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Alice A. Previte, Esq.
Attn: DEP Docket Number: 02-21-01
Office of Legal Affairs
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Re: Comments on NJDEP Proposed Amendments to Permit and Reporting Requirements for Fumigants and Other Hazardous Air Pollutants, N.J.A.C. 7:27, 7:27A (DEP Docket Number 02-21-01, Proposal No. PRN 2021-020)

Dear Ms. Previte:

On behalf of our member companies that provide 1 million jobs in the state and make the New Jersey Business & Industry Association (NJBIA) the largest statewide business association in the country, we are writing to express our comments on the above referenced rule. In addition to our comments outlined below, NJBIA is supportive of the comments submitted by the Chemistry Council of New Jersey (CCNJ). Please accept those comments as also being submitted by NJBIA.

When the Department was first contemplating fumigation regulations, they were focused on limited usage in our port areas where certain products were imported and then fumigated due to the potential of containing harmful insects. The Department was also aware that these fumigation practices were long-standing, consistent with industry practice, and were, in fact, the standards used in port areas in our region and nationally.

Because of concerns with banning or regulating a practice in New Jersey without commensurate regulations being implemented in neighboring ports, the Department had expressed its intention to seek uniform regulations in a large geographical region so as not to drive out importers from New Jersey ports to the benefit of Pennsylvania, New York, Virginia, Baltimore, and other area ports. Despite acknowledging in the rule summary that the Department has had discussions with regional regulators on this topic, it has decided to move ahead with a New Jersey only regulation despite the obvious absence of a regional agreement.

This decision to overregulate New Jersey port activities in the manner contemplated by this proposal will no doubt have a significant harmful impact on New Jersey's ports and import businesses. This will no doubt drive up the costs of products, including food products in New Jersey. We further note the economic analysis in the rule summary does not adequately acknowledge these economic impacts but, instead, falls back to the simplistic statement that there will be a positive economic impact. This analysis, or rather lack thereof, is clearly inconsistent with the mandates of the Administrative Procedure Act (APA).

The proposal defines “fumigant” as “a chemical registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).” As discussed in the CCNJ comments, this is a vastly overbroad definition bringing into regulation many more substances than initially the Department said it was contemplating and regulating significantly more activities and locations. It is clear that the Department did not fully appreciate the complexity of industry practice in this area when it proposed this rule with this definition. This rule will have a substantial impact on the pesticide industry, on businesses in need of fumigation, and on New Jersey’s economy.

Because of these issues, we believe the Department should rescind the proposal, engage in stakeholder processes, and craft a new rule that is more limited and protective of New Jersey’s economic interests. We believe this can be accomplished while adequately setting appropriate parameters to protect the public health from fumigation emissions.

If the Department is hesitant to rescind the proposal, we would recommend an alternative process. Once the comment period is closed, which is on the day these comments are received, the Department should immediately engage in stakeholder processes. If the Department subsequently determines that the proposal needs to be modified in any substantive manner, it can utilize the process authorized in the Administrative Procedure Act to make substantial changes upon adoption. This process will allow the Department to keep the proposal in place, put forth the changes it wants in a new proposal, and adopt a final rule that incorporates the initial rule as modified by the new proposal. The APA allows the Department an additional six months to adopt the final rule, thus allowing up to 18 months from the initial proposal. This is a reasonable course of action.

We thank you for the opportunity to comment and welcome the ability to engage in further stakeholder processes.

A handwritten signature in black ink, appearing to read "Ray Cantor", with a long horizontal stroke extending to the right.

Ray Cantor
Vice President of Government Affairs
New Jersey Business & Industry Association