
DO I NEED AN AIR PERMIT?

Introduction

The environmental laws specified in Section 403 of the **Florida Statutes** authorize the Department of Environmental Protection (Department) to regulate sources of air pollution in Florida. The Department establishes rules and regulations regarding air quality as part of the Florida Administrative Code (**F.A.C.**). In Florida, an air permit is required prior to constructing, operating or modifying a unit or facility that emits or is reasonably expected to emit any **air pollutant** unless an exemption from permitting applies. In addition, an **air construction permit** is required to install **air pollution control equipment**. The following series of questions are intended to help you determine if the construction, operation or modification of a unit or activity needs an air permit in Florida.

Permitting Authorities

Depending on the location of the project as well as the type of permit, applications may be processed by one of the following **permitting authorities**.

- The Department's **Bureau of Air Regulation** is responsible for processing applications for: **air construction permits** subject to the preconstruction review requirements for the prevention of significant deterioration (**PSD**) of air quality; **air construction permits** for all power plants; and **Title V** air operation permits for all **acid rain** sources as well as all large power plants.
- The Department's **District** Offices are responsible for processing applications for the following facilities located within the **District** Office boundaries and not belonging to one of the approved **Local Air Program** Offices: minor source **air construction permits** for all non-power plant projects, all **Title V** air operation permits not processed by the Department's **Bureau of Air Regulation**, all federally enforceable state operation permits (**FESOP**) and all non-**Title V** air operation permits.
- The Department's approved **Local Air Program** Offices with air permitting programs include: Broward County Department of Planning & Environmental Protection, Duval County Environmental Resources Management Department, Hillsborough County Environmental Protection Commission, Miami-Dade County Department of Environmental Resources Management, Orange County Environmental Protection Division, Palm Beach County Health Department, and Sarasota Air and Water Quality Program. Each program is responsible for processing all applications for permits within its boundaries and authorized under the Specific Operating Agreement (**SOA**), which generally includes the following: minor source **air construction permits** for all non-power plant projects, all **Title V** air operation permits not processed by the Department's **Bureau of Air Regulation**, all federally enforceable state operation permits (**FESOP**) and all non-**Title V** air operation permits. The **SOA** typically precludes a **Local Air Program** Office from processing applications for county-owned or operated facilities.

In addition, the Department's **District** Offices approved **Local Air Program** Offices are responsible for making determinations on requests for case-by-case exemptions from air permitting requirements pursuant to Rule 62-4.040, **F.A.C.** for sources over which it has permitting jurisdiction.

Air Construction Permits

Air construction permits are required for initial construction or modifications to an existing unit or facility. Depending on the emissions from a facility as well as the emissions increases from a project, different types of **air construction permits** are required for **major stationary sources**, **major modifications** and minor sources of air pollution. **Air construction permits** require the publication of a public notice in a newspaper of general circulation. The **air construction permit** is issued for a period of

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time sufficient to allow construction and operation of the new equipment while the owner or operator is conducting tests or otherwise demonstrating initial compliance with the conditions of the **air construction permit**. Notwithstanding the expiration of an **air construction permit**, all limitations and requirements applicable to the design and operation of the permitted facility or emissions unit remain in effect until the facility or emissions unit is permanently shut down, except for any such limitation or requirement that is obsolete by its nature (such as a requirement for initial compliance testing). In addition to Florida regulations, the **air construction permit** must include any federal air regulations with applicable provisions beyond record keeping and reporting (e.g., National Emission Standards for Hazardous Air Pollutants (**NESHAP**) in 40 CFR Part 61 (for individual pollutants) or Part 63 (for industrial categories) or New Source Performance Standards (**NSPS**) in 40 CFR Part 60).

Air Operation Permits

An **air operation permit** is required for the operation of a unit or facility after construction and **compliance testing** has been completed. An **air operation permit** is required for the remainder of the unit's or facility's operating life. The **air construction permit** will specify the deadline for submitting an application for an **air operation permit**. As indicated below, some **air operation permits** require the publication of a public notice in a newspaper of general circulation. An **air operation permit** is issued for a period of time not to exceed five years and must be renewed. The type of **air operation permit** required is based upon the amounts of emissions from a facility. If you are requesting emissions limits or operational restrictions to avoid a state or federal air permit program, you need to discuss deadlines for obtaining a permit with the **permitting authority**. If federal air regulations (e.g., **NSPS** or **NESHAP** provisions) become applicable after a unit is constructed, the applicable requirements may be placed directly into an **air operation permit**; however, an **air construction permit** may still be necessary to install any **air pollution control equipment**.

Air construction permits and **air operation permits** are discussed in more detail below.

Exemptions from Air Permitting

Question: Is my unit or activity categorically or conditionally exempt?

If a facility or unit meets certain criterion, it may be exempt from the requirements to obtain both an **air construction permit** and a non-**Title V air operation permit**. There are two types of exemptions established by rule. First, there are specific exemptions based upon the type of activity or unit. These are called categorical exemptions and are listed in Rule 62-210.300(3)(a), **F.A.C.** Examples of activities and units that are categorically exempt from air construction and non-**Title V** air operation permits include home heating furnaces, application of fungicides and pesticides, and restaurants. There are also activities and units that are exempt from requirements to obtain an **air construction permit** and a non-**Title V air operation permit** as long as they meet certain requirements that are set forth in the rules. These are referred to as conditional exemptions and are also set forth in Rule 62-210.300(a), **F.A.C.** For example, some equipment (e.g., emergency generators, fossil fuel steam generators, printing operations, internal combustion engines, etc.) may be exempt if they meet the criterion set forth in the rule. Categorical and conditional exemptions are self-executing and do not require an application or an advance notification to the **permitting authority**. If your facility must obtain a **Title V** air operation permit (see below), some units may still be exempt from air construction permit requirements, but may have to be identified in the facility's **Title V** air operation permit.

Question: Is my unit or activity generically exempt?

If your unit or activity is not categorically or conditionally exempt, it may meet the generic exemption thresholds in Rule 62-210.300(3)(b), **F.A.C.** and be exempt from requirements to obtain an **air**

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construction permit and a non-**Title V air operation permit**. These exemptions are based upon the activity, unit or facility's potential emissions and whether other state or federal rules may regulate the activity or unit. These exemptions are self-executing and do not require an application or advance notification to the **permitting authority**. If your facility must obtain a **Title V** air operation permit (see below), your unit may still be exempt from air construction permit requirements, but it will have to be identified in the facility's **Title V** air operation permit.

One of the requirements to qualify for a categorical, conditional or generic exemption is that the activity or unit is not subject to a **unit-specific applicable requirement**. This means that there are no other state or federal rules that establish requirements on that activity or unit beyond record keeping or reporting. The majority of the state rules that would be unit-specific are set forth in Chapter 62-296, **F.A.C.** The federal rules are more voluminous, but unit-specific requirements would largely be in Title 40, Chapters 60, 61 or 63 of the Code of Federal Regulation (**CFR**).

Question: Would my unit or activity qualify for a case-by-case exemption?

If your unit or activity does not fall within the exemption requirements in Rule 62-210.300, **F.A.C.**, it may qualify for a case-by-case exemption from **air construction permit** requirements provided in Rule 62-4.040, **F.A.C.** Typically, this exemption is used for units or activities that emit **air pollutants** in quantities that are small enough based upon the unique circumstances that regulation of the activity or unit is not reasonably justified. If a state or federal rule applies to your unit or activity, it likely will not qualify for this exemption. This exemption requires the concurrence and action of the **permitting authority**, which may require the publication of a public notice. Although the exemption can apply to **air operation permits** as well as **air construction permits**, any exempt units or activities must be identified in any **Title V air operation permit** or Federally Enforceable State Operation Permit (**FESOP**).

Air General Permits

If your unit or activity does not meet any of the exemption requirements, you may be authorized to construct or operate the unit or activity by following the requirements of a specific rule called an "**air general permit**" instead of obtaining a case-by-case air permit.

*Question: Is my unit or activity covered by an **air general permit**?*

An **air general permit** is a specific rule that governs the construction and operation of specific units or activities such that an individual permit is not necessary. **Air general permits** are not usually available for an activity involving a variety of units or a number of similar units, even if each unit might individually qualify for an **air general permit**. This is because the aggregate amount of potential (maximum possible) air pollution is likely to cause the activity to require an individual air permit. Some **air general permits** do accommodate multiple units, however, and you should review the rule carefully to see if your activity is within such a category. If your unit or activity is covered by an **air general permit**, you will need to follow **registration procedures** and submit the **processing fee**, but no individual application or air permit is required. The rules and procedure for **air general permits** are identified in Rules 62-210.310 and 62-210.920, **F.A.C.** Examples of activities and units that may be eligible for an air general permit include printing operations, bulk gasoline plants, surface-coating operations, concrete batch plants and dry cleaning facilities.

If your unit or activity does not meet the requirements for an exemption or **air general permit**, an **air construction permit** and an **air operation permit** are required.

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Air Construction Permits for Major Stationary Sources (PSD Permits)

*Question: Is the unit or facility you are building a new **major stationary source** of air pollution?*

If you are building a brand new unit or facility that will result in a **major stationary source**, it will require an air construction permit subject to the preconstruction review requirements for the prevention of significant deterioration (**PSD**) of air quality pursuant to Rule 62-212.400, **F.A.C.** A new unit or new facility is considered a major stationary source if it emits or will have the **potential to emit**:

- 100 tons per year or more of a **PSD pollutant** and the facility belongs to an industrial category identified in the definition of **major stationary source**, or
- 250 tons per year or more of a **PSD pollutant**, or
- 5 tons per year or more of lead.

In addition, if you are making a physical or operational change at an existing facility that is not currently a **major stationary source**, but the **PSD pollutant** emissions associated with that change meet the **major stationary source** thresholds (i.e. 100 tons per year or more for industrial categories identified in the definition of **major stationary source** or 250 tons per year or more for all other industrial categories), that change requires a **PSD air construction permit**.

Applications for **PSD air construction permits** require a **\$7500 permit processing fee**, an **ambient air quality modeling analysis** and an evaluation of the **best available control technology**. Applications for **PSD air construction permits** are processed in our Tallahassee office by the **Bureau of Air Regulation**. If emission limits are taken to stay below the applicable 100 or 250 ton per year threshold, the application is handled by the one of the Department's **District Offices** or approved **Local Air Program Offices**.

*Question: Are you making a **major modification** to an existing major stationary source?*

If you are making a physical or operational change at a facility or unit that is already a **major stationary source**, that change may require a **PSD air construction permit** if it could result in an increase in **PSD pollutant** emissions above the **significant emissions rate** as defined in Rule 62-210.200, **F.A.C.** For changes to an existing unit, the **PSD pollutant** increase is evaluated either by comparing **baseline actual emissions** to future **projected actual emissions** or, at the election of the applicant, comparing **baseline actual emissions** to future **potential to emit**. There are procedures available to avoid the requirement to obtain a **PSD air construction permit** such as **netting** and new source review reform; however, an **air construction permit** may still be required as indicated below.

Air Construction Permits for Minor Sources

If your activity or unit does not meet the exemption, **air general permit** or **PSD air construction permit** criterion, it will require a minor source **air construction permit**. **Air construction permits** are required prior to constructing a new unit or facility and prior to making changes that will increase **actual emissions** of an existing unit. **Air construction permits** are also required prior to the installation of new **air pollution control equipment**.

Title V Air Operation Permits

A facility is considered a **major facility** or a **Title V** source and must obtain a **Title V air operation permit** if the facility emits or has the **potential to emit**: 100 tons per year or more of any **regulated air pollutant**, 10 tons per year or more of any single **hazardous air pollutant**, or 25 tons per year or more of

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any combination of **hazardous air pollutants**, 5 tons per year or more of lead or lead compounds or the facility has an **acid rain** unit. The rules for the **Title V air operation permit** program are set forth in Chapter 62-213, **F.A.C.**

An initial application for a **Title V air operation permit** must be submitted at least 90 days prior to the expiration of the **air construction permit** but no later than 180 days after the unit(s) or facility commences operation. **Title V air operation permits** require the publication of a public notice in a newspaper of general circulation. A **Title V air operation permit** must be revised within the same timeframes for an initial application to incorporate new activities authorized in an **air construction permit**. If new state or federal rule requirements become effective, the Department may have to open the **Title V air operation permit** to include those new provisions. **Title V air operation permits** must also be renewed every five years.

Federally Enforceable State Operating Permit (FESOP)

If the facility could emit pollutants in quantities that would require a **Title V air operation permit**, but decides to accept enforceable limits on these pollutants to keep emissions below the **Title V, major stationary source** or other federal program thresholds, the facility may request a **FESOP**. These air permits are handled by the Department's **District** and approved **Local Air Programs**. In general, a **FESOP** requires the publication of a public notice in a newspaper of general circulation. However, the **applicable regulations** waive the publication requirement if all of the permitted emissions units within the facility have been issued one or more **air construction permits** which have undergone the applicable public notice procedures and the applicant requests that the conditions of the **air construction permits** be transferred without material change to the **FESOP**. In addition, notice must be given to the U.S. Environmental Protection Agency and any local air pollution control program of the **FESOP** issuance.

Non-Title V Operation Permit

If the facility does not have the **potential to emit regulated air pollutants** in quantities that would require a **Title V air operation permit**, a non-**Title V air operation permit** will be required. These air permits are handled by the Department's **District** and **Local Air Program** Offices.

Permit Application Forms

Application forms for air permits are available electronically at the following link:
<http://www.dep.state.fl.us/Air/forms/application.htm>.