15A NCAC 02D .0544 is amended under temporary procedures as follows:

15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions of Rule .0530 of this Section. For all other regulated NSR pollutants, the provisions of Rule .0530 of this Section apply.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

(1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

(A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

(B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

(C) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;

(D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;

(E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and

(F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph;

(2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and

(3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.

(c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.

(d) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.

(e) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by

40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(f) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(h) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(i) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(j) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(k) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(l) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(m) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

(1) a description of the project;
(2) identification of sources whose emissions could be affected by the project;
(3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
(4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
(5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(n) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that ~~published in the Federal~~

~~Register June 3, 2010 and effective August 2, 2010~~ as of July 20, 2011 and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable as of its effective date in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

History Note: *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;*
Eff. January 28, 2011 pursuant to E.O. 81, Beverly E. Perdue;
Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule.
Temporary Amendment Eff. _____.