

INTER-OFFICE COMMUNICATION

Ohio Environmental
Protection Agency
Division of Air Pollution Control

TO: Permitting Staff

FROM: Brittany Smith DAPC-CO MACT Coordinator, through Paul Koval, Manager and Mike Hopkins, Assistant Chief

DATE: 8/5/2010

RE: Guidance for area source MACT/GACT rules

The purpose of this memo is to provide permitting staff DAPC's position concerning the permitting and compliance assessment of area source Maximum Achievable Control Technology (MACT) standards (also known as Generally Available Control Technologies (GACTs)). In order to understand our position, I thought it would be best to first provide a little background concerning the area source MACT/GACT rules.

Background

Toxic air pollutants are pollutants that are known or suspected of causing cancer or other serious health effects. The Clean Air Act required U.S. EPA to identify categories of industrial sources that emit one or more of 187 listed toxic air pollutants. These industrial categories include both major and area sources. For major sources within each source category, the Clean Air Act required U.S. EPA to develop standards that restrict emissions to levels consistent with the lowest emitting (also called best-performing) facilities. Major sources are those that emit 10 tons a year or more of a single toxic air pollutant or 25 tons a year or more of a combination of air toxics.

In July 1999, U.S. EPA released the Integrated Urban Air Toxics Strategy, which addresses air toxics in urban areas from stationary, indoor, and mobile sources. Under the Clean Air Act, the U.S. EPA identified a list of 30 urban hazardous air pollutants (HAPs) (Section 112 (k)(3)(B)) and also created a list of area sources that account for 90% of emissions for the listed 30 HAPs(Section 112 (c)(3)). Under CAA Section 112 (c)(3), U.S. EPA listed a total of 70 standards for area source categories, but failed to promulgate the standards within the timeframe specified by the statute. On March 31, 2006, the court ordered U.S. EPA to promulgate the standards for area source categories under CAA section 112(c)(3) after U.S. EPA was sued by Sierra Club.

For area sources within each source category, the Clean Air Act allows U.S. EPA to develop standards or requirements which provide for the use of generally available control technologies (GACT) or management practices rather than the maximum achievable control technology (MACT) required for major sources. MACT requirements apply to major sources of HAPs or

area sources, and these standards are congressionally mandated. GACT standards apply to some area sources, and they are considered to be an optional alternative approach to MACT. These standards are technologies that are considered 'generally available' to a particular source category.

Over the past decade, a significant number of new rules have been adopted that specifically apply to area sources, which, by definition, are any sources with HAP emissions that are not major sources. These new regulations affect a large number of smaller facilities and for many of these facilities the rule poses significant adjustments. Sources that have been affected by these new rules are required to make significant efforts to quantify HAP emissions, implement new control measures and/or work practices, and perform additional compliance monitoring activities. Many area sources may find the requirements to determine emission levels and to meet various technical and administrative requirements a significant new challenge since many of these smaller sources have not faced the requirements of complex federal regulations in the past.

As to DAPC guidance concerning the processing of permits for sources with an applicable area source MACT/GACT, DAPC has developed the following questions and answers.

Questions with DAPC Answers:

1. What is the difference between GACT and MACT?

Area sources are required to meet MACT standards or the less stringent generally available control technology standards (GACT). MACT standards are congressionally mandated and involve the emission control level of the best controlled similar source (for new sources). For existing sources, the average emission rate of the best performing 12% of facilities establishes the emission levels. GACT is the optional approach to MACT under CAA 112 (d)(5). These technologies are considered 'generally available' to a source category. According to the Integrated Urban Air Toxics Strategy, MACT standards are developed for some area sources, but most sources are going to be subject to GACT standards developed in accordance with section 112 (d)(5).

2. Has the state of Ohio accepted delegation for the area source MACT/GACT rules?

No, we have not formally accepted delegation of the area source MACT/GACT rules. The implementation of the delegation of section 112 (d) standards is discussed in the Memorandum of Agreement between U.S. EPA and the Ohio EPA finalized on April 10, 2002. The main reason we have not accepted delegation is because our workload as an agency would increase significantly if we accepted delegation of authority and U.S. EPA has not provided any additional funding for us to perform the additional work. Ohio EPA will be discussing this issue with U.S. EPA in the future.

3. Since we have not accepted delegation for the area source MACT/GACT rules, should we include them in permits?

The Division of Air Pollution Control has decided to include language concerning area source MACT/GACT rules in permits on a very limited basis. In this case, we will only be including a term and condition that identifies that an area source MACT/GACT rule may apply, and informs the permittee that U.S. EPA, not Ohio EPA, is responsible for enforcement of this rule. The purpose of this term is to inform the permittee of the rule. An example of a term to use is as follows:

The Ohio EPA has determined that this facility may be applicable to the requirements of an area source MACT/GACT rule that the Ohio EPA does not have the delegated authority to implement. Although Ohio EPA has determined that an area source MACT (also known as the GACT) may apply, at this time Ohio EPA does not have the authority to enforce this standard. Instead, U.S. EPA has the authority to enforce this standard. Please be advised that all requirements associated with these rules are in effect and are enforceable by U.S. EPA. For more information on the area source rules, please refer to the follow U.S. EPA website: <http://www.epa.gov/ttn/atw/area/arearules.html>

This term should be included in the Standard Terms and Conditions (A) section for non-Title V facilities.

Permits for Title V facilities must incorporate these rules by reference (IBR) according to Engineering Guide #76.

4. What happens if the permittee does not want the term in their permit?

If the permittee does not want the term in their permit, then remove it. Since it is just included to make the permittee aware of an additional air pollution obligation, it is considered optional. Adding a note in the workflow would be an alternative that the Division of Air Pollution Control recommends.

5. Should this term be included in installation permits, operating permits or both?

This term should be included in both installation and operating permits once it is determined that an area source MACT/GACT applies. For the MACT standards that Ohio EPA has the delegation of authority to implement, these standards are required to be Incorporated by Reference (IBR) in accordance to Engineering Guide #76 for Title V facilities. For the area source MACT/GACT standards that Ohio EPA does not have the delegation of authority to implement, these standards should be included as a brief term and condition as demonstrated in question 3 for non-Title V facilities. Title V facilities that may be subject to an area source MACT/GACT that Ohio EPA does not have the delegated authority to implement still need to have the area source MACT/GACT standard incorporated by reference (IBR) in the Title V permit.

6. Does area source MACT/GACT applicability affect de minimis (OAC rule 3745-15-05) determinations?

No, area source MACT/GACT applicability does not affect de minimis determinations. Any de minimis determinations should be done without considering area source MACT/GACT applicability. When determining the applicability of Chapter 3704 of the ORC, OAC rule 3745-15-05 specifically does not allow any requirement to be taken into consideration that is established under the CAA (for example, MACT standards) that would result in an emission limitation of less than 10 pounds per day or an operational restriction equivalent to an emission limitation of less than 10 pounds per day. If you determine that the source is de minimis, then no further action is required on your part. The source is de minimis and it does not need a permit. Therefore, it does not need any area source MACT/GACT referencing because there is no permit. If it is determined that the affected source is not de minimis, then it needs a permit and the standard language for the area source MACT/GACT should be included as described earlier. This means that a permit should not be required solely because of area source MACT/GACT applicability.

7. As it relates to the area source MACTs, what additional work are staff expected to do?

DO/LAA staff are not required to determine facility applicability for the non-delegated standards.

8. Are DOs/LAAs responsible for inspecting facilities for compliance with GACT rules?

District Office and Local Air Agency staff are not responsible for inspecting facilities for compliance with the non-delegated area source MACT/GACT rules.

9. If I am on an inspection and notice a violation of an area source MACT/GACT that Ohio EPA does not have delegation of authority to implement, what should I do?

Discuss the issue with the facility contact. Let them know you noticed an area source MACT/GACT violation, and Ohio EPA does not have the authority to enforce the area source MACT/GACT rules, but U.S. EPA does. Let them know that you are obligated to notify U.S. EPA of the violation. In the compliance letter, reiterate to the owners responsible that it's the facility's responsibility to identify and comply with any possible area source MACTs/GACTs that Ohio EPA does not have the delegation of authority to implement. You can notify U.S. EPA simply by copying them on your post inspection letter that includes a description of what you found concerning the area source MACT /GACT.

10. Can the state/DOs/LAAs pursue enforcement since the state hasn't accepted delegation for the program?

No. The violation should be reported to U.S. EPA Region V for enforcement.

11. Should the DOs/LAAs cite the applicable area source MACT/GACT subpart under the "Federal Rules in Applicability" section STARS 2?

The area source MACT/GACT rules should be included in the “Federal Rules in Applicability” section in STARS2. This information would be useful for our agency if we would like to know how many permitted facilities are impacted by a particular rule. Also, this information would be important to us in case we do accept delegation of these rules in the future.

12. Testing companies for GDFs are starting to do the extra area source MACT/GACT required testing during the Stage II testing (which makes total sense from a tester's point of view). Should we be witnessing these extra steps?

There is no obligation for our staff to witness the additional testing requirements for the area source MACT/GACT. However, if the additional testing coincides with another test which Ohio EPA is responsible for witnessing, inspectors are allowed to observe the testing for GDFs as well.

13. Is Ohio EPA likely to accept delegation for all area sources at once, or just some of them piece-by-piece?

At this time, we have not determined whether Ohio EPA will accept delegation for all area sources at once or if Ohio EPA will accept the area sources piece by piece.

14. How will the DOs/LAAs be notified of this delegation?

They will be notified by memo from DAPC with an instructions on the requirements of the delegation.

15. Is there a central CO contact for questions on the area sources standards, or should we forward the question to Region V?

At this time, the questions concerning non-delegated area sources should be referred to Region V. If Ohio EPA accepts delegation in the future, the questions should be addressed to Brittany Smith, MACT Coordinator.

16. How should the limitations or control requirements established by these rules affect potential to emit for Title V, PSD, MACT, de minimis, BAT applicability?

These are considered federally enforceable rules, so these rules can affect PTE for Title V, PSD, MACT, de minimis, and BAT applicability.

17. After confirming that a area source MACT/GACT rule applies to a source, how do we include the citation in a PTIO without assessing compliance (in accordance with 3745-31-05 (A)(2)(d))?

We are not including any sort of citation in a PTIO. All permits should reference the area source rules in accordance to the example provided in this document.

18. How should DO/LAAs address area source MACT/GACT rules when sending a follow-up FCE letter? Specifically, should the letter explain that compliance with area source MACT/GACT rules were not addressed during the FCE?

We are not requiring DOs/LAAs to do any more work than what is added to the permit. When sending a follow-up FCE letter, the letter should state that these rules may be applicable to the facility, but they are not enforceable by Ohio EPA. Use the same language that is used in the permit in regards to the area source rules.

19. Do Title V sources need to certify compliance with area source MACT/GACT rules? If so, does it matter whether the area source MACT/GACT rule has been cited in a permit?

No certification is required. However, facilities must comply with everything that is included in the permit.

20. Do applicants need to include a reference to the area source MACT/GACT rule for each significant and insignificant EU as an applicable requirement per 3745-77-03 (C)(4)(a)?

No, this reference is not considered an applicable requirement at this time.

21. How are insignificant emissions units subject to an area source MACT/GACT to be incorporated into a Title V permit?

This guidance does not result in any change to the current procedure of listing insignificant emissions units (IEUs) in Part B (Facility-Wide section) of a Title V permit. Any source subject to an area source MACT/GACT should continue to be listed in State and federally-enforceable list of IEUs. The standard permit language following the list of State and federally-enforceable IEUs reads: "Each insignificant emissions unit at this facility must comply with all State and federal regulations..." It is the responsibility of the Title V permit holder to know which area source MACT/GACT applies to individual IEUs at the facility and ensure that those emissions units comply with the area source MACT/GACT requirements.

22. If the area MACT/GACT standard requires periodic compliance demonstrations or emissions testing, are we obligated to attend the test, review the report, or enter the results into CETA if they are submitted to us?

Ohio EPA staff are not required to attend the test, review the report, or enter results into CETA for tests demonstrating compliance with area source rules.

23. Does area source MACT/GACT applicability affect the exemption determinations from OAC rule 3745-31-03 (A)(1) and the Permit by Rule determinations from 31-03 (A)(4)?

No, area source MACT/GACT applicability does not affect exemption determinations. It is the obligation of the company to comply with the area source rules.

24. Where should facilities send their initial notification forms for these standards?

Facilities are required to send their initial notification forms to the following:
 Director, Air and Radiation Division, US EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604-3507.

cc:

Robert Hodanbosi, Division Chief, Ohio EPA, Division of Air Pollution Control, P.O.Box 1049, Columbus, OH 43216.

and

cc the appropriate Ohio EPA District Office (DO) or Local Air Agency (laa). District Offices and local air agencies are determined by county.

25. Where should facilities send their other compliance forms for these standards (reports, notification of compliance, etc.)?

Facilities should send their compliance forms for area source MACT/GACT rules that Ohio EPA does not have the delegated authority to implement to U.S EPA Region V at the following address:

Director, Air and Radiation Division, US EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604-3507

26. Can you provide include a table listing which area source Ohio EPA currently has delegation for?

Source Categories Promulgated Under the December 15, 2006 Deadline	Subpart	CFR Reference	Ohio's Delegation
Primary Nonferrous Metal Production	GGGGGG	63.11160-63.11168	no
Primary Copper Smelting	EEEEEE	63.11146-63.11152	no
Secondary Copper Smelting	FFFFFF	63.11153-63.11159	no
Polyvinyl Chloride and Copolymers Production	DDDDDD	63.11140-63.11145	no

Source Categories Promulgated Under the June 15, 2007 Deadline	Subpart	CFR Reference	
Carbon Black Production	MMMMMM	63.11400-63.11406	no
Wood Preserving	QQQQQQ	63.11428-63.11434	no
Acrylic Fibers/Modacrylic Fibers Production	LLLLLL	63.11393-63.11399	no
Chemical Manufacturing: Chromium Compounds	NNNNNN	63.11407-63.11413	no
Flexible Polyurethane Foam Production	OOOOOO	63.11414-63.11420	no
Flexible Polyurethane Foam Fabrication Operations	OOOOOO	63.11414-63.11420	no
Lead Acid Battery Manufacturing	PPPPPP	63.11421-63.11427	no

Source Categories Promulgated Under the December 15, 2007 Deadline	Subpart	CFR Reference	
Paint Stripping Operations, Misc. Surface Coating, Autobody Refinishing	HHHHHH	63.11169-63.11180	no
Clay Ceramics Mfg.	RRRRRR	63.11435-63.11445	no
Pressed & Blown Glass Manufacturing	SSSSSS	63.11448-63.11460	no
Secondary Non-ferrous Metals	TTTTTT	63.11462-63.11473	no
Stainless and Non-stainless Steel Manufacturing (EAFs)	YYYYY	63.10680-63.10692	no
Iron and Steel Foundries	ZZZZZ	63.10880-63.10906	no

Source Categories Promulgated Under the June 15, 2008 Deadline	Subpart	CFR Reference	
Plating and Polishing	WWWWWW	63.11504-63.11512	no
Metal Fabrication and Finishing: Electrical and Electronic Equipment Manufacturing	XXXXXX	63.11514-63.11523	no
Metal Fabrication and Finishing: Fabricated Metal Products	XXXXXX	63.11514-63.11523	no
Metal Fabrication and Finishing: Fabricated Plate Work	XXXXXX	63.11514-63.11523	no
Metal Fabrication and	XXXXXX	63.11514-63.11523	no

Finishing: Fabricated Structural Metal Manufacturing			
Metal Fabrication and Finishing: Heating Equipment, Except Electric	XXXXXX	63.11514-63.11523	no
Metal Fabrication and Finishing: Industrial Machinery and Equipment Manufacturing	XXXXXX	63.11514-63.11523	no
Metal Fabrication and Finishing: Primary Metal Products Manufacturing	XXXXXX	63.11514-63.11523	no
Metal Fabrication and Finishing: Valves and Pipe Fittings	XXXXXX	63.11514-63.11523	no
Metal Fabrication and Finishing: Iron and Steel Forging	XXXXXX	63.11514-63.11523	no

Source Categories Promulgated Under December 15, 2008 Deadline	Subpart	CFR Reference	
Ferroalloys Production	YYYYYY	63.11524-63.11532	no

Source Categories Promulgated Under June 15, 2009 Deadline	Subpart	CFR Reference	
Copper Foundries	ZZZZZZ	63.11544-63.11557	no
Aluminum Foundries	ZZZZZZ	63.11544-63.11557	no
Nonferrous Foundries	ZZZZZZ	63.11544-63.11557	no

Source Categories Promulgated Under October 16, 2009 Deadline	Subpart	CFR Reference	
Chemical Manufacturing Area Sources: comprised of the 9 following sources	VVVVVV	63.11494-63.11503	no
Ag Chemicals and Pesticide Mfg		63.11494-63.11503	
Cyclic Crude & Intermediate Production		63.11494-63.11503	
Industrial Inorganic Chemical Manufacturing		63.11494-63.11503	
Industrial Organic Chemical Manufacturing		63.11494-63.11503	
Inorganic Pigments Manufacturing		63.11494-63.11503	

Misc. Organic Chemical Manufacturing		63.11494-63.11503	
Pharmaceutical Production		63.11494-63.11503	
Plastic Materials and Resins Mfg		63.11494-63.11503	
Synthetic Rubber Mfg		63.11494-63.11503	

Source Categories Promulgated Under November 16, 2009 and December 16, 2009 Deadlines	Subpart	CFR Reference	
Paint and Allied Products Manufacturing	CCCCCCC	63.11599-63.11607	no
Asphalt Processing and Asphalt Roofing Mfg	AAAAAAA	63.11559-63.11567	no
Chemical Preparations Industry	BBBBBBB	63.11579-63.11588	no
Prepared Feeds	DDDDDDD	63.11619-63.11627	no

Source Categories to be completed by December 16, 2010	Subpart	CFR Reference
Industrial Boilers	TBA	
Institutional/Commercial Boilers	TBA	
Sewage Sludge Incineration	TBA	
Brick and Structural Clay	TBA	

Area Sources With Specific Court Ordered Deadlines	Subpart	FR Date	CFR Reference	
Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities	BBBBBBB	1/10/2008	63.11080-63.11100	no
Gasoline Distribution, Gasoline Dispensing Facilities	CCCCCCC	1/10/2008	63.11110-63.11132	no
Oil & Natural Gas Production	HH	1/3/2007	63.760-63.777	no
National Emission Standards for Hospital Ethylene Oxide Sterilizers	WWWWW	12/28/2007	63.10382-63.10448	yes
Reciprocating internal combustion engines (RICE)-new	ZZZZ	1/18/2008	63.6580-63.6675	no
Reciprocating internal combustion engines-existing compression	ZZZZ	3/3/2010	63.6580-63.6675	no

ignition				
Reciprocating internal combustion engines-existing spark ignition	ZZZZ	To be signed 8/10/2010		no

Area Sources Before 2005	Subpart	FR Date	CFR Reference	
Municipal Landfills	AAAA	1/16/2003	63.1930-63.1990	yes
Dry Cleaning Facilities	M	9/22/1993	63.320-63.326	yes
Chromic Acid Anodizing	N	1/25/1995	63.340-63.348	yes
Commercial Sterilization	O	12/6/1994	63.360-63.368	yes
Halogenated Solvent Cleaners	T	12/2/1994	63.460-63.471	yes
Secondary Lead Smelting	X	6/23/1995	63.541-63.551	yes
Hazardous Waste Incineration	EEE	9/30/1999	63.1200-63.1221	yes
Mercury Cell Chlor-Alkali Plants	IIIII	12/19/2003	63.8180-63.8266	no
Portland Cement	LLL	12/20/2006 (after re-proposed)	63.1340-63.1358	yes
Secondary Aluminum Production	RRR	3/23/2000	63.1500-63.1519	yes
Publicly Owned Treatment Works (POTWs)	VVV	10/26/1999	63.1580-63.1595	yes

If you have any questions concerning this guidance, please contact Brittany Smith, 614-644 3698

Cc: Bob Hodanbosi, Chief, DAPC
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All DO/Laa Air Unit Supervisors