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VIA ELECTRONIC FORMAT

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Re: NJDEP Notice of Opportunity for Public Comment on Discontinuation of General Permit GP-020 for Research and Development; Published at 53 N.J.R. 1231(a) on July 19, 2021

Dear Mr. Adhanom,

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) appreciates the opportunity to provide comments to the New Jersey Department of Environmental Protection (NJDEP, Department) regarding the discontinuation of GP-020 for Research and Development (R&D) at minor air facilities, N.J.A.C. 7:27-8.8(c)19. In a notice that consists of little more than five bullet points, the NJDEP is proposing this disruptive action without a clear evaluation of the performance of the existing program, a consideration of alternative approaches, or a risk-benefit analysis of the significant changes they are proposing. The NJDEP has identified "issues" that indicate there is a need to revise the GP-020 program and is using these as a pretext for eliminating the program. Indeed, the NJDEP is asserting that all the "issues" they have identified will be fixed by subjecting the research facilities to the traditional preconstruction permitting program, all the while ignoring the factors that led to the development of the GP-020 in the first instance. We oppose this action as it lacks equivalent alternatives and strongly urge the NJDEP to reconsider based on our comments and recommendations below.

The GP-020 is a permit that industry and the NJDEP developed collaboratively more than 15 years ago to offer vital operational flexibility required for R&D operations facilities (e.g. short durations, variable configurations, confidentiality of processes and raw materials, etc.), while providing appropriate public health protection. The flexibility provided by the GP-020 has allowed hundreds of millions of dollars in research investments to be made in New Jersey at research companies that employ thousands of workers. This recognition of the vital role research plays in New Jersey's economy was one of the factors that led to the regulatory language at N.J.A.C. 7:27-

8.8(c)19, requiring the NJDEP to have available a general permit for equipment used for research and development. Operational flexibility in R&D operations is a critical step in the development of life-saving and life-enhancing products that impact people across the globe every day.

While over 20 facilities are using the GP-020, these few general permits streamline the permitting process, effectively avoiding over one thousand traditional permitting actions per year. This means the GP-020 is saving both the NJDEP and R&D companies thousands of hours of time and money, allowing our state's critical R&D functions to operate on the fast and rapidly changing schedules that are the nature of these operations. More critically, the flexibility provided by the GP-020 allows the changes to be made quickly while ensuring environmental protection; if research cannot be changed quickly, it will not be performed in New Jersey. The NJDEP's proposed action to rescind this permit is significant and will result in a major disruption to the R&D sector in New Jersey (and globally), without any true justification by the Department of a further need for reduction of risk to public health or the environment. The NJDEP's decision to discontinue the GP-020 sacrifices the use of sound judgement and thorough consideration and was made without consulting any of the R&D industry in the state.

CCNJ Responses to the NJDEP's Justifications for Discontinuation of GP-020

NJDEP Justification #1: "GP-020 does not address health risk from all hazardous air pollutants (HAPs) consistent with the new reporting thresholds and new risk factors."

The R&D operations that currently operate in New Jersey and hold a GP-020 are small-scale in nature with extremely low HAP emissions; these R&D emission sources are trivial contributors and do not use the most toxic chemicals on the health risk list. Industry members recently shared real-life HAP emissions pulled from GP-020 annual reports with the NJDEP. These numbers, which are actual emissions, range from no HAP emissions to a fraction of a ton per year level, all of which demonstrate an acceptable health risk. It is worth noting that the list of HAP thresholds in the GP-020 was developed by the NJDEP via a rigorous and thorough health risk evaluation process that was the same approach that the NJDEP used in 2017/2018 to revise the HAP reporting thresholds in its regulations. The emission limits in the GP-020 are more stringent than the HAP reporting thresholds that were in place when the GP-020 was originally issued. Therefore, we disagree that the GP-020 does not address health risk from all HAPs (emitted by R&D operations) and that the GP-020 is not consistent with the new HAP reporting thresholds and risk factors. In addition, New Jersey's R&D sector have Best Management Practices (BMPs), Environmental/Social/Governance (ESG) commitments, and other protections in-place to ensure their operations are not impacting public health. The NJDEP has not evaluated the health risk associated with the annual emission reports that are submitted as a requirement for all holders of the GP-020. If the NJDEP had done this analysis, the Department would have realized that it cannot claim that the GP-020 does not address health risk.

NJDEP Justification #2: "GP-020 does not include all required HAP potential to emit (PTE) emission limits based on the HAP reporting thresholds at N.J.A.C. 7:27-17.9, which became operative on February 12, 2018."

The need to update references to this regulation only requires an administrative revision and does not justify discontinuation of the GP-020.

NJDEP Justification #3: "GP-020 does not include PM-10 and PM-2.5 PTE emission limits as per N.J.A.C. 7:27-8 Appendix 1 Table A and 7:27-22 Appendix Table A, operative date February 12, 2018."

The need to update references to these regulations only requires an administrative revision and does not justify discontinuation of the GP-020.

NJDEP Justification #4: "There is a low demand for GP-020. Since 2005, only 47 facilities have been registered under this general permit. Currently, there are 27 active permits."

Though the NJDEP may consider the number of facilities that currently hold an active GP-020 to be low, the importance of this general permit and the critical need for R&D operational flexibility and regulatory certainty remain extremely high for R&D operations in the state. The simplicity of the GP-020 has helped the R&D community and the NJDEP avoid thousands of permit changes per year that would have significantly burdened both the facilities and the NJDEP without resulting in any increased protection of the environment or public health. Furthermore, many changes can be made quickly in an environmentally sound manner under the GP-020, while the timeframes required for traditional PCPs would keep many new research projects from being performed in New Jersey. Additionally, many permit applications will need to be confidential, which will require paper applications, extra security measures by the NJDEP and potentially longer reviews. This proposal would conceivably take a single GP for each facility and, instead, require numerous PCPs, plus multiplication of those efforts (and the necessary applicant and NJDEP resources) for applications with confidentiality claims.

NJDEP Justification #5: "Research and development (R&D) facilities can apply for a preconstruction permit (PCP) for the equipment or operations, which requires a case-by-case review. A PCP for R&D facilities can be structured to include flexibility similar to those in GP-020, depending on the facilities' operations."

This statement ignores the fact that the lack of adaptability of the PCP to research operations is what led to the development of the GP-020 over 15 years ago. A PCP format is not an acceptable or practical air permit replacement option for the R&D facilities in New Jersey, which is why the GP-020 was originally created and why it is still needed. The GP-020 solved that exact conundrum. Standard PCP permitting is an inefficient and inappropriate way to manage these operations and emissions to protect public health and the environment. In most states and federally, R&D operations are exempt from air permitting and air quality regulations because the emissions are so insignificant. The NJDEP's PCP format requires listing of all equipment and pollutants, operating scenarios for all equipment configurations, worst case emissions for all reportable pollutants, and a very complicated and specific health risk assessment process. Equipment additions and removals for permitted R&D facilities range significantly and it would

be a regulatory burden to modify a PCP permit for each R&D equipment change. These requirements make it impossible for R&D operations to obtain a standard format PCP that they can comply with. Again, that is why the GP-020 was created, absent the NJDEP's willingness to exempt R&D operations from air permitting like nearly every other state does. A PCP approach would conceivably result in repeated permit transactions as R&D projects evolve, even though the emission impacts are trivial. In order for this PCP approach to be tailored to R&D permitting needs, an NJDEP guidance document should be written to allow facilities and the Department to follow a consistent format and structure. We contend that it would be easier to revise the current GP-020 than to create a new guidance document or technical manual.

Also, CCNJ is deeply concerned about the NJDEP's ability to review all of the additional PCP application submittals that would result from the discontinuation of the GP-020. We do not believe that there is an adequate number of staff/resources to efficiently process these permits, especially given the NJDEP's current backlog, and the R&D sector, as we have certainly seen in the past year, is critical to public health and the state of New Jersey. Delays due to the NJDEP's review would significantly hinder the R&D operations at facilities, where adaptability is instrumental to our work.

Other Industry Concerns

Lack of Transparency from the NJDEP with Stakeholders

Though industry stakeholders made it clear that we had concerns with the NJDEP considering to rescind the GP-020, there was a severe lack of transparency with this effort as the Department chose not to engage with permittees at any time leading up to their decision to move forward and publish the proposal to discontinue this permit. As stated by the NJDEP, there are "only" 27 active GP-020 permits, which is hardly a large number for the Department to communicate and collaborate with on such a vital permit.

Prior to the July 19, 2021 publication of the NJDEP Notice of Opportunity for Public Comment on Discontinuation of General Permit GP-020 for Research and Development, the only time the Department engaged with stakeholders regarding this effort was at the February 5, 2021 Industrial Stakeholder Group (ISG) meeting, where they shared their plans to rescind this permit. At that meeting, our members asked that the NJDEP not take any final action on the GP-020 until they had a chance to meet with the users of that permit to discuss alternatives. Following this announcement at the ISG meeting, the NJDEP did not hold any formal stakeholder meetings with the permittees and impacted industries, who were essentially blind-sided when the notice was published.

This action did not adhere to the requirements of the Administrative Procedure Act (APA), which hindered the public's opportunity and due process rights to participate in this process. CCNJ firmly believes that a stakeholder process with transparent and open-minded dialogue would have helped determine how best to address the NJDEP's concerns while also protecting the R&D

operations and jobs in the state. Absent this stakeholder process and any consideration from the NJDEP to pause this effort, New Jersey faces losing the R&D sector that brings many benefits to its citizens. It is important to note that many companies find it a challenge to operate already, and additional hurdles, costs and uncertainties will further hamper our efforts to bring investment and product lines into the state.

Confidential Information

Also during the February 5, 2021 ISG meeting, the NJDEP presented on the topic of confidential information in air permit applications. Among the inefficiencies for both the permittee and the NJDEP that the Department had shared were strict procedures, demonstrated need, pre-application discussion, hardcopy submittal only, Department security of confidential applications, dual versions of the application to maintain (confidential and public versions), and additional review time. The GP-020 is an excellent example of a permitting solution that streamlines this process and allows the protections that both industry and the NJDEP seek.

Industry Recommendations

CCNJ first recommends that the NJDEP withdraw their proposal to discontinue the GP-020. Based on our arguments above, we believe that the GP-020 should remain as-is, with the appropriate reference updates, as an option for the R&D sector in New Jersey. However, if the NJDEP is not amenable to that, we still recommend that the proposal be withdrawn, on hold while the Department immediately works on suitable and appropriate alternatives to the GP-020 with stakeholders. A "suitable and appropriate alternative" would be a permit replacement that the R&D sector agrees accomplishes the same flexibility and predictability as the GP-020; below are two options that we recommend the NJDEP to seriously consider:

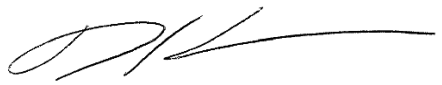
- A revised GP with updated rule citations and any revised HAP emission limits that are deemed necessary through a transparent stakeholder process; or
- A Subchapter 8 R&D permitting procedure that effectively provides the same permit conditions as the GP-020 with a simplified health risk assessment process for HAPs above reporting thresholds.

We are not supportive of the NJDEP working individually with GP-020 permittees to craft a PCP on a case-by-case basis. There is no certainty with this approach as it solely depends on each different permit writer conducting a site-specific risk assessment.

Again, CCNJ strongly urges the NJDEP to pause their efforts to rescind the GP-020 and reassess the best path forward for both the Department and permittees. Our members are more than willing to sit down with the NJDEP to continue the discussion regarding timing and alternatives in a way that promotes transparency and productiveness.

On behalf of our CCNJ members, I thank you for your review of our comments and consideration of our concerns and recommendations. Together, we believe we can work collaboratively to both be protective and allow businesses to continue to operate in the state and provide benefits to the citizens of New Jersey.

Sincerely,



Dennis Hart
Executive Director