

## **15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES**

(a) The owner or operator of a source required to apply maximum achievable control technology (MACT) under 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.

(b) For the purposes of this Rule, the definitions in 15A NCAC 02D.1109, 40 CFR 63.51, 40 CFR 63.2, and the following definitions apply:

- (1) "Equivalent emission limitation" means an emission limitation, established under Section 112(j) of the federal Clean Air Act, that is equivalent to the MACT standard that EPA would have promulgated under Section 112(d) or (h) of the federal Clean Air Act.
- (2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.
- (3) "Title V permit" means a permit issued under this Section.

(c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT under 15A NCAC 2D .1109 shall submit an application for a permit or for a significant permit revision under this Section, whichever is applicable.

(d) Approval process for new and existing affected sources.

- (1) Sources subject to Section 112(j) as of the Section 112(j) deadline. The requirements of Subparagraphs (d)(1)(A) and (B) of this Paragraph shall apply to major sources that include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has failed to promulgate an emission standard under 40 CFR Part 63 on or before an applicable Section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.

(A) The owner or operator shall submit an application for a permit or for a revision to an existing Title V permit issued or a pending Title V permit meeting the requirements of Subparagraph (m)(1) of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of the federal Clean Air Act.

(B) The owner or operator of a source that does not submit an application under Subparagraph (d)(1)(A) of this Rule and that is notified in writing by the Division that one or more sources at the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air Act shall submit an application for a Title V permit or for a revision to an existing Title V permit meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in writing by the Division. The Division is not required to make such notification.

(C) The requirements in Parts (i) and (ii) of this Subparagraph shall apply when the owner or operator has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT determination by the Division under 15A NCAC 02D .1112, but has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act.

- (i) When the owner or operator has a Title V permit that incorporates a Section 112(g) case-by-case MACT determination under 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule for a Title V permit revision within 30 days of the Section 112(j) deadline or within 30 days of being notified that in writing by the Division that one or more sources at the major facility belong in such category or subcategory. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing limitations in the permit to effectuate Section 112(j) of the federal Clean Air Act. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (ii) When the owner or operator that has submitted a Title V permit application that incorporates a Section 112(g) case-by-case MACT determination by the Division under 15A NCAC 02D .1112, but has not received the permit incorporating the Section 112(g) requirements, the owner or operator shall continue to pursue a Title V permit that addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or operator shall submit a permit application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of issuance of that Title V permit. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Director shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

(e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are therefore not subject to Section 112(j) of the federal Clean Air Act on that date, but where events occur subsequent to the Section 112(j) deadline that would bring the source under the requirements of this Rule, and the source does not have a Title V permit that addresses the requirements of Section 112(j) of the federal Clean Air Act.

- (1) When one or more sources in a category or subcategory subject to the requirements of this Rule are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of startup of the source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.
- (2) When one or more sources in a category or subcategory subject to 112(j) requirements are installed at a major source or result in the source becoming a major source due to the installation, and the installation requires 112(g) emission limitations to be established and permitted under 15A NCAC 02Q .0528, and the owner or operator has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of issuance of that Title V permit, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the permit shall be revised to incorporate any additional Section 112(j) requirements.

- (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Director shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT requirements (including relevant compliance deadlines), shall apply to such sources.
- (4) If EPA establishes a lesser quantity emission rate under Section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this Rule, then the owner or operator of such a major source shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the Section 112(j) deadline, and the owner or operator has a permit meeting the Section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the Section 112(j) deadline.

- (1) If the Title V permit already provides the requirements that address the events that occur under this Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the Section 112(j) requirements are thus satisfied.
- (2) If the Title V permit does not contain the requirements that address the events that occur under this Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an application for a revision to the existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule shall apply to such sources.

(g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard under this 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline, request an applicability determination from the Division by submitting an application meeting the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.

(h) An owner or operator who submits a Part 1 MACT application meeting the requirements of Paragraph (m)(1) of this Rule shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule no later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in 40 CFR 63 Subpart B Table 2. When an owner or operator is required by 15A NCAC 02D .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date that is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by 40 CFR 63 Subpart B Table 1, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. The Part 2 applications shall be reviewed by the Division according to the procedures established in 40 CFR 63.55.

- (1) Any owner or operator who submitted a request for an applicability determination on or before May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a determination must resubmit that request by the date that is 60 days after the Administrator publishes in the Federal Register a proposed standard under Section 112(d) or 112(h) of the Clean Air Act for the category or subcategory in question. Such a resubmitted request must be supplemented to discuss the relation between the source(s) in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The Director shall take action on each supplemented and resubmitted request within an additional 60 days after the applicable deadline for the resubmitted request. If more than three years remain on the current Title V permit, the owner or operator shall submit an application for a Title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the Section 112(j) MACT emission limitations.

If less than three years remain on the current Title V permit, any required conforming changes shall be made when the permit is renewed. If the applicability determination is positive, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified for the category or subcategory in question in 40 CFR 63 Subpart B Table 1. If the applicability determination is negative, no further action by the owner or operator is necessary.

- (2) An owner or operator who has submitted an application meeting the requirements of Paragraph (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under Section 112(g) that apply to one or more sources in a relevant category or subcategory are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to this Rule for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in 40 CFR 63 Subpart B Table 1. Each request for a determination under this Paragraph shall be construed as a complete application for an equivalent emission limitation under this Rule. If the Director determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations the Director would otherwise adopt under this Rule, then the Director must adopt the existing emission limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in question. If the Director determines that the emission limitations in the prior case-by-case MACT determination under Section 112(g) are not substantially as effective as the emission limitations that the Director would otherwise adopt for the source in question under this Rule, the Director must make a new MACT determination and adopt a Title V permit incorporating an appropriate equivalent emission limitation under this Rule. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question.
  - (i) If the Director disapproves a permit application submitted under this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.
  - (j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.
  - (k) The permit shall contain the items specified in 40 CFR 63.52 including:
    - (1) specification of the affected source and the new affected source
    - (2) an emission limitation (or limitations) or emission standard equivalent to existing source MACT and an emission limitation (or limitations) equivalent to new source MACT for control of emissions of hazardous air pollutants for that category or subcategory determined by the Director according to 40 CFR 63.55(a) on a case-by-case basis;
    - (3) any emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation;
    - (4) any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements; and
    - (5) a compliance date(s) by which the owner or operator of an existing source shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit not to exceed three years from the date of issuance of the permit (The owner or operator of a new affected source shall comply with a new source MACT level of control immediately upon startup.)
  - (l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.
  - (m) A permit application for a MACT determination shall consist of two parts.
    - (1) The Part 1 application shall contain the information required under 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.
    - (2) The Part 2 application shall contain the information required under 40 CFR 63.53(b) and shall be submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.

(n) Permit application review. The Director shall follow 40 CFR 63.55 (a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the procedures established under this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a Title V permit addressing Section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the Division. Such time period shall not exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. The Director shall issue a Title V permit meeting Section 112(j) requirements after receipt of a complete Part 2 MACT application following the schedule in 15A NCAC 02Q .0525.

(o) The following requirements apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit under this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under 15A NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.
- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued under this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. (Subparagraph (a)(1) of Rule .0517 of this Section does not apply to requirements established under this Rule.) The Director shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.
- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director need not change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is as effective as that required by the promulgated standard. If EPA promulgates an emission standard that is applicable to an affected source after the date a permit application is approved, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the Division is not required to incorporate any less stringent emission limitation of the promulgated standard and may consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a Title V permit.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;  
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