



North Carolina Department of Environment and Natural Resources
Division of Air Quality

Michael F. Easley, Governor

William G. Ross, Jr., Secretary
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September 16, 2008

Memorandum

To: MACT Task Force
Regional Supervisors
Section Chiefs
Deputy Director

From: Keith Overcash 

Subject: Area Source GACTs and North Carolina Air Toxics

The purpose of this memo is to announce the initiation of a proposed change to the state air toxics rules, and to issue interim policy to follow as the change undergoes the rulemaking process.

Background

State rules were issued over ten years ago to require unpermitted facilities to comply with state air toxics rules when they comply with their last Federal maximum achievable control technology (MACT) or generally available control technology (GACT) standard. It turns out that these long-delayed but recently issued Federal area source GACTs are affecting smaller facilities than were anticipated when the state air toxics rules were issued. As a result, an unpermitted facility may be able to comply with the GACT rules without making any changes to its operations, but is automatically required to submit a state permit application to demonstrate compliance with the state air toxics rule. There is concern that this unintended and perhaps unnecessary burden to small sources may not be in the overall interest of the state air toxics program.

Discussion of Proposed Rule Change

Essentially, the proposed rule change will be to remove the phrase "or GACT" from 2Q.0704, .0705, and .0706. This will eliminate the automatic requirement for all facilities subject to GACT to submit a permit application to demonstrate compliance with the air toxics rules. However, if an unpermitted facility is required to install a control device to comply with the GACT, then the facility must submit a permit application to comply with air toxics at the same time it submits a permit application for the control device. The facility must be in compliance with air toxics at the same time it comes into compliance with the GACT. Unpermitted facilities that do not need a control device will not be subject to state air toxics unless drawn in by a Director's call or other mechanism.

Although the rule change will not attempt to define “control device”, a spray booth and filter used to comply with Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources, AKA the auto body shop rule) at an unpermitted area source is not considered a control device.

State Rulemaking Action

It is my intent to present the rule change concept to the Air Quality Committee (AQC) at its November 2008 meeting. The draft rule will be held until after the last of the Federal area source MACT/GACT standards are promulgated in June 2009. It is estimated that the rule change would be effective in May 2010. Attached are the draft proposed rule change and the tentative rulemaking schedule.

Interim Policy

Until directed otherwise, DAQ staff is to use the attached draft proposed rule in place of 02Q.0704, .0705, and .0706.

Attachments (2)

Tentative rulemaking schedule for amendments to 02Q.0700 rules Re: GACT
Draft proposed 02Q.700rules

Cc: Local Program MACT Contacts
Small Business Ombudsman
Pollution Prevention

Tentative Rule-making schedule for amendments to 02Q .700 rules Re: GACT

11/12/08	Concept to the AQC
7/8/09	Draft rule to AQC
9/10/09	EMC Request to go to public hearing
10/15/09	Last date for filing in State Register
10/15/09	Publish in NCR
11/??/09	Public hearing sometime in month of November
12/??/10	End of comment period in mid December
3/11/10	Present public hearing package to EMC
3/??/10	Submit to RRC
5/1/10	Effective date for rules

15A NCAC 02Q .0704 NEW FACILITIES

(a) This Rule applies only to facilities that begin construction after September 30, 1993.

(b) The owner or operator of a facility that:

- (1) is required to have a permit because of applicability of a Section in Subchapter 2D of this Chapter other than Section .1100 of Subchapter 2D of this Chapter except for facilities whose emissions of toxic air pollutants result only from sources exempted under Rule .0102 of this Subchapter;
- (2) has one or more sources subject to a MACT ~~or GACT~~ standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; ~~or~~
- (3) has one or more sources subject to a GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) of the Clean Air Act which requires a control device as defined in Paragraph (10) of Rule 15A NCAC 02D .0101 to comply with that GACT standard ; or
- ~~(3)~~(4) has a standard industrial classification code that has previously been called under Rule .0705 of this Section;

shall have received a permit to emit toxic air pollutants before beginning construction, and shall comply with such permit when beginning operation.

(c) The owner or operator of a facility subject to this Rule who has not received a permit to emit toxic air pollutants under Paragraph (b) of this Rule shall apply for a permit to emit toxic air pollutants according to Paragraph (b) ~~(c)~~ or ~~(e)~~(e) of Rule .0705 of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998.*

15A NCAC 02Q .0705 EXISTING FACILITIES AND SIC CALLS

(a) This Rule applies only to facilities that were in operation or permitted to construct before October 1, 1993 and new facilities subject to Rule .0704(c) of this Section.

(b) For sources at a facility subject to a MACT ~~or GACT~~ standard, or that may be subject to a MACT ~~or GACT~~ standard based on studies required by Section 112(n)(1) of the Clean Air Act, 42 U.S.C. Section 7412(n)(1), the owner or operator of the facility shall comply with 15A NCAC 2D .1100 as follows:

- (1) When the owner or operator submits a permit application to comply with the last MACT ~~or GACT~~, MACT, excluding the MACT ~~or GACT~~ for combustion sources, known to apply to the facility, he shall also submit a permit application to comply with 15A NCAC 2D .1100. The facility shall

comply with 15A NCAC 2D .1100 by the same deadline that it is required to comply with the last ~~MACT or GACT~~ MACT.

- (2) If the owner or operator does not have to submit a permit application to comply with the last ~~MACT or GACT~~ MACT, excluding the ~~MACT or GACT~~ for combustion sources, he shall submit a permit application to comply with 15A NCAC 2D .1100 within six months after the promulgation of the last ~~MACT or GACT~~ MACT, excluding the ~~MACT or GACT~~ for combustion sources, known to apply to the facility or by January 1, 1999, whichever is later. The facility shall comply with 15A NCAC 2D .1100 by the same deadline that it is required to comply with the last ~~MACT or GACT~~ MACT.
- (3) ~~If the owner or operator submitted a permit application for the last MACT or GACT, excluding the MACT or GACT for combustion sources, known to apply to the facility before July 1, 1998, he shall submit a permit application to comply with 15A NCAC 2D .1100 by January 1, 1999. The facility shall comply with 15A NCAC 2D .1100 within three years from the date that the permit is issued.~~

~~The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding those sources exempt from evaluation under Rule .0702 of this Section. The owner or operator of a facility whose actual rate of emissions from all sources are not greater than the toxic permitting emissions rates listed in Rule .0711 of this Section does not have to file a permit application to comply with 15A NCAC 2D .1100. He shall provide documentation that the facility's emissions of toxic air pollutants are below the levels in Rule .0711 of this Section if the Director requests this documentation.~~

(c) For sources at a facility subject to a GACT standard which requires a control device as defined in Paragraph (10) of Rule 15A NCAC 02D .0101 to comply with that GACT standard, the owner or operator of the facility shall submit a permit application to comply with 15A NCAC 2D .1100. The facility shall comply with 15A NCAC 2D .1100 by the same deadline that it is required to comply with the GACT.

(d) The permit application required under Paragraphs (b) and (c) of this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding those sources exempt from evaluation under Rule .0702 of this Section. The owner or operator of a facility whose actual rate of emissions from all sources is not greater than the toxic permitting emissions rates listed in Rule .0711 of this Section does not have to file a permit application to comply with 15A NCAC 2D .1100. The facility shall provide documentation that its emissions of toxic air pollutants are below the levels in Rule .0711 of this Section if the Director requests this documentation.

~~(e)~~(e) For facilities that that:

- (1) will not be subject to a MACT or GACT ~~standard, standard;~~
- (2) will be subject to a GACT standard which does not require a control device as defined in Paragraph (10) of Rule 15A NCAC 02D .0101 to comply with that GACT standard; or

(3) ~~that~~ will be subject only to a MACT or GACT standard for unadulterated fuel combustion sources, the owner or operator of the facility shall have 180 days to apply for a permit or permit modification for the emissions of toxic air pollutants after receiving written notification from the Director that such permit or permit modification is required. The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section. Such facilities shall comply with 15A NCAC 2D .1100 within three years from the date that the permit is issued. The Director shall notify facilities subject to this Paragraph by calling for permit applications based on standard industrial classifications, that is, the Director shall call at one time for permits for all facilities statewide that have the same four-digit standard industrial classification code, except those facilities in certified local air pollution control agency areas. (Local air pollution control agencies shall call the standard industrial classification code within their jurisdiction when the Director calls that code. A local air pollution control agency may call a particular standard industrial classification code before the Director calls that code if the Commission approves the call by the local air pollution control agency. In deciding if it shall grant permission to a local air pollution control agency to call a particular standard industrial classification code before the Director calls that code, the Commission shall consider if the call is necessary to protect human health or to allow the local program to better implement these Rules in its jurisdiction.) Facilities with sources that will be subject to MACT that receive an SIC call shall notify the Director and shall comply with 15 NCAC 2D .1100 in accordance with Paragraph (b) of this Rule. All sources, regardless of their standard industrial classification code, excluding sources exempt from evaluation in Rule .0702 of this Section, at the facility shall be included in the call for permit applications. When the Environmental Protection Agency (EPA) promulgates MACT under Section 112(e) of the federal Clean Air Act, excluding cooling towers, the Director shall notify the owners or operators of facilities in the standard industrial classification that best corresponds to the MACT category that they are required to submit a permit application for the emissions of toxic air pollutants from their facilities. If the EPA fails to promulgate a MACT as scheduled, the Director shall notify the owners or operators of facilities 18 months after the missed promulgation date that they are required to submit a permit application for the emissions of toxic air pollutants from their facilities. The owner or operator of a facility whose actual rate of emissions from all sources are not greater than the toxic permitting emissions rates listed in Rule .0711 of this Section does not have to file a permit application to comply with 15A NCAC 2D .1100. He shall provide documentation that the facility's emissions of toxic air pollutants are below the levels in Rule .0711 of this Section if the Director requests this documentation. The Director may request this documentation if he finds that the facility's potential emissions of toxic air pollutants are above the levels in Rule .0711 of this Section.

~~(d)~~(f) The owner or operator of a facility may request a permit to emit toxic air pollutants any time before such application is required. The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998.*

15A NCAC 02Q .0706 MODIFICATIONS

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section, other than Section .1100, in Subchapter 02D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant activities as defined in 15A NCAC 02Q .0103(20) or sources exempted under Rule .0102 of this Subchapter;
- (2) has one or more sources subject to a MACT ~~or GACT~~ standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; ~~or~~
- (3) has one or more sources subject to a GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) of the Clean Air Act which requires a control device as defined in Paragraph (10) of Rule 15A NCAC 02D .0101 to comply with that GACT standard ; or
- ~~(3)~~(4) has a standard industrial classification code that has previously been called under Rule .0705 of this Section;

the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if:

- (1) The modification results in:
 - (A) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; or
 - (B) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section; or
- (2) The Director finds that the modification of the facility will cause an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded. The Director shall provide the findings to the owner or operator of the facility. The Director may require the owner or operator of a facility subject to this Subparagraph to provide an evaluation showing what the resultant emissions and impacts on ambient levels for air toxics from the modified facility will be.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and

- (2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as causing an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded.

(d) If a source is included in an air toxic evaluation, but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, then the emissions from this source shall be reduced by the time that the new or modified source begins operating such that the facility shall be in compliance with the rules in this Section and 15A NCAC 02D .1100.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S. L. 1989, C. 168, S. 45;
Rule originally codified as part of 15A NCAC 2H .0610;
Eff. July 1, 1998;
Amended Eff. December 1, 2005; April 1, 2005.*