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MEMO TO : Interested Parties

FROM : James L. Semerad
Director, Division of Air Quality
North Dakota Department of Environmental Quality

RE : Recission of:
1) Policy for the Control of Hazardous Air Pollutant (HAP) Emissions in North Dakota

2) Dispersion Modeling Requirements, Compressor Engines and Glycol Dehydration Units

Date : December 18, 2023

Background

The Policy for the Control of Hazardous Air Pollutant Emissions in North Dakota (Air Toxics Policy) was established in 1987. Initially, the policy underwent periodic updates; however, the most recent update was in 2010.

On January 23, 2015, the State issued guidance regarding Dispersion Modeling Requirements, Compressor Engines and Glycol Dehydration Units (2015 Guidance). While a separate document, the 2015 Guidance tiers to the Air Toxics Policy.

Purpose

As stated in the Air Toxics Policy, *"the control of air pollutants has traditionally concentrated on a relatively few "criteria" pollutants, whose emissions are regulated by various local, state and federal rules. Particulate matter less than 10 microns in diameter (PM_{10}), sulfur dioxide, nitrogen dioxide, carbon monoxide, and lead emissions are regulated by placing emission limits on designated air contaminant sources. The Federal NSPS program regulates, in addition to the previously mentioned pollutants, several air contaminates from select sources. Some effort has been made to control HAPs on the federal and state levels through the NESHAP and MACT programs. However, promulgation of new NESHAPs by EPA has been slow, requiring 4-5 years"*.

Therefore, almost 40 years ago, the Air Toxics Policy was developed by the Department to supplement "*the relative slowness of NESHAP and MACT promulgation at the federal level*" under 40 Code of Federal Regulations (CFR) Parts 61 and 63, and to satisfy federal counterparts who encouraged policy development at that time.

The Department recognized the limitations of the policy and understood it would not be in place indefinitely, however, given the factors outlined above, the Air Toxics Policy was developed to be

utilized until sufficient regulations were established. As stated in the Air Toxics Policy *"This policy document is effective until modified by the Department or until formal rules are promulgated."*

The 2015 Guidance clarified dispersion modeling requirements specifically for compressor engines and glycol dehydration units. The 2015 Guidance was developed by the Department to tier to the Air Toxics Policy as stated, *"hazardous air pollutants (air toxics) as defined by the Department's Air Toxics Policy"*.

Regulatory Status

In recognition of the delays in implementing National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations under 40 CFR Part 61, the U.S. Environmental Protection Agency (EPA) attempted to resolve the timeliness problem by developing regulations under 40 CFR Part 63. The Part 63 NESHAP regulations improved EPA's ability to implement air toxics regulations in a timely manner.

All sources operating in North Dakota must comply with the applicable NESHAPs that have been promulgated, and are periodically reviewed, by the EPA. NESHAPs regulate hazardous air pollutants (HAPs) that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. In addition, these regulations have undergone direct review of the specific HAP they regulate and involve public comment and specific rulemaking procedures by EPA.

Since 1991, North Dakota has been adopting applicable NESHAPs into the North Dakota Air Pollution Control Rules. NESHAPs are incorporated by reference in the North Dakota Air Pollution Control Rules under Chapter 33.1-15-13 and Chapter 33.1-15-22 and/or implemented by EPA. The NESHAPs have been used in North Dakota air quality regulatory permit reviews for over 30 years.

As EPA has established additional NESHAPs over time, air quality staff have implemented the NESHAPS, noted the limitations of the outdated Air Toxics Policy as well as potential conflicts between the Air Toxics Policy and the applicable NESHAPs. Additionally, the North Dakota Air Pollution Control Rules under Subsection 33.1-15-02-04.3. authorizes the Department to establish, on a case-by-case basis, specific limits of concentrations for other air containments (e.g., HAPs).

North Dakota Initiative

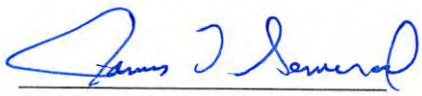
The Division of Air Quality is also reviewing agency policies and guidance to determine if they may have become antiquated, overly burdensome, or inefficient. This review is consistent with Governor Burgum's Red Tape Reduction initiative aimed at eliminating unnecessary and outdated regulations, rules, policies, and procedures to make government more efficient and effective. Based on the review above, the Division has concluded that the Air Toxics Policy meets the Red Tape Reduction initiative.

Decision

The U.S. Congress established the foundational framework under Section 112 of the Clean Air Act for EPA to regulate HAPs. Section 112 provides EPA the authority to promulgate comprehensive regulations and standards that are designed to be protective of human health and the environment. Focusing the air quality regulatory permit reviews on the applicable NESHAPs will ensure up-to-date regulation of HAPs in North Dakota.

Therefore, based on review of the above, including documentation that "formal rules are promulgated", the Policy for the Control of Hazardous Air Pollutant Emissions in North Dakota (Air Toxics Policy) is hereby formally rescinded.

Further, as a result of this action, the January 23, 2015 guidance regarding Dispersion Modeling Requirements, Compressor Engines and Glycol Dehydration Units that tiered to the Air Toxics Policy, is also formally rescinded.

Approved: 

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JLS/DES/RTT/DJP:

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