, 17.3, 17.5, 17.7, 17.9, 21.1, 21.2, 21.3, 21.4, 7:27-21 Appendix 1, 22.1, 22.3, 22.5, 22.6, 22.8, 22.18, 22.19, 22.22, 22.27, 22.30, and 22.35; and 7:27A-3.2 and 3.10**

**Proposed Repeal: N.J.A.C. 7:27-8.27**

**Proposed New Rules: N.J.A.C. 7:27-17.10 and 22.36**

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, and 26:2C-1 et seq., specifically 26:2C-8, 8.11, 9, 9.2, and 9.4.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 02-21-01.

Proposal Number: PRN 2021-020.

A **public hearing** concerning this notice of proposal and the proposed State Implementation Plan (SIP) revision that this proposed rulemaking represents will be held on April 8, 2021, at 4:00 P.M. The public hearing will be conducted virtually through the Department of Environmental Protection's (Department) video conferencing software (that is,

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Microsoft Teams). A link to the virtual public hearing will be provided on the Department's Air Quality website at <https://www.state.nj.us/dep/aqm/curformp.html>. The hearing will remain open until all testimony has been heard. If you are interested in providing oral testimony at the virtual public hearing, please email the Department at [Heidi.Jones@dep.nj.gov](mailto:Heidi.Jones@dep.nj.gov) no later than 12:00 P.M. on April 6, 2021, with your contact information (name, organization, telephone number, and email address). You must provide a valid email address so the Department can send you an email confirming receipt of your interest to testify orally at the hearing and provide you with a separate option for a telephone call-in line if you do not have access to a computer that can connect to Microsoft Teams. Please note that the Department will take oral testimony at the hearing by alphabetical order of the testifying person's last name, and that this hearing will be recorded.

Submit written comments by April 30, 2021, electronically at [www.nj.gov/dep/rules/comments](http://www.nj.gov/dep/rules/comments). Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket No. 02-21-01

Office of Legal Affairs

New Jersey Department of Environmental Protection

401 East State Street, 7th Floor

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Mail Code 401-04L

PO Box 402

Trenton, NJ 08625-0402

The proposed amendments, repeal, and new rules will become operative 60 days after their adoption (see N.J.S.A. 26:2C-8). The notice of proposal may be viewed or downloaded from the Department's website at [www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).

The agency proposal follows:

### **Summary**

Since the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

This proposed rulemaking represents a continuation of the Department's efforts to address air contaminants in New Jersey through its permitting and emission statements programs. The Department's rules at N.J.A.C. 7:27-8, 16, 17, and 21 and related penalties at N.J.A.C. 7:27A-3.2 and 3.10 are part of New Jersey's State Implementation Plan (SIP) for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for ozone. To the extent that the proposed amendments, repeal, and new rules impact rules in the SIP, this rulemaking constitutes a revision to the SIP. The proposed amendments and new rule at N.J.A.C. 7:27-22 do not constitute a revision to the SIP as those provisions at N.J.A.C. 7:27-22

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are not part of the SIP. The Department will submit the rules that constitute a proposed revision to the SIP to the United States Environmental Protection Agency (EPA) to revise New Jersey's SIP, as required by the Federal Clean Air Act (CAA).

This rulemaking includes three major components. First, the Department proposes to regulate fumigants and fumigation operations based on potential to emit, rather than weight of raw materials, to provide clarity on the regulatory requirements for these operations that utilize highly toxic chemicals (fumigation). Second, the Department proposes to regulate three air contaminants that are not currently regulated by the State, to be referred to as State-specific hazardous air pollutants (New Jersey Hazardous Air Pollutants, or NJHAPs). Third, the Department proposes to add 13 air contaminants to the list of "toxic air pollutants" that must be included in an emission statement submitted by a source otherwise subject to emission statement requirements (emission statements). The Department uses the term "air contaminant" in this rulemaking and in its air pollution control rules to refer generically to substances in the air. The term "air contaminant" is defined throughout N.J.A.C. 7:27 to mean "any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases."

This rulemaking also includes proposed penalty provisions at N.J.A.C. 7:27A for the proposed amendments to the Air Pollution Control rules. In addition, the Department proposes amendments to remove references to the discontinued Facility-Wide Permit Program, as well as miscellaneous amendments throughout the rules to correct grammar and punctuation, and to enhance clarity and readability.

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### **Fumigation**

Fumigation involves the treatment of a commodity or structure (for example, a warehouse or container) with a pesticide intended to eliminate unwanted pests from that commodity or structure. Commodities, such as lumber/logs, fruit (for example, grapes, peaches), cocoa beans, grains, tobacco, peanuts, and pasta are routinely fumigated as they are imported to, or exported from, the United States. Fumigation operations have been a concern for quite some time, both in New Jersey and throughout the region, because of the high level of toxicity of the chemicals used and the exposure of the public during fumigation operations.

The most commonly used fumigants for the treatment of commercial commodities are methyl bromide, sulfuryl fluoride, and phosphine, all three of which are highly toxic. Of these, only sulfuryl fluoride is not already Federally regulated as either a hazardous air pollutant (HAP) or a volatile organic compound (VOC).

Methyl bromide is a highly toxic halogenated hydrocarbon. Methyl bromide is a colorless, non-flammable gas with a very low odor concentration, which is used to treat commodities, such as grapes, asparagus, logs, and other imported goods. Methyl bromide is also used as a fumigant for domestically sourced logs before export. Acute and chronic human exposure to high concentrations of methyl bromide can cause central nervous system and respiratory system failures, including death, and may harm the lungs, eyes, and skin. Additionally, acute exposure to methyl bromide in high concentrations has been shown to cause kidney damage in humans. Methyl bromide depletes the ozone layer and its production

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in the United States and its import are banned, except for certain uses, such as commodity fumigation.

Sulfuryl fluoride is an inorganic compound. Sulfuryl fluoride is a colorless, odorless gas that is also a potent greenhouse gas. Sulfuryl fluoride is used to fumigate commodities, such as cereal grains, dried fruits, tree nuts, cocoa beans, and coffee beans. It is also used to control pest infestations in structures and shipping containers. In humans, acute inhalation exposure to high concentrations of sulfuryl fluoride results in respiratory irritation, lung damage, central nervous system depression, and death. Chronic exposure impacts the central nervous system and respiratory tract. The fluoride ion may affect muscle activity (muscle twitching, seizures) by binding to calcium. Other effects are attributed to its binding to potassium and magnesium ions. Sulfuryl fluoride would be expected to disrupt carbohydrate and lipid metabolism in humans, similar to its action in termites; at high levels it is lethal.

The California Environmental Protection Agency (CalEPA), through its Department of Pesticide Regulation and its Office of Environmental Health Hazard Assessment (OEHHA), has been researching and issuing documents on the health impacts of sulfuryl fluoride for more than 10 years. The following table summarizes the documents issued by the CalEPA concerning its findings on the health impacts resulting from the discharge of sulfuryl fluoride to the ambient air:

CalEPA document	Sulfuryl fluoride toxicity finding <sup>5</sup>
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<p>July 1, 2005-Memorandum Findings on the Health Effects of the Active Ingredient: Sulfuryl Fluoride<sup>1</sup></p>	<p>1. OEHHA identifies sulfuryl fluoride as a candidate toxic air contaminant (TAC) 2. OEHHA concurs with issuance of sulfuryl fluoride reference concentrations</p>
<p>July, 2006-Sulfuryl Fluoride (Vikane®) Risk Characterization Document Volume I Health Risk Assessment<sup>2</sup></p>	<p>Lists a 24-hour sulfuryl fluoride reference concentration of 510 µg/m<sup>3</sup> and a long-term or chronic reference concentration of 10 µg/m<sup>3</sup></p>
<p>September, 2006-Sulfuryl Fluoride (Vikane®) Risk Characterization Document Executive Summary<sup>3</sup></p>	<p>2006 CA Pesticide Report's recommended standards met OEHHA criteria for including the standards as toxicity factors</p>
<p>March 3, 2017-Memorandum Establishing Sulfuryl Fluoride Uncertainty Factors for Acute and Short-term Exposures<sup>4</sup></p>	<p>Lists an updated 24-hour sulfuryl fluoride reference concentration of 1,700 µg/m<sup>3</sup> and a long-term or chronic reference concentration of 60 µg/m<sup>3</sup></p>

<sup>1</sup> [https://www.cdpr.ca.gov/docs/emon/pubs/tac/tacpdfs/sulfluor/oehha\\_findings.pdf](https://www.cdpr.ca.gov/docs/emon/pubs/tac/tacpdfs/sulfluor/oehha_findings.pdf)

<sup>2</sup> [https://www.cdpr.ca.gov/docs/emon/pubs/tac/tacpdfs/sulfluor/final\\_rcd\\_vol1.pdf](https://www.cdpr.ca.gov/docs/emon/pubs/tac/tacpdfs/sulfluor/final_rcd_vol1.pdf)

<sup>3</sup> <http://www.fluoridealert.org/wp-content/pesticides/sf.calif.sept.06.risk.summary.pdf>

<sup>4</sup> [https://www.cdpr.ca.gov/docs/risk/rcd/establishing\\_sulfuryl\\_fluoride.pdf](https://www.cdpr.ca.gov/docs/risk/rcd/establishing_sulfuryl_fluoride.pdf)

<sup>5</sup> µg/m<sup>3</sup> - micrograms per cubic meter

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Phosphine is a colorless, flammable, and toxic gas used to fumigate grains, animal feed, and leaf-stored tobacco. Phosphine is also used as a rodenticide. Acute inhalation exposure causes headaches, fatigue, burning substernal pain, vomiting, labored breathing, chest tightness, pulmonary edema, and tremors in humans. Chronic exposure may cause inflammation of the nasal cavity and throat, weakness, dizziness, nausea, jaundice, and liver effects. Cardiovascular complications may cause death within 12 to 24 hours following exposure. Deaths that occur 24 hours after exposure are usually a result of liver or kidney failure. Pulmonary edema can also lead to death.

Information on Statewide usage of methyl bromide, sulfuryl fluoride, and other fumigants is available in the “Fumigant Use in New Jersey – 2016 Survey” (2016 Survey), a report prepared by the Department’s Office of Pesticide Evaluation and Monitoring, available at <https://www.nj.gov/dep/enforcement/pcp/bpo/pem/surveys/fume2016.pdf>. Approximately 79 percent of all targeted licensed applicators responded to the 2016 Survey. The 2016 Survey listed methyl bromide usage at 169,459 pounds and sulfuryl fluoride usage at 125,905 pounds. Methyl bromide and sulfuryl fluoride accounted for 94 percent of the weight of all fumigants applied. Use of fumigants in warehouses, trailers, ports, and food-processing operations accounted for 45 percent of all fumigant usage, while 54 percent of the remaining application sites were categorized as “other/unspecified.” These other sites include agricultural soil fumigation, and residential and commercial structural fumigation for indoor pests. Although it is not practicable to estimate the exact annual amounts of methyl bromide and sulfuryl fluoride used for fumigating commodities, it is reasonable to conclude from the 2016 Survey data that

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methyl bromide and sulfuryl fluoride application amounts are significant and are in the approximate range of 20 to 50 tons per year for each fumigant. A good majority of these emissions are likely discharged at ground level directly to the environment. Although phosphine is not as commonly used in New Jersey as methyl bromide and sulfuryl fluoride, its use as a rodenticide and as an insecticide for fumigation is well established.

As indicated in the 2016 Survey, many commodities are fumigated in warehouses located in and around the densely populated areas of Newark, Elizabeth, and Camden. This finding is consistent with feedback the Department has received from stakeholders who conduct fumigations or own commodities that are fumigated. In addition, fumigation is conducted at these three New Jersey cities because they all have active ports where imported and exported commodities must be fumigated before they can be distributed. All three cities have a significantly higher (roughly 10-fold) population density than the New Jersey average, which is approximately 1,225 per square mile, and all three cities have a minority population of more than 80 percent.

During its review of fumigation operations, the Department determined that some applicators were operating without the requisite air pollution control permits. As a result, in 2017, the Department issued a Compliance Advisory Enforcement Update as a follow-up to its Compliance Advisory Enforcement Alert issued in 2005. The Department issued these two Compliance Advisories to advise that the use of fumigants on agricultural commodities requires an air pollution control permit in accordance with the Department's rules at N.J.A.C. 7:27-8.2(c)19. The 2017 Enforcement Update further clarified that applicators may also be subject

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to N.J.A.C. 7:27-16, if the applicator triggered the maximum allowable emission rate at N.J.A.C. 7:27-16.16.

In 2017, the Department also sent information requests to the four fumigation companies responsible for most of the fumigation operations in the State and met with three of them. Since that time, the Department has supplemented this information-gathering effort with information request letters to additional companies identified as conducting fumigation operations in New Jersey.

Responses from these fumigation companies included information on fumigation events using methyl bromide, sulfuryl fluoride, and phosphine. Based on its review of the responses, the Department issued Notices of Violation (NOVs) to the fumigation companies and the property owners/responsible entities for operations at 33 sites to which permitting requirements applied. The NOVs provided notice and compliance deadlines to submit air permit applications. To facilitate the permit application process, the Department's Offices of Air Permitting and Compliance and Enforcement conducted joint site visits at several fumigation facilities. Currently, the Department has 13 pending air pollution control permit applications from New Jersey facilities, as well as one approved permit.

As the Department became aware of the extent to which fumigation operations in New Jersey are being conducted without required permits, the Department joined a regional effort through the Mid-Atlantic Regional Air Management Association (MARAMA) to share information concerning these operations and the risks from these fumigants and to develop and implement consistent requirements for their control. MARAMA is a voluntary, non-profit

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association of 10 state and local air pollution control agencies. MARAMA's mission is to strengthen the skills and capabilities of member agencies and to help them work together to prevent and reduce air pollution in the Mid-Atlantic Region.

MARAMA's work to evaluate fumigation operations resulted in the "Fumigation White Paper – April 2019" (White Paper), to which the Department contributed. See [https://www.marama.org/images/stories/documents/MARAMA\\_Fumigation\\_White\\_Paper\\_040219.pdf](https://www.marama.org/images/stories/documents/MARAMA_Fumigation_White_Paper_040219.pdf). The White Paper collected and reviewed information from agency staff on practices and regulations, as well as potential management, permitting, and control strategies that address toxic emissions resulting from the use of fumigants to treat commercial commodities. The environmental agencies of three states outside the MARAMA region (Maine, Georgia, South Carolina) also contributed to the White Paper.

The many known and reported instances of fumigation activities causing severe health damage provided the impetus for the development of the White Paper. Several examples are listed in the "Why should we be concerned?" section of the White Paper. The report underscored the urgent need to address the health risks of fumigation by crystallizing the fact that many of these fumigation activities occurred in areas in and around ports, where low-income and environmentally stressed neighborhoods are located; and that fumigants are generally emitted at ground level, resulting in high off-site concentrations. White Paper recommendations include issuance of comprehensive air permits for fumigation activities, and requiring "good fumigation practices," including risk mitigation.

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Regional coordination and consistent compliance standards are important to avoid a race to the bottom, where fumigation operations relocate to jurisdictions that have the least protective air quality regulations, threatening public health, safety, and welfare of the neighboring residents. Thus, the White Paper lists how fumigation is regulated by each contributing state's environmental regulatory agency, what types of fumigation have been permitted, and what actions and restrictions were required to minimize off-site health risks. For example, the Maryland Department of the Environment has classified sulfur dioxide as a state-specific Maryland toxic air pollutant, a step that allows the Maryland Department to address sulfur dioxide's use and discharge from fumigation operations. Maryland's regulation applies to emissions of the three fumigants addressed by this proposed rulemaking and requires fumigators to install Maryland's best available emission-reducing control technology for toxic air pollutants. Maryland also requires fumigators to meet the ambient impact requirement demonstrating that the pollutant concentration does not exceed established threshold and risk-based screening levels. (See COMAR 26.11.15.05.)

As a result of the Department's outreach, evaluation, and enforcement initiative, the Department determined to revise its permitting rules to clarify the regulatory requirements applicable to fumigation operations. By doing so, the Department believes it is taking an important step toward consistent regulation of fumigation operations in the region to protect public health, safety, and welfare. The importance of clarifying the rules applicable to fumigation operations and ensuring greater compliance with permitting requirements, as well

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as regulating the fumigants themselves, stems from the highly toxic nature of the substances used in this process.

The Department's existing rules require fumigation operations to obtain a permit if the combined weight of all raw materials used exceeds 50 pounds in any one hour, subject to certain conditions. See existing N.J.A.C. 7:27-8.2(c)19 and paragraph 6 of the existing definition of "significant source" at N.J.A.C. 7:27-22.1. The Department proposes to amend the permitting requirements for fumigation operations to base the permit requirements on a fumigation operation's potential to emit, rather than the weight of raw materials used. As proposed, fumigation will be subject to permit requirements if the fumigation of a commodity or industrial structure, proposed to be defined as discussed below, has a potential to emit more than 0.1 pounds (45.4 grams) per hour, which is consistent with the existing potential to emit threshold for chemicals currently defined as toxic substances. See existing and proposed N.J.A.C. 7:27-8.2(c)2. The Department will evaluate United States Department of Agriculture (USDA) pesticide use requirements to confirm the pound per hour emissions listed in the application are appropriate and correct.

As part of its review, the Department also considered whether air pollution control permits for activities involving fumigation should be portable. A portable air pollution control permit would allow a permittee to conduct fumigation operations at multiple locations without having to obtain site-specific approvals. However, given the high toxicity of fumigants, the many types of locations where fumigation could occur, and the proximity of many fumigation

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operations to residential areas, the Department determined that case-by-case review and a site-specific permit are necessary to protect public health, safety, and welfare.

“Fumigation or fumigation operation” is proposed to be defined at N.J.A.C. 7:27-8.1 and 22.1. Certain emergency fumigation operations, as discussed further below, are proposed to be exempt from the permitting requirement. See proposed new N.J.A.C. 7:27-8.2(c)22 and proposed new paragraph 21 of the definition of “significant source” at N.J.A.C. 7:27-22.1.

As explained above, the fumigation of a commodity or industrial structure is proposed to be subject to the permitting requirements at the proposed potential to emit threshold. The Department proposes to define “commodity” and “industrial structure” at N.J.A.C. 7:27-8.2 and 22.1. In addition to fumigating commodities, such as produce and logs, to remove or prevent pests, it is often necessary to fumigate the location where the commodities are, have been, or will be stored. Fumigation operations can range from fumigating a truckload of logs under a tarp, to a large warehouse filled with cocoa beans, or even an empty warehouse. Thus, the Department proposes to define “industrial structure” broadly to mean a structure or equipment, such as a building, warehouse, container, bin, silo, room, commodity pallet, or manufacturing or processing equipment, in which fumigation occurs. The proposed definition excludes private residences and commercial offices.

By promulgating permitting requirements specific to fumigation operations and setting a more appropriate metric to determine when a fumigation operation requires a permit, the Department expects to improve compliance with permit requirements. The Department believes that the proposed fumigation rules will clarify the regulatory requirements for

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fumigation operations and ensure public health, safety, and welfare are adequately protected from the highly toxic chemicals most frequently used to fumigate commodities and industrial structures. The Department's proposed rules addressing the emissions from commodity fumigation should benefit residents in existing environmentally overburdened neighborhoods by reducing exposure to fumigants. Although other Federal and Department rules address certain aspects of fumigation operations, for example, EPA's Worker Protection Standard, 40 CFR Part 170, and the Department's Pesticide Control Code, N.J.A.C. 7:30, these State and Federal requirements do not ensure that the release of the fumigant will not result in a significant health risk to the surrounding communities.

Discharge of fumigants: vertical stack requirements and risk assessment

The Department has determined that it would be difficult, if not impossible, to reduce health risks from fumigation operations to an acceptable level unless the emissions are directed through a vertical stack. A vertical stack of sufficient height ensures that the emissions from the stack are dispersed, thereby minimizing the concentration of air pollutants at ground level, where individuals may be exposed. If the fumigation operation is subject to the air pollution control permitting provisions at N.J.A.C. 7:27-8 or 22, proposed new N.J.A.C. 7:27-17.10(a), Discharge of fumigants, would require a vertical stack to release emissions above the roofline of the container or structure where the fumigation is taking place. The release of the emissions above the roofline is a baseline requirement; the risk assessment will determine the appropriate height of the stack. Emergency fumigation is not subject to proposed new N.J.A.C.

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7:27-17.10; however, there are comparable vertical stack provisions applicable to emergency fumigation at proposed N.J.A.C. 7:27-8.2(g) and 22.36.

If the fumigation operation is subject to the permitting requirements at N.J.A.C. 7:27-8 or 22, then a risk assessment for the fumigation operation is necessary as part of the permit application. See proposed new N.J.A.C. 7:27-17.10(b). The Department uses risk assessments to evaluate potential effects on public health and the environment from facilities seeking permits to emit air contaminants. The proposed risk assessment for fumigation is consistent with the risk assessment requirements for the emission of other air contaminants subject to an air pollution control permit. The facility has the option of conducting the air quality modeling and submitting the results for review and approval or requesting that the Department conduct the modeling.

If the facility opts for the latter, the Department will utilize AERMOD (or an equivalent air quality model) to conduct the risk assessment, consistent with Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions). AERMOD is the EPA-preferred air quality dispersion modeling system developed by the American Meteorological Society/Environmental Protection Agency Regulatory Model Improvement Committee (AERMIC). AERMOD incorporates air dispersion based on planetary boundary layer turbulence structure and scaling concepts, including treatment of both surface and elevated sources, and both simple and complex terrain. The Department will input into AERMOD information, including the maximum hourly and annual air toxic emissions, facility plot plan, stack parameters, and hours of operation, to determine the maximum off-site ambient air toxic

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concentrations. The Department will calculate annual air contaminant emissions by using the maximum annual number of fumigation events, the length of each fumigation event, and the hourly emission rates.

Once air quality dispersion modeling determines the maximum off-site ambient air toxic concentrations, the Department compares them to any applicable unit risk factors (for carcinogens) and reference concentrations (for noncarcinogens). A unit risk factor can be defined as the upper-bound excess probability of contracting cancer as the result of a lifetime of exposure to a carcinogen at a concentration of one microgram per cubic meter ( $\mu\text{g}/\text{m}^3$ ) in air. Unit risk factor units are “per microgram (of chemical) per cubic meter (of air)” or  $(\mu\text{g}/\text{m}^3)^{-1}$ . A reference concentration, which is a quantification of the air contaminant’s hazard, is an estimate of a daily inhalation exposure concentration for the human population that is likely to be without an appreciable risk of deleterious non-carcinogenic effects. The value of the reference concentration is derived by incorporating uncertainty factors to account for uncertainties in toxicity studies. Reference concentration units are “microgram (of chemical) per cubic meter of air” or  $\mu\text{g}/\text{m}^3$ . The Department uses reference concentrations generated by recognized governmental agencies including, but not limited to, the EPA’s Integrated Risk Information System, (<https://www.epa.gov/iris>), the United States Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, (<https://www.atsdr.cdc.gov>), and the California Environmental Protection Agency’s OEHHA (<https://oehha.ca.gov/>).

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If modeling shows a potential for a significant health risk, the facility must take necessary actions to lower the risk. Such actions could include installing controls, increasing stack height, increasing discharge velocity, increasing control efficiency, and decreasing processing rates. Proposed N.J.A.C. 7:27-17.10(b) provides information on how to access the technical manuals that govern the risk assessment.

Once the Department confirms that the fumigation scenario passes the risk assessment, the Department will draft a compliance plan that specifies how the facility must operate to meet the required limits and ensures that the permit discharge parameters are consistent with those used in the risk assessment. The compliance plan is a condition of permit approval and part of the permit. See existing N.J.A.C. 7:27-8.13(d) and 22.9. Compliance plan requirements would have to address site-specific parameters like the sealing of the structure, the duration of aeration, the exhaust flow rate, and the use of air pollution control equipment. Among other conditions, a compliance plan would place limits on the amount of fumigant applied, consistent with the calculated or proposed hourly and annual potentials to emit, which represent the worst case emission rates. A compliance plan also would require the facility to monitor its fumigant according to standard USDA practice.

The Department's guidance on risk assessment is available at:

<https://www.nj.gov/dep/aqpp/risk.html>. The Department proposes to reference, at N.J.A.C. 7:27-8.5(d), Air quality impact analysis, and 22.3(vv), General provisions, the risk screening worksheets associated with its Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions) to clarify that provisions relating to this manual in

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the Department's rules also apply to the associated worksheets. The proposed amendments also correct references to risk assessments to refer to "air quality dispersion modeling" and, where appropriate, insert references to the risk screening worksheets to clarify that they are associated with the technical manuals (and all are subject to public input). These proposed new and amended provisions are at N.J.A.C. 7:27-8.5(d) (availability), 22.3(cc) (denial of an application), 22.3(vv) (availability), and 22.8(a) (requirement to conduct modeling), (b) (use of the modeling), (c) (to be followed in preparing an air quality simulation modeling and risk assessment protocol), (d) (availability), and (e) (public input before finalization) and at proposed new N.J.A.C. 7:27-17.10(b) (to be followed in conducting risk assessments).

These proposed amendments also clarify that the risk screening worksheets are based upon the content and procedures outlined in the technical manuals. Lastly, the proposed amendments at N.J.A.C. 7:27-8.5(d) and 22.8(a), (b), (c), and (d) serve to ensure consistency between the risk assessment procedures in the Department's preconstruction permit rules at N.J.A.C. 7:27-8 and its operating permit rules at N.J.A.C. 7:27-22.

Requirements for emergency fumigation at N.J.A.C. 7:27-8.2(g) and N.J.A.C. 7:27-22.36

The Department recognizes that the USDA Animal and Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) program may direct emergency fumigation to prevent the movement of agricultural pests into or within the United States. Pursuant to existing Federal requirements, such fumigation is conducted consistent with the emergency exemption directions contained in the pesticide label and the USDA Treatment Manual, available at the USDA website at

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[https://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

The Department proposes to exempt certain emergency fumigation operations from the permitting requirements at N.J.A.C. 7:27-8 or 22. At N.J.A.C. 7:27-8.1 and 22.1, the Department proposes new definitions of “emergency fumigation” or “emergency fumigation operation” to mean the fumigation of a commodity or industrial structure that is required by a State or Federal authority, such as the USDA.

In some cases, an emergency fumigation may be the first time, or the first time in many years, that a source (a warehouse operation, for example) must fumigate. In this situation, the source may not have anticipated that it would be required to obtain a permit for this fumigation operation. A source that has fumigated within the preceding five years is not eligible for the emergency fumigation procedure but must obtain a permit, since a recently-required fumigation should have put the source on notice that it was likely to be required to fumigate at some future point. See proposed new N.J.A.C. 7:27-8.2(g) and 22.36(a).

The requirements for an emergency fumigation at proposed at N.J.A.C. 7:27-8.2(g) and 22.36, offer some degree of protection to the surrounding community and the environment, even though the Department has not issued a permit for which a risk assessment would have been conducted. These requirements include advance notice to the Department and appropriate warning signs at the site and fence or property line during fumigation and aeration. The proposed rules also require that the source use a vertical stack extending above the roofline to a height that comports with good engineering practice, and that the fumigation operation cease or be adjusted appropriately if the level of fumigant at the property or fence

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line exceeds the limit established by the fumigant label. Within 30 calendar days after the fumigation, the owner or operator must submit a report to the Department with detailed information on the operation. The report must also include a summary of all fumigation operations conducted over the preceding five years, to ensure that the source is eligible for the emergency fumigation permit exemption. A fumigation operation that took place before the operative date will not disqualify a subsequent emergency fumigation operation from using the emergency fumigation operation exemption.

As a result of proposed new N.J.A.C. 7:27-8.2(g), the Department proposes to recodify the subsequent subsections of N.J.A.C. 7:27-8.2, including the amendments to those sections that are discussed elsewhere in this rulemaking.

#### Regulating fumigants as Group III toxic substances and establishing reporting and state-of-the-art (SOTA) thresholds

Subchapter 17 of the Air Pollution Control rules regulates asbestos and HAPs, as well as toxic substances (otherwise referred to as “TXS”), defined as “a substance listed at N.J.A.C. 7:27-17.3, Table 1”. More stringent reporting and emission standards apply to air contaminants identified as TXS because of their high toxicity and extensive use. Specifically, for TXS listed at N.J.A.C. 7:27-17, a health-protective hourly reporting threshold of 0.01 pounds per hour applies, which, given the toxicity of these air contaminants, is a more protective metric for assessing risk than the pounds per year reporting threshold established for HAPs that are not TXS. The Department proposes to amend N.J.A.C. 7:27-17.3, Table 1, Toxic Substances, to include a third group of toxic substances, to be referred to as “Group III TXS,” defined at

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proposed amended N.J.A.C. 7:27-8.1. Proposed amended Table I identifies the Group III TXS as all fumigants, and specifically identifies methyl bromide, sulfuryl fluoride, and phosphine, the three fumigants most commonly used in fumigation operations at this time. "Fumigant" is proposed to be defined at N.J.A.C. 7:27-8.1, 17.1, and 22.1 to include chemicals registered with the EPA as pesticides under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq. (FIFRA). Therefore, all Group III TXS would be chemicals registered with the EPA as pesticides under FIFRA.

Each air contaminant identified at Table 1 at N.J.A.C. 7:27-17.3 is subject to the permitting requirements of N.J.A.C. 7:27-8 and 22, as provided at N.J.A.C. 7:27-8.2(c)2 (applicability) and the parallel provision at paragraph 16 of the definition of "significant source operation" at N.J.A.C. 7:27-22.1. The Department proposes to replace a reference to TXS at paragraph 14 of the definition of "significant source operation" at N.J.A.C. 7:27-22.1 with "Group I or II TXS" to make clear that a reference to Group III TXS is not intended to be included in the generic term "TXS." The Department is also proposing reporting thresholds and state-of-the-art (SOTA) thresholds for the proposed Group III TXS at proposed amended Table 3A (existing Table 2, with amendments) and proposed new Table 3B at N.J.A.C. 7:27-17.9. A facility that has the potential to emit an air contaminant in an amount over the reporting threshold must report on its permit application the maximum potential annual and hourly emissions for that contaminant. In addition, the rulemaking requires that if the facility has the potential to emit a contaminant in an amount over the SOTA threshold, the facility must make use of equipment, or an emission control apparatus, that meets SOTA standards, based on a

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permit application technology assessment to determine the feasibility of the installation of a control device, pursuant to N.J.A.C. 7:27-16.16 and 16.17 and SOTA requirements. As discussed further below, the reporting and SOTA thresholds are also used throughout N.J.A.C. 7:27-8, 21, and 22 in determining the applicability of various permitting and other requirements.

The Department's Division of Air Quality conducted an analysis in order to determine the maximum pound per hour (lb/hr) emission rate that would result in a negligible risk at the facility fence line for each fumigant. The analysis was based on the toxicology of each fumigant and air dispersion modeling. The results of the analysis support the approach of regulating fumigation activities and regulating fumigants as Group III TXS with a reporting threshold of 0.01lb/hr. For phosphine and methyl bromide, which are already regulated as Hazardous Air Pollutants, the Department does not propose to change the existing annual reporting thresholds or the SOTA thresholds, but only to add this second reporting threshold of 0.01lb/hr for each, as reflected in proposed Table 3B. To establish a SOTA threshold for sulfuryl fluoride, the remaining Group III TXS, the Department referred to N.J.S.A. 26:2C-9.2c(1), which establishes a SOTA threshold at five tons (10,000 pounds) per year for an air contaminant, such as sulfuryl fluoride, that is not a hazardous air pollutant (HAP).

The Department does not propose to add Group III TXS to N.J.A.C. 7:27-8.2(c)15. Existing N.J.A.C. 7:27-8.2(c)15 is an applicability provision, identifying (among other things) Group I TXS and Group II TXS as subject to permit requirements, under certain conditions. However, this permit applicability provision applies only to groundwater and wastewater treatment and was not intended to encompass Group III TXS. In addition, the Group III TXS are gases at standard

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conditions and are not likely to partition into the water, as they must be pressurized to be liquified or aerosolized.

Sulfuryl fluoride, identified as a proposed Group III TXS, is also proposed to be listed as a New Jersey Hazardous Air Pollutant (NJHAP) at proposed N.J.A.C. 7:27-17.3, Table 2, which is discussed further below.

### **New Jersey Hazardous Air Pollutants (NJHAPs)**

The Department regulates substances listed under Section 112 of the Clean Air Act, 42 U.S.C. § 7412(b), Hazardous Air Pollutants (HAPs). In addition to the Federally listed HAPs, the Department proposes to regulate hydrogen sulfide (H<sub>2</sub>S), 1-Bromopropane (1-BP), otherwise known as n-propyl bromide (n-PB), and sulfuryl fluoride, as State-specific hazardous air pollutants. The EPA defines HAPs as those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Congress promulgated an initial list of HAPs, and the EPA adds and removes substances from the list based on the EPA's determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation, or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects. The existing Federal list contains 187 HAPs. The Department, at existing N.J.A.C. 7:27-17.9, lists permitting reporting thresholds for 185 of the Federally listed HAPs. The two Federally listed HAPs not listed at N.J.A.C. 7:27-17.9 are radionuclides and mineral fibers, including asbestos, which are regulated by other New Jersey

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State programs. The HAPs reporting thresholds are values established by the Department above which the HAP emissions must be identified on air pollution control permits.

In accordance with its authority under the Air Pollution Control Act at N.J.S.A. 26:2C-8, the Department has determined that it is necessary to regulate substances, in addition to, Federally regulated HAPs, when the current use and emission of these substances and their current toxicity profiles may result in a significant health impact. New Jersey and other states recognize that there are air toxics of equal or greater concern than HAPs that are not regulated because the EPA has not yet classified them as HAPs. The Department proposes to classify as State-specific hazardous air pollutants, or New Jersey Hazardous Air Pollutants (NJHAPs), three non-HAP substances that it believes should be regulated. The Department proposes to define “New Jersey Hazardous Air Pollutant” or “NJHAP” at N.J.A.C. 7:27-8.1, 17.1 and 22.1, and in the Air Administrative Procedures and Penalties at N.J.A.C. 7:27A-3.2.

At proposed new Table 2 at N.J.A.C. 7:27-17.3, the Department is identifying three air contaminants as NJHAPs: hydrogen sulfide (H<sub>2</sub>S), 1-Bromopropane (1-BP), otherwise known as n-propyl bromide (n-PB), and sulfuryl fluoride. (Note that because sulfuryl fluoride is also a fumigant, its emissions are also addressed by permitting requirements for fumigation operations and by other assorted requirements for TXS, discussed below.) For each NJHAP, the Department proposes both a reporting threshold and a SOTA threshold, as set forth at proposed Tables 3A and 3B at N.J.A.C. 7:27-17.9. The reporting threshold determines whether a permit application for a source that emits a listed NJHAP must include the maximum potential annual and hourly emissions for that NJHAP.

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The Department developed the proposed reporting thresholds using the analysis outlined in the Department's Technical Support Document Updating Hazardous Air Pollutant Reporting Thresholds, June 5, 2017, (Technical Support Document), which is available on the Department's website, <http://www.nj.gov/dep/airmon/airtoxics/>. The analysis in the Technical Support Document includes evaluation of the modeling methodology, analysis of the modeling results, and identification of the proposed threshold values using the modeling results and the reference concentration of each individual NJHAP. The Department followed this procedure in developing the proposed reporting thresholds, as it did in updating the reporting thresholds for HAPs in 2018. See 49 N.J.R. 2373(a); 50 N.J.R. 454(a). In order to be adequately protective of public health, for sulfuryl fluoride, which is also a fumigant and highly toxic, the Department based the pounds per year reporting threshold on a yearly continuous operation with an hourly emission rate of 0.01 pounds.

To establish a SOTA threshold for these NJHAPs, the Department referred to the Air Pollution Control Act at N.J.S.A. 26:2C-9.2.c(1). The Air Pollution Control Act requires the incorporation of SOTA (referred to in the statute as "advances in the art of air pollution control") for equipment and control apparatus with either a potential to emit any HAP equal to or greater than the de minimis levels specified by the EPA, or the potential to emit five tons (10,000 pounds) per year or more of any other air contaminant.

Existing N.J.A.C. 7:27-17.9, Table 2, provides a reporting threshold (lbs/yr) and a SOTA threshold for the 185 Federally recognized HAPs that the Department regulates. For HAPs that are also toxic substances, existing N.J.A.C. 7:27-17.9(a)2 identifies an additional reporting

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threshold of 0.01 pounds per hour. The Department proposes to divide existing N.J.A.C. 7:27-17.9, Table 2 into Tables 3A and 3B. Proposed Table 3A provides a SOTA threshold and the single pounds per year reporting threshold for the HAPs and the proposed new NJHAPs that are not toxic substances. Proposed new Table 3B provides the SOTA threshold and the pounds per hour and pounds per year reporting thresholds for the HAPs and the proposed new NJHAPs that are toxic substances.

The air contaminants proposed to be relocated from existing Table 2 to new Table 3B with no change to their reporting and SOTA thresholds are benzene, carbon tetrachloride, chloroform, 1,4 Dioxane, ethylene dibromide, ethylene dichloride, ethylene imine, methyl bromide, methyl chloroform, methylene chloride, phosphine, 1,1,2,2 Tetrachloroethane, tetrachloroethylene, 1,1,2 Trichloroethane, and trichloroethylene. Sulfuryl fluoride is proposed as an addition to Table 3B. The characterization of H<sub>2</sub>S, 1-BP, and sulfuryl fluoride as NJHAPs is indicated by footnote 5 to Table 3A, and by footnote 2 to Table 3B. Proposed new footnote 6 to Table 3A and proposed new footnote 3 to Table 3B clarify that none of the air contaminants in Table 3A and all of the air contaminants in Table 3B are toxic substances or TXS, as that term is defined at N.J.A.C. 7:27-17.

Proposed deletion and replacement at N.J.A.C. 7:27-17.7(a) more clearly describes the applicability of the subchapter. Existing N.J.A.C. 7:27-17.7 explains the applicability of Subchapter 17 by referring to a list of examples of operations and equipment that are subject to Subchapter 17. Proposed new N.J.A.C. 7:27-17.7(a) clarifies that operations involving asbestos and coatings containing asbestos are regulated by Subchapter 17, as are all HAPs, TXS,

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and NJHAPs. To avoid the suggestion that the operations and equipment to which the subchapter applies are in any way limited to the examples at existing N.J.A.C. 7:27-17.7, the Department proposes to remove that list entirely.

At N.J.A.C. 7:27-17.7(b) and (c), and in the definition of “exempt activity” at N.J.A.C. 7:27-22.1, proposed amendments expand the reference to TXS to include HAPs and NJHAPs, both of which are subject to this subchapter. The proposed amended heading of N.J.A.C. 7:27-17.9 adds a reference to NJHAPs, for which the Department is proposing reporting and SOTA thresholds. The proposed deletion and replacement at N.J.A.C. 7:27-17.9(a) and (b) replace references to specific provisions at N.J.A.C. 7:27-8, 21, and 22 with more general references to the subchapters in which they are codified. This is intended to streamline and simplify these rules. The explanations regarding the use and interpretation of the Tables at existing N.J.A.C. 7:27-17.9(a)1 and 2 are replaced by a simpler explanation at proposed N.J.A.C. 7:27-17.9(b). The explanation at N.J.A.C. 7:27-17.9(a)3 is replaced by proposed footnote 4 to Table 3A, only. This existing explanation denotes the air contaminants where the SOTA threshold is lower than the reporting threshold, so that the SOTA threshold is applied as the reporting threshold. This is the case only for hydrogen fluoride, phenol, vinylidene chloride, and selenium compounds. This explanation does not apply to Table 3B.

At N.J.A.C. 7:27-8 and 22, proposed amendments add, where appropriate, a reference to NJHAPs in provisions also referencing HAPs or TXS. Throughout N.J.A.C. 7:27-8, 17, 21, and 22, references to N.J.A.C. 7:27-17.9(a) or (b) or Table 2 are proposed to be replaced with references to Tables 3A and 3B. See the references to reporting thresholds at N.J.A.C. 7:27-

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8.2(d)3ii(4) and (e)2v, 8.4(k)1, 8.18(a)3ii, 8.20(d)2, 8.21(b)5ii, 21.3(b)1ii and 2iii, 22.1, 22.3(c), 22.6(f)5i and ii, 22.27(e)1iii, and 22.30(l). See also the references to SOTA thresholds at N.J.A.C. 7:27-8.2(d)16iii and v(4), 8.12(a)1, 8.18(a)4, 8.21(b)6 and 8, 22.1, and 22.35(b) and (c).

The basis for the Department's determination to regulate hydrogen sulfide (H<sub>2</sub>S), 1-Bromopropane (1-BP), otherwise known as n-propyl bromide (n-PB), and sulfuryl fluoride as NJHAPs, including the reference concentrations for and potential health effects of each NJHAP, follows.

#### Hydrogen Sulfide (H<sub>2</sub>S)

The inhalation of H<sub>2</sub>S causes both acute and chronic health impacts. The EPA's Integrated Risk Information System establishes a chronic, or annual/long-term, H<sub>2</sub>S reference concentration of two micrograms per cubic meter (µg/m<sup>3</sup>). ([www.epa.gov/iris](http://www.epa.gov/iris).) Chronic exposure to H<sub>2</sub>S can lead to damage to the nervous and respiratory systems. OEHHA has determined that the acute, or 24-hour, H<sub>2</sub>S reference concentration is 42 µg/m<sup>3</sup>. Acute exposure can lead to damage to the central nervous system and result in headaches and nausea. Toxicology studies also suggest that long-term exposure to H<sub>2</sub>S may have toxic effects on the respiratory tract and cardiovascular system. The Agency for Toxic Substances and Disease Registry provides a summary of many of these studies in its Toxicological Profile for Hydrogen Sulfide/Carbonyl Sulfide, Agency for Toxic Substances and Disease Registry (See <https://www.atsdr.cdc.gov/ToxProfiles/TP.asp?id=389&tid=67#bookmark07> ). This document provides an overview of the toxicology of H<sub>2</sub>S, including descriptions and evaluations of

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toxicological studies and epidemiological investigations, and provides conclusions, where possible, on the relevance of toxicity and toxicokinetic data to public health.

Because H<sub>2</sub>S has a strong offensive odor, which a person can detect at very low concentrations (its very low odor threshold is approximately eight parts per billion (ppb) by volume (11 µg/m<sup>3</sup>)), the Department receives numerous H<sub>2</sub>S odor complaints. Sources of these H<sub>2</sub>S emissions include, but are not limited to, refineries, landfills, sewage treatment plants, and waste-related source operations. Although the primary focus of this proposed rulemaking is the health risks associated with H<sub>2</sub>S, establishing an H<sub>2</sub>S reporting threshold will, in addition to addressing the acute and chronic health effects of H<sub>2</sub>S, assist in ensuring that the potential for odors beyond the property line is evaluated as part of the review of the air pollution control permit application.

H<sub>2</sub>S has become a contaminant of concern nationwide. To address H<sub>2</sub>S emissions, several states have established maximum ambient levels that a facility's H<sub>2</sub>S discharges must not exceed. New York's one-hour ambient air quality standard is 0.01 parts per million (ppm) (14 µg/m<sup>3</sup>) (6 CRR-NY 257-10.3); Pennsylvania's 24-hour standard is 0.005 ppm and one-hour standard is 0.1 ppm (25 Pa. Code 131.4.); California's one-hour ambient air quality standard is 0.03 ppm (see the Table of Standards at 17 CCR § 70200); and Rhode Island established a secondary ambient air quality standard of 10 ppb (**250 RICR-120-05-22.9**).

1-Bromopropane (1-BP) (also referred to as n-propyl bromide or n-PB)

The Department proposes to regulate 1-BP, which is a solvent, as an NJHAP, based on its high toxicity and potential for significant use in dry cleaners, degreasers, and other commercial

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operations in New Jersey. In 2015, the total amount of 1-BP manufactured in, or imported into, the United States was almost 13,000 tons. In August of 2017, the Agency for Toxic Substances and Disease Registry issued reference concentrations for short- and long-term non-carcinogenic health impacts of 1-BP exposure. (See [www.atsdr.cdc.gov](http://www.atsdr.cdc.gov).) The acute, or 24-hour, reference concentration is 5,030  $\mu\text{g}/\text{m}^3$  and the chronic, or annual/long-term, reference concentration is 101  $\mu\text{g}/\text{m}^3$ . Short-term exposure can cause neurological and nervous system disorders. Health studies also show that 1-BP exposure can result in reproductive and developmental effects and cancer. Cancer caused by 1-BP exposure occurs after years of frequent contact. In addition to chronic, debilitating health conditions, exposure to the solvent can also cause acute ailments, making it easier to quantify the negative health impact of 1-BP in the short-term. These conditions include respiratory distress, profound dizziness, upset stomach, slurred speech, muscle twitching, and even loss of consciousness.

Numerous government studies and academic and clinical reports support the need to evaluate the potential health impacts of 1-BP when a facility proposes to emit the substance to the ambient air. The EPA has developed and released for public comment a draft Unit Risk Factor for the carcinogenic impacts of 1-BP through a draft risk evaluation under the Toxic Substances Control Act (TSCA). The Department did not use this Unit Risk Factor to determine the proposed 1-BP reporting threshold, since the EPA has not yet completed the public review process. However, when the Unit Risk Factor is finalized, the Department will accept comments on its proposed use to set a reporting threshold for 1-BP.

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On November 23, 2015, the EPA added 1-BP to the Toxics Release Inventory (TRI) – a list of chemicals that must be reported pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Public Law 99-499, (42 U.S.C. § 11023). See 40 CFR 372.65. This EPA action was based on the National Toxicology Program’s listing of 1-BP as “Reasonably Anticipated to be a Human Carcinogen.” The National Toxicology Program is a Federal interagency program in the Department of Health and Human Services that was created as a cooperative effort to coordinate toxicology testing programs within the Federal government, strengthen the science base in toxicology, develop and validate improved testing methods, and provide information about potentially toxic chemicals to health, regulatory, and research agencies, scientific and medical communities, and the public. (See <https://ntp.niehs.nih.gov>.)

The addition of 1-BP to the TRI followed several years of research on the solvent’s negative impacts on the environment and human health. With this action, the EPA officially concluded that 1-BP, which was already recognized as harmful to the environment, is reasonably anticipated to be a human carcinogen and meets the EPCRA statutory list revision criteria at 42 U.S.C. § 11023(d)(2)(B). The addition of 1-BP to the TRI will affect 140 users nationwide, most of whom use large quantities of the solvent for commercial or industrial application. These 140 users have the greatest negative impact on the environment and human health from the use of 1-BP. One of the 140 facilities included in the 2017 TRI report is located in New Jersey. See the searchable TRI explorer, [https://iaspub.epa.gov/triexplorer/tri\\_release.chemical](https://iaspub.epa.gov/triexplorer/tri_release.chemical).

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In addition, the EPA's Office of Pollution Prevention and Toxics identified 1-BP for further evaluation in the TSCA work plan, based on high hazard concerns due to its toxicity profile. In addition, based on its physical-chemical properties and use scenarios, the Office of Pollution Prevention and Toxics identified inhalation to be the primary exposure route of concern for 1-BP (see TSCA Draft Work Plan, [https://www.epa.gov/sites/production/files/2016-03/documents/1-bp\\_report\\_and\\_appendices\\_final.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/1-bp_report_and_appendices_final.pdf)).

On February 6, 2015, the EPA issued for public comment two petitions in support of adding 1-BP to the Clean Air Act Section 112(b)(1) list of hazardous air pollutants. The Halogenated Solvents Industry Alliance (HSIA) submitted its petition on October 28, 2011; New York State Department of Environmental Conservation (NYSDEC) submitted its petition on November 24, 2011.

The EPA accepted comments on the petitions until October 1, 2017, but has not made a final decision on whether to include 1-BP as a HAP. It did, however, conclude that the two petitioners provided adequate evidence that 1-BP emissions and ambient concentrations "may reasonably be anticipated to cause adverse health effects." EPA's docket for this petition is at <https://www.regulations.gov/docket?D=EPA-HQ-OAR-2014-0471>.

Several states have also determined that 1-BP is a substance that poses a potential health risk to communities surrounding facilities that operate equipment and processes using and emitting 1-BP beyond the facility's property line.

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Since 2010, the Massachusetts Toxic Use Reduction Act (TURA) has required the reporting of 1-BP, which, as of January 2016, was designated a Higher Hazard Substance under TURA (see <https://www.mass.gov/files/hhs - lhs fact sheet final 2016 0.pdf>). Under this designation, Massachusetts facilities in TURA-covered sectors with 10 or more employees are subject to reporting, planning, and fee requirements if they use 1,000 pounds or more of 1-BP annually. Massachusetts determined that 1-BP has serious adverse effects on human health, including both acute and chronic health effects. The Massachusetts chemical fact sheet is available from the Toxics Use Reduction Institute at [www.turi.org](http://www.turi.org).

California's Office of Environmental Health Hazard Assessment (OEHHHA) has included 1-BP in its California Proposition 65 list as a developmental/reproductive toxicant since December 2004 and as a chemical that causes cancer since 2016 (see <https://oehha.ca.gov/chemicals/1-bromopropane> and <https://oehha.ca.gov/media/downloads/proposition-65/chemicals/1bromonote1204.pdf>). Proposition 65, officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, (California Code, Health and Safety Code – HSC, Division 20, Chapter 6.6, section 25249.5-25249.14) was enacted as a ballot initiative in November 1986. The proposition protects drinking water sources in California from being contaminated with chemicals known to cause cancer, birth defects, or other reproductive harm, and requires businesses to inform Californians about exposures to such chemicals. It also requires California to maintain and update a list of chemicals known to the state to cause cancer or reproductive toxicity.

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Pennsylvania included 1-BP on its Hazardous Substance List at 34 Pa. Code Chapter 323, Appendix A. New York, in addition to filing a petition with the EPA to classify 1-BP as a hazardous air pollutant, established an annual non-carcinogenic health risk guideline concentration of 4.3 micrograms per cubic meter, based on the NYDEC's determination that 1-BP is a "High Toxicity Contaminant (HTC)." As a result, process emission sources as defined at 6 NYCCR Part 212.12(b)(19) that emit 1-BP must report yearly actual annual emissions and may be required to conduct a Toxic Impact Assessment incorporating an AERSCREEN modeling analysis or AERMOD modeling protocol.

From 2004 to 2018, 22 New Jersey facilities listed 1-BP in their New Jersey Community Right to Know submissions. The Department's Community Right to Know program collects, processes, and disseminates the chemical inventory, environmental release, and materials accounting data required to be reported under the New Jersey Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., and these EPCRA. Of these, three were dry cleaners and the rest were other businesses, including suppliers and manufacturing companies. Some of these facilities may have already discontinued their use of 1-BP and switched to another solvent as a result of its 2015 addition to the TRI and increasing awareness of its negative health impacts. A reporting threshold for 1-BP, as proposed in this rulemaking, will allow the Department to identify source operations that emit 1-BP and address associated off-site impacts.

#### Sulfuryl fluoride

As discussed above, the health impacts of sulfuryl fluoride are well-documented. Sulfuryl fluoride is used primarily as a commodity fumigant and is commonly discharged at

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ground level when the fumigation operation is concluded. The siting of fumigation facilities in close proximity to residential neighborhoods creates the potential for significant health risk to affected communities.

In addition to regulating sulfuryl fluoride as a Group III TXS, the Department proposes to also regulate sulfuryl fluoride as an NJHAP, based on its observed neurotoxicity and respiratory effects in humans and laboratory animals. As explained above, CalEPA has been researching the health impacts of sulfuryl fluoride for many years and is currently reevaluating its risk assessment. The proposed reporting and SOTA thresholds in this rulemaking are not impacted by CalEPA's work but when updated, the CalEPA standard will be used as a risk factor for the required risk assessment.

### **Emission Statements**

The Department proposes to amend N.J.A.C. 7:27-21, Emission Statements, to add 13 air contaminants to the list of toxic air pollutants that must be reported in Emission Statements. The New Jersey Emission Statement Program establishes a periodic, comprehensive inventory of air pollution from stationary sources in the State, as required by the Clean Air Act, 42 U.S.C. § 7511a(a)(3)(B). The Emission Statement rules at N.J.A.C. 7:27-21 require the reporting of air contaminants, including carbon monoxide, sulfur dioxide, ammonia, particulate matter, lead, volatile organic compounds, oxides of nitrogen, carbon dioxide, methane, and 36 HAPs. The emission statements that facilities submit provide the Department with an estimate of the Statewide emissions of regulated air contaminants, which is used to assist it in monitoring the State's progress toward emission reduction goals and attainment of National Ambient Air

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Quality Standards. The Department uses the data from the emission statements as the basis of the emissions inventory for New Jersey's State Implementation Plan (SIP). The Department makes this data available to the public and submits it to the EPA's national databases, the National Emissions Inventory, and the National Air Toxics Assessment. The Department also uses the data from the emission statements to calculate annual emissions fees associated with operating permits issued pursuant to N.J.A.C. 7:27-22, as well as for permitting and compliance purposes.

The Department last updated the list of toxic air pollutants that must be reported in emission statements in 2003. In response to the significant changes in toxicity factors and increased amounts of air toxics emitted since the last update, the Department performed an analysis to determine if the list should again be modified to better address pollutants of concern.

As part of this rulemaking, the Department conducted a relative risk analysis that compared all air toxics listed and reported in accordance with existing N.J.A.C. 7:27-21, Appendix 1, with all other air toxics listed in operating permits. In the first step of the analysis, the Department determined the cumulative allowable emission rates of all air toxics listed in operating permits. The Department then evaluated each of these air toxics using the following: 1) its unique allowable cumulative emission rate; 2) its unique toxicity value; and 3) a consistent ambient air quality impact concentration (in micrograms per cubic meter). The Department used the output of this evaluation to rank each air toxic by its relative health risk. Using this

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methodology, a toxic air pollutant with a high toxicity value could have a lower relative risk than a toxic air pollutant with a low toxicity value, if the cumulative emission rate was much lower.

The Department used trichloroethylene (TCE) as a benchmark for relative carcinogenic risk because TCE has the lowest relative carcinogenic risk of all toxic air pollutants that are currently required to be reported. The Department's relative risk analysis identified 11 air contaminants not listed in existing Appendix 1 that have relative carcinogenic risks higher than the relative carcinogenic risk of TCE. The Department also used TCE as the benchmark for relative non-carcinogenic risk for consistency with the carcinogenic analysis. Eighteen air contaminants have relative non-carcinogenic risks higher than the relative non-carcinogenic risk of TCE. The relative non-carcinogenic risks of these 18 air contaminants are also much higher than most of the toxic air pollutants listed at existing N.J.A.C. 7:27-21, Appendix I that must be reported in emission statements.

The Department also took into consideration the number of facilities that, according to their operating permits, have the potential to emit these air contaminants. In doing so, the Department did not consider air contaminants that are emitted by only one or two facilities, but instead focused on air contaminants that are being emitted on a significant level and by a significant number of sources. For those air contaminants emitted only by one or two facilities, although the emission data would not be captured in an emission statement, these emissions and their impacts would be addressed as part of the facility-wide risk assessment conducted in the Department's review of an operating permit renewal application. Additionally, if environmental or citizen groups or any government agency had a specific question or concern

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about one of those air contaminants not included, the Department determined that it would be easy to identify and evaluate the facilities that emit it, even without a requirement to report the emissions in the emission statement. This reduced to 13 the number of air contaminants proposed to be included in amended N.J.A.C. 7:27-21, Appendix I, as listed below. The Department will continue to evaluate the prevalence and toxicity of other air contaminants to determine whether it should require their reporting in emission statements.

The 13 air contaminants proposed to be added to the existing list at N.J.A.C. 7:27-21, Appendix 1 are: benzo(a)pyrene, chlorine, cobalt metal and compounds, cyanide compounds (as hydrogen cyanide), ethyl benzene, glycol ethers (as 2-methoxy ethanol), hydrogen fluoride, methyl tert-butyl ether, naphthalene, phosphorous, styrene, triethylamine, and xylene. As discussed above, the Department made this selection based on its determination of the emissions of greatest concern in New Jersey. With the exception of benzo(a)pyrene, these air contaminants are all Federally listed HAPs. All of these 13 air contaminants were identified with either carcinogenic or non-carcinogenic risks in a range comparable to the currently reportable list of toxic air pollutants, and all must be reported under the EPA's TRI Program.

Although the proposed amendments at N.J.A.C. 7:27-21 do not require any facility to reduce its air contaminant emissions, the Department anticipates that the new reporting requirements will result in a reduction in emissions of the 13 proposed toxic air pollutants. In similar programs, such as the Federal TRI, facilities have voluntarily reduced the quantities of pollutants that they report, perhaps due to increased public awareness.

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The 13 air contaminants proposed for inclusion in emission statements are listed, with their Chemical Abstracts Service (CAS) numbers, at proposed new N.J.A.C. 7:27-21 Appendix 1, Table 3. The proposed amended definition of “toxic air pollutant” or “toxic” reflects the addition of this table and the incorporation by reference of the three tables of toxic air pollutants. The reporting requirements for these 13 proposed toxic air pollutants are set forth at proposed new N.J.A.C. 7:27-21.3(b)1iii. These air contaminants must be reported, at the facility level only, beginning with reporting year 2021, to be submitted in 2022. Other proposed amendments at N.J.A.C. 7:27-21.3(b) are intended to make more clear which toxic air pollutants are to be reported at only the facility level, and which are to be reported at the source level, as well as the facility level. Proposed amended N.J.A.C. 7:27-21.3(b) also reflects that the reporting thresholds at N.J.A.C. 7:27-21 Appendix 1, Table 2 applied for reporting years 2005 through 2017, not for reporting not year 2017, alone. Indication that these reporting thresholds applied prior to reporting year 2017 was inadvertently not captured in the last amendment of these rules. See 49 N.J.R. 515(a); 3511(a). (These reporting thresholds were also in effect beginning with reporting year 2003 for higher PTE facilities.) Other proposed amendments to this section streamline and recodify its provisions and add language incorporating by reference the tables at N.J.A.C. 7:27-21 Appendix 1 that are referred to, but not incorporated by reference, in the existing rules to clarify that this table is regulatory.

Unrelated to the new reporting requirements, the Department is amending the definition of “Emission Statement Guidance Document” at N.J.A.C. 7:27-21.1 to correct the title of this document and update the address of the Department’s website where it is available. In

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addition, the amended definition more correctly indicates the frequency with which the document is updated.

The Department also proposes to simplify and streamline the provisions at N.J.A.C. 7:27-21.4 that address the procedure for submitting an emission statement by deleting N.J.A.C. 7:27-21.4(a) and the introductory language at N.J.A.C. 7:27-21.4(b), referencing reporting year 2002 or later. The references in these subsections to reporting years before and after 2002 are no longer relevant or necessary. The remaining proposed amendments at N.J.A.C. 7:27-21.4 reflect recodification resulting from the deletion of these provisions.

### **Penalty provisions**

The Department is proposing to amend the definition of “HAP (Table B)” at N.J.A.C. 7:27A-3.2, to correctly reference proposed N.J.A.C. 7:27-17.9, Tables 3A and 3B. This is necessary because N.J.A.C. 7:27-8 Appendix 1, Table B had been previously relocated to N.J.A.C. 7:27-17.9, existing Table 2, and is now proposed to be amended to Tables 3A and 3B.

To reflect new requirements in this proposed rulemaking, the Department proposes to amend the penalty tables for violations of N.J.A.C. 7:27-8, 17, and 22. Proposed amendments at N.J.A.C. 7:27A-3.10(m)8 and 22 add penalties for violations of the proposed new requirements for emergency fumigation operations at N.J.A.C. 7:27-8.2(g) and 22.36. Proposed amendments at N.J.A.C. 7:27A-3.10(m)17 add penalties for violations of the proposed new requirements for vertical stacks and risk assessments in connection with fumigation operations at N.J.A.C. 7:27-17.10. The proposed penalties are consistent with penalties established for violations of comparable seriousness and environmental impact.

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To reflect the proposed regulation of three NJHAPs, “NJHAP” is added to the class of source operations, sometimes referred to as “class 5,” referenced in the penalty tables for violations of N.J.A.C. 7:27-8 and 22, which are required to comply with the following Federal or Federally related programs or standards: New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), prevention of significant deterioration (PSD), Emission Offset Rule (EOR), Air Toxics (TXS), and hazardous air pollutants (HAPs). These terms are defined in the existing administrative penalty provisions at N.J.A.C. 7:27A-3.2. In addition, the statutory citation for each program or standard is listed at existing footnote 6 to the tables of penalties for violations of N.J.A.C. 7:27-8 and 22. Because the citation for permitting requirements for HAPs is at N.J.A.C. 7:27-17, not at N.J.A.C. 7:27-22 Appendix, Table B, as reflected in the existing footnote, the Department proposes amendments to this footnote to remove the incorrect citation, and to add NJHAP and HAP to the existing reference to TXS, since the regulatory citation for all three is at N.J.A.C. 7:27-17. All references to HAP (Table B) in the penalty tables and in footnote 6, as well as in footnote 3 to Table 2B of N.J.A.C. 7:27A-3.10(n), are amended to remove the incorrect parenthetical reference to N.J.A.C. 7:27-22 Appendix, Table B.

Other corrections to the penalty tables at N.J.A.C. 7:27A-3.10(m) include the removal of references to footnote 5 from the penalties at N.J.A.C. 7:27A-3.10(m)8 for violations of class 5 emissions pursuant to N.J.A.C. 7:27-8.3(a) and (e) (emissions regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, NJHAP, and HAP). Penalties for these class 5 violations are not, as would be indicated by footnote 5, “based on permit, if applicable, or if not, estimate of air

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contaminant with greatest emission rate without controls.” Reference to this footnote correctly does not appear in connection with the other class 5 penalties for violations of N.J.A.C. 7:27-8.3(b).

The Department proposes to amend N.J.A.C. 7:27A-3.10(m)22 by adding reference to footnote 6 at N.J.A.C. 7:27-22.3(e), for the class of Maximum Allowable Emission of Source Operation, Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO<sub>x</sub>, or air contaminants regulated pursuant to HAP. Referring to footnote 6 for this class is consistent with the use of that footnote elsewhere in the penalty tables. The Department also proposes to remove the incorrect reference to footnote 10 from the penalties for violations of N.J.A.C. 7:27-22.15(b)1 for class 5 emissions in that table. Footnote 10 provides that these penalties are “based on each preconstruction permit incorporated into the operating permit, if applicable, or if not, estimate of air contaminants with the stated emission rate without controls.” Footnote 10 correctly does not appear in connection with the other class 5 penalties for violations of N.J.A.C. 7:27-22.3(a), (b), or (e), or 22.14(d).

The Department also proposes to remove reference to footnote 2 from the penalties for violations of N.J.A.C. 7:27-22.18(e)3 through 22.28(i). Footnote 2, Double Penalty if Over Two Ringelmann or Over 40 percent Opacity, clearly bears no relation to the requirements at N.J.A.C. 7:27-22.18(e)3 through 22.28(i). The footnote, correctly, is not referenced at the penalties for violations of N.J.A.C. 7:27-22.18(d) and (e)1 and 2.

Proposed non-substantive amendments to the penalty tables for violations of N.J.A.C. 7:27-8.3(e), 22.3(c), (d), and (e), 22.14(d), and 22.15(b)1 split the penalty cells shared by the

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“minor” (M) and “non-minor” (NM) types of violations so that each row for each type of violation contains a penalty. This is to avoid any possible confusion as to whether the penalty in the existing shared cell applies to only one, or both types of violation in the row.

The Department proposes putting in correct alphabetical order the penalties for violations of N.J.A.C. 7:27-8.4(j) and (n).

Finally, at N.J.A.C. 7:27A-3.10(n), footnotes 3 and 4 to Tables 2A and 2B are amended to correct their inadvertent reversal. The correct footnote for “major source operation” is footnote 3 and the correct footnote for “minor source operation” is footnote 4.

#### **Removal of references to the discontinued facility-wide permit program**

For a number of years, the Department conducted a pilot program known as the Facility-Wide Permit Program, as directed by the New Jersey Pollution Prevention Act of 1991, N.J.S.A. 13:1D-35 et seq., and 34:5A-1 et seq., pursuant to which it issued multi-media permits that combined individual air, water, and hazardous waste permitting requirements into a single document. While the pilot program was in effect, the Department revised its air pollution control rules to conform to that program. By 2006, however, all facility-wide permits issued to Title V sources had been converted to operating permits under the Title V operating permit program and the Department ended the Facility-Wide Permit Program. To the extent the Department’s air permitting rules at N.J.A.C. 7:27-8, 16, 21, and 22 still contain provisions that reference or relate only to this defunct program, the Department proposes to remove these provisions. For more information on the end of this program, see <https://www.nj.gov/dep/enforcement/opppc/reports/fwpreport.pdf>.

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The proposed amendments remove the following definitions that relate to the discontinued facility-wide permit program: at N.J.A.C. 7:27-8.1, “Pollution Prevention Assessment” and “Pollution Prevention Plan”; and at N.J.A.C. 7:27-8.1, 16.1, 21.1, and 22.1, “facility-wide permit.” The Department proposes to remove and reserve N.J.A.C. 7:27-8.2(i) and N.J.A.C. 7:27-22.3(z) and proposes to repeal and reserve N.J.A.C. 7:27-8.27, Special facility-wide permit provisions. The Department also proposes to remove and reserve N.J.A.C. 7:27-22.22(d) and (h), which apply only to facilities with a facility-wide permit. Proposed amendments at N.J.A.C. 7:27-16.17(d)2xi and (l)2 remove references to facility-wide permits and a proposed amendment at N.J.A.C. 7:27-22.22(e) removes a reference to N.J.A.C. 7:27-22.22(h).

### **Miscellaneous Amendments**

#### **Ethylene glycol monobutyl ether**

Incidental to the proposed amendments at N.J.A.C. 7:27-17.9, the Department proposes to remove ethylene glycol monobutyl ether from the list of HAPs at existing N.J.A.C. 7:27-17.9, Table 2, including the reporting and SOTA thresholds for this HAP. The proposed action is based on the EPA’s removal of ethylene glycol monobutyl ether from the Federal list of HAPs in November 2004. See 69 FR 69320, November 29, 2004, and <https://www.epa.gov/haps/initial-list-hazardous-air-pollutants-modifications>).

**Delayed implementation of proposed new reporting and SOTA thresholds for Group III TXS and NJHAPs**

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The operative date for air pollution control rules is either 60 days after adoption (signature by the Commissioner) pursuant to N.J.S.A. 26:2C-8, or the date of publication in the New Jersey Register – whichever is later. However, the Department is proposing a delayed operative date for the new reporting and new SOTA thresholds for the new Group III TXS and the new NJHAPs proposed at N.J.A.C. 7:27-17.9. As indicated by proposed footnote 3 to Table 3A and proposed footnote 1 to Table 3B, the Department is proposing that these requirements become operative 60 days after the adopted rules are published in the New Jersey Register. The Department intends the proposed delayed operative date for the new reporting and new SOTA thresholds to allow additional time for sources to become aware of these new thresholds. This proposed delayed operative date would not affect pounds per year reporting thresholds or SOTA thresholds for phosphine and methyl bromide, as those thresholds were existing requirements at N.J.A.C. 7:27-17.9 and are unchanged by this proposed rulemaking.

In addition, proposed replaced N.J.A.C. 7:27-22.30(l) provides additional time to include 1-BP and hydrogen sulfide, the two NJHAPs that are not also fumigants, in an application for the renewal of an operating permit. The proposed new reporting and SOTA thresholds for these two NJHAPs will apply only to renewal applications for operating permits with an expiration date that is at least three years after the effective date of this rulemaking, in the same way that the Department delayed the requirement that HAPs for which it had established new reporting thresholds in 2018 be included in permit renewal applications. However, the Department does not propose to extend this additional time to apply to the proposed new reporting and SOTA

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thresholds for fumigants, because of the much greater threat to public health that these toxics represent.

Miscellaneous amendments at N.J.A.C. 7:27-8 and 22

The Department proposes to clarify in the definition of “equipment” at N.J.A.C. 7:27-8.1 that the emission of an air contaminant may be either directly or indirectly to the outdoor atmosphere. Proposed amended N.J.A.C. 7:27-8.2(c)19i corrects the inadvertent omission of a reference to (c)21 when the Department added this category of stationary reciprocating engines to N.J.A.C. 7:27-8.2(c) in 2005. See 37 N.J.R. 3976(a). In the same way, the proposed amended definition of “insignificant source operation” at N.J.A.C. 7:27-22.1 adds the previously inadvertently omitted stationary reciprocating engines category, codified as paragraph 20 of the definition of “significant source operation” at N.J.A.C. 7:27-22.1.

Proposed amendments at N.J.A.C. 7:27-8 replace Arabic numerals with Roman numerals in “Group 1 TXS” and “Group 2 TXS,” consistent with the use of Roman numerals throughout N.J.A.C. 7:27-8, 17, and 22, specifically, the proposed amended definitions of these terms at N.J.A.C. 7:27-8.1, and 8.2(c)2 and 15i. Proposed amended “Group 1 TXS” and “Group 2 TXS” at N.J.A.C. 7:27-8.1 remove the redundant lists of Groups I and II TXS, as they appeared in 1998.

For greater clarity, the Department proposes to substitute the phrase “any combination thereof” for similar text at N.J.A.C. 7:27-8.2(c), and at the definition of “significant source operation” at N.J.A.C. 7:27-22.1. Proposed amended N.J.A.C. 7:27-8.2(d)1 adds a missing comma; proposed amended N.J.A.C. 7:27-8.2(e) removes a comma. Proposed amended N.J.A.C. 7:27-8.2(e)1v(1) corrects “then” to “than.”

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Proposed amended “operating permit” at N.J.A.C. 7:27-22.1 hyphenates “facility wide” as “facility-wide.” Proposed amended “source operation” replaces “on” with “one” to refer to “one or more pieces of equipment or control apparatus.”

The Department proposes to delete and reserve N.J.A.C. 7:27-22.3(tt), as it is no longer necessary to prohibit the use of discrete emission reduction (DER) credits that were generated in a program the Department ended 15 years ago.

At N.J.A.C. 7:27-22.5, Application procedures for initial operating permits, the Department proposes deleting paragraph (c)3, which sets forth application submission deadlines in 1995. This table of deadlines is no longer relevant. Also at N.J.A.C. 7:27-22.5(c), proposed amendments make minor stylistic or grammatical changes.

Proposed amended N.J.A.C. 7:27-22.6(l) removes a comma and proposed amended N.J.A.C. 7:27-22.35(c) adds two missing commas and makes other stylistic changes for improved clarity.

#### Miscellaneous amendments to N.J.A.C. 7:27-16

A proposed amendment at N.J.A.C. 7:27-16.1A(b) corrects an erroneous reference to N.J.A.C. 7:27-17.4(c). There is no such subsection. A 2018 rulemaking removed the provisions at N.J.A.C. 7:27-17.4(a) and (b), so that the remaining provisions at then-existing subsection (c) were simply codified as N.J.A.C. 7:28-17.4. In adopting that rulemaking, the Department inadvertently failed to modify all references to the recodified subsection. (See 49 N.J.R. 2373(a); 50 N.J.R. 454(a)) The Department also proposes to correct a series of references at N.J.A.C. 7:27-16.17 that should have been, but were not, updated as a result of this same

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rulemaking. The January 2018 rulemaking, in reflecting deleted sections of amended N.J.A.C. 7:27-16.17, recodified N.J.A.C. 7:27-16.17(f) through (k) as 16.17(e) through (j), 16.17(m) through (q) as (k) through (o), and (s) through (t) as (p) through (q). However, the Department failed to update some of the affected internal references at N.J.A.C. 7:27-16.17(b) through (g), (i), (j), (1), and (n) to reflect these recodifications. The references at N.J.A.C. 7:27-16.17(e), (f), and (j) to N.J.A.C. 7:27-16.17(f) should have been updated as N.J.A.C. 7:27-16.17(e). Also at N.J.A.C. 7:27-16.17(e), the reference to N.J.A.C. 7:27-16.17(k) should have been updated to N.J.A.C. 7:27-16.17(j). Similarly, the reference at N.J.A.C. 7:27-16.17(g) to N.J.A.C. 7:27-16.17(g) should have been updated to N.J.A.C. 7:27-16.17(f), and the references at N.J.A.C. 7:27-16.17(b), (d), and (i) to (j) should have been updated to N.J.A.C. 7:27-16.17(i). Further, at N.J.A.C. 7:27-16.17(l), the reference to N.J.A.C. 7:27-16.17(j), (k) or (l) should have been updated to N.J.A.C. 7:27-16.17(i) or (j), which also reflects the deletion of the then-existing N.J.A.C. 7:27-16.17(l) in the 2018 amendments at N.J.A.C. 7:27-16. Finally, the Department proposes to correct the inadvertently omitted update at N.J.A.C. 7:27-16.17(n); the reference to N.J.A.C. 7:27-16.17(m) is corrected to N.J.A.C. 7:27-16.17(k).

The Department also proposes to remove the reference to the long-passed operative date of May 31, 1995, from N.J.A.C. 7:27-16.17(b). For greater simplicity, the Department also proposes to remove the reserved paragraph at N.J.A.C. 7:27-16.17(b)1 and recodify the remaining provisions at N.J.A.C. 7:27-16.17(b). The Department proposes to remove the incorrect reference to “pursuant to (1) below” from recodified N.J.A.C. 7:27-16.17(b)1.

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Proposed amended N.J.A.C. 7:27-16.22(i) is simplified for greater clarity. By making a generic reference to the provisions at N.J.A.C. 7:27-16 that pertain to the submission of records to the Department, the Department obviates the need to update those references periodically.

#### Miscellaneous amendments at N.J.A.C. 7:27-17

Proposed amended N.J.A.C. 7:27-17.3(a) provides greater clarity, removing unnecessary reference to Table 1, and clarifying that registration must take place within six months after the Department adds any TXS to N.J.A.C. 7:27-17. The Department proposes to remove “storage tank, or transfer operation” as those are included within the term “source operation” through the language related to “one or more pieces of equipment or control apparatus” and are, therefore, redundant. The Department also proposes to delete N.J.A.C. 7:27-17.5(f), which serves no useful regulatory purpose in that it provides only that the provisions at N.J.A.C. 7:27-17.5 (relating to using TXS in open top tanks or surface cleaners) are effective beginning January 1, 1981. Proposed amendments to N.J.A.C. 7:27-17.5(b) and (e) correct codification terminology.

#### Amendments at N.J.A.C. 7:27-21 to remove outdated provisions

Proposed for deletion, as outdated and no longer relevant, are the applicability provisions at N.J.A.C. 7:27-21.2(c) regarding the reporting of emissions occurring in or before 1992.

#### Grammar and punctuation

The Department proposes grammatical corrections to substitute “that” for “which” throughout N.J.A.C. 7:27-8 and 22. The Department also proposes to replace “shall” at N.J.A.C.

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7:27-8, 21, and 22 to reflect the present tense, or a non-imperative future tense, as appropriate. At N.J.A.C. 7:27-16.1, in the definition of “operating permit,” the Department proposes hyphenating “facility-wide.”

#### Conforming “incorporated by reference” provisions

Proposed amended N.J.A.C. 7:27-8.2(c)16iii and v(4) correct the inadvertent omission of text that would explicitly incorporate by reference N.J.A.C. 7:27-8 Appendix, Table A.

References to N.J.A.C. 7:27-8 Appendix 1 throughout N.J.A.C. 7:27-8 should have included text indicating that Table A in the appendix is incorporated by reference,. Proposed amendments to these provisions correct the inadvertent omission of some or all of the text indicating that N.J.A.C. 7:27-8 Appendix 1, Table A, is incorporated by reference. See N.J.A.C. 7:27-8.4(k), 8.12(a), 8.18(a), 8.20(d), 8.21(b). Similarly, proposed amendments correct or update incorporation by reference text at N.J.A.C. 7:27-21 and 22 as follows: N.J.A.C. 7:27-21.1, definition of “toxic air pollutant” or “toxic,” 21.3(b), 22.3(c), 22.6(f), and 22.7(e). The Department also proposes to conform the language referring to the incorporation by reference of the EPA definition of volatile organic compound at the definition of “volatile organic compound” or “VOC” at N.J.A.C. 7:27-21.1.

#### Contact information

Proposed amendments at N.J.A.C. 7:27-8 and 22 update and correct Department contact information, including telephone numbers, at N.J.A.C. 7:27-8.4(b), 8.5(d), 8.28(a), 16.17(p), 22.3(t) and (v), 22.8(c) and (d), 22.18(k), and 22.19(g).

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### **Social Impact**

The Department anticipates that the proposed amendments, repeal, and new rules will, overall, have a positive social impact, by reducing air pollutants that have an adverse impact on air quality and human health.

### **Fumigation**

As discussed more fully in the Summary above, fumigation operations in New Jersey pose a serious health risk. There are numerous reported instances of fumigation activities causing severe health damage, including death, to workers, residents, and bystanders in different parts of the world. In addition, exposure to fumigants may be causing unreported off-site health impacts when fumigation activities occur.

In humans, acute inhalation exposure to high concentrations of sulfuryl fluoride, a colorless, odorless gas, which is one of the most commonly used fumigants, results in respiratory irritation, pulmonary edema, nausea, abdominal pain, central nervous system depression, numbness in the extremities, muscle twitching, seizures, and even death. Chronic exposure damages the central nervous system and respiratory tract. Direct contact with concentrated sulfuryl fluoride liquid causes tissue damage to eyes, mucous membranes, or skin. At lethal concentrations, sulfuryl fluoride disrupts carbohydrate and lipid metabolism of humans. Sulfuryl fluoride is also a potent greenhouse gas.

Methyl bromide, another commonly used fumigant that is colorless and has a low odor concentration, causes both severe health effects and serious environmental impacts. Acute and chronic human exposure to methyl bromide can cause central nervous system and

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respiratory system failures, including death, eye irritation and watering, nose irritation, throat irritation, headaches, nausea/vomiting, dizziness, and asthma exacerbation. Chronic effects include cancer and damage to the liver, kidney, and central nervous system. Methyl bromide is also a volatile organic compound (VOC) that contributes to the formation of ground-level ozone (ozone) and fine particles (PM<sub>2.5</sub>), either through condensation or complex reactions with other compounds in the atmosphere. Ozone and PM<sub>2.5</sub> contribute to climate change. Moreover, both ozone and fine particles cause significant health effects. Ozone can make it more difficult to breathe deeply and vigorously, inflame and damage airways, and cause chronic obstructive pulmonary disease. The health effects associated with exposure to PM<sub>2.5</sub> are significant, mainly because particles of this size can easily reach into the deepest regions of the lungs. Therefore, to the extent that the proposed rulemaking results in a reduction in methyl bromide emissions, there is a benefit to the public.

Phosphine is also colorless and acute inhalation exposure causes headaches, fatigue, burning substernal pain, vomiting, labored breathing, chest tightness, pulmonary edema, and tremors in humans. Chronic exposure may cause nasal cavity and throat inflammation, weakness, dizziness, nausea, jaundice, and liver effects. Exposure to phosphine may cause cardiovascular complications, leading to death within 12 to 24 hours, liver or kidney failure, leading to death in 24 hours, or pulmonary edema, also leading to death.

In reviewing the social impact of regulating fumigation operations, the Department considered the population of residents adjacent to fumigation operations. There are currently two permitted facilities and 13 facilities with pending applications. Six facilities are in or around

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environmental justice areas. The number of residents within a one-mile radius of the 13 facilities with pending applications totals 107,330. Of these, 62,150 residents live in or around environmental justice areas. The neighboring residents are those who will benefit most from the proposed rulemaking, with an overall positive social impact.

The proposed amendments and new rules will allow the Department to collect information and thoroughly review how facilities perform, manage, and implement control strategies that address toxic emissions resulting from the fumigation of commodities and industrial structures. The Department will also ensure greater compliance by clarifying the regulatory requirements applicable to fumigation operations. This will also have a positive social impact for New Jersey residents.

#### **New Jersey Hazardous Air Pollutants (NJHAPs)**

The proposed amendments establishing thresholds for the three NJHAPs addressed by this rulemaking (H<sub>2</sub>S, 1-BP, and sulfuryl fluoride) will have a positive social impact, primarily from improved public health and reduced medical costs. NJHAPs, like the HAPs for which the Department has already established reporting and SOTA thresholds, can cause serious health effects. The designation of these air contaminants as NJHAPs does not impose a separate permitting requirement on a source. However, by establishing reporting thresholds for these NJHAPs, the Department is requiring some facilities that did not previously have to report emissions and conduct risk assessments for those NJHAP emissions to do so in the future. If the risk assessment indicates that the risk from the emissions is non-negligible, then the facility will need to modify the source operation to lower the risk. See the discussion of refined risk

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assessment in the Economic Impact below. The resulting reduction in NJHAP emissions and ambient impacts will have a positive social impact, since exposure to H<sub>2</sub>S damages the nervous and respiratory systems, exposure to 1-BP causes neurological and nervous system disorders, and exposure to sulfuryl fluoride results in respiratory irritation, lung damage, and central nervous system depression as discussed in the Summary above. Like methyl bromide, 1-BP is also a VOC, which contributes to the formation of ozone and fine particles (PM<sub>2.5</sub>), the health impacts of which are discussed above.

The Department is unable to predict how many sources otherwise required to apply for new, modified, or renewed permits will also have to identify NJHAPs as a result of the proposed amendments, or how many of these sources will have to perform risk assessments for these NJHAP emissions. Nor can the Department predict the reduction in NJHAP emissions that will result from the proposed amendments. The Department does not currently have records showing a source's potential to emit an NJHAP. The proposed new reporting threshold for each NJHAP will only require the reporting of emissions above that threshold, so the Department will still not have information regarding the potential to emit NJHAPs below the thresholds. Thus, it will continue to be difficult to assess the overall extent of these emissions by New Jersey sources. However, the Department is aware of facilities, several of which do not have air permits, that use sulfuryl fluoride to fumigate imported commodities. With the proposed clarified rules, the Department believes these facilities will have to include sulfuryl fluoride on their applications and the emission of sulfuryl fluoride from these operations will be subject to a thorough health risk assessment. Because issuance of a permit is conditioned on a successful

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risk assessment, there will be a positive social impact from ensuring that emissions of sulfur dioxide and fluoride from these sources do not pose a health risk.

### **Emission Statements**

The Department proposes to add 13 air contaminants to the existing list at N.J.A.C. 7:27-21 Appendix 1. The 13 air contaminants were identified with either carcinogenic or non-carcinogenic risks in a range comparable to the currently reportable list of toxic air pollutants. All must be reported under the EPA's TRI Program. All but benzo(a)pyrene are Federally listed HAPs. By including these 13 air contaminants in the Department's Emission Statement program, the Department will have information to evaluate whether its regulation of air contaminants sufficiently protects public health and safety and more data to support air quality control policy development conducted at the State, regional, and Federal levels. Knowledge of the extent and sources of the emissions of these toxic air pollutants, the term used at N.J.A.C. 7:27-21 to identify air contaminants that must be included in an emission statement, will help prepare the State to meet emerging requirements in the Federal National Emission Standards for Hazardous Air Pollutants (NESHAPs), which establish evolving control measures associated with air toxics. Not only could this data be used to help the State identify the sources of these pollutants, but it could also be used to track the State's progress in achieving pollution reduction goals.

The reporting of the actual emission of the 13 additional toxic air pollutants will allow the Department to focus on those toxic air pollutants that are emitted in the greatest amounts and that have the greatest potential health risks.

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### **Economic Impact**

The Department anticipates that the proposed rulemaking will result in a net economic benefit for the residents of the State. There is a benefit to surrounding communities when facilities are required to conduct a risk assessment for their fumigation operations, through the permitting process, and ensure that their emissions do not pose a health risk. Similarly, the proposed reporting thresholds for NJHAPs and addition of the 13 air contaminants to the Emission Statement program are expected to reduce the amounts and concentrations of these air contaminants in the atmosphere. In the Social Impact above, the Department provides a qualitative analysis of the health effects associated with the emissions of fumigants and NJHAPs affected by this rulemaking. The Department also explains the benefits of including 13 air contaminants to the Emission Statement program. Although the Department cannot, with specificity, estimate the monetary benefits associated with the health improvement as a result of reductions in emissions of these toxic air pollutants, preventing any of the adverse health effects and symptoms of exposure is a benefit to the State and its residents. The Department expects that reducing exposure to these toxic emissions will result in a net economic benefit to New Jersey and its residents by minimizing risk of lowered productive work hours and lost work days, health care visits, and health care and hospitalization costs. As noted in the Social Impact above, the 107,300 residents within a one-mile radius of the 13 fumigation operations with pending applications, including 62,150 residents who live in or around environmental justice areas, are among those who will benefit most from the proposed rulemaking.

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### **Fumigation**

The Department proposes to amend the permitting requirements for fumigation operations to base the permit requirements on a fumigation operation's potential to emit, rather than the weight of raw materials used, as currently regulated. Although the Department is proposing to change the permitting threshold for fumigation operations to be consistent with that of other toxic substances, the Department believes that the universe of fumigation operations subject to permit requirements under the existing and proposed rules will be approximately the same. For emergency fumigation operations subject to existing permitting requirements that qualify for a permit exemption under the proposed requirements for emergency fumigation operations, there is a savings associated with all permitting fees that would have otherwise been assessed against the source.

The economic impact from the proposed permitting rules, which essentially do not differ from the cost of complying with the existing permit requirements, is anticipated to be proportional to the scope of a facility's fumigation activities. For an initial preconstruction permit application, each facility will pay a base fee of \$2,730 for the first piece of equipment, \$640.00 for each additional piece of equipment, and a supplemental fee based on a review of the risk assessment. There is no fee for a facility subject to the proposed emergency fumigation operation provisions.

Because fumigation operations involve highly toxic chemicals, the Department proposes to require a fumigation operation subject to a permit or subject to the emergency fumigation provisions to use a vertical stack when it conducts fumigation activities. Otherwise, the highly

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toxic emissions would be vented at ground level, with potential health impacts to nearby residents, including sensitive and vulnerable populations, for example, children and the elderly. In addition to the stack, the facility will need to install a blower and support systems for the stack and blower. The scale and cost of a vertical stack and associated components will vary, depending on the size of the fumigation operation. Based on vendor inquiries made in 2019, the Department estimates the initial cost for design, purchase, and installation to range from \$13,000 for smaller facilities to \$200,000 for larger facilities. These costs could be lower for a small operation requiring minimal modifications to its existing equipment. In addition to this initial investment, the Department expects a facility to incur annual operating and maintenance costs of approximately \$90,000 per year for routine tarpaulin fumigation operations, in which the fumigation takes place under a tarpaulin to segregate the operation from the rest of the facility. The additional recurring costs for shipping container fumigation operations, in which commodities are fumigated inside a shipping container, is approximately \$220.00 per container. The cost consists of the increased labor required to install the required vertical stack to the aeration equipment on the container.

In the Department's experience and based on the toxicity of these emissions, the required risk assessment under the existing rules would indicate the need for a vertical stack; therefore, facilities subject to both the existing and proposed permitting requirements would not incur additional costs as a result of the proposed vertical stack requirement. The proposed requirement that emergency fumigation operations also use a vertical stack, although the

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proposed rules do not subject those operations to a permit, would likewise have no economic impact for facilities subject to both the existing and proposed permitting requirements.

### **New Jersey Hazardous Air Pollutants (NJHAPs)**

As discussed in the Summary above, facilities that emit NJHAPs for which the Department is proposing to establish thresholds may have to list one or more NJHAPs in the Potential to Emit section of the air pollution control permit application. As discussed in the Social Impact above, a source that is not otherwise subject to a permit is not required to obtain a permit as a result of the proposed designation of air contaminants as NJHAPs. The additional costs, if any, are associated with determining and listing the NJHAP emissions on the permit application and including the NJHAP emissions in the already-required risk assessment. The likely outcome of the risk assessment is risk mitigation, by means of a vertical stack, fans, or other devices. In the case of fumigation operations using sulfuryl fluoride, which is both a Group III toxic substance (fumigant) and an NJHAP, the risk assessment presumes the use of the vertical stack, since the proposed rules require all regulated fumigation operations to use a vertical stack. Fans are often used in many source operations, not just fumigation operations, to increase discharge velocity, thereby reducing risk.

As a result of the proposed regulation of H<sub>2</sub>S, 1-BP, and sulfuryl fluoride as NJHAPs, the Department anticipates that a facility will incur no, or minimal, cost in determining whether any of these substances is emitted above its proposed reporting threshold. Under the existing rules, if a source operation seeking a permit emits H<sub>2</sub>S, it must determine the potential to emit H<sub>2</sub>S as part of the application submittal and review process, in order to ensure that risk is

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negligible. It must also determine the potential to emit to ensure that the odor associated with the H<sub>2</sub>S emissions would not “unreasonably interfere with the enjoyment of life or property” beyond the facility’s property line, as provided generally at N.J.A.C. 7:27-5.1. Because H<sub>2</sub>S emissions exceed the low odor threshold of H<sub>2</sub>S at potential to emit levels well below the proposed reporting threshold, under the existing rules a facility is already making the potential to emit determination to satisfy odor requirements.

Similarly, since 1-BP is a VOC (a group of air contaminants for which the Department has established permit reporting thresholds), a facility likely has already determined its 1-BP emissions in order to determine its total VOC emissions rate.

Lastly, information currently available to the Department suggests that emissions of sulfuryl fluoride in New Jersey result exclusively from fumigation operations. A facility should be able to calculate the emission discharge rate of sulfuryl fluoride used in fumigation at little to no cost. The amount of sulfuryl fluoride must be determined before fumigating to ensure that enough sulfuryl fluoride is being used to successfully complete the fumigation process. Since sulfuryl fluoride does not react during the fumigation process and only a negligible amount is absorbed into the commodity or other material being treated, it can be assumed that all the sulfuryl fluoride used in the operation is being emitted. Licensed fumigators should be able to estimate the amount of sulfuryl fluoride discharged during the first hour after the fumigation is completed, as this would be the highest hourly emission rate.

A facility with the potential to emit an NJHAP above the reporting threshold will incur some costs during the risk assessment component of the application review process. The

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Department will evaluate each NJHAP that is emitted above its reporting threshold with a risk screening procedure using the Department's "NJDEP Division of Air Quality Risk Screening Worksheet for Long-Term Carcinogenic and Noncarcinogenic Effects and Short-Term Effects" (Risk Screening Worksheet) (see [www.nj.gov/dep/agpp/risk.html](http://www.nj.gov/dep/agpp/risk.html)). On May 7, 2019, the Department issued, for public review and comment, a draft Risk Screening Worksheet that includes all NJHAPs. The Department finalized and posted the risk screening worksheet changes on June 30, 2020. Sulfuryl fluoride (SF) was not included on the worksheet, which will be updated once California updates the SF risk factors.

The worksheet is a tool intended to simplify and reduce the cost of the full risk assessment to both the applicant and the Department. Specifically, the worksheet is an Excel spreadsheet that an applicant can complete by inputting NJHAP emission rates, distance to the property line, and stack height. The facility does not need to retain a consultant to complete the worksheet. If the Risk Screening Worksheet output shows a negligible risk, no further action is necessary. However, if the Risk Screening Worksheet output shows a non-negligible risk, the facility has two options: either modify the source operation to lower the risk to the point where the output shows a negligible risk or have a refined risk assessment conducted before considering risk reduction measures.

A refined risk assessment consists of computer-generated atmospheric dispersion modeling that uses stack- and source-specific data, as well as representative meteorological data. These evaluations normally use the EPA's refined dispersion model AERMOD (American Meteorological Society (AMS)/EPA Regulatory Model). The refined risk assessment often

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predicts concentrations that are lower than those estimated with the Risk Screening Worksheet. When a refined risk assessment is conducted, each individual air toxic must be evaluated for cancer risk and short- and long-term non-cancer risks, as appropriate. Each air toxic's health risk must be assessed at the receptor with the highest predicted concentration in the five-year simulation (AERMOD) and at sensitive receptors (such as nearest residence, daycare center, hospital, nursing home, or playground) located within the defined modeling grid.

Both the existing and proposed amended rules provide that either the facility or the Department can perform the refined risk assessment. If the facility conducts the risk assessment, it must prepare a protocol for the Department's review and approval in accordance with Technical Manual 1003 and a report that shows the results of the assessment. Based on discussions with sources in 2018 and 2019, the Department estimates that an assessment conducted by a consultant may cost in the range of \$5,000 to \$100,000, depending on the type of facility, the number of sources, and the NJHAP that needs to be evaluated. For larger facilities, pursuant to existing State and Federal regulations, air quality modeling may already be necessary for one or more criteria pollutants (carbon monoxide, lead, ozone, nitrogen dioxide, particulate matter, and sulfur dioxide) to confirm that there will be no violation of either a national ambient air quality standard (NAAQS) or a New Jersey ambient air quality standard. This same modeling analysis can also be used to determine the health impacts of the NJHAP at no additional cost to the facility. Existing N.J.A.C. 7:27-8.6, Table B. Supplementary Fee Schedule and 22.31(z) provide for a fee of \$2,730 for the Department to

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evaluate the facility's risk assessment protocol, and an additional \$2,730 for the Department to review the results of the risk assessment performed in accordance with the protocol. The Department does not propose to amend the fees in this rulemaking. The fees are in addition to the facility's costs to develop the protocol and conduct the risk assessment. The Department charges the same fees for preconstruction permits and operating permits filed as significant modifications. There are no fees charged for an operating permit that is not filed as a significant modification; administrative review costs associated with operating permits already are paid through the statutorily established annual emission fees reflecting the facility's actual emissions.

If the facility decides to use the other alternative—asking the Department to conduct the refined risk assessment—it can do so by submitting a facility plot plan and paying the required fees (at N.J.A.C. 7:27-8.12 for preconstruction permit applications and at N.J.A.C. 7:27-22.31 for operating permit applications filed as significant modifications). The Department's fee to conduct this refined risk assessment is \$2,730, whether the application is for a preconstruction permit or an operating permit filed as a significant modification. For this refined risk assessment, the Department performs a site-specific air quality dispersion modeling analysis to estimate the ambient air concentrations, and to assess the effect of aerodynamic downwash on plume dispersion. This analysis considers actual site conditions, source parameters, and meteorology. To facilitate the analysis, the applicant must provide to the Department a detailed plot plan with the information listed in the document, "Information Required for Second-Level Risk Screening"

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(<http://www.nj.gov/dep/aqpp/downloads/risk/2LEVEL.pdf>). Many facilities already have plot plans. However, if a facility must obtain a new or modified plot plan, the cost can range between \$500.00 and \$2,000. If the refined risk assessment shows a negligible risk, no further action is necessary.

However, the risk assessment may indicate that a facility must take measures to reduce the health risk associated with its potential emissions. A facility can lower the health risk from a source operation in several ways. Reducing operating hours and restricting operating hours to certain times of the day can reduce risk at no or minimal cost. For each NJHAP, increasing stack height and increasing stack discharge velocity will usually also lower the potential health risks by decreasing the NJHAP's ambient impact level. The risk is lowered because the emissions are dispersed or spread out over a larger geographic area. The stack discharge velocity depends, in part, on the fan that is installed in the stack. Costs for increasing the stack discharge velocity depend on whether the existing fan can be used at a higher load or must to be replaced with a more powerful fan. A higher load would also increase electricity costs. However, in some cases where the health risk is determined to be non-negligible after stack modifications are considered, additional emission reductions may be necessary.

Substituting a less toxic raw material for the NJHAP would reduce or eliminate risk and could result in cost savings, depending on the price of the substitute. Another method of reducing emissions is to install a control device. The cost to control 1-BP or H<sub>2</sub>S by removing it prior to discharge using activated carbon can range from \$5,000 to \$10,000 per ton controlled, which is comparable to the cost to control VOCs and NO<sub>x</sub> emissions.

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Sulfuryl fluoride can be controlled through chemical absorption in a packed column using sodium hydroxide solution. The Department estimates the initial capital cost of a 500 standard cubic feet per minute (scf/m) carbon steel packed tower scrubber, including ancillary equipment (tanks, pumps, electrics, and instrumentation), to be in the \$150,000 to \$200,000 range. In addition, the estimated annual operating and maintenance (O&M) cost ranges from \$100,000 to \$125,000. The Department based these estimates on the EPA's Air Pollution Control Technology Fact Sheet (Fact Sheet) for packed-bed scrubbers (EPA-452/F-03-015), available at <https://www.epa.gov/catc/clean-air-technology-center-products>. The Department updated the costs in the EPA Fact Sheet, which are expressed in 2002 dollars, to 2019 dollars, using the "Annual Average" from the Bureau of Labor Statistics Historical Consumer Price Index for All Urban Consumers (CPI-U), so that \$100.00 in 2002 dollars adjusts to approximately \$140.00 in 2019 dollars.

The cost of the control devices varies based on the type and amount of NJHAPs emitted, and to what degree NJHAP emissions must be reduced in order to achieve a negligible risk. If a facility already has a control device installed or will be installing a control device to achieve compliance with another statutory or regulatory requirement, the cost per ton of NJHAP controlled would be less. For example, this would be the case if an additional carbon adsorption unit is added to one or more carbon units that were already installed or if the temperature of an existing afterburner/thermal oxidizer must be raised to increase destruction efficiency.

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New proposed NJHAP reporting thresholds could impact the timing of modifications to permitted source operations. Existing N.J.A.C. 7:27-8.18 requires revision of a preconstruction permit if the use of a new material not specified in an existing permit causes a new air contaminant, including an NJHAP, to exceed its reporting threshold. If the criteria related to permit modifications are not applicable, a seven-day-notice, pursuant to N.J.A.C. 7:27-8.20, or a permit amendment pursuant to N.J.A.C. 7:27-8.21, may be filed for the change. Seven-day-notice and amendments do not require prior approval from the Department to implement the modification, while permit revisions do require prior approval. Requiring the reporting of these NJHAPs could result in the delay of a modification while the Department reviews the application for the modification. An applicant could shorten this delay by evaluating the potential health risk from the NJHAP prior to submitting the application and by making any necessary changes to reduce the risk to a negligible level. The applicant could also expedite the review and issuance of a permit decision by engaging in a pre-application meeting with the Department to discuss the impact of having to include the NJHAP on the application. This is also true of the proposed new reporting and SOTA thresholds for fumigants.

The relevant fees are set forth at existing N.J.A.C. 7:27-8.6. The fee for a permit revision is \$2,730 per new or changed piece of equipment and \$640.00 per each additional new or changed piece of equipment; the fee for a seven-day-notice change or notice of amendment is \$910.00.

The proposed delayed implementation of the new SOTA and reporting thresholds may minimize or eliminate compliance costs. Sources that submit permit applications before the

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operative date of the proposed rulemaking will not need to immediately update their applications to incorporate the new fumigant and NJHAP thresholds. Also, a source with a permit that expires within three years after the operative date of the amended rules is not subject to the proposed new NJHAP reporting thresholds until that permit is renewed or modified. This approach allows facilities to evaluate their existing source operations and provides the facilities with time to make any necessary modifications to reduce health risks to negligible levels. This, in turn, minimizes the cost to comply with the proposed amended rules.

As discussed in the Summary above, as a result of the proposed new fumigant and NJHAP reporting thresholds, some activities that were not subject to permit requirements may now be required to be included in a permit application and corresponding permit conditions. For example, under revised paragraph 14ii(5) in the definition of “exempt activity” at N.J.A.C. 7:27-22.1, to be exempt, the source may not emit any NJHAP above the reporting threshold. The proposed amendment at N.J.A.C. 7:27-17.9 to add NJHAP reporting thresholds will also determine whether certain stationary storage tanks, and mixing and blending vessels, must be reclassified and listed in a permit as a significant source operation.

The proposed amended definition of “insignificant source operation” at N.J.A.C. 7:27-22.1 requires that the tanks and vessels meet certain criteria, one of which is that the equipment must not have the potential to emit any NJHAP above its reporting threshold. Similarly, under proposed amended N.J.A.C. 7:27-8.2(d)3ii(4) and (e)2v, certain equipment and source operations are not significant sources if they meet certain criteria, including that the equipment or source operation must not have the potential to emit any NJHAP above its

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reporting threshold. The Department does not anticipate these elements of the proposed rules will increase costs for permitted facilities. The existing rules require a facility to evaluate each source to determine if it is an exempt activity, an insignificant source, or a significant source operation. The proposed amendments do not change the requirement to conduct this evaluation, although they may change the results.

### **Emission Statements**

Existing N.J.A.C. 7:27-21.2(a) establishes the air contaminant reporting thresholds that determine whether a facility is subject to emissions reporting. The proposed amendments related to emissions statements do not expand the applicability of the reporting requirements to additional facilities.

The proposed rules require 126 of the approximately 450 facilities that are subject to emission statement reporting requirements to add one or more of the proposed additional 13 toxic air pollutants to their emission statements. Of these, only 31 facilities have three or more of these toxic air pollutants to add. Compliance begins with the emission statement for Reporting Year 2021 (to be submitted in 2022). Facilities are already required to monitor and keep records of these 13 HAPs to ensure compliance with permit emission level limits. N.J.A.C. 7:27-21 does not necessitate the establishment of a calculation methodology, but only requires the use of the calculation methodology that is already in the possession of a person at the time of reporting or that can be obtained through public sources (except in instances where use of a specific method is dictated by the permit). Therefore, facilities will be able to use existing on-site records to prepare the emission statement.

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The Department identified factors that affect the incremental cost of expanded reporting for a facility, such as the number of sources and the extent to which emission recordkeeping is currently performed at facilities for these air toxics. The estimated average incremental cost per facility is \$100.00. In order to generate this conservative cost estimate, the Department assumed a facility will use a consultant, at a rate of \$150.00 per hour (average based on a range of \$125.00 to \$175.00 per hour) and estimated that the total time needed to input the data and perform any required calculations is one hour per pollutant. This estimate considers the fact that these facilities are already submitting emission statements and already have in place both the trained personnel and necessary equipment to comply. The incremental costs incurred in complying with the proposed amendments should decrease to some degree in subsequent years, once facilities establish the management systems for recording, maintaining, and compiling the additional emissions information.

### **Environmental Impact**

In addition to reducing the adverse health impacts related to the use of the air contaminants addressed in this rulemaking, the Department anticipates that the proposed amendments, repeal, and new rules will also have a positive environmental impact.

### **Fumigation**

In addition to their health impacts, methyl bromide and sulfuryl fluoride, two of the three most widely used fumigants, have environmental impacts that the Department anticipates will be mitigated by the control and reduction of fumigant emissions. Methyl bromide depletes the ozone layer and is designated a Class I ozone-depleting substance, which

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generally cannot be produced in, or imported into, the United States. The use of methyl bromide in the fumigation of commodities is permitted as a “quarantine and pre-shipment exemption.”

Methyl bromide is also a HAP and a VOC and contributes to the formation of ground-level ozone and PM<sub>2.5</sub>, which have adverse environmental impacts in addition to the adverse human health effects discussed in the Social Impact above. Ozone interferes with the ability of plants to produce and store food, which makes them more susceptible to disease, insects, other pollutants, and harsh weather. Ozone damages the leaves of trees and other plants and injures native vegetation and ecosystems, ruining the appearance of cities, national parks, and recreation areas. Ozone also reduces crop and forest yields, resulting in significant losses to annual crop production throughout the United States. Ozone also damages certain man-made materials, such as textile, fibers, dyes, and paints, requiring more frequent upkeep and repair.

PM<sub>2.5</sub> contributes to visibility impairment, also referred to as “regional haze.” At elevated PM<sub>2.5</sub> concentrations, visual ranges are degraded and images of scenic views (for example, mountains and urban skylines) are significantly obscured. Beyond visibility impairment, ambient particulate matter affects vegetation, ecosystems, soiling, materials and structures, and the radiative properties of clouds. The nutrient or acidifying characteristics of deposited particulate matter on both terrestrial and aquatic ecosystems contribute to adverse impacts on species shifts, loss of diversity, threatened and endangered species, and alteration of native fire cycles. Reducing and controlling the use of methyl bromide as a fumigant will diminish these adverse environmental impacts.

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Sulfuryl fluoride is a potent greenhouse gas that could contribute to climate change, as it has a global warming potential approximately 4,800 times greater than carbon dioxide and remains in the atmosphere for approximately 36 years. Effects from climate change include increase in average temperatures and temperature extremes, extreme weather events, ice melt, and ocean acidification.

Phosphine, the third fumigant addressed by the proposed new rules and amendments, does not represent a significant environmental hazard beyond its very significant health impacts addressed in the Summary above. Phosphine degrades in days and is a low risk for contaminating ground or surface waters. Phosphine near the soil surface will diffuse into the atmosphere and be removed via photodegradation. Phosphine trapped beneath the soil surface will bind to soil, inhibiting its movement, and be oxidized to phosphates. While phosphates do not pose the same toxicity issues as phosphine, they are of some environmental concern in that phosphates are nutrients that disturb the balance of aquatic environments, causing algae to grow rapidly.

### **New Jersey Hazardous Air Pollutants (NJHAPs)**

As discussed in the Social Impact above, conducting a risk assessment may result in the reduction of NJHAP emissions by permitted facilities. While the Department's primary concern in this proposed rulemaking is the reduction of the adverse human health impacts of these air contaminants, the environment will also benefit.

### **Hydrogen Sulfide (H<sub>2</sub>S)**

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H<sub>2</sub>S emissions contribute to the formation of sulfuric acid, which in turn contributes to acid rain. Acid rain causes damage to buildings, historic monuments, and statues, especially those made of rocks, such as limestone and marble, that contain large amounts of calcium carbonate. Acid rain also lowers the pH concentrations in surface water, causing damage to fish and other aquatic animals and reducing biodiversity. In soils, the hydronium ions of acid rain mobilize toxins, such as aluminum, and leach away essential nutrients and minerals, such as magnesium.

#### 1-Bromopropane (1-BP) or n-Propyl Bromide (n-PB)

The Department regulates 1-BP, a VOC, under the existing rules at N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds. The proposed regulation of 1-BP as a toxic substance may lead to facilities replacing it with another chemical. To the extent the vapor pressure of the substituted chemical is higher or lower than that of 1-BP, the resulting VOC emissions will be increased or decreased. VOCs are precursors to ground-level ozone formation; thus, changes in the level of VOCs emitted from a source will increase or decrease the resulting formation of ground-level ozone, the environmental impacts of which are discussed above. To a lesser extent, VOCs also contribute to the formation of PM<sub>2.5</sub>, the environmental impacts of which are discussed above.

#### Sulfuryl Fluoride

As with the other fumigants and the other NJHAPs addressed by this rulemaking, the Department's primary concern with sulfuranyl fluoride emissions is the impact on the health and

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welfare of New Jersey residents. There are, however, positive environmental impacts associated with regulating sulfuryl fluoride, as discussed above, regarding its use as a fumigant.

### **Emission Statements**

As explained above, the Department proposes to add 13 air contaminants to the existing list at N.J.A.C. 7:27-21 Appendix 1. The 13 air contaminants must be reported under the EPA's TRI Program and all but benzo(a)pyrene are Federally listed HAPs. The proposed requirement that 13 additional toxic air pollutants be included in a source's emission statement will not directly decrease the emissions of these air contaminants. However, data gathered from their inclusion will be used when regional and national analyses are conducted concerning emissions of air toxics. These analyses could lead to initiatives that identify and target the air toxics whose emissions cause the greatest potential environmental risks. In addition, public awareness of which sources are high emitters of air toxics increases pressure on those sources to reduce those emissions.

Nine of the 13 toxic air pollutants are VOCs. The benefits of reducing VOC emissions are discussed above. The four non-VOC toxic air pollutants proposed for regulation are chlorine, cobalt, phosphorous, and hydrogen fluoride. Minimizing the emissions of any of these air contaminants will prevent environmental damage. For example, chlorine causes environmental harm, even at low levels, to organisms living in water and in soil (see "Chemical properties of chlorine – Health effects of chlorine – Environmental effects of chlorine," Lenntech. 2019. <https://www.lenntech.com/periodic/elements/cl.htm>). Cobalt air emissions settle to the ground and enter the food and water supply; most of the population is exposed to cobalt

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through food, water, and air (see “Public Health Statement: Cobalt.” Agency for Toxic Substances and Diseases Registry. April 2004. <https://www.atsdr.cdc.gov/ToxProfiles/tp33-c1-b.pdf>). Phosphorus air emissions can contaminate water bodies, such as lakes, causing algae to grow faster than ecosystems can handle. Significant increases in algae harm water quality, food resources and habitats, and decrease the oxygen that fish and other aquatic life need to survive. Hydrogen fluoride emissions can cause damage to agriculture. After being absorbed by rain and clouds, hydrogen fluoride converts to hydrofluoric acid, a highly corrosive acid that will react with metal and limestone and physically damage or kill aquatic life (see “Hydrofluoric acid” NIH: U.S. National Library of Medicine. <https://pubchem.ncbi.nlm.nih.gov/compound/Hydrofluoric-acid#section=Non-Human-Toxicity-Values>).

In addition, the proposed amendments, repeal, and new rules are also expected to reduce emissions of HAPs and other air contaminants that cause serious environmental effects in that they affect the health of animals. Like humans, animals may experience health problems if they are exposed to sufficient quantities of air toxics over time. These health effects can include damage to the immune system, as well as neurological, reproductive (such as reduced fertility), developmental, respiratory, and other health problems (see the EPA Toxics Website, <http://www3.epa.gov/ttn/atw/allabout.html>).

#### **Federal Standards Statement**

Executive Order (EO) No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies that adopt, readopt, or amend State rules that exceed any Federal

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standards or requirements to include in the rulemaking document a Federal standards analysis.

The Department is proposing amendments and new rules for which there are no comparable Federal standards or requirements. The three components of this rulemaking - permitting requirements for fumigation operations and regulation of fumigants (fumigation), State-specific regulation of New Jersey Hazardous Air Pollutants (NJHAPs), and additional toxic air pollutants to be reported on emission statements (emission statements) - are discussed below.

### **Fumigation**

The application of pesticides in fumigation operations is regulated by Federal standards and requirements. However, there are no Federal standards and requirements addressing the emission of air contaminants to the ambient air as addressed by the proposed amendments and new rules. There are also no comparable Federal standards or requirements addressed by proposed amended N.J.A.C. 7:27-17.

### **New Jersey Hazardous Air Pollutants (NJHAPs)**

The proposed amendments establish reporting and SOTA thresholds for three air contaminants of concern to New Jersey (H<sub>2</sub>S, 1-BP, and sulfuryl fluoride) that are not yet regulated by the EPA. There are no comparable Federal standards or requirements.

### **Emission Statements**

The Department has determined that at present there are no analogous Federal regulatory requirements to the proposed amendments to include 13 toxic air pollutants in the Emission Statement rules. The Department is proposing amendments based on its determination that the reporting of emissions of these 13 additional toxic air pollutants is

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necessary to enable the Department to have sufficient information to determine if the health, safety, and welfare of New Jersey citizens is sufficiently protected; to develop well-targeted and cost-effective regulatory programs; and to track progress toward meeting environmental goals.

A more detailed discussion of the reasons for proposing these additional reporting requirements is provided in the Social and Environmental Impact statements above.

### **Jobs Impact**

The Department anticipates that the proposed amendments, repeal, and new rules will have little or no impact on job retention or creation in the State. As explained below, the proposed amendments addressing fumigation operations and the regulation of fumigants as air toxics should have no impact on job retention or creation. The proposed regulation of New Jersey HAPs, and the proposed addition of 13 toxic air pollutants to the list of those that must be reported on an emission statement may have some minimal impact on job creation.

However, the Department is not able to estimate the number of jobs that may be created as a result. The jobs impact of the three components of this rulemaking - permitting requirements for fumigation operations and regulation of fumigants (fumigation), State-specific regulation of New Jersey Hazardous Air Pollutants (NJHAPs) and additional toxic air pollutants to be reported on emission statements are discussed more fully below.

### **Fumigation**

The proposed establishment of fumigation-specific permitting should not require the hiring of additional personnel to ensure compliance with these requirements since fumigation operations have already had to ensure compliance with the Department's permitting rules. The

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Department also does not anticipate that the regulation of fumigants as toxics will impact job retention or creation, as this does not create an independent requirement for a permit, only that these toxics be reported on an already required permit.

### **New Jersey Hazardous Air Pollutants (NJHAPs)**

The Department anticipates the proposed establishment of reporting and SOTA thresholds for three NJHAPs will have a small positive impact on job creation and retention. In order to comply with the reporting thresholds for these NJHAPs, owners and operators of affected sources may need to conduct more-refined risk assessments, design modifications to source operations, and install equipment to lower potential health risks. This may result in additional work for engineering firms, air pollution control manufacturers, and related construction trades that provide services to facilities subject to the proposed NJHAP reporting and SOTA thresholds.

### **Emission Statements**

As discussed in the Economic Impact above, there will be minimal expanded reporting required for some facilities. Thus, there may be a small positive impact on job creation and retention to the extent that facilities will need to engage the services of a consultant to input the data and perform any required calculations to add one or more of the proposed additional 13 toxic air pollutants to their emission statements.

## **Agricultural Industry Impact**

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Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed amendments, repeal, and new rules on the agricultural industry. The Department anticipates that the proposed rulemaking will have a minimal impact on the agricultural industry in New Jersey by reducing emissions of air contaminants, including fumigants and New Jersey Hazardous Air Pollutants (NJHAPs) and, thus, reducing the damage that these air contaminants can cause to crops, as discussed in the Environmental Impact above.

### **Regulatory Flexibility Analysis**

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed amendments, repeal, and new rules impose upon small businesses. The Regulatory Flexibility Act defines the term “small business” as “any business which is a resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” Based on this definition, the Department expects that the proposed rules will affect small businesses.

### **Fumigation**

The proposed rules require a fumigation operation to obtain a permit based on potential to emit. Fumigators that apply the fumigant are, for the most part, large corporations that typically have commercial and residential divisions and are not considered a small business. The Department is aware that some of the fumigators registered with the Department are small businesses; however, it cannot estimate the total number at this time.

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Companies that own the commodity to be fumigated are not expected to be small businesses. Such companies have the financial capability to purchase or sell and ship product long distances. In some cases, ownership of the commodity can change one or more times during storage and fumigation. Such transactions occur between companies with substantial assets that could be located anywhere in the United States or abroad.

Commercial fumigation can occur at the location of the commodity owner or in a rented space at a warehouse. In New Jersey, large scale fumigation occurs at port facilities that are operated by large corporations or public/private partnerships and not expected to be small businesses. Fumigation could also occur at a warehouse whose ownership structure could be classified as a small business.

To the extent the regulation of fumigation operations and the use of fumigants impact small businesses in New Jersey, the Department has evaluated the reporting, recordkeeping, and other compliance requirements that the proposed rules impose upon small businesses. The compliance requirements are discussed in the Summary above, and the costs are discussed in the Economic Impact above. The proposed rules do not exempt small businesses from the reporting, recordkeeping, or other compliance requirements; unregulated fumigation operations and the use of fumigants endangers public health, safety, and welfare, which cannot be correlated to the size of the business.

#### **New Jersey Hazardous Air Pollutants (NJHAPs)**

The proposed new reporting thresholds for NJHAPs will provide the Department with information to better understand the source and quantity of the emissions of these air

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contaminants in New Jersey. The proposed rules do not exempt small businesses from the reporting, recordkeeping, or other compliance requirements; unregulated NJHAP emissions endanger public health, safety, and welfare, which cannot be correlated to the size of the business. Until the proposed reporting requirements yield more information regarding these emissions, it is difficult to determine precisely how many small businesses may be impacted by these proposed new requirements, but the Department has determined the following concerning NJHAP emissions in New Jersey:

#### 1-Bromopropane (1-BP)

As mentioned in the Summary above, from 2004 to 2018, 22 New Jersey facilities listed 1-BP in their New Jersey Community Right to Know (CRTK) submissions. Of these, three were dry cleaners and the rest were other businesses, including suppliers and manufacturing companies, which could be small businesses. The proposed rulemaking does not apply to companies that are only suppliers of 1-BP. Some facilities that processed 1-BP may have already discontinued its use and switched to another solvent as a result of the increasing awareness of 1-BP's negative health impacts.

#### Hydrogen sulfide (H<sub>2</sub>S)

Hydrogen sulfide is primarily emitted from landfills and municipal sewage treatment plants, that are owned and operated by State, county, or local entities, which are not classified as small businesses. H<sub>2</sub>S is also emitted from other industrial operations, some of which may meet the classification of a small business.

#### Sulfuryl fluoride

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As described above, the primary use of sulfuryl fluoride in New Jersey is as a fumigant. The impact on small businesses is described generally in the discussion of fumigation operations, above.

The proposed amendments to add 1-BP, H<sub>2</sub>S and sulfuryl fluoride at N.J.A.C. 7:27-17.9 impose the same requirements on small businesses as on other regulated entities, as discussed in the Summary and Economic Impact above. Because the NJHAP emissions from a source at a small business could pose a significant health risk, the Department is not able to exempt small businesses from the proposed requirements. However, the Department will work with the small business to reduce the risk in the most cost-effective way, including, for example, modification of stack configuration or batch size.

### **Emission Statements**

Approximately 49 businesses meeting the Regulatory Flexibility Act definition of "small business" already submit emissions statements to the Department. Of these, approximately 20 facilities are expected to emit one or more of the 13 toxic air pollutants proposed for inclusion in emission statements. The proposed amendments will not have a significant impact on the recordkeeping, reporting, and compliance requirements on small businesses, since these businesses already have the necessary testing methods, equipment, and staff in place. The exact increase in operational costs is discussed in the Economic Impact and are expected to be negligible for most small businesses.

The Department attempts to lessen the burden on small businesses by providing technical support. The Department holds an annual workshop at which all aspects of the

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Emission Statement program are reviewed. This workshop is arranged through the Cook College Office of Continuing Professional Education at Rutgers University, New Brunswick, New Jersey. Registration information for this workshop can be accessed at the <http://www.cpe.rutgers.edu/about-rutgers-ocpe.html>. The next scheduled Emission Statement workshop will be held in June of 2021. The Department also operates a help desk specifically to assist facilities with questions related to the Emission Statement submittal. It can be reached by calling (609) 633-8248.

Any small business that is subject to the Emission Statement rules has the potential to emit relatively large quantities air contaminants with the potential to damage public health, welfare, and the environment. This significant potential is why it would not be appropriate for the Department to exempt such businesses from the proposed reporting requirements.

#### **Housing Affordability Impact Analysis**

In accordance with N.J.S.A. 52:14B-4, the Department has evaluated the proposed amendments, new rules, and repeal to determine their impact, if any, on the affordability of housing. The proposed rules regulate fumigation operations and emissions of air contaminants, including permitting and reporting requirements by significant sources of air pollution and neither impose requirements, nor confer direct benefits onto homeowners, builders, or other providers of housing, making it extremely unlikely that they will have an impact on the affordability of housing units or result in a change in the average costs of housing.

#### **Smart Growth Development Impact Analysis**

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In accordance with N.J.S.A. 52:14B-4, the Department has evaluated the proposed amendments, repeal, and new rules to determine their impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments, repeal, and new rules regulate fumigation operations and emissions of air contaminants, including permitting and reporting requirements by significant sources of air pollution, making it extremely unlikely that they will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

In accordance with N.J.S.A. 52:14B-4(a)(2) and N.J.S.A. 2C:48B-2, the Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rule proposed for repeal may be found in the New Jersey Administrative Law at N.J.A.C. 7:27-8.27.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### CHAPTER 27

#### AIR POLLUTION CONTROL

SUBCHAPTER 8. PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT)

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7:27-8.1 Definitions

The following words and terms, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

...

**“Commodity” means a mass-produced product that can be bought and sold, including agricultural products, produce, logs, vehicles, and clothing.**

...

**“Emergency fumigation” or “emergency fumigation operation” means the fumigation of a commodity or industrial structure that is required by a State or Federal authority, including the United States Department of Agriculture or the United States Food and Drug Administration, on an emergency basis.**

...

**“Equipment” means any device capable of causing the emission of an air contaminant, either directly or indirectly, to the outdoor atmosphere, and any stack or chimney, conduit, flue, duct, vent, or similar device connected or attached to[,] or serving the equipment.**

...

[“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A.

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26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42.

This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.]

...

**“Fumigant” means a chemical registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).**

**“Fumigation” or “fumigation operation” means the action of introducing a fumigant in the gaseous state to prevent, control, or eliminate a targeted pest.**

...

“Group [1] I TXS” means an air contaminant that is [found on] **included in** the list of Group [1] I TXS at N.J.A.C. 7:27-17.3[, which is incorporated by reference herein, together with all amendments and supplements]. [As of June 12, 1998, the following is the complete list of Group 1 TXS: Benzene (Benzol), Carbon tetrachloride (Tetrachloromethane), Chloroform (Trichloromethane), Dioxane (1,4-Diethylene dioxide; 1,4-Dioxane), Ethylenimine (Aziridine), Ethylene dibromide (1,2-Dibromoethane), Ethylene dichloride (1,2-Dichloroethane), 1,1,2,2-Tetrachloroethane (sym Tetrachloroethane), Tetrachloroethylene (Perchloroethylene), 1,1,2-Trichloroethane (Vinyl trichloride), and Trichloroethylene (Trichlorethene).]

“Group [2] II TXS” means an air contaminant that is [found on] **included in** the list of Group [2] II TXS at N.J.A.C. 7:27-17.3[, which is incorporated by reference herein, together with

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all amendments and supplements]. [As of June 12, 1998, the following is the complete list of Group 2 TXS: Methylene chloride (Dichloromethane), 1,1,1-Trichloroethane (Methyl chloroform).]

**“Group III TXS” means an air contaminant that is included in the list of Group III TXS at N.J.A.C. 7:27-17.3.**

...

**“Industrial structure” means a structure or equipment, including a building, warehouse, container, bin, silo, room, commodity pallet, 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 in which fumigation occurs.**

...

**“New Jersey Hazardous Air Pollutant” or “NJHAP” means a substance listed at N.J.A.C. 7:27-17.3, Table 2.**

...

[“Pollution Prevention Assessment” means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term "Pollution Prevention Assessment" at N.J.A.C. 7:1K-1.5; if there is any

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conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

“Pollution Prevention Plan” means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term "Pollution Prevention Plan" at N.J.A.C. 7:1K-1.5.]

...

#### 7:27-8.2 Applicability

(a) - (b) (No change.)

(c) Any equipment or source operation that may emit one or more air contaminants, except carbon dioxide (CO<sub>2</sub>), directly or indirectly into the outdoor air and belongs to one of the categories listed below, is a significant source (and, therefore, requires a preconstruction permit and an operating certificate), unless it is exempted from being a significant source pursuant to (d), (e), [or] (f), **or (g)** below:

1. (No change.)
2. Any source operation [of] **or** equipment that has the potential to emit any Group [1 or Group 2] **I, II, or III** TXS, (or [a] **any** combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);
3. (No change.)
4. A surface cleaner [which] **that** uses a cleaning solution containing five percent or

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more VOCs, HAPs, **NJHAPs**, or [VOC and HAP combined] **any combination thereof**, and [which]

**that is:**

i. - iv. (No change.)

5. - 14. (No change.)

15. Equipment [which] **that** is used for treating groundwater, industrial waste water, or municipal wastewater with a solids content of less than two percent by weight as it enters the equipment (typical operations performed by this type of equipment include, but are not limited to, air stripping, aeration, digestion, thickening, flocculating, surface impounding, and dewatering), if the equipment does either of the following:

i. Treats or handles influent which has one or both of the following:

(1) A total concentration of VOCs and Group [2] **II** TXS in the influent of 3,500 parts per billion by weight (ppbw) or more; or

(2) A total Group [1] **I** TXS concentration in the influent of 100 ppbw or more; or

ii. (No change.)

16. - 18. (No change.)

19. Equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour, provided:

i. Such equipment [shall] **does** not include equipment [which] **that** is the same type as is included within a category described [in] **at** (c)1, 2, 4[, 5, 6, 7, 8, 9, 10,] **through** 12, 15, or 18 above; or [in] **at** (c)20, **21, or 22** below, but which is excluded from the category

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because it does not meet an applicability threshold set forth in the description of the category. That is, the equipment has a lower capacity, weight of materials processed, vapor pressure, or consumption of BTUs, or otherwise falls outside a parameter that is included in the description of the category;

ii. (No change.)

20. Welding equipment, if the weight of the welding rod or welding wire used in the process is greater than 12 pounds in any calendar day; [and]

21. Any stationary reciprocating engine with a maximum rated power output of 37 kW or greater, used for generating electricity, not including emergency generators[.]; **and**

**22. Any fumigation of a commodity or industrial structure that has the potential to emit any fumigant or combination of fumigants at a rate greater than 0.1 pounds per hour (45.4 grams per hour), except as provided at (g) below.**

(d) Even if a source is listed [in] **at** (c) above, any of the following is not a significant source (and, therefore, does not need a preconstruction permit and operating certificate) if it is:

1. - 2. (No change.)

3. A stationary storage tank, provided that (d)3i, ii, and iii below are satisfied:

i. (No change.)

ii. The following criteria are met:

(1) (No change.)

(2) The tank does not emit any air contaminant[, which] **that** may

cause an odor detectable outside the property boundaries of the facility;

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(3) (No change.)

(4) The tank's potential to emit each TXS, **each NJHAP**, and each HAP does not exceed the reporting thresholds at N.J.A.C. 7:27-17.9[(a)], **Tables 3A and 3B**; and

(5) The percentage by weight of all HAPs **and NJHAPs** collectively in the raw material stored in the tank is less than 1.0 percent; and

iii. The owner or operator of the tank has readily available upon Department request a statement certified in accordance with N.J.A.C. 7:27-1.39, signed by the responsible official, as defined at N.J.A.C. 7:27-1.4[, which] **that:**

(1) - (3) (No change.)

4. - 15. (No change.)

16. Equipment used to temporarily replace commercial fuel burning equipment that has a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber, and/or stationary reciprocating engines with a maximum rated power output of 37 kW or greater, used for generating electricity, that are shut down as part of CRM activities, provided the replacement equipment:

i.- ii. (No change.)

iii. Does not emit any air contaminant in excess of the [state of the art] **state-of-the-art** thresholds [in] at N.J.A.C. 7:27-8 Appendix 1, Table A, **incorporated herein by reference**, and [7:27-]17.9[(b)], **Tables 3A and 3B**;

iv. (No change.)

v. Prior to operating, is listed in an electronic notification to the

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Department's Regional Air Enforcement Office, that:

(1) - (3) (No change.)

(4) States the replacement equipment will not emit any air contaminant in excess of the [state of the art] **state-of-the-art** thresholds [in] **at** N.J.A.C. 7:27-8 Appendix 1, Table A, **incorporated herein by reference**, and [7:27-]17.9[(b)], **Tables 3A and 3B**;

(5) - (7) (No change.)

vi. (No change.)

17. - 21. (No change.)

(e) Equipment or a source operation that would be classified as a significant source solely because it meets the criteria [in] **at** (c)19 above[,] is not a significant source (and, therefore, does not need a permit and certificate), provided that (e)1, 2, and 3 below are satisfied:

1. The equipment or source operation is one of the following:

i. A mixer, cutter, molder, conveyer, blender, filler, or cooking kettle

[which] **that** processes material intended as food for direct human consumption, provided that the temperature of the food does not exceed 225 degrees Fahrenheit;

ii. - iv. (No change.)

v. A vessel with a capacity of 1,000 gallons or greater in which the mixing or blending of liquids takes place in a non-reactive process, provided that:

(1) The operating temperature of the vessel is not greater [then] **than** 350 degrees Fahrenheit; and

(2) (No change.)

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vi. - vii. (No change.)

2. The following criteria are met:

i. (No change.)

ii. The source does not emit any air contaminant [which] **that** may cause an odor detectable outside the property boundaries of the facility;

iii. The source meets one of the following criteria:

(1) (No change.)

(2) The source is a mixing or blending vessel [which] **that** meets the

criteria set forth [in] **at (e)1v [through], vi, or vii** above and is vented directly to the outdoor atmosphere;

iv. (No change.)

v. The source's potential to emit each TXS, **each NJHAP**, and each HAP does not exceed the reporting thresholds at N.J.A.C. 7:27-17.9[(a)], **Tables 3A and 3B**; and

vi. The percentage by weight of all HAPs **and NJHAPs** collectively in the raw material is less than 1.0 percent; and

3. (No change.)

(f) (No change.)

**(g) A fumigation operation that would be classified as a significant source solely because it meets the criteria at (c)2, 19, or 22 above is not a significant source (and, therefore, does not need a permit and certificate) if the operation is an emergency fumigation operation and there has been no other fumigation operation by the facility or source owner or operator**

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within the preceding five years, including an emergency fumigation operation meeting the requirements of this section or N.J.A.C. 7:27-22.36. A fumigation operation that was performed before (the operative date of this amendment) will not disqualify a subsequent emergency fumigation operation from the use of this section. The following requirements apply to emergency fumigation operations meeting the above criteria:

1. The owner or operator shall provide advance notification to the Department of the emergency fumigation operation by first-class mail or electronic mail, as provided at (g)2 below, that includes the following:

- i. Documentation that the operation is an emergency fumigation operation;
- ii. The exact physical location of the facility at which the emergency fumigation operation will be conducted and the distance to the nearest property line, building, structure, and public area;
- iii. The industrial structure(s) to be fumigated, including the number of industrial structure(s);
- iv. The commodity to be fumigated, including quantity;
- v. The fumigant name and estimated quantity to be used; and
- vi. The name and address of the company that will perform the emergency fumigation operation;

2. The owner or operator shall submit, to the Department, the pre-fumigation notice required at (g)1 above and the post-fumigation report required at (g)6 below through

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**the appropriate regional Bureau of Air Compliance and Enforcement by first-class mail or by email, as follows:**

**i. If the emergency fumigation operation is located in Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, or Warren County:**

**Bureau of Air Compliance & Enforcement – Northern**

**7 Ridgedale Ave**

**Cedar Knolls, NJ 07927**

**[AirCE-Northern@dep.nj.gov](mailto:AirCE-Northern@dep.nj.gov);**

**ii. If the emergency fumigation operation is located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:**

**Bureau of Air Compliance & Enforcement – Central**

**401 E State St**

**Mail Code 22-03A, PO Box 420**

**Trenton, NJ 08625-0420**

**[AirCE-Central@dep.nj.gov](mailto:AirCE-Central@dep.nj.gov); or**

**iii. If the emergency fumigation operation is located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:**

**Bureau of Air Compliance & Enforcement – Southern**

**2 Riverside Dr, Suite 201**

**Camden, NJ 08103**

**[AirCE-Southern@dep.nj.gov](mailto:AirCE-Southern@dep.nj.gov);**

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**3. Prior to the application of fumigant at the site, and until aeration is completed, the owner or operator shall post visible and legible signs on the property at any access point and at the facility fence or property line closest to any public right-of-way. The signs must include all wording/information for placards required by the Federally approved fumigant label to identify the operation as dangerous and provide other details, including:**

- i. The date the fumigation will begin;**
- ii. The name and the EPA registration number of the fumigant used;**
- iii. The name, address, and telephone number of the fumigation company**

**and/or applicator; and**

- iv. A 24-hour emergency response telephone number;**

**4. The emergency fumigation operation must include a stack that extends above the highest point of the container/roofline to a height above the ground and exhausts vertically to remove the fumigant;**

**5. The emergency fumigation operation must be discontinued, or the rate of aeration must be decreased, if the monitored concentration level limit established in the fumigant label is exceeded at the fence or property line; and**

**6. Within 30 calendar days following the completion of the emergency fumigation operation, the owner or operator shall submit to the Department, by first-class mail or electronic mail, as provided at (g)2 above, a written report that includes the following:**

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- i. The exact physical location of the facility at which the emergency fumigation operation was conducted and the distance to the nearest property line, building, structure, and public area;**
- ii. The industrial structure(s) that were fumigated, including the number of industrial structure(s);**
- iii. The commodity fumigated, including quantity;**
- iv. The name and address of the company that performed the emergency fumigation operation;**
- v. The identity of the State or Federal authority that required the emergency fumigation operation;**
- vi. The equipment used to perform the emergency fumigation operation, including the containment system employed (for example, tarp, sealed container, or fumigation chamber);**
- vii. The name and quantity of the fumigant used, including a copy of the fumigant label;**
- viii. The duration of the fumigation and aeration, including the start and end times for each;**
- ix. The method employed to release the fumigant to the atmosphere after completion of the emergency fumigation operation and aeration, including the rate of release and the distance above the ground at which the fumigant was released;**
- x. A brief description of the capture and control device used, if any; and**

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**xi. A summary of the fumigation operations, if any, conducted by the facility or source owner or operator over the preceding five years, including any emergency fumigation operation conducted pursuant to this section or N.J.A.C. 7:27-22.36(a). The summary must include the date, amount of fumigant used, and the commodity or industrial structure fumigated for each fumigation operation.**

[(g)] **(h)** (No change in text.)

[(h)] **(i)** Although an insignificant source does not require a permit, emissions information from an insignificant source may be required on an application [under] **pursuant to** N.J.A.C. 7:27-8.4 if the insignificant source vents to a control device, stack, or chimney [which] **that** also serves a significant source.

[(i)] A permit and certificate are not required for equipment, control apparatus, or a source operation at a facility which is covered by a facility-wide permit issued by the Department pursuant to N.J.S.A 13:1D-35 et seq. However, the holder of the facility-wide permit must comply with N.J.A.C. 7:27-8.27, Special facility-wide permit provisions.]

(j) (No change.)

7:27-8.4 How to apply, register, submit a notice, or renew

(a) (No change.)

(b) The actions listed at (a)1 through 12 above shall be submitted in accordance with (c) below on forms obtained from the Department. These forms, and information about these actions, may be obtained in the following ways:

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1. In paper form, by contacting the Department at:

Department of Environmental Protection

[Division of Air Quality]

Air Quality [Permitting Program] **Regulation and Planning**

Bureau of [Air Permits] **Stationary Sources**

Preconstruction Permits Section

401 East State Street

Mail Code 401-02

PO Box 420

Trenton, New Jersey 08625-0420

Telephone: (609) 292-6716 or 1-800-441-0065

Website: <http://www.nj.gov/dep/aqpp>; or

2. (No change.)

(c) - (j) (No change.)

(k) An application, registration, or notice [shall] **must**, if required by the applicable form, list each air contaminant that meets either of the following conditions:

1. The source operation's potential to emit the air contaminant is equal to or higher than the applicable reporting threshold in Table A [in] **at** N.J.A.C. 7:27-8 Appendix 1, **incorporated herein by reference**, or [7:27-]17.9[(a)], **Tables 3A and 3B**; or

2. (No change.)

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(l) When listing raw materials on an application, registration, or notice, the applicant shall list each HAP **and NJHAP** raw material separately. Each non-HAP **and non-NJHAP** raw material shall be:

1. (No change.)
2. Listed in a group of non-HAP **and non-NJHAP** raw materials with similar physical and/or chemical properties. If a group is listed, the group [shall] **must be approved by the Department as** sufficiently limited, so as to allow the Department to evaluate whether the source, using those raw materials, [shall comply] **complies** with specified maximum emission rates and applicable requirements. [The grouping shall be approved by the Department.]

(m) When listing the emissions for a contaminant for which emissions information is required [under] **pursuant to** (k) above:

1. The applicant shall separately list emissions for each HAP **and NJHAP**;
2. Emissions for each non-HAP **and non-NJHAP** shall be:
  - i - ii. (No change.)
3. If a source emits a contaminant that is [both] a HAP **or an NJHAP** and is also a VOC or a particulate, emissions of that air contaminant shall be listed [separately] as a HAP **or as an NJHAP**, and shall also be included in any grouping of total VOCs or total particulates.

(n) - (s) (No change.)

7:27-8.5 Air quality impact analysis

(a) - (c) (No change.)

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(d) An air quality impact analysis and/or a risk assessment shall be conducted in accordance with [a] **an air quality dispersion modeling protocol and/or risk screening worksheets** approved in advance by the Department. The Department [shall] **will not approve [a] an air quality dispersion modeling protocol**, unless it takes **into account** all relevant site-specific and general factors [into account]. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The **air quality dispersion modeling** protocol shall document how the person proposes to conduct the air quality impact analysis and/or risk assessment, and how the results will be presented to the Department. Technical guidance on the preparation of [a] **an air quality dispersion modeling protocol and the use of risk screening worksheets** can be found in [the Air Quality Permitting Program's] Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol)[,] and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions), available on the Department's website at <http://www.nj.gov/dep/agpp/techman.html>. **The risk screening worksheets are available on the Department's website at <https://www.state.nj.us/dep/agpp/risk.html>**. Additional technical guidance on preparing a protocol may be requested from:

Department of Environmental Protection

Air Quality [Permitting Program] **Regulation and Planning**

Bureau of [Technical Services] **Evaluation and Planning**

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Air Quality Evaluation Section

401 East State Street, 2nd Floor

Mail Code 401-02

PO Box 420

Trenton, New Jersey 08625-0420

Telephone: [609-633-1110] **(609) 292-6722**

7:27-8.12 [State of the art] **State-of-the-art**

(a) If an application proposes construction, installation, reconstruction, or modification of equipment and control apparatus that is a significant source meeting the following criteria, the applicant shall document [state of the art] **state-of-the-art** (SOTA) for the source:

1. The equipment and control apparatus has a potential to emit any HAP **or NJHAP** at a rate equal to or greater than the SOTA Threshold at N.J.A.C. 7:27-17.9[(b)], **Tables 3A and 3B**; or

2. The equipment and control apparatus has a potential to emit any other air contaminant or category of air contaminant, except carbon dioxide (CO<sub>2</sub>), at a rate equal to or greater than the SOTA threshold in Appendix 1, Table A, incorporated herein by reference.

(b) - (e) (No change.)

(f) A [case by case] **case-by-case** SOTA standard shall be determined by the Department based on a demonstration by the applicant, using a "top down" approach. To perform a "top down" SOTA demonstration, the applicant shall:

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1. (No change.)

2. Arrange the measures on the list in descending order of air pollution control effectiveness. The first-listed or "top" measure shall constitute SOTA for the source, unless the applicant provides one of the following:

i. (No change.)

ii. A demonstration that the top measure should be eliminated from consideration based on its environmental impacts. The justification shall show that the adverse environmental effects of the top measure (for example, effects on water or land, HAP or NJHAP emissions, or increased environmental hazards), when compared with its air contaminant emission reduction benefits, would make use of the top measure unreasonable;

iii. - iv. (No change.)

3. (No change.)

#### 7:27-8.18 Permit revisions

(a) The following actions require prior approval from the Department through a permit revision:

1. - 2. (No change.)

3. Use of a new raw material not specified in the permit, if the use would cause any of the following results (if the use would not cause any of these results, it shall be processed as a seven-day-notice [under] **pursuant to** N.J.A.C. 7:27-8.20, or as an amendment [under] **pursuant to** N.J.A.C. 7:27-8.21):

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- i. (No change.)
- ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold [in] **at** N.J.A.C. 7:27-8 Appendix 1, Table A, **incorporated herein by reference**, or at [7:27-]17.9[(a)], **Tables 3A and 3B**; or
- iii. (No change.)
- 4. A reconstruction, as described [in] **at** N.J.A.C. 7:27-8.23, unless the reconstructed source has the potential to emit each of the air contaminants listed [in] **at** N.J.A.C. 7:27-8 Appendix 1, Table A, **incorporated herein by reference**, and at [7:27-]17.9[(b)], **Tables 3A and 3B**, in amounts less than the applicable SOTA threshold level; in that case, the owner or operator of the source shall notify the Department of the reconstruction using the amendment procedures set forth at N.J.A.C. 7:27-8.21;
- 5. - 7. (No change.)
- (b) (No change.)

7:27-8.20 Seven-day-notice changes

- (a) - (c) (No change.)
- (d) A permittee shall not [under], **pursuant to** (b)1 above, use a seven-day-notice for a change that would:
  - 1. (No change.)

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2. Result in emission of a new air contaminant at a level that would cause the source's potential to emit to exceed reporting thresholds [in] at N.J.A.C. 7:27-8 Appendix 1, Table A, **incorporated herein by reference**, or at [7:27-]17.9[(a)], **Tables 3A and 3B.**

(e) - (h)(No change.)

#### 7:27-8.21 Amendments

(a) (No change.)

(b) A permittee shall notify the Department of the following changes as an amendment:

1. - 4. (No change.)

5. The use in a permitted source of a new raw material not specified in the permit (including a change in the contents of a storage tank or container), or a change in the source's use of a raw material outside the limits in the permit, if the change would not cause any of the following:

i. (No change.)

ii. Emission of a new air contaminant not specified in the permit and certificate, at a level that meets or exceeds the applicable reporting threshold [in] at N.J.A.C. 7:27-8 Appendix 1, Table A, **incorporated herein by reference**, or at [7:27-]17.9[(a)], **Tables 3A and 3B**; or

iii. (No change.)

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6. Replacement of an entire permitted source with a replacement source that performs the same function as the replaced source and which, for each air contaminant listed [in] **at N.J.A.C. 7:27-8 Appendix 1, Table A, incorporated herein by reference,** and [7:27-]17.9[(b)], **Tables 3A and 3B,** that the replacement source may emit, has a potential to emit the air contaminant in an amount that is less than the applicable SOTA threshold level [in] **at N.J.A.C. 7:27-8 Appendix 1, Table A, incorporated herein by reference,** and [7:27-]17.9[(b)], **Tables 3A and 3B;**
7. (No change.)
8. A reconstruction, as described at N.J.A.C. 7:27-8.23, provided that the reconstructed source has the potential to emit each air contaminant listed [in] **at N.J.A.C. 7:27-8 Appendix 1, Table A, incorporated herein by reference,** and [7:27-]17.9[(b)], **Tables 3A and 3B,** in amounts less than the applicable SOTA threshold level.

(c) - (f) (No change.)

**7:27-8.27 (Reserved)**

7:27-8.28 Delay of testing

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(a) A permittee may seek the approval of the Department for a delay in testing required pursuant to N.J.A.C. 7:27-8.4(f), 8.7(f), or 8.13(d). In such case the following [shall apply]

**applies:**

1. The permittee shall submit a request for such approval on paper to the address given at N.J.A.C. 7:27-8.4(b) and to the appropriate regional enforcement office indicated [in] **at** (a)1i [through iv], **ii, or iii** below, or to the address specified on the Department's website at

<http://www.nj.gov/dep/easyaccess/compenf.htm#Aircomplenf>;

i. If the permitted source is located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:

Department of Environmental Protection  
Bureau of Air Compliance & Enforcement -Central  
[4 Station Plaza] **401 E State St**  
Mail Code 22-03A  
PO Box 420  
Trenton, NJ 08625-0420.

ii. (No change.)

iii. If the permitted source is located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:

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Department of Environmental Protection

Bureau of Air Compliance & Enforcement - Southern

2 Riverside Drive, Suite 201

Camden, NJ [08102] **08103**.

2. - 3. (No change.)

(b) (No change.)

## SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTION BY VOLATILE ORGANIC COMPOUNDS

### 7:27-16.1 Definitions

The following words and terms, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

...

["Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C.

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7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.]

...

“Operating permit” means the permit described in Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661 et seq., and [in] **at** N.J.A.C. 7:27-22. This term [shall] include a general operating permit [which] **that** is applicable [facility wide] **facility-wide**, but does not include a general operating permit [which] **that** applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

...

“Permit” means a preconstruction permit[,], **or** operating permit[, or facility-wide permit].

...

#### 7:27-16.1A Purpose, scope, applicability, and severability

- (a) (No change.)
- (b) As set forth at N.J.A.C. 7:27-17.4[(c)], this subchapter's requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, or the use of compliant coatings, [shall apply]

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**applies** with full force to Group II TXS until the Department amends this [rule]

**subchapter** in response to an EPA rulemaking or otherwise.

(c)-(i) (No change.)

#### 7:27-16.17 Alternative and facility-specific VOC control requirements

(a) (No change.)

(b) Except as provided at (q) below, the owner or operator of any facility that contains a source operation subject to (a)<sup>1</sup> above shall[:]

[1. (Reserved)]

[2. Beginning on May 31, 1995,] comply with either (b)<sup>[2i or ii]</sup>**1 or 2** below:

[i.] **1.** Use control apparatus that the Department has determined [(pursuant to (1) below)] will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected;  
or

[ii.] **2.** Operate the facility in accordance with a facility-specific VOC control plan approved by the Department pursuant to [(j)] **(i)** below.

(c) The following requirements apply to an owner or operator seeking approval of an alternative VOC control plan pursuant to (a)<sup>2 or 3</sup> above:

1. The owner or operator shall submit to the Department at the address listed [in (s)] **at (p)** below a proposed alternative VOC control plan prepared in accordance

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with (d) below. Submission of a proposed alternative VOC control plan does not relieve an owner or operator of any facility, equipment, or source operation from complying by the compliance dates in other sections of this subchapter. If, and when, the Department approves an alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval;

2. - 5. (No change.)

(d) An owner or operator submitting a proposed alternative or facility-specific VOC control plan pursuant to (b)2[ii] or (c) above shall include the following information in the plan:

1. (No change.)

2. The following information for each source operation listed pursuant to (d)1 above:

i. - x. (No change.)

xi. For any construction, alteration, or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for each permit required. The permit may be a preconstruction permit and certificate [under] **pursuant to** N.J.A.C. 7:27-8[,] **or** an operating permit [under] **pursuant to** N.J.A.C. 7:27-22[, or a facility-wide permit as defined at N.J.A.C. 7:1K-1.5];

xii. - xiii. (No change.)

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3. Any other information the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements [of (j)] **at (i)** below; and
  4. (No change.)
- (e) Notwithstanding the provisions [of] **at (b)** above, the owner or operator of a facility that had actual annual emissions of VOC in 1990, and each year thereafter, of less than 25 tons, may comply with the requirements of this section by obtaining the Department's approval of a compliance plan and implementing such a plan. To comply in this manner, the owner or operator shall submit a proposed compliance plan pursuant to [(f)1] **(e)1** below, obtain the Department's approval of the plan pursuant to [(k)] **(j)** below, and implement the plan pursuant to [(f)2] **(e)2** below.
1. - 2. (No change.)
- (f) Within 30 days after receiving a proposed facility-specific VOC control plan submitted pursuant to (b)2 above, or a proposed compliance plan submitted pursuant to [(f)] **(e)** above, the Department will notify the owner or operator in writing whether the submission includes sufficient information to commence review. If the submission does not contain sufficient information to complete the review, the Department will include in the notice a list of the deficiencies, a statement of the additional information required to make the submission complete, and a time by which the owner or operator must make a complete submission. The Department may refrain from reviewing the substance of the submission until the additional information is provided to the

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Department.

(g) Failure by an owner or operator to submit the additional information requested by the Department pursuant to [(g)] **(f)** above within the time stated in the Department's notification [shall] constitutes a violation of this subchapter. In such case, the Department may deny the submission and pursue its other remedies.

(h) (No change.)

(i) Within six months after receiving a complete proposed alternative or facility-specific VOC control plan, the Department [shall] **will** approve, approve and modify, or disapprove the proposed plan and notify the owner or operator of the decision in writing. The Department [shall] **will** approve the proposed plan only if it satisfies the following requirements:

1. - 2. (No change.)

3. For any control technologies described [in (j)2] **at (i)2** above [which] **that** the owner or operator does not propose to use on the equipment or source operation, the proposed plan demonstrates that the control technology:

i. - iv. (No change.)

4. The emission limit proposed for each source operation is the lowest rate [which] **that** can practicably be achieved at a cost within the limits described [in (j)3iii] **at (i)3iii** and iv above;

5. - 6. (No change.)

(j) Within six months after receiving a complete compliance plan submitted pursuant to

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[(f)] **(e)** above, the Department [shall] **will** approve, approve and modify, or disapprove the proposed compliance plan and notify the owner or operator of the decision in writing. The Department [shall] **will** approve the proposed compliance plan only if it satisfies the following conditions:

1. The compliance plan contains all of the information required [under (f)] **pursuant to (e)** above;

2. - 4. (No change.)

(k) (No change.)

(l) Before altering any source operation [which] **that** is included in an approved alternative or facility-specific VOC control plan, approved compliance plan, or demonstration (except as authorized or required in the approval), the owner or operator shall:

1. Pursuant to this section, apply for, and obtain, the Department's approval of an amendment to the approved compliance plan, VOC control plan, or demonstration, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties [under] **pursuant to** N.J.A.C. 7:27A-3.10) modify the VOC control plan, compliance plan, or demonstration to reflect the alteration, in a manner satisfying the criteria set forth [in] **at (i) or (j)**[, (k) or (l)] above[, respectively]; and

2. Apply for and obtain any preconstruction permit and certificate[, ] **or** operating

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permit, [or facility-wide permit,] or change thereto, required for the alteration.

Each application must be submitted with the application to amend the VOC control plan.

(m) (No change.)

(n) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27-1.32, if:

1. (No change.)
2. The person seeks to contest one or more conditions of the Department's approval imposed [under (m)] **pursuant to (k)** above; or
3. The Department has revoked the person's approval pursuant to [(o)1] **(m)1** through 3 above.

(o) (No change.)

(p) The owner or operator submitting a proposed alternative or facility-specific VOC control plan, compliance plan, or demonstration shall send it to the Department at the following address:

Department of Environmental Protection

[Division of Air Quality]

Air Quality [Permitting Program] **Regulation and Planning**

Bureau of [Air Permits] **Stationary Sources – Operating Permit Section**

401 East State Street, **2nd Floor**

Mail Code 401-02

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PO Box 420

Trenton, New Jersey 08625-0420

(q) (No change.)

7:27-16.22 Emission information, recordkeeping, and testing

(a) - (h) (No change.)

(i) Any person who [reports information] **submits** to the Department **records made** pursuant to the requirements [set forth at N.J.A.C. 7:27-16.2(s), 16.3(s), 16.7(m) and (n), 16.16(g), or 16.20(g)] **of this subchapter** may assert a confidentiality claim for that information in accordance with the procedures set forth at N.J.A.C. 7:27-1.6 through 1.30.

## SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES AND HAZARDOUS AIR POLLUTANTS

7:27-17.1 Definitions

The following words and terms, when used in this subchapter, [shall] have the following meanings, unless the context clearly indicates otherwise.

...

**“Fumigant” means a chemical registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).**

...

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**“New Jersey Hazardous Air Pollutant” or “NJHAP” means a substance listed at N.J.A.C.**

**7:27-17.3, Table 2.**

...

7:27-17.3 Storage, transfer, and use of toxic substances

(a) No person shall cause, suffer, allow, or permit any TXS [listed in Table 1] to be emitted **into the outdoor atmosphere** from any source operation, [storage tank, or transfer operation into the outdoor atmosphere] unless such equipment and operation is registered with the Department [within] **no later than** six months [of] **after** the effective date of **the inclusion of the TXS in** this subchapter. Such registration shall include information relating to vessel sizes, transfer rates, emission rates, operating procedures, and other information required by the Department and shall be made on forms provided by the Department.

(b) - (f) (No change.)

**(Agency Note:** The column headings in proposed new Table 1 Group III and Table 2 are proposed to be permanent boldface when the Department adopts them.)

TABLE 1

TOXIC SUBSTANCES

GROUP I-II (No change.)

**GROUP III**

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<b>Name</b>	<b>CAS Number</b>
<b>Fumigants, including, but not limited to:</b>	
<b>Methyl bromide</b>	<b>74839</b>
<b>Sulfuryl fluoride</b>	<b>2699798</b>
<b>Phosphine</b>	<b>7803512</b>

**TABLE 2**

**NEW JERSEY HAZARDOUS AIR POLLUTANTS (NJHAPs)**

<b>Name</b>	<b>CAS Number</b>
<b>1-Bromopropane</b>	<b>106945</b>
<b>Hydrogen sulfide</b>	<b>7783064</b>
<b>Sulfuryl fluoride</b>	<b>2699798</b>

7:27-17.5 Operating instructions

- (a) (No change.)
- (b) Any person subject to the provisions of [subsection] (a)[of this section] **above** shall maintain a training program to ensure that all personnel associated with the use or operation of the open top tank or surface cleaner understand and follow the specified procedure.
- (c) - (d) (No change.)
- (e) Any person subject to the provisions of this section shall notify the Department in

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writing within five days of any revision or alteration of a procedure approved pursuant to the provisions of [subsection] (d) [of this section] **above**. Such written notification shall include a detailed description of the changes in the procedure and the reasons therefor. Such amended procedure shall be subject to review and approval by the Department.

[(f) The provisions of this section shall become effective on January 1, 1981.]

#### 7:27-17.7 Applicability

[(a) Operations and equipment covered by this subchapter shall include, but not be limited to, storage tanks, transfer operations, open top tanks, surface cleaning, surface coating, organic chemical manufacture, pharmaceutical manufacture, petroleum refining, and miscellaneous organic solvent uses in which one or more of the toxic substances in Table 1 are stored, used, or manufactured.]

**(a) This subchapter addresses asbestos coating, HAPs, TXS, and NJHAPs. It also addresses the manufacture, application, or use of any coating containing asbestos, as well as the emission of HAPs, TXS, or NJHAPs from any source operation.**

(b) Whenever **the provisions of this subchapter or any other subchapters of this chapter apply to any** persons, equipment, control apparatus, or **the emissions of HAPs, TXS** [subject to the provisions of this subchapter are also subject to the provisions of any other subchapters of this chapter], **or NJHAPs**, the requirements of the relevant provisions of this subchapter and all subchapters of this chapter will apply.

(c) Whenever a **HAP, TXS, or NJHAP** subject to the provisions of this subchapter is also

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subject to the provisions of any other subchapters of this chapter, the relevant provisions of the subchapter requiring the lowest allowable rate will apply.

7:27-17.9 [Hazardous air pollutant and toxic substance reporting thresholds] **Reporting and [state of the art] state-of-the-art thresholds for hazardous air pollutants, toxic substances, and New Jersey Hazardous Air Pollutants**

[(a) The reporting thresholds referenced in N.J.A.C. 7:27-8.2(d)3ii(4) and (e)2v, 8.4(k)1, 8.18(a)3ii, 8.20(d)2, 8.21(b)5ii, 21.3(b)1ii and 2iii, 22.1, 22.3(c), 22.6(f)5i and ii, 22.27(e)1iii, and 22.30(l) are:

1. For a HAP that is not a TXS, as listed in Table 2, below;
2. For a HAP that is both a HAP and a TXS:
  - i. As listed in Table 2; and
  - ii. 0.01 pounds per hour; and
3. For any HAP, the lower of the reporting threshold and the SOTA threshold in Table 2 below.

(b) The state of the art thresholds referenced in N.J.A.C. 7:27-8.2(d)16iii and v(4), 8.12(a)1, 8.18(a)4, 8.21(b)6 and 8, 22.1, and 22.35(b) and (c) are as listed in Table 2, below.]

**(a) The reporting thresholds for HAPs, TXS, and NJHAPs, referenced at N.J.A.C. 7:27-8, 21, and 22, and the state-of-the-art thresholds for HAPs, TXS, and NJHAPs, referenced at N.J.A.C. 7:27-8 and 22, are as listed in Tables 3A and 3B below.**

**(b) There are two distinct and independent reporting thresholds for air contaminants listed in Table 3B (annual and hourly). The provisions at N.J.A.C. 7:27-8, 21, and 22 referenced at (a)**

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**above apply if the potential to emit the listed air contaminant satisfies the provision's threshold requirement, using either the annual or hourly threshold.**

TABLE [2] 3A

Reporting [Threshold] and SOTA Thresholds (HAPs and NJHAPs that are not TXS)<sup>6</sup>

(Potential to emit)

CAS <u>Number</u>	<u>Air Contaminant</u>	Reporting Threshold <u>(lbs/yr)</u>	SOTA Threshold <u>(lbs/yr)</u>
...			
[71432	Benzene	6	4,000]
...			
<b>106945</b>	<b>1-Bromopropane<sup>5</sup></b>	<b>2,000<sup>3</sup></b>	<b>10,000<sup>3</sup></b>
...			
[56235	Carbon tetrachloride	8	2,000]
...			
[67663	Chloroform	2	1,800]
...			
[123911	1,4-Dioxane	9	10,000]
...			
[106934	Ethylene dibromide	0.08	200

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107062	Ethylene dichloride	1.8	1,600
107211	Ethylene glycol	2,000	10,000
151564	Ethylene imine	0.002	6]
...			
<b>7783064</b>	<b>Hydrogen sulfide <sup>5</sup></b>	<b>90<sup>3</sup></b>	<b>10,000<sup>3</sup></b>
...			
[74839	Methyl bromide	230	10,000]
...			
[71556	Methyl chloroform	2,000	10,000]
...			
[75092	Methylene chloride	2,000	10,000]
...			
[7803512	Phosphine	14	10,000]
...			
[79345	1,1,2,2-Tetrachloroethane	0.8	600]
...			
[79005	1,1,2-Trichloroethane	3	2,000
79016	Trichloroethylene	8	10,000]
...			
[111762	Ethylene glycol monobutyl ether	1,000	10,000]

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...

<sup>1-2</sup> (No change.)

<sup>3</sup> This threshold is operative on and after (60 days after publication of the adopted amendments).

<sup>4</sup> In the case where the SOTA threshold is lower than the reporting threshold, the SOTA threshold is applied as the reporting threshold.

<sup>5</sup> New Jersey Hazardous Air Pollutant (NJHAP).

<sup>6</sup> Except for those air contaminants identified by footnote 5 as NJHAPs, each of the air contaminants in this Table is a HAP, and none of the air contaminants in this table is a TXS.

TABLE 3B

Reporting and SOTA Thresholds (HAPs and NJHAPs that are TXS)<sup>3</sup>

(Potential to emit)

CAS Number	<u>Air Contaminant</u>	Reporting	Reporting	SOTA
		Threshold	Threshold	Threshold
		<u>(lb/hr)</u>	<u>(lbs/yr)</u>	<u>(lbs/yr)</u>
71432	Benzene	0.01	6	4,000
56235	Carbon tetrachloride	0.01	8	2,000
67663	Chloroform	0.01	2	1,800
123911	1,4-Dioxane	0.01	9	10,000
106934	Ethylene dibromide	0.01	0.08	200

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107062	Ethylene dichloride	0.01	1.8	1,600
151564	Ethylene imine	0.01	0.002	6
74839	Methyl bromide	0.01 <sup>1</sup>	230	10,000
71556	Methyl chloroform	0.01	2,000	10,000
75092	Methylene chloride	0.01	2,000	10,000
7803512	Phosphine	0.01 <sup>1</sup>	14	10,000
2699798	Sulfuryl fluoride <sup>2</sup>	0.01 <sup>1</sup>	90 <sup>1</sup>	10,000 <sup>1</sup>
79345	1,1,2,2-Tetrachloroethane	0.01	0.8	600
127184	Tetrachloroethylene	0.01	180	10,000
79005	1,1,2-Trichloroethane	0.01	3	2,000
79016	Trichloroethylene	0.01	8	10,000

<sup>1</sup> This threshold is operative on and after (60 days after publication of the adopted amendments).

<sup>2</sup> New Jersey Hazardous Air Pollutant (NJHAP).

<sup>3</sup> Except for those air contaminants identified by footnote 2 as NJHAPs, each of the air contaminants in this Table is a HAP, and all of the air contaminants in this table are TXS.

#### 7:27-17.10 Discharge of fumigants

- (a) For a source operation that exceeds the permit applicability thresholds at N.J.A.C. 7:27-8.2(c)2, 19, or 22, or that meets the definition of “significant source operation” at N.J.A.C. 7:27-22.1, paragraphs 6, 16, or 21:

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- 1. No person shall cause, suffer, allow, or permit any fumigant to be emitted from any source operation into the outdoor atmosphere, unless such discharge is directed upward through a vertical stack that extends above the highest point of the container, roofline, or structure; and**
  - 2. Except as provided at N.J.A.C. 7:27-8.2(g) and 22.36, no person shall cause, suffer, allow, or permit the emission of a fumigant from any source operation into the outdoor atmosphere, unless a risk assessment for that operation has been performed and meets the criteria for issuance of a permit, as provided at N.J.A.C. 7:27-8.5.**
- (b) The risk assessment required at (a)2 above shall be conducted in accordance with an air quality dispersion modeling protocol and/or risk screening worksheets approved in advance by the Department. The Department will not approve an air quality dispersion modeling protocol, unless the protocol accounts for all relevant site-specific and general factors. These factors include, but are not limited to, a land use analysis, proper consideration of topography, a good engineering practice stack height analysis, use of the most recent version of the EPA-approved models, identification of the most appropriate meteorological data, and consideration of all relevant averaging times. The air quality dispersion modeling protocol shall document how the person proposes to conduct the air quality impact analysis and/or risk assessment, and how the results will be presented to the Department. Technical guidance on the preparation of an air quality dispersion modeling protocol and the use of risk screening worksheets can be**

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**found in Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol) and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions), available on the Department's website at <http://www.nj.gov/dep/agpp/techman.html>. The risk screening worksheets can be found on the Department's website at <https://www.state.nj.us/dep/agpp/risk.html>.**

**Additional technical guidance on preparing a protocol may be requested from:**

**Department of Environmental Protection**

**Air Quality Regulation and Planning**

**Bureau of Evaluation and Planning**

**Air Quality Evaluation Section**

**401 East State Street, 2nd Floor**

**Mail Code 401-02**

**PO Box 420**

**Trenton, New Jersey 08625-0420**

**Telephone: (609) 292-6722**

## SUBCHAPTER 21. EMISSION STATEMENTS

### 7:27-21.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

...

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“Emission Statement Guidance Document” refers to the Emission **Statement** Guidance Document, [version 2017.1, dated October 17, 2016,] and any addendum or subsequent revision, published at the Department's website at <http://www.nj.gov/dep/baqp/> <https://www.nj.gov/dep/aqm/es/emstatpg.html>. This publication is updated [annually] **periodically** to incorporate the Department's latest guidance regarding Emission Statement policies, reporting procedures, and format. This information is provided in order to assist the owner or operator of a facility subject to this subchapter with the process of completing, certifying, and submitting an Emission Statement.

...

[“Facility-wide permit” means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term “facility-wide permit” at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.]

...

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“Permit” means a preconstruction permit[, or operating permit[, or facility-wide permit].

...

“Toxic air pollutant” or “toxic” means any of the substances listed [in] **at** N.J.A.C. 7:27-21[, Appendix 1, Tables **1, 2, or 3**, incorporated herein by reference.

...

“Volatile organic compound” or “VOC” means a volatile organic compound as that term is defined by the EPA at 40 CFR 51.100(s), [as supplemented or amended, which is] incorporated **herein** by reference [herein], **as amended and supplemented**.

7:27-21.2      Applicability

(a) - (b)      (No change.)

[(c)]      Notwithstanding (a) above, no facility is required, pursuant to this subchapter, to submit an emission statement for SO<sub>2</sub>, TSP, PM<sub>10</sub>, or Pb with respect to emissions occurring in or before 1992.]

[(d)] **(c)**      (No change in text.)

7:27-21.3      General provisions

(a)      (No change.)

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(b) [An Emission Statement shall include] **In addition to** the information required [under] **pursuant to** N.J.A.C. 7:27-21.5 [and], **an Emission Statement** shall include emission information for the following air contaminants:

1. If the facility's potential to emit VOC is less than 25 tons per year and if the facility's potential to emit each of the other air contaminants listed in Table 1 at N.J.A.C. 7:27-21.2 is less than the applicable reporting threshold set forth in Table 1, such that the facility is subject to Emission Statement requirements only because its potential to emit VOC is equal to or greater than 10 tons per year, emission information shall be reported only for[:

i. The] **the** following three Table 1 air contaminants: VOC, NO<sub>x</sub>, and CO[;], **reported at both the facility level and the source level, and:**

[ii.] i. For reporting years **2005 through 2017, reported at the facility level only**, each of the toxic air pollutants [that is] listed [in] **at** N.J.A.C. 7:27-21 Appendix 1, Table 1, **incorporated herein by reference**, and for which the facility has a potential to emit that is equal to or greater than the applicable reporting threshold at N.J.A.C. 7:27-21 Appendix 1, Table 2, **incorporated herein by reference;** [and]

[iii.] ii. For reporting [year] **years 2018 [and for each year thereafter], 2019, and 2020, reported at the facility level only**, each of the toxic air pollutants [that is] listed [in] **at** N.J.A.C. 7:27-21 Appendix 1, Table 1, **incorporated herein by reference**, and for which the facility has a potential to emit

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that is equal to or greater than the applicable reporting threshold at N.J.A.C. 7:27-17.9[(a)], **Tables 3A and 3B; and**

- iii. **For reporting year 2021 and for each year thereafter, reported at the facility level only, each of the toxic air pollutants listed at N.J.A.C. 7:27-21 Appendix 1, Tables 1 and 3, incorporated herein by reference, for which the facility has a potential to emit that is equal to or greater than the applicable reporting threshold at N.J.A.C. 7:27-17.9, Tables 3A and 3B;**

- 2. If the facility's potential to emit VOC is equal to or greater than 25 tons per year or if the facility's potential to emit any other air contaminants listed in Table 1 at N.J.A.C. 7:27-21.2 is equal to or greater than the reporting threshold, emission information shall be reported for [the following:

- i. Each] **each** of the air contaminants listed in Table 1 at N.J.A.C. 7:27-21.2, reported at **both the facility level and** the source level[;
- ii. Beginning with the Emission Statement for reporting year 2003 and for each year thereafter,] **and** the greenhouse gases CO<sub>2</sub> and CH<sub>4</sub>[;], **reported at the facility level only, and:**

- [iii.] i. For reporting years **2005 through 2017, reported at the facility level only**, each of the toxic air pollutants that is listed [in] **at N.J.A.C. 7:27-21 Appendix 1, Table 1, incorporated herein by reference**, and for which the facility has a potential to emit that is equal to or greater than the

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applicable reporting threshold at N.J.A.C. 7:27-21 Appendix 1, Table 2,  
**incorporated herein by reference; [and]**

[iv.] **ii.** For reporting years 2018 [and for each year thereafter], **2019, and 2020, reported at the facility level only**, each of the toxic air pollutants that is listed [in] **at N.J.A.C. 7:27-21 Appendix 1, Table 1, incorporated herein by reference**, and for which the facility has a potential to emit that is equal to or greater than the applicable reporting threshold at N.J.A.C. 7:27-17.9[(a).], **Tables 3A and 3B; and**

**iii.** **For reporting year 2021 and for each reporting year thereafter, reported at the facility level only, each of the toxic air pollutants that is listed at N.J.A.C. 7:27-21 Appendix, Tables 1 and 3, incorporated herein by reference, and for which the facility has a potential to emit that is equal to or greater than the applicable reporting threshold at N.J.A.C. 7:27-17.9, Tables 3A and 3B.**

(c) - (h) (No change.)

7:27-21.4 Procedure for submitting an Emission Statement

[(a) For an Emission Statement submitted for reporting year 2001 or earlier, the following procedures apply:

1. The Emission Statement shall be submitted to the Department on or before:

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- i. May 31, 1993 for a facility subject to this subchapter due to the emissions of 1992; and
  - ii. For each following year, April 15 of each calendar year following any calendar year in which the facility is subject to this subchapter;
2. The Emission Statement shall be submitted on a form obtained from the Department at the address listed in (c) below; and
3. Any owner or operator submitting an Emission Statement shall transmit the Emission Statement to the Department on paper. With the written prior approval of the Department, an Emission Statement may be submitted on computer diskette or electronically, in a form approved by the Department, in lieu of a submission of an Emission Statement on paper.

(b) For an Emission Statement submitted for reporting year 2002 or later, the following procedures apply:]

[1.] **(a)** Unless the owner or operator obtains approval pursuant to [(d)] **(e)** below to submit an Emission Statement on paper, each Emission Statement shall be prepared using the Remote Access Data Information User System (RADIUS) software (or its successor software) available from the Department at the address given at [(c)] **(d)** below, and submitted either through NJDEP online ([www.njdeponline.com](http://www.njdeponline.com)) or on a Department-accessible electronic storage medium (such as a CD) delivered to the Department at the address at [(c)] **(d)** below[;].

[2.] **(b)** If a claim of confidentiality is being asserted for any information in an Emission Statement, pursuant to [(e)] **(f)** below, the following [shall apply] **applies:**

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- [i. ] **1.** A version of the Emission Statement [which] **that** is complete, except that it omits the information [which] **that** is claimed to be confidential, shall be submitted to the Department. This document shall be submitted electronically, unless the owner or operator obtains approval to submit it on paper pursuant to [(d)] **(e)** below. Information included in any electronic submittal shall be information for which no claim of confidentiality is being made;
  - [ii.] **2.** In addition to the submittal made pursuant to [(b)2i] **(b)1** above, a complete version of the Emission Statement shall also be submitted on paper, and it shall include the information that is claimed to be confidential, as well as all other information required; and
  - [iii.] **3.** The information given in both versions of the Emission Statement shall be identical, except that the information claimed to be confidential shall be omitted from the version submitted pursuant to [(b)2i] **(b)1** above; and
- [3.] **(c)** An Emission Statement shall be submitted to the Department by the following due date:
- [i. ] **1.** For submittals on paper pursuant to [(d)] **(e)** below, by April 15 of the submittal year; and
  - [ii.] **2.** For submittals either through NJDEP online ([www.njdeponline.com](http://www.njdeponline.com)) or on a Department-accessible electronic storage medium, by May 15 of the submittal year; this due date [shall] also [apply] **applies** to the paper copy

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of the Emission Statement submitted when certain information in the electronic version of the Emission Statement is claimed to be confidential.

[(c)] **(d)** The Department's Bureau of [Air Quality Planning shall be] **Stationary Sources** is the Department's point of contact for the Emission Statement program. As such:

1. - 3. (No change.)

[(d)] **(e)** If it is a hardship for an owner or operator to submit an Emission Statement electronically, the owner or operator may request approval from the Department to submit the Emission Statement on a paper form. The Department [shall] **will** approve such a request provided that:

1. - 3. (No change.)

[(e)] **(f)** (No change in text.)

#### APPENDIX 1

TABLES 1 and 2 (No change.)

#### TABLE 3

#### **Additional Toxic Air Pollutants**

#### **to be Reported in Emission Statements**

**Air Contaminant**

**CAS Number<sup>1</sup>**

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<b>Benzo(a)pyrene</b>	<b>50-32-8</b>
<b>Chlorine</b>	<b>7782-50-5</b>
<b>Cobalt metal and compounds</b>	<b>7440-48-4</b>
<b>Cyanide compounds (as hydrogen cyanide)</b>	
<b>Ethyl benzene</b>	<b>100-41-4</b>
<b>Glycol ethers (as 2-methoxy ethanol)</b>	
<b>Hydrogen fluoride</b>	<b>7664-39-3</b>
<b>Methyl tert-butyl ether</b>	<b>1634-04-4</b>
<b>Naphthalene</b>	<b>91-20-3</b>
<b>Phosphorous</b>	<b>7723-14-0</b>
<b>Styrene</b>	<b>100-42-5</b>
<b>Triethylamine</b>	<b>121-44-8</b>
<b>Xylene</b>	<b>1330-20-7</b>

---

<sup>1</sup> Given here for individual contaminants only, not for classes of contaminants. A CAS number is a unique identifier that is assigned to each chemical specie by the Chemical Abstract Service, a division of the American Chemical Society.

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## SUBCHAPTER 22. OPERATING PERMITS

### 7:27-22.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise.

...

**“Commodity” means a mass-produced product that can be bought and sold, including agricultural products, produce, logs, vehicles, and clothing.**

...

**“Emergency fumigation” or “emergency fumigation operation” means the fumigation of a commodity or industrial structure that is required by a State or Federal authority, including the United States Department of Agriculture or the United States Food and Drug Administration, on an emergency basis.**

...

**“Exempt activity” means one of the following:**

1. Source operations [which] **that** have no potential for emitting any air contaminant, including, but not limited to:

- i. Stationary storage tanks [which] **that** are used for the storage of water or distillates of air; and
- ii. (No change.)

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2. Any of the following activities, if the activity supports [the] one or more production processes of the facility, and does not itself constitute a facility production process or a part thereof:

i. - x. (No change.)

xi. The use of portable space heaters [which] **that** reasonably can be carried and relocated by an employee; and

xii. (No change.)

3. - 11. (No change.)

12. Equipment that blends or mixes potting soil (including, but not limited to, soil, compost, artificial media or soil-less media, and/or peat moss) [which] **that** is used on site in a commercial or non-commercial greenhouse or nursery operation for plant propagation and [which] **that** is not for commercial sale;

13. (No change.)

14. Equipment or a source operation, that satisfies subparagraphs 14i, ii, and iii below:

i. The equipment or source operation is one of the following:

(1) A mixer, cutter, molder, conveyor, blender, filler, or cooking kettle [which] **that** processes material intended as food for direct human consumption, provided that the temperature of the food does not exceed 225 degrees Fahrenheit;

(2) - (4) (No change.)

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- ii. The following criteria are met:
  - (1) (No change.)
  - (2) The source does not emit any air contaminant [which] **that** may cause an odor detectable outside the property boundaries of the facility;
  - (3) – (4) (No change.)
  - (5) The source's potential to emit each TXS, **each NJHAP**, and each HAP does not exceed the reporting thresholds at N.J.A.C. 7:27-17.9[(a)], **Tables 3A and 3B**; and
  - (6) (No change.)
- iii. (No change.)
- 15. (No change.)
- 16. Equipment used to temporarily replace commercial fuel burning equipment that has a maximum rated heat input of 1,000,000 BTU per hour or greater to the burning chamber and/or stationary reciprocating engines with a maximum rated power output of 37 kW or greater, used for generating electricity that are shut down as part of CRM activities, provided the replacement source operation:
  - i. - ii. (No change.)
  - iii. Does not emit any air contaminant in excess of the [state of the art] **state-of-the-art** (SOTA) thresholds [in] **at** N.J.A.C. 7:27-17.9[(b)], **Tables 3A and 3B** and 22.35;
  - iv. (No change.)

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v. Prior to operating, is listed in an electronic notification to the Regional Air Enforcement Office, where that notification:

(1) - (3) (No change.)

(4) States the replacement equipment will not emit any air contaminant in excess of the [state of the art] **SOTA** thresholds [in] at N.J.A.C. 7:27-17.9[(b)], **Tables 3A and 3B** and 22.35;

(5) - (7) (No change.)

vi. (No change.)

17. - 21. (No change.)

...

["Facility-wide permit" means a single permit issued by the Department to the owner or operator of a priority industrial facility incorporating the permits, certificates, registrations, or any other relevant Department approvals previously issued to the owner or operator of the priority industrial facility pursuant to the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., and the appropriate provisions of the Pollution Prevention Plan prepared by the owner or operator of the priority industrial facility pursuant to N.J.S.A. 13:1D-41 and 42. This term shall have the same meaning as defined for the term "facility-wide permit" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.]

...

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**“Fumigant” means a chemical registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).**

**“Fumigation” or “fumigation operation” means the action of introducing a fumigant in the gaseous state to prevent, control, or eliminate a targeted pest.**

...

**“Industrial structure” means a structure or equipment, including a building, warehouse, container, bin, silo, room, commodity pallet, 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 in which fumigation occurs.**

...

**“Insignificant source operation” means equipment or a source operation that is one of the following:**

1. Equipment or a source operation [which] **that** is the same type as is included within a category described in paragraphs 1, 3, 4, 5, 7, 8, 9, 11, 14, **or** 16[, 17, 18, or 19] **through 21** in the definition of “significant source operation,” but which is excluded from the category because it does not meet an applicability threshold set forth in the description of the category. That is, the equipment or source operation has a lower capacity, weight of materials processed, vapor pressure, or consumption of BTUs, or otherwise falls outside a parameter that is included in the description of the category;

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2. A stationary storage tank or mixing or blending vessel, provided that subparagraphs 2i,

ii, and iii below are satisfied:

i. (No change.)

ii. The following criteria are met:

(1) - (3) (No change.)

(4) The tank's or vessel's potential to emit each TXS, **each NJHAP**, and each HAP does not exceed the reporting thresholds at N.J.A.C. 7:27-17.9[(a)], **Tables 3A and 3B; and**

(5) (No change.)

iii. (No change.)

3. - 4. (No change.)

...

**“New Jersey Hazardous Air Pollutant” or “NJHAP” means a substance listed at N.J.A.C. 7:27-17.3, Table 2.**

...

“Operating permit” means the consolidated preconstruction and operating permit issued pursuant to Title V of the Federal Clean Air Act, 42 U.S.C. §§ 7661 et seq., this subchapter, Title I of the Federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and N.J.A.C. 7:27-8. This term includes a general operating permit that is applicable [facility wide] **facility-wide**, but does not include a general operating permit that applies only to a part of a facility. Where a general operating permit applies only to a part of a facility, the general operating permit shall

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be incorporated into the operating permit. This term also includes an operating permit issued for a temporary facility; for a facility subject to a MACT or GACT standard pursuant to N.J.A.C. 7:27-22.26; or for a component of a facility pursuant to N.J.A.C. 7:27-22.5(j).

...

["Pollution Prevention Assessment" means an assessment of potential pollution prevention opportunities for the use, generation and release of non-hazardous substances, prepared by an owner or operator of a priority industrial facility that is covered by an effective facility-wide permit issued by the Department, containing the same elements as those required for hazardous substances by N.J.A.C. 7:1K-4.3 and 4.5. This term shall have the same meaning as defined for the term "Pollution Prevention Assessment" at N.J.A.C. 7:1K-1.5; if there is any conflict between the definition at N.J.A.C. 7:1K-1.5 and this one, the definition at N.J.A.C. 7:1K-1.5 shall control.

"Pollution Prevention Plan" means a plan required to be prepared by an industrial facility pursuant to N.J.S.A. 13:1D-41 and 42, N.J.A.C. 7:1K-3 and N.J.A.C. 7:1K-4. This term shall have the same meaning as defined for the term "Pollution Prevention Plan" at N.J.A.C. 7:1K-1.5.]

...

"Significant source operation" means any source operation that is one of the following, unless the source operation is explicitly specified, in the definition of "exempt activity," as an exempt activity, and unless the source operation is explicitly specified, in paragraphs 1, 2, or 4 of the definition of "insignificant source," as an insignificant source:

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1. - 2. (No change.)

3. A surface cleaner that uses a cleaning solution containing five percent or more VOCs, HAPs, **or NJHAPs**, or [VOC and HAP combined] **any combination thereof**, and [which] **that** is:

i. – iv. (No change.)

4. – 5. (No change.)

6. Equipment in which the combined weight of all raw materials used exceeds 50 pounds in any one hour, provided:

i. Such equipment [shall] **does** not include equipment [which] **that** is the same type as is included within a category described in paragraphs 1, 3, 4, or 5 above, or in paragraphs 7, 8, 9, 11, 14, **or 16**[, 17, 18 or 19] **through 21** below; but which is excluded from the category because it does not meet an applicability threshold set forth in the description of the category. That is, the equipment has a lower capacity, weight of materials processed, vapor pressure, or consumption of BTUs, or otherwise falls outside a parameter that is included in the description of the category;

ii. (No change.)

7. - 13. (No change.)

14. Any waste or water treatment equipment [which] **that** may emit air contaminants including, but not limited to, air stripping equipment, aeration

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basins, surface impoundments, lagoons, sludge tanks, dewatering equipment, soil cleaning equipment, conveying equipment, digesters, thickeners, flocculators, driers, fixation equipment, composting equipment, pelletizing equipment, and grit classifying equipment. For water treatment equipment, the concentration in the water of any **Group I or II** TXS must equal or exceed 100 parts per billion by weight or the total concentration in the water of VOC must equal or exceed 3,500 parts per billion by weight;

15. (No change.)
16. Any source operation or equipment that has the potential to emit any Group [1] **I, II,** or [Group 2] **III** TXS (or [a] **any** combination thereof) at a rate greater than 0.1 pounds per hour (45.4 grams per hour);
17. - 19. (No change.)
20. Any stationary reciprocating engine with a maximum rated power output of 37 kW or greater, used for generating electricity, not including emergency generators[.]; **and**
21. **Any fumigation of a commodity or industrial structure that has the potential to emit any fumigant or combination of fumigants at a rate greater than 0.1 pounds per hour (45.4 grams per hour), except as provided at N.J.A.C. 7:27-22.36.**

...

“Source operation” means any process, or any identifiable part thereof, that emits, or

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can reasonably be anticipated to emit, any air contaminant, either directly or indirectly, into the outdoor atmosphere. A source operation may include [on] **one** or more pieces of equipment or control apparatus.

...

“Surface cleaner” means a device used to remove unwanted foreign matter from the surfaces of materials by using VOC, [or] HAP, **or NJHAP** solvents in liquid or vapor state.

...

#### 7:27-22.3 General provisions

(a) - (b) (No change.)

(c) The owner or operator of a facility subject to this subchapter shall ensure that no air contaminant is emitted from any significant source operation at a rate, calculated as the potential to emit, that exceeds the applicable threshold for reporting emissions set forth [in] **at N.J.A.C. 7:27-22 Appendix, Table A, incorporated herein by reference**, or [7:27-]17.9[(a)], **Tables 3A and 3B**, unless emission of the air contaminant is authorized by the operating permit.

(d) - (s) (No change.)

(t) Application forms for operating permits, modifications to operating permits, and information pertaining to operating permits and the requirements of this subchapter are available on the Department's website at <http://www.nj.gov/dep/agpp/applying.html> and at the following address:

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Department of Environmental Protection

[Division of Air Quality]

Air Quality [Permitting Program] **Regulation and Planning**

Bureau of [Air Permits] **Stationary Sources** - Operating [Permits] **Permit** Section

401 East State Street, **2nd Floor**

Mail Code 401-02

PO Box 420

Trenton, New Jersey 08625-0420

Telephone: (609) 633-8248

(u) - (y) (No change.)

[(z) For a facility with an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq., the facility-wide permit shall constitute the operating permit under N.J.A.C. 7:27-22 if:

1. The air pollution control portion of the facility-wide permit meets the requirements of N.J.A.C. 7:27-22 and EPA approves the Department's request to allow a facility-wide permit to constitute a facility's operating permit; and
2. The facility-wide permit was issued after the date of such EPA approval.]

**(z) (Reserved)**

(aa) - (bb) (No change.)

(cc) The Department shall deny an application for an initial operating permit, minor modification, significant modification, or renewal, if approval of the application would

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authorize a violation of any applicable requirement, or a contravention of other criteria established by the Department by rule or pursuant to technical manuals, **including risk screening worksheets**, published with public input, to protect human health and welfare and the environment, unless the Department simultaneously approves a compliance schedule to achieve compliance.

(dd)-(ss) (No change.)

[(tt) On and after April 25, 2004, no permittee may use DER credits to comply with a VOC or NO<sub>x</sub> permit limit established pursuant to this subchapter.]

**(tt) (Reserved)**

(uu) (No change.)

(vv) The following information is available from the Department:

1. (No change.)
2. Technical manuals are available on the Department's website at <http://www.nj.gov/dep/agpp/techman.html> and **associated risk screening worksheets are available at <https://www.state.nj.us/dep/agpp/risk.html>.** **Both technical manuals and risk screening worksheets** may be requested from the Department at the following address:

Department of Environmental Protection

Air Quality [Permitting Program] **Regulation and Planning**

Bureau of [Technical Services] **Evaluation and Planning**

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Air Quality Evaluation Section

401 East State Street, 2nd Floor

Mail Code 401-02

PO Box 420

Trenton, New Jersey 08625-0420

Telephone: (609) [633-1110] **292-6722**

7:27-22.5 Application procedures for initial operating permits

(a) - (b) (No change.)

(c) For an existing facility subject to this subchapter, the applicable deadline for submitting an administratively complete application for an initial operating permit is the [earliest] **earlier of the deadlines at (c)1 and 2** below [which applies] **that apply** to the facility:

1. For **an** affected Title IV [facilities] **facility** with source operations subject to the acid deposition control program Phase II requirements for initial operating permits, the applicable deadline specified at N.J.A.C. 7:27-22.29(b); **or**
2. For [facilities] **a facility** with any source operation designated by **the** EPA pursuant to 40 CFR 70.3(a)(5) as requiring an operating permit, within 12 months after the effective date of **the** EPA's designation, or by a later deadline specified by **the** EPA in its designation[; and].
- [3. For all other facilities, by the deadline the table below as determined by the facility's primary SIC code, as reported to the New Jersey Secretary of State:

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	<b>Complete</b>	
	<b>Application</b>	<b>Early</b>
<b><u>SIC Code</u></b>	<b><u>Deadline</u></b>	<b><u>Submittal</u></b>
2000 through 2086	8/15/95	5/15/95
2088 through 2199	8/15/95	5/15/95
4900 through 4910	8/15/95	5/15/95
4911 <sup>1</sup>	8/15/95	5/15/95
4912 through 4939	8/15/95	5/15/95
6400 through 6999	8/15/95	5/15/95
8300 through 9999	8/15/95	5/15/95
4911 <sup>2</sup>	11/15/95	8/15/95
4200 through 4399	11/15/95	8/15/95
5900 through 6399	11/15/95	8/15/95
7000 through 7199	11/15/95	8/15/95
7500 through 8299	11/15/95	8/15/95
0000 through 1299	5/15/96	2/15/96
1400 through 1999	5/15/96	2/15/96
3200 through 3599	5/15/96	2/15/96

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4000 through 4199	5/15/96	2/15/96
4400 through 4499	5/15/96	2/15/96
4800 through 4899	5/15/96	2/15/96
5300 through 5499	5/15/96	2/15/96
1300 through 1399	11/15/96	8/15/96
2700 through 2799	11/15/96	8/15/96
2900 through 2999	11/15/96	8/15/96
3600 through 3999	11/15/96	8/15/96
4500 through 4799	11/15/96	8/15/96
7300 through 7499	11/15/96	8/15/96
2200 through 2599	5/15/97	2/15/97
3000 through 3199	5/15/97	2/15/97
5000 through 5299	5/15/97	2/15/97
5500 through 5899	5/15/97	2/15/97
7200 through 7299	5/15/97	2/15/97
2087	11/15/97 <sup>+</sup>	8/15/97 <sup>+</sup>
2600 through 2699	11/15/97 <sup>+</sup>	8/15/97 <sup>+</sup>
2835 through 2899	11/15/97 <sup>+</sup>	8/15/97 <sup>+</sup>

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2800 through 2834	5/15/98 <sup>++</sup>	2/15/98 <sup>++</sup>
4940 through 4999	5/15/98 <sup>++</sup>	2/15/98 <sup>++</sup>

---

<sup>1</sup> If the facility is located in Atlantic, Burlington, Gloucester, Hudson, Hunterdon, Salem, Union, Camden, Monmouth, Sussex, or Warren County.

<sup>2</sup> If the facility is located in Bergen, Cape May, Cumberland, Essex, Mercer, Middlesex, Ocean, Morris, Passaic, or Somerset County.

<sup>+</sup> If submitted electronically, applications may be submitted by February 4, 1999. The recommended early submittal date for an electronic submittal is November 4, 1998. If the application includes information for which a claim of confidentiality is being asserted, this extended deadline shall apply to both the electronic submittal and the accompanying paper submittal which includes the information being claimed confidential. See N.J.A.C. 7:27-22.4(c).

<sup>++</sup> If submitted electronically, applications may be submitted by May 4, 1999. The recommended early submittal date for an electronic submittal is February 4, 1999. If the application includes information for which a claim of confidentiality is being asserted, this extended deadline shall apply to both the electronic submittal and the accompanying paper submittal which includes the information being claimed confidential. See N.J.A.C. 7:27-22.4(c).]

(d) - (j) (No change.)

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7:27 22.6 Operating permit application contents

(a) - (e) (No change.)

(f) An application for an initial operating permit shall include all information required by the application form, the instructions accompanying the application form, and the applicable completeness checklist(s) for the application. This shall include, but is not limited to, the following:

1. (No change.)
2. For the source operations proposed to be classified as insignificant source operations pursuant to (d) or (e) above, the following information:
  - i. A list of the types of insignificant source operations found at the facility;  
[and]
  - ii. - iii. (No change.)
3. For each significant source operation at the facility [which] **that** will be subject to the operating permit, information including, but not limited to, the following:
  - i. - ii. (No change.)
  - iii. Identification of any stack or chimney [which] **that** serves the source operation and specification of:  
(1) - (2) (No change.)
  - iv. (No change.)

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4. A general description of each of the facility's production processes and products in sufficient detail to determine which applicable requirements apply to the facility[,] including, but not limited to, for each production process its NAICS code. The description shall set forth for each production process:
  - i. - ii. (No change.)
  - iii. A general description of the operating scenario used to produce the product(s) or intermediate product(s), and a description of any operating scenarios [which] **that** may be used to produce the same product(s) or intermediate product(s). Such description of an operating scenario shall be prepared pursuant to N.J.A.C. 7:27-22.27;
5. The following information pertaining to emissions at the facility:
  - i. For each significant source operation, each air contaminant that it may emit, and its potential to emit that air contaminant, including any non-captured emissions, in tons per year, and any other units, for example pounds per hour, required to verify compliance with any applicable requirement. If the source operation's potential to emit a given air contaminant does not exceed the applicable threshold for reporting emissions set forth [in] **at N.J.A.C. 7:27-22 Appendix, Table A, incorporated herein by reference, or at [7:27-]17.9[(a)], Tables 3A and 3B,** the air contaminant need not be included;

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- ii. For the facility, each air contaminant, if any, emitted as fugitive emissions and not associated with any source operation; the cause of that air contaminant being emitted as fugitive emissions; and a reasonable estimate of the facility's fugitive emissions of that air contaminant, in tons per year, and any other units required to verify compliance with any applicable requirement. However, if the facility's potential to emit a given air contaminant as fugitive emissions does not exceed the applicable threshold for reporting emissions set forth [in] **at N.J.A.C. 7:27-22 Appendix, Table A, incorporated herein by reference**, or at [7:27-]17.9[(a)], **Tables 3A and 3B**, the information required by this paragraph need not be given in respect to that air contaminant;
  - iii. - xi. (No change.)
  - xii. For each criteria pollutant, any emission reductions [which] **that** have been banked, pursuant to N.J.A.C. 7:27-18.8, and an indication as to whether they are held by the owner or operator of the facility or by another person;
6. For each significant source operation at the facility or, if applicable, for each group of source operations, or for the facility as a whole, information pertaining to air pollution control requirements as follows:
- i. (No change.)

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- ii. Citation to the State or Federal rule, regulation, permit, or other authority, [which] **that** establishes each applicable requirement upon which the proposed permit conditions are based;
- iii. For each applicable requirement, each provision of the applicable requirement [which] **that** sets forth a maximum allowable emissions limitation, a limitation on operation affecting emissions, or a work practice standard affecting emissions applicable to the facility;
- iv. The proposed permit conditions [which] **that** incorporate and reflect each provision provided pursuant to (f)6ii above;
- v. - vi. (No change.)

7. - 9. (No change.)

- 10. A statement that a copy of the application, or a summary of the application with any relevant portion of the permit application as determined by **the** EPA [under] **pursuant to** 40 CFR 70.8, has been sent to **the** EPA; [and]

11. - 12. (No change.)

(g) - (k) (No change.)

- (l) Any applicant who, pursuant to N.J.A.C. 7:27-22.14, seeks to include, as a component of the operating permit for the facility, one or more general operating permits shall specify the general operating permit(s) proposed to be included, identify each source operation to which the general operating permit would apply, and meet all other general operating permit application requirements set forth at N.J.A.C. 7:27-22.14. The

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conditions of such general operating permit, if applicable, will be incorporated into the operating permit for the facility.

(m) - (n) (No change.)

7:27-22.8 Air quality [simulation] **dispersion** modeling and risk assessment

(a) An applicant for an initial operating permit for a new major facility, or for a minor modification or significant modification to an existing operating permit, shall conduct air quality [simulation] **dispersion** modeling in accordance with (c) below if:

1. - 2. (No change.)

3. The application includes relocation of a temporary facility to a site not specifically authorized in the operating permit, and air quality [simulation] **dispersion** modeling or risk assessment was required for the location(s) authorized in the operating permit;

4. The application includes source operations [which] **that**, based on screening procedures published in technical manuals by the Department, **including risk screening worksheets**, have the potential to cause any of the adverse air quality effects listed [in] **at** (b)1 through 4 below; or

5. (No change.)

(b) The air quality [simulation] **dispersion** modeling shall be used to determine whether the potential to emit proposed in the permit application may cause:

1. - 4. (No change.)

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(c) The air quality [simulation] **dispersion** modeling shall be conducted using procedures published in technical manuals by the Department and in accordance with [a] **an air dispersion modeling** protocol approved in advance by the Department. The protocol shall document how the air quality [simulation] **dispersion** modeling is to be conducted and how the results of the analysis are to be presented to the Department. The **air dispersion modeling** protocol shall be prepared in accordance with [the Department's technical manuals on Air Quality Modeling (technical manual] **Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol)** and [Risk Assessment (technical manual] **Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions)**, available on the Department's website at <http://www.nj.gov/dep/aqpp/techman.html> and at the following address:

Department of Environmental Protection  
[Division of] Air Quality **Regulation and Planning**  
Bureau of Evaluation and Planning  
Air Quality Evaluation Section  
401 East State Street, 2nd Floor  
Mail Code 401-02  
PO Box 420  
Trenton, New Jersey 08625-0420  
Telephone: (609) 292-6722

(d) An applicant not subject to (a) above may voluntarily perform **an** air quality [simulation

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modeling and] **impact analysis and/or a risk assessment** [for existing source operations and submit these to the Department, to] **conducted in accordance with an air quality dispersion modeling protocol and/or risk screening worksheets, approved in advance by the Department and will** be made available as part of the public review process for applications for initial operating permits or renewals.

1. [Performance of] **The applicant should consider performing a voluntary** [modeling and] **air quality impact analysis and/or a risk assessment** [should be considered by the applicant] if the facility's potential to emit any [hazardous air pollutant] **HAP or NJHAP** exceeds the **reporting** thresholds [contained in the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004), available at the address in (c) above] **at N.J.A.C. 7:27-17.9, Tables 3A and 3B.**
2. Guidance on conducting **an air quality** [simulation modeling and] **impact analysis and/or a risk assessment** is available in [the Department's technical manual for Risk Assessment for Operating Permits (technical manual 1004)] **Technical Manual 1002 (Guidance on Preparing an Air Quality Modeling Protocol) and Technical Manual 1003 (Guidance on Preparing a Risk Assessment for Air Contaminant Emissions)**, available at the address [in] **at (c) above.**
3. An applicant for an initial operating permit or the renewal of an operating permit may voluntarily prepare a risk assessment based on air monitoring of actual levels of [hazardous air pollutants] **HAPs or NJHAPs**, in lieu of an assessment

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based on air quality [simulation] **dispersion** modeling. Guidance on conducting ambient air quality monitoring is available at the following address:

Department of Environmental Protection

[Office] **Division** of Air Quality [Management

Bureau of Air Monitoring]

401 East State Street, [7th] **2nd** Floor

Mail Code 401-[07H] **02E**

PO Box 420

Trenton, New Jersey 08625-0420

Telephone: (609) 292-0138

- (e) Any new or revised technical manuals **and any associated risk screening worksheets** referenced in this section will be subject to public input prior to finalization.

7:27-22.18 Source emissions testing and monitoring

(a) - (j) (No change.)

- (k) A permittee may seek the approval of the Department for a delay in testing required pursuant to a permit and/or this section. In such case, the following [shall apply]

**applies:**

1. The permittee shall submit a request for such approval on paper to the address [given] at N.J.A.C. 7:27-22.3(t) and to the appropriate regional enforcement office indicated [in] **at** (k)1i [through iv], **ii, or iii** below:

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- i. If the permitted source is located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:

Department of Environmental Protection

Bureau of Air Compliance & Enforcement - Central

[4 Station Plaza] **401 E State St**

Mail Code 22-03A

PO Box 420

Trenton, NJ 08625-0420.

- ii. - iii. (No change.)

- 2. - 3. (No change.)

- (l) (No change.)

#### 7:27-22.19 Recordkeeping, reporting, and compliance certification

- (a) - (f) (No change.)

- (g) Any deviation from operating permit requirements [which] **that** results in a release of air contaminants shall be reported to the Department as follows:

- 1. If the air contaminants are released in a quantity or concentration [which] **that** poses a potential threat to public health, welfare, or the environment or [which] **that** might reasonably result in citizen complaints, the permittee shall report the release to the Department:

- i. Immediately on the Department hotline at [(609) 292-7172] **1 877**

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**WARNDP (1 877 927-6337)**, pursuant to N.J.S.A. 26:2C-19(e); and

ii. (No change.)

2. - 3. (No change.)

(h) - (j) (No change.)

7:27-22.22 Seven-day-notice changes

(a) - (c) (No change.)

[(d) In addition to the items listed at (c) above, a seven-day-notice change may be used for the following, pursuant to the procedures of this section:

1. A change to an existing significant source operation, or construction or installation of any new significant source operation, at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1, provided that:
  - i. The production process containing the significant source operation is identified in and subject to an approved facility-wide permit issued under N.J.S.A. 13:1D-35 et seq.;
  - ii. The proposed change, construction, or installation is either:
    - (1) Allowed under the facility-wide permit; or
    - (2) Documented in a modification to a Pollution Prevention Plan which satisfies the requirements of N.J.A.C. 7:1K-3 and 4, or in a

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Pollution Prevention Assessment as defined in N.J.A.C. 7:1K-1.5;

and

iii. The proposed change, construction, or installation does not cause any of the following:

- (1) An increase in the generation of nonproduct output per unit of production manufactured by the significant source operation or production process;
- (2) An exceedance of the maximum allowable concentration or rate of emission of any air contaminant for the production process or the entire facility, whichever is more stringent;
- (3) An exceedance of the maximum allowable concentration or effluent limitation of any discharge to waters of the State; or
- (4) The addition of a new production process.]

**(d) (Reserved)**

(e) A permittee shall, pursuant to (f), (g), [(h),] or (i), (as applicable) below, submit a timely and administratively complete notice for any change being made[,] pursuant to this section as a seven-day-notice change.

(f) - (g) (No change.)

[(h) To be administratively complete, any notice submitted pursuant to (d)<sup>1</sup> above for a modification of equipment or control apparatus, or installation of new equipment or control apparatus, at a facility with an approved facility-wide permit, shall include a

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Pollution Prevention Plan Modification or Pollution Prevention Assessment pursuant to N.J.A.C. 7:1K-3 and 4 in addition to the items required in (g) above.]

**(h) (Reserved)**

(i) - (o) (No change.)

**7:27-22.27 Operating scenarios**

(a) The Department will include operating scenarios in an operating permit, if the operating scenarios meet all applicable requirements, including, but not limited to, all applicable emission standards.

1. (No change.)
2. New operating scenarios may be authorized through a notice of a seven-day-notice change pursuant to N.J.A.C. 7:27-22.22, provided the emission limit for a source operation included in operating scenarios [which] **that** are being added by a seven-day-notice to an existing operating permit shall not exceed the maximum allowable emission limits in the existing operating permit for the source operation.

(b) - (c) (No change.)

(d) An applicant or permittee seeking authorization for operating scenarios shall provide to the Department, in the application for an initial operating permit, significant modification, or minor modification, or in a seven-day-notice, at least the following information:

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1. - 4. (No change.)
  5. For any operating parameter addressed or limited in the existing operating permit that may be changed under the proposed operating scenario, proposed ranges, or limits for that parameter relevant to air contaminant emissions. This shall include, but not be limited to, parameters, such as the quantity or type of raw material used. Operating parameters [which] **that** do not affect emissions need not be included in the operating scenario. As long as the facility operates within the range or limit of each specified parameter in an approved operating scenario, such operation shall be considered consistent with that operating scenario.
- (e) In addition to the information required at (d) above, the following information shall be provided to the Department if the operating scenario is proposed to be added to an existing operating permit as a seven-day-notice:
1. For each source operation included in the operating scenario:
    - i. - ii. (No change.)
    - iii. A demonstration that, under the proposed operating scenario, any new air contaminant not authorized by the existing operating permit would be emitted at a rate less than the applicable threshold for reporting emissions at N.J.A.C. 7:27-17.9[(a)], **Tables 3A and 3B** or [in N.J.A.C.] at 7:27-22 Appendix, Table A, **incorporated herein by reference.**

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7:27-22.30 Renewals

(a) - (b) (No change.)

(c) To be considered timely, an application for renewal shall be received by the Department at least 12 months prior to expiration of the operating permit. However, consistent with N.J.A.C. 7:27-22.4(e), the applicant is encouraged to submit the renewal application at least 15 months prior to expiration of the operating permit, so that the Department can notify the applicant of any deficiencies in the application. This will allow the applicant to correct any deficiencies, and to better ensure that the application is administratively complete by the renewal deadline. Only applications [which] **that** are administratively complete by the renewal deadline will be eligible for coverage by an application shield.

(d) To be deemed administratively complete, an application for renewal of an operating permit shall include all information required by the application form for the renewal and the following:

1. (No change.)
2. Any additional changes to the operating permit [which] **that** the permittee seeks to have included in the operating permit. For these changes, the permittee shall submit all information required pursuant to the procedures for an administrative amendment, seven-day-notice change, minor modification, or significant modification, pursuant to N.J.A.C. 7:27-22.20, 22.22, 22.23, or 22.24, as applicable;

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3. Any change[s which] **that** the permittee has submitted as a seven-day-notice change since the date of issuance of the most recent operating permit, and [which] **that** the permittee seeks to have incorporated into the operating permit;
4. - 6. (No change.)

(e) - (k) (No change.)

[(l) An operating permit with an expiration date of February 12, 2021, or later shall include in the application for renewal each HAP that may be emitted and its potential to emit, including any non-captured emissions, in tons per year, and any other units, for example, pounds per hour, required to verify compliance with any applicable requirement. If the source operation's potential to emit a given HAP does not exceed the applicable threshold for reporting emissions at N.J.A.C. 7:27-17.9(a), the application for renewal of the operating permit need not include the air contaminant.]

**(l) An application for renewal of an operating permit with an expiration date prior to (three years after the effective date of this amendment) is not required to include the NJHAPs hydrogen sulfide and 1-bromopropane.**

7:27-22.35 Advances in the art of air pollution control

- (a) Newly constructed, reconstructed, or modified equipment and control apparatus [which] **that** constitutes a significant source operation shall incorporate advances in the art of air pollution control as developed for the kind and amount of air contaminant emitted by the applicant's equipment and control apparatus as provided in this section.

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(b) For equipment and control apparatus with a potential to emit hazardous air pollutants **and NJHAPs** at less than the [state of the art] **state-of-the-art** thresholds at N.J.A.C. 7:27-17.9[(b)], **Tables 3A and 3B**, and with a potential to emit less than five tons per year of any other air contaminant, except carbon dioxide (CO<sub>2</sub>), the applicant need not document advances in the art of air pollution control, but instead shall document compliance with:

1. - 3. (No change.)

4. Any other applicable State or Federal standard or regulation, including any general operating permit issued pursuant to N.J.A.C. 7:27-22.14 [which] **that** applies to that source operation.

(c) For equipment and control apparatus with a potential to emit any hazardous air pollutant **and NJHAPs** equal to or greater than the [state of the art] **state-of-the-art** thresholds at N.J.A.C. 7:27-17.9[(b)], **Tables 3A and 3B** or with a potential to emit five tons per year or more of any other air contaminant, except carbon dioxide (CO<sub>2</sub>), the applicant shall document advances in the art of air pollution control, except for CO<sub>2</sub>, in accordance with the following criteria, as applicable:

1. Best Available Control Technology (BACT), where applicable, as set forth at 50 CFR 52.21, for air contaminant emission increases subject to standards for prevention of significant deterioration (PSD) pursuant to 40 CFR 52.21;
2. Lowest Achievable Emission Rate (LAER), where applicable, as set forth at 40 CFR 51.165(a)(xiii) and N.J.A.C. 7:27-18, for air contaminants [which] **that** cause a

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significant net emissions increase of a nonattainment air contaminant in an area [which] **that** is nonattainment for that contaminant;

3. (No change.)
4. A general operating permit issued pursuant to N.J.A.C. 7:27-22.14 [which] **that** applies to that source operation; and
5. For any other air contaminant not covered under (c)1, 2, 3, or 4 above, emitted by a source operation with the potential to emit five or more tons per year of that air contaminant, except carbon dioxide (CO<sub>2</sub>), the use of up-to-date technology and methods, reflected in equipment, control apparatus, and procedures, that when applied to an emission source will reasonably minimize emissions of that contaminant.
  - i. The Department will periodically publish technical manuals containing technology, methods, and performance levels [which] **that** can be used by applicants for demonstrating advances in the art of air pollution control, after public input and comment. Such technology, methods, and performance levels shall have been demonstrated to be reliable for similar air contaminant discharge parameters, and shall be available at reasonable cost commensurate with the reduction in air pollution.
  - ii. Once the Department has published a technical manual for advances in the art of air pollution control pursuant to (c)5i above, any application submitted [which] **that** shows compliance with the technical manual shall

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be considered to incorporate advances in the art of air pollution control for the source operations covered by the technical manual. The Department will periodically review and update the technical manuals, with public notice and input. If the Department amends a technical manual, **the amended technical manual will apply** only to applications submitted after the final publication of the amended technical manual [shall be subject to it].

iii. (No change.)

#### **7:27-22.36 Requirements for emergency fumigation**

**(a) A fumigation operation that would be classified as a significant source solely because it meets the criteria at paragraphs 6, 16, or 21 of the definition of “significant source operation” at N.J.A.C. 7:27-22.1 is not a significant source (and, therefore, does not need a permit and certificate) if the operation is an emergency fumigation operation and there has been no other fumigation operation by the facility or source owner or operator within the preceding five years, including an emergency fumigation operation meeting the requirements of this section or N.J.A.C. 7:27-8.2(g). A fumigation operation that was performed before (the operative date of this amendment) will not disqualify a subsequent emergency fumigation operation from the use of this section. The following requirements apply to emergency fumigation operations meeting the above criteria:**

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1. The owner or operator shall provide advance notification to the Department of the emergency fumigation operation by first-class mail or electronic mail, as provided at (a)2 below, that includes the following:
  - i. Documentation that the operation is an emergency fumigation operation;
  - ii. The exact physical location of the facility at which the fumigation operation will be conducted and the distance to the nearest property line, building, structure, and public area;
  - iii. The industrial structure(s) to be fumigated, including the number of industrial structure(s);
  - iv. The commodity to be fumigated, including quantity;
  - v. The fumigant name and estimated quantity to be used; and
  - vi. The name and address of the company that will perform the emergency fumigation operation.
  
2. The owner or operator shall submit to the Department the pre-fumigation notice required at (a)1 above and the post-fumigation report required at (a)6 below through the appropriate regional Bureau of Air Compliance and Enforcement, by first-class mail or by email, as follows:
  - i. If the emergency fumigation operation is located in Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union, or Warren County:

**Bureau of Air Compliance & Enforcement – Northern**

**7 Ridgedale Ave**

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**Cedar Knolls, NJ 07927**

**[AirCE-Northern@dep.nj.gov](mailto:AirCE-Northern@dep.nj.gov)**;

- ii. **If the emergency fumigation operation is located in Burlington, Mercer, Middlesex, Monmouth, or Ocean County:**

**Bureau of Air Compliance & Enforcement – Central**

**401 E State St**

**Mail Code 22-03A, PO Box 420**

**Trenton, NJ 08625-0420**

**[AirCE-Central@dep.nj.gov](mailto:AirCE-Central@dep.nj.gov)**; or

- iii. **If the emergency fumigation operation is located in Atlantic, Camden, Cape May, Cumberland, Gloucester, or Salem County:**

**Bureau of Air Compliance & Enforcement – Southern**

**2 Riverside Dr, Suite 201**

**Camden, NJ 08103**

**[AirCE-Southern@dep.nj.gov](mailto:AirCE-Southern@dep.nj.gov)**;

3. **Prior to the application of fumigant at the site and until aeration is completed, the owner or operator shall post visible and legible signs on the property at any access point and at the facility fence or property line closest to any public right-of-way. The signs must include all wording/information for placards required by the Federally approved fumigant label to identify the operation as dangerous and provide other details, including:**

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- i. The date the fumigation will begin;**
  - ii. The name and the EPA registration number of the fumigant used;**
  - iii. The name, address, and telephone number of the fumigation company and/or applicator; and**
  - iv. A 24-hour emergency response telephone number;**
- 4. The emergency fumigation operation must include a stack that extends above the highest point of the container/roofline to a height above the ground and exhausts vertically to remove the fumigant;**
- 5. The emergency fumigation operation must be discontinued, or the rate of aeration must be decreased, if the monitored concentration level limit established in the fumigant label is exceeded at the fence or property line; and**
- 6. Within 30 calendar days following the completion of the fumigation operation, the owner or operator shall submit to the Department, by first-class mail or electronic mail, as provided at (a)2 above, a written report that includes the following:**
  - i. The exact physical location of the facility at which the emergency fumigation operation was conducted and the distance to the nearest property line, building, structure, and public area;**
  - ii. The industrial structure(s) that were fumigated, including the number of industrial structure(s);**
  - iii. The commodity fumigated, including quantity;**

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- iv. The name and address of the company that performed the emergency fumigation operation;**
- v. The identity of the State or Federal authority that required the emergency fumigation operation;**
- vi. The equipment used to perform the emergency fumigation operation, including the containment system employed (for example, tarp, sealed container, or fumigation chamber);**
- vii. The name and quantity of the fumigant used, including a copy of the fumigant label;**
- viii. The duration of the fumigation and aeration, including the start and end times for each;**
- ix. The method employed to release the fumigant to the atmosphere after completion of the emergency fumigation operation and aeration, including the rate of release and the distance above the ground at which the fumigant was released;**
- x. A brief description of the capture and control device used, if any; and**
- xi. A summary of the fumigation operations, if any, conducted by the facility or source owner or operator over the preceding five years, including any emergency fumigation operation conducted pursuant to this section or N.J.A.C. 7:27-8.2(g). The summary must include the date, amount of fumigant used, and the commodity or industrial structure fumigated for each fumigation operation.**

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## CHAPTER 27A

### AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

#### SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

##### 7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are as defined [in] **at** N.J.S.A. 26:2C-2 and N.J.A.C. 7:27 and 27C.

...

“HAP [(Table B)]” means a hazardous air pollutant listed [in] **and identified as a HAP at** N.J.A.C. 7:27-[8]**17.9**, [Appendix 1, Table B] **Tables 3A and 3B**.

...

“**New Jersey Hazardous Air Pollutant**” or “**NJHAP**” means a substance listed at N.J.A.C. **7:27-17.3, Table 2**.

...

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a) - (l) (No change.)

(m) The violations of N.J.A.C. 7:27, whether the violation is minor or non-minor in accordance with (q) through (t) below, and the civil administrative penalty amounts for

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each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter [in] at N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1. - 7. (No change.)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Each Subsequent Offense</u>
N.J.A.C. 7:27-8.2(g)1	Submit Pre-fumigation Notification	NM	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-8.2(g)3	Posting of Fumigation Signs	NM	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-8.2(g)4	Stack Requirements	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-8.2(g)5	Concentration Exceedance	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-8.2(g)6	Submit Emergency Fumigation Report	NM	\$500	\$1,000	\$2,500	\$7,500

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<u>Citation</u>	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and	
					Subsequent Offense	
N.J.A.C. 7:27-8.3(a)	Obtain Preconstruction Permit				Each	
Class: Estimated Potential Emission Rate of Source Operation						
1.-4. (No change.)						
5.	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup>	NM	\$2,000 <sup>5</sup>	\$4,000 <sup>5</sup>	\$10,000 <sup>5</sup>	\$30,000 <sup>5</sup>

<u>Citation</u>	Type of Violation	First Offense	Second Offense	Third Offense	Fourth and	
					Subsequent Offense	
N.J.A.C. 7:27-8.3(b)	Obtain Certificate				Each	
Class: Estimated Potential Emission Rate of Source Operation						
1.-4. (No change.)						
5.a	Failure to renew a certificate Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup>	M	\$2,000	\$4,000	\$10,000	\$30,000
5.b	All other violations Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , HAP [(Table B)] <sup>6</sup>	NM	\$2,000	\$4,000	\$10,000	\$30,000

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[Citation]	<u>Citation</u>	[Rule Summary]	<u>Rule Summary</u>	<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>
N.J.A.C. 7:27-8.3(d)		Preconstruction Permit or Certificate		M	\$100	\$200	\$500	\$1,500
		Readily Available						

<u>Citation</u>	<u>Rule Summary</u>	<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>
N.J.A.C. 7:27-8.3(e)	Emissions Detected by Stack Tests from Source Operation					
...						

For greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO<sub>x</sub> or air contaminants regulated pursuant to HAP [(Table B)]<sup>6</sup>:

- 1.-3. (No change.)

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<u>Citation</u>	<u>Rule Summary</u>	<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	Fourth and
							Each
N.J.A.C. 7:27-8.3(e)	Preconstruction Permit and Certificate Conditions and Provisions						
Class: Emissions from Source Operation							
1.a-4.b (No change.)							
5.a	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - No Emission Increase	M	\$3,000 <sup>5</sup>	\$6,000 <sup>5</sup>	\$15,000 <sup>5</sup>	\$45,000 <sup>5</sup>	
5.b	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - Emission Increase	NM					
...							

<u>Citation</u>	<u>Rule Summary</u>	<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	Fourth and
							Each
...							
4 <sup>-5</sup> (No change.)							
6 ...							
TXS, <b>NJHAP</b> , and <b>HAP</b> (N.J.A.C. 7:27-17)							
[HAP (TABLE B) (N.J.A.C. 7:27-8, Appendix 1 – Table B)]							

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9. - 16. (No change.)

17. The violations of N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

[Citation] <u>Citation</u>	[Class] <u>Class</u>	Type of <u>Violation</u>	First <u>Offense</u>	Second <u>Offense</u>	Third <u>Offense</u>	Fourth and <u>Subsequent</u> <u>Offense</u>
...						
<b>N.J.A.C. 7:27-17.10(a)1</b>	<b>Discharge through Vertical Stack</b>	<b>NM</b>	<b>\$1,000</b>	<b>\$2,000</b>	<b>\$5,000</b>	<b>\$15,000</b>
<b>N.J.A.C. 7:27-17.10(a)2</b>	<b>Conduct Risk Assessment</b>	<b>NM</b>	<b>\$2,000</b>	<b>\$4,000</b>	<b>\$10,000</b>	<b>\$30,000</b>

<sup>3</sup> (No change.)

18. - 21. (No change.)

22. The violations of N.J.A.C. 7:27-22, Operating Permits, and the civil administrative penalty amounts for each violation, per source operation, are set forth in the following tables:

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<u>Citation</u>	<u>Rule Summary</u>	<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	Fourth and
							Each
N.J.A.C. 7:27-22.3(a)	Obtain and Maintain Operating Permit						
	Class: Estimated Potential Emission of Source Operation						
	1.-4. (No change.)						
	5. Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup>	NM	\$2,000	\$4,000	\$10,000	\$30,000	
...							

<u>Citation</u>	<u>Rule Summary</u>	<u>Violation</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	Fourth and
							Each
N.J.A.C. 7:27-22.3(b)	Obtain Operating Permit Before						
	Operation						
	Class: Estimated Potential Emission of Source Operation						
	1.-4. (No change.)						
	5. Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup>	NM	\$2,000	\$4,000	\$10,000	\$30,000	
...							

N.J.A.C. 7:27-22.3(e) Other Conditions  
 Class: Emission of Source Operation

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1.a-4.b (No change.)

5.a	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - No Emission Increase	M	\$3,000	\$6,000	\$15,000	\$45,000
-----	---	---	---------	---------	----------	----------

5.b	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - Emission Increase
-----	--

Fourth and  
Each

<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Subsequent Offense</u>
N.J.A.C. 7:27-22.3(e)	Emissions Detected by Stack Test					
Class: Maximum Allowable Emission of Source Operation						
...						
Greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO <sub>x</sub> , or air contaminants regulated pursuant to HAP [(Table B)] <sup>6</sup> :						
1.-3. (No change.)						
...						

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<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	Fourth and
						Subsequent Offense
N.J.A.C. 7:27-22.14(d)	General Operating Permit Terms and Conditions					
	Class: Estimated Potential Emission Rate of Source Operation					
	1.a-4.b (No change.)					
5.a	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - No Emission Increase	M	\$3,000	\$6,000	\$15,000	\$45,000
5.b	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - Emission Increase					

<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	Fourth and
						Subsequent Offense
N.J.A.C. 7:27-22.15(b)1	Temporary Facility Operating Permit Requirements					
	Class: Emission of Source Operation					

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<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Fourth and Subsequent Offense</u>		
1.a-4.b (No change.)								
5.a	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - No Emission Increase	M	\$3,000 <sup>[1]</sup> °]	\$6,000 <sup>[1]</sup> °]	\$15,000 <sup>[1]</sup> °]	\$45,000 <sup>[10]</sup>		
5.b	Regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, <b>NJHAP</b> , and HAP [(Table B)] <sup>6</sup> - Emission Increase							
[Citation]	<u>Citation</u>	[Rule Summary]	<u>Rule Summary</u>	<u>n</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>	<u>Offense</u>
...								
N.J.A.C. 7:27-22.18(e)3	Submit Source Emissions Test Report	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>		
N.J.A.C. 7:27-22.18(f)	Perform Periodic Source Emissions Testing	NM	\$2,000 <sup>[2]</sup>	\$4,000 <sup>[2]</sup>	\$10,000 <sup>[2]</sup>	\$30,000 <sup>[2]</sup>		
N.J.A.C. 7:27-22.18(g)3	Schedule Performance Specification Test Date	M	\$300 <sup>[2]</sup>	\$600 <sup>[2]</sup>	\$1,500 <sup>[2]</sup>	\$4,500 <sup>[2]</sup>		

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<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	Fourth and Each			
			<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	<u>Subsequent Offense</u>
N.J.A.C. 7:27-22.18(g)4	Conduct Performance Specification Test	NM	\$1,000 <sup>[2]</sup>	\$2,000 <sup>[2]</sup>	\$5,000 <sup>[2]</sup>	\$15,000 <sup>[2]</sup>
N.J.A.C. 7:27-22.18(g)5	Submit Performance Specification Report	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.18(h)	Certify Source Emission Test Report or Performance Specification Test Report	M	\$300 <sup>[2]</sup>	\$600 <sup>[2]</sup>	\$1,500 <sup>[2]</sup>	\$4,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.19(a)	Maintain Records of Source Emissions Testing or Monitoring	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.19(c)	Submit Source Emissions Testing and Monitoring Reports	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.19(f)	Submit Periodic Compliance Certification	NM	\$1,000 <sup>[2]</sup>	\$2,000 <sup>[2]</sup>	\$5,000 <sup>[2]</sup>	\$15,000 <sup>[2]</sup>
N.J.A.C. 7:27-22.19(h)	Submit Operating Permit or Emissions Records	M	\$500	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.19(i)	Make Information Readily Available	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.27(b)	Maintain Information for Alternative Operating Scenarios	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>
N.J.A.C. 7:27-22.28(i)	Maintain Emissions Trading Log	M	\$500 <sup>[2]</sup>	\$1,000 <sup>[2]</sup>	\$2,500 <sup>[2]</sup>	\$7,500 <sup>[2]</sup>

<sup>4-5</sup> (No change.)

<sup>6</sup> NSPS (40 CFR 60)

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NESHAP (40 CFR 61)

PSD (40 CFR 51)

EOR (N.J.A.C. 7:27-18)

TXS, NJHAP, and HAP (N.J.A.C. 7:27-17)

[HAP Table B (N.J.A.C. 7:27-22, Appendix, Table B)]

<sup>7-10</sup> (No change.)

<u>Citation</u>	<u>Rule Summary</u>	<u>Type of Violation</u>	<u>First Offense</u>	<u>Second Offense</u>	<u>Third Offense</u>	Fourth and
						Subsequent
						Each
						<u>Offense</u>
N.J.A.C. 7:27-22.36(a)1	Submit Pre-fumigation Notification	NM	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-22.36(a)3	Posting of Fumigation Signs	NM	\$500	\$1,000	\$2,500	\$7,500
N.J.A.C. 7:27-22.36(a)4	Stack Requirements	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-22.36(a)5	Concentration Exceedance	NM	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-22.36(a)6	Submit Emergency Fumigation Report	NM	\$500	\$1,000	\$2,500	\$7,500

23. - 33. (No change.)

(n) The Department [shall] **will** determine the amount of civil administrative penalty for violations of N.J.A.C. 7:27-8 and [7:27-]22 as follows: for violations detected by continuous monitoring systems in accordance with (n)1 below; for continuous monitoring systems not installed, out of service or out of control in accordance with (n)2

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below; and for violations of continuous monitoring systems recordkeeping and reporting requirements in accordance with (n)3 below. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have no legal effect.

1. The Department [shall] **will** determine the amount of civil administrative penalty for violations of N.J.A.C. 7:27-8.3(e) and [7:27-]22.3(e) as indicated by continuous monitoring systems on the basis of the severity level, duration of the offense and the size or nature of the source operation associated with the violation as follows:

i. - iii. (No change.)

CONTINUOUS MONITORING SYSTEMS<sup>7</sup>

TABLE 1 (No change.)

CONTINUOUS MONITORING SYSTEMS<sup>7</sup>

[Table 2a] <b>TABLE 2A</b>
MAJOR SOURCE
OPERATION <sup>[4]</sup> <sup>3</sup>
(No change to table.)

[table 2b] <b>TABLE 2B</b>
MINOR SOURCE
OPERATION <sup>[3]</sup> <sup>4</sup>
(No change to table.)

TABLE 3
(No change to table.)

2. - 3. (No change.)

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<sup>1-2</sup> (No change.)

<sup>3</sup> Any source operation with estimated potential emissions without controls of greater than 22.8 pounds per hour, or greater than 5.7 pounds per hour for VOC and NO<sub>x</sub>, or air contaminants regulated pursuant to NSPS, NESHAP, PSD, EOR, TXS, **NJHAP**, and HAP [(Table B)] based on Preconstruction Permit or Certificate issued pursuant to N.J.A.C. 7:27-8 or Operating Permit issued pursuant to N.J.A.C. [7:22] **7:27-22**.

<sup>4-8</sup> (No change.)

(o)- (u) (No change.)