

MEMO TO : Interested Parties

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

RE : Recission of Guidance Policy for Establishing Legally and Practically Enforceable Emission Limits for Storage Vessels of Oil, Condensate and Produced Water

DATE : October 21, 2024

Background

The Guidance Policy for Establishing Legally and Practically Enforceable Emission Limits for Storage Vessels of Oil, Condensate and Produced Water (hereafter referred to as the Storage Vessel Guidance) was established and signed on October 9, 2013. The Storage Vessel Guidance does not provide an end date or re-evaluation date and has not been revised since its signing.

Purpose

As stated in the Storage Vessel Guidance, it was, “*created to provide an additional approach that may be used to establish legally and practically enforceable VOC emission limits for storage vessels in the Oil and Gas sector*”. The Storage Vessel Guidance is a Departmental policy intended for storage vessels, at non-production facilities, that are installed on or after August 23, 2011 and are subject to 40 CFR 60 [New Source Performance Standards (NSPS)], Subpart OOOO. It includes a storage vessel registration program to provide a means of compliance with the control requirements under NSPS Subpart OOOO through legally and practically enforceable volatile organic compounds (VOC) emission limits. In accordance with NSPS Subpart OOOO, §60.5365(e), each storage vessel constructed after August 23, 2011, which has potential emissions less than 6 tons per year (TPY) of VOC is not an affected facility subject to control requirements if there is a legally and practically enforceable limit in place.

All Department guidance and policy are based on the information available at the time of establishment, inherently have limitations, and may not be in place indefinitely. As stated in the Storage Vessel Guidance “*The Department at its discretion may modify this program.*”

Regulatory Status

The U.S. Environmental Protection Agency (EPA) has developed New Source Performance Standard (NSPS) regulations under 40 CFR Part 60 for the crude oil and natural gas source category. At the time the Storage Vessel Guidance was established by the Department, EPA had promulgated NSPS OOOO in August 2012.

All sources operating in North Dakota must comply with the applicable NSPS Subparts that have been promulgated, and are periodically reviewed, by the EPA. NSPS Subparts are pollution control standards for new stationary sources and are established for individual industrial or source categories. In addition, these regulations undergo direct review of the specific source categories they regulate and involve public comment and specific rulemaking procedures by EPA.

Since 1982, North Dakota has been adopting applicable NSPS Subparts into the North Dakota Administrative Code (NDAC) Air Pollution Control Rules. NSPS Subparts are now incorporated by reference in the North Dakota Air Pollution Control Rules under Chapter 33.1-15-12 and/or implemented by EPA. The NSPS Subparts have been used in North Dakota air quality regulatory permit reviews for over 40 years.

The Storage Vessel Guidance has limitations when establishing legally and practically enforceable VOC emission limits in accordance with Air Quality regulations (NDAC 33.1-15) and does not currently appear to address permitting or regulatory applicability in a practical or appropriate manner. All restrictions/limitations and conditions are evaluated and addressed during the New Source Review (NSR)/preconstruction permitting phase for facilities requesting to establish legally and practically enforceable VOC emission limits; storage vessels are included when evaluating permitting requirements and applicable regulations. Thus, the Storage Vessel Guidance is unnecessary, since restrictions and conditions are typically and routinely addressed in the permitting program and incorporated into permits, instead of through guidance or policy. The NSR/preconstruction process also includes the opportunity for public comment and EPA review.

Additionally, the Department recognizes the narrow scope of the Storage Vessel Guidance, as it only considers NSPS, Subpart OOOO. Several NSPS OOOO series Subparts have been promulgated since the Storage Vessel Guidance (i.e., OOOOa, OOOOb and OOOOc). The NSPS OOOO series Subparts are continuing to become more restrictive and contain more comprehensive requirements. In 2019 NSPS Subparts OOOO and OOOOa were adopted by the Department, thereby removing EPA Region 8 as the implementing and enforcing agency, causing the Storage Vessel Guidance to become even less relevant. Lastly, since the Storage Vessel Guidance's implementation in 2013, it has been rarely utilized by facilities in order to comply with NSPS Subpart OOOO control requirements.

North Dakota Initiative


The Division of Air Quality is in the process of 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 Storage Vessel Guidance meets the Red Tape Reduction initiative.

Decision

The U.S. Congress established the foundational framework under Section 111(b) of the Clean Air Act for EPA to set New Source Performance Standards. Section 111(b) provides EPA the authority to promulgate comprehensive regulations and pollution control standards for air pollutants emitted by new stationary sources and are established for source categories. Focusing the air quality

regulatory permit reviews on the applicable NSPS Subparts will ensure up to date regulation of sources through active and collaborative oversight in North Dakota.

Therefore, based upon the review above, the Guidance Policy for Establishing Legally and Practically Enforceable Emission Limits for Storage Vessels of Oil, Condensate and Produced Water is hereby formally rescinded.

Approved: 
James L. Semerad
Director
Division of Air Quality

JLS/DEP/DJP/KKS:er

xc: L. David Glatt, Director, Department of Environmental Quality