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Re: Comments on Air Toxics and Fumigation Issues Following the NJ DEP Stakeholders Meeting on January 17, 2019

Dear Mr. Ratzman:

The New Jersey Business and Industry Association (NJBIA) and the Chemistry Council of New Jersey/Site Remediation Industry Network (CCNJ/SRIN) (collectively, “Commenters”) submit preliminary comments on the New Jersey Department of Environmental Protection’s (NJDEP) proposals on air toxics and fumigation standards, as presented in NJDEP’s stakeholder meeting on January 17, 2019.

Additional Air Toxics will be added to Subchapter 17:

NJDEP is considering adding substances to the list of Hazardous Air Pollutants (HAP) and Toxic Substances (TXS) at N.J.A.C. 7:27-17, specifically, hydrogen sulfide (H₂S), sulfuryl fluoride (SF) and n-propyl bromide (NPB). Commenters submit the following comments to the proposed inclusion of these three substances to the HAP list.

Hydrogen sulfide: While NJDEP references odor complaints emanating from landfills, Commenters urge NJDEP to articulate a reasoned basis for identifying H₂S as a HAP. Subchapter 17 regulates HAPs. H₂S is not a HAP as defined by NJDEP, USEPA and Congress (pursuant to 42 U.S.C. § 7412(b)). Commenters do not agree that H₂S emissions rise to the level of regulation in Subchapter 17, and do not think it is an appropriate precedent to set. There are certainly other mechanisms for addressing “other pollutants” (like H₂S) within Subchapter 8 and Subchapter 22 that avoid such precedents.

To the extent that the listing is influenced in part by the potential for odors from landfill facilities, Commenters note that these considerations are adequately addressed by the Legacy Landfill law and implementing regulations. Second, NJDEP must support the listing with peer-reviewed scientific studies that demonstrate there is presently an existing adverse offsite public health impact occurring due to H₂S emissions from landfills or other industrial sources of H₂S that is not addressed through existing permit requirements. In other words, NJDEP must demonstrate that there is a real public health issue to be addressed through the inclusion of H₂S within Subchapter 17. The Commenters do not believe there is. H₂S has been managed as a pollutant for decades and is already well controlled due to its readily identifiable odor. Odor is detected well below the toxicity level, leaving ample margin for avoiding toxic effects. Commenters are concerned that further regulatory action on H₂S emissions is not productive, and will add unnecessary burden for businesses in New Jersey.

Finally, while the inclusion of H₂S on the HAP list may be geared toward the landfill industry, it will impact other companies such as refineries and chemical plants, which already have extensive measures in place to protect their workers and neighbors from H₂S exposure. There will be no public health benefit from further regulating H₂S from these other industrial H₂S emitting operations. These impacts were not addressed at the stakeholder meeting, and must be considered in any proposed

rulemaking. Given the lack of actual public health benefit, the Commenters believe this rulemaking is not justified.

Commenters also suggest the removal of the old requirement to provide site plans that are certified by a licensed Land Surveyor as part of air dispersion modeling submittals. This is very costly and does not account for new technology that is much more effective and efficient for the intended purpose.

Sulfuryl fluoride and n-propyl bromide: Similar to the comments above with respect to H₂S, Commenters urge NJDEP to articulate a reasoned basis for the inclusion of these substances in the Subchapter 17 HAP listing. NJDEP must rely on peer-reviewed scientific sources that demonstrate that there is presently an existing adverse public health risk occurring due to these substances that is not addressed through existing permit structures. As a general matter, Commenters are concerned that the inclusion of new HAPs will increase the burden and cost of air permitting, specifically with respect to risk screening and health risk assessment requirements.

Fumigation Applicability and Additional Requirements:

NJDEP announced its plans to amend air rules at N.J.A.C. 7:27-8 (Minor Source Permitting), N.J.A.C. 7:27-22 (Major Source Permitting) N.J.A.C. 7:27-17 (Air Toxics) and N.J.A.C. 7:27A (air penalty tables) to clarify air permit applicability for fumigation operations and to further evaluate appropriate protective measures.

In the spirit of thoroughness, Commenters would like to address and provide further explanation about a couple statements and conceptions that came to light during the January 17, 2019 stakeholder meeting at NJDEP. During the Department's Rule Overview presentation, NJDEP presented three "hypothetical" cases to illustrate how its proposed standard of "negligible risk" could be met by construction of aeration stacks that would elevate emissions. The cases disregard the reality that many industrial locations are already in areas where distances to the property lines are quite limited. The hypotheticals assumed "buffers" of 250 to 350 feet in order to reach the conclusion that aeration stacks could feasibly be built. In actuality, stacks would need to be 400 to 500 feet or taller to meet NJDEP's desired standard, not practicable, affordable, or consistent with USEPA's fumigant label requirements or USDA treatment procedures.

In addition, NJDEP acknowledged in earlier discussions with the cocoa bean industry, the largest user of sulfuryl fluoride in the state, that the industry needs to have the flexibility to occupy and vacate warehouse space in very short time frames in order to respond to commodity fluctuations. Based on the conceptual plan presented by NJDEP, it appears that the Department is no longer willing to consider an expedited procedure for air permitting. This factor alone may cause the state to lose the entire cocoa bean industry, which uses some three million square feet of warehousing in the state and accounts for many jobs and related businesses.

One specific area of concern with NJDEP's rule promulgation centers on the lack of an emergency exemption in situations where the USDA requires that the commodity be fumigated *in situ*, without allowing the commodity to be moved. In these instances, fumigation often occurs in an open area without the use of an aeration stack. Due to the physical limitations imposed by the "negligible risk" standard, commodities subject to this USDA requirement could not be fumigated without the use of a portable stack that could, again, reach 400-500 ft. Again, this is simply not practicable or affordable.

Another specific area of concern where Commenters see a need for careful consideration is the business disruption that will result from enactment of new regulations requiring immediate compliance. Businesses that have been operating in the state for years will not survive unless they are allowed to continue operating

while working toward compliance. The cocoa bean industry has explained to NJDEP on a number of occasions that many of its warehouses are leased and not owned, making construction of aeration stacks and other changes to property problematic. In addition, a short compliance schedule will put undue stress on an industry that already functions with close profit margins. Any compliance schedule should phase in requirements over several years at the least.

In summary, attempting to force fit fumigation operations into standard air permitting policies as proposed by NJDEP will result in significant added costs for the business community, without an attendant evaluation of benefits associated with the rulemaking. NJDEP is proposing to require the use of venting stacks and/or air pollution control equipment for fumigation operations, which have been effectively regulated via federal and state pesticide usage and other requirements. The proposed requirements are very costly and possibly not feasible given the logistics of fumigation locations and variety of commodities and operational circumstances under which fumigations are conducted. Costs could easily exceed \$100,000 per location and may push business out of state, when multiple other government agencies already have overlapping programs in place to protect public health during fumigation. Commenters strongly advise the NJDEP Division of Air Quality to internally coordinate any efforts regarding fumigation operations with the Division of Waste Enforcement, Pesticides and Release Prevention.

NJDEP stated during the stakeholder meeting that its reason for proposing these additional fumigation standards was to respond to public concerns, but no peer reviewed studies were cited to validate an existing public health concern. These operations are already regulated by multiple agencies, including NJDEP, USEPA, OSHA and USDA, who are tasked with ensuring safe operation. Commenters are concerned that there is not sufficient justification for the additional costs required of industry to meet the proposed permitting requirements. This proposal will encourage companies to locate out of state as other states do not require such extensive fumigation requirements.

Finally, while NJDEP noted that the proposed fumigation regulations would apply to commodity fumigation, Commenters caution NJDEP in crafting the definition of “commodity.” With an extensive definition, NJDEP standards could apply beyond goods and services to fumigation services conducted in commercial or institutional properties.

NJAC 7 7:27-21 Emission Statements & HAP Reporting

NJDEP is also considering requiring the reporting of additional substances on Emission Statements as required at N.J.A.C. 7:27-21, based on its review of the relative risk of substances emitted by permitted facilities. NJDEP has identified 28 compounds to add to the list of toxic air pollutants that require emission statement reporting. Commenters question the need for this data, given that TRI and RPPR reports have much of the collective emission data that the NJDEP indicates will be gathered through the proposed revision. Further, NJDEP reviews health risk during the approval process for new and modified air permits as well as during Title V renewals, and will not issue approvals unless the offsite health risk associated with permitted emissions of these compounds are acceptable. Facilities certify compliance with applicable emission standards, confirming that the typically low emission limits associated with these compounds are met. This is a very effective means of evaluating and assuring a safe level of public health risk from a given facility or an operation within a facility. Accordingly, Commenters believe that the value to be gained from reporting the proposed compounds is outweighed by the additional burden imposed, and that reporting the emissions of these compounds may lead to unnecessary public concern and confusion over public exposure when the emissions are already deemed safe.

This additional action on air toxics adds to the permitting and compliance challenges already created by recent DEP air toxics policy changes/initiatives including:

- 2018 deep cuts to the HAP air permit reporting thresholds;

- Additional compounds and more stringent risk thresholds for the list of chemicals requiring DEP's health risk assessment;
- Changes to the health risk assessment and air dispersion modeling guidance;
- Facility-wide health risk assessment for all Title V renewals; and
- Pending revision of DEP's screening health risk assessment worksheet that appears to create double or triple the failing results of the current tool.

The above-mentioned actions are successfully protecting public health before emission sources are built or modified, but these actions have also yielded considerable additional work, delay and challenges within NJDEP's permitting branches (largely due to excess review time and a backlog of modeling projects). The additional reporting requirements for these compounds will certainly create additional costs for the business community, with no public benefit, since the potential to emit these compounds is already vetted for public health impacts during the permitting process. We estimate the time and cost of capturing this additional information is over \$1 million per year total for businesses operating in New Jersey. Therefore, Commenters recommend that NJDEP not proceed with the addition of these compounds to the emission statement rules.

We would like the record to reflect our support of any comments submitted by CCNJ core/SRIN members.

Thank you for the opportunity to provide feedback.

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