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CHAPTER I

Summaries and Recommendations

Proposed amendments to Rules 15A NCAC 02D .0530 and .0531.

BACKGROUND AND SUMMARY

Rule 15A NCAC 02D .0530, Prevention of Significant Deterioration, is proposed for amendment, to clarify that installation of Best Available Control Technology (BACT) applies to all new natural gas-fired electrical utility generating units for which cost recovery is sought under the Clean Smokestacks Act.

Rule 15A NCAC 02D .0531, Sources in Nonattainment Areas, is proposed for amendment to remove pollutant specific references that require sources to continue measures after an area's redesignation to attainment and replace description of nonattainment areas with reference to 40 CFR 81.334 that identifies nonattainment areas. The rule is also amended to clarify that new natural gas-fired electrical utility generating units in nonattainment areas for which cost recovery is sought pursuant to G.S. 62-133.6 shall install lowest achievable emission rate (LAER) technology for nitrogen oxides and sulfur dioxide. Finally, obsolete language is removed in Paragraph (n) of 02D .0531, and the subsequent paragraph lettering is revised accordingly.

PUBLIC COMMENTS AND RESPONSES THERETO

No comments received during the comment period.

CONCLUSION

No one commented on the rules that were published in the *North Carolina Register* and taken to public hearing. Therefore, no rule changes will be made to the proposed rule amendments as a result of the hearings.

HEARING OFFICER'S RECOMMENDATION

The Hearing Officer recommends that the proposed amendments as presented in Chapter II of this hearing report be adopted by the Environmental Management Commission.

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1 15A NCAC 02D .0530 is proposed for amendment as follows:
2

3 **15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION**

4 (a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as
5 required by 40 CFR 51.166.

6 (b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except
7 the definition of "baseline actual emissions."

8 (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source
9 review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

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

19 (i) The average rate shall include fugitive emissions to the extent quantifiable, and
20 emissions associated with startups, shutdowns, and malfunctions.

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

24 (iii) For an existing emission unit (other than an electric utility steam generating unit),
25 the average rate shall be adjusted downward to exclude any emissions that would
26 have exceeded an emission limitation with which the major stationary source must
27 currently comply. However, if the State has taken credit in an attainment
28 demonstration or maintenance plan consistent with the requirements of 40 CFR
29 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable
30 control technology standard that the Administrator proposed or promulgated under
31 part 63 of the Code of Federal Regulations, the baseline actual emissions shall be
32 adjusted to account for such emission reductions.

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

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

41 (vi) The average rate shall not be based on any consecutive 24-month period for which
42 there is inadequate information for determining annual emissions, in tons per year,
43 and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.

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

47 (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual
48 emissions shall be calculated for existing emissions units in accordance with the procedures
49 contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with
50 the procedures contained in Part (B) of this Subparagraph.

51 (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR
52 51.166(b)(3)(ii) shall be seven years.

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

54 (c) All areas of the State shall be classified as Class II except that the following areas are Class I:

55 (1) Great Smoky Mountains National Park;

- 1 (2) Joyce Kilmer Slickrock National Wilderness Area;
- 2 (3) Linville Gorge National Wilderness Area;
- 3 (4) Shining Rock National Wilderness Area;
- 4 (5) Swanquarter National Wilderness Area.

5 (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the
6 Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to
7 be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be
8 proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations
9 may be redesignated only by the appropriate Indian Governing Body.

10 (e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be
11 limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards
12 set forth in 40 CFR 51.166(d).

13 (f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining
14 compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii)
15 shall be limited to five years as described in 40 CFR 51.166(f)(2).

16 (g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i)
17 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
18 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in
19 the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this
20 Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in
21 this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain,
22 except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide
23 that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and
24 provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted
25 so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR
26 51.166(n)(2).

27 (h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-133.6
28 shall install best available control technology for NO_x and SO₂. SO₂, regardless of applicability of the rest of this rule.

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

32 (j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator
33 of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or
34 .0500.

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

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

41 (m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall also be exempted when calculating
42 source applicability and control requirements under this Rule.

43 (n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any
44 manner by:

- 45 (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good
46 engineering practice; or
- 47 (2) any other dispersion technique not implemented before then.

48 (o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment
49 procedures in accordance with the requirements of 40 CFR 51.102.

50 (p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the
51 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
52 allowance set forth in 40 CFR 51.166(s)(4).

53 (q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e),
54 notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a
55 demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and

1 if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis
 2 that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been
 3 satisfied.

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

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

11 (t) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c)
 12 of this Rule, the following procedures shall apply:

13 (1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of
 14 receiving the permit application or within 30 days of receiving advance notification of an application.
 15 The notification shall be at least 30 days prior to the publication of notice for public comment on the
 16 application. The notification shall include a copy of all information relevant to the permit application
 17 including an analysis provided by the source of the potential impact of the proposed source on
 18 visibility.

19 (2) The Director shall consider any analysis concerning visibility impairment performed by the Federal
 20 Land Manager if the analysis is received within 30 days of notification. If the Director finds that the
 21 analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on
 22 visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the
 23 application, an explanation of his decision or notice as to where the explanation can be obtained.

24 (3) The Director may require monitoring of visibility in or around any Class I area by the proposed new
 25 source or modification when the visibility impact analysis indicates possible visibility impairment.

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

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

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

47 (v) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific
 48 reference states otherwise. The version of the Code of Federal Regulations incorporated in this Rule is that as of June 13,
 49 ~~2007, 2007~~ ~~except those provisions noticed as stayed in 69 FR 40274, and does not include any subsequent amendments~~
 50 ~~or editions to the referenced material.~~

51
 52 *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-
 53 215.108(b); 150B-21.6;
 54 Eff. June 1, 1981;
 55 Amended Eff. December 1, 1992; August 1, 1991;

1 *Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is*
 2 *effective, whichever is sooner;*
 3 *Amended Eff. _____; May 1, 2008; July 28, 2006; July 1, 1997; February 1, 1995; July 1, 1994.*
 4

5 15A NCAC 02D .0531 is proposed for amendment with changes as follows:
 6

7 **15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS**

8 (a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply except
 9 the definition of "baseline actual emissions."

- 10 (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source
 11 review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:
 12 (A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per
 13 year, at which the emissions unit actually emitted the pollutant during any consecutive 24-
 14 month period selected by the owner or operator within the 5-year period immediately
 15 preceding the date that a complete permit application is received by the Division for a permit
 16 required under this Rule. The Director shall allow a different time period, not to exceed 10
 17 years immediately preceding the date that a complete permit application is received by the
 18 Division, if the owner or operator demonstrates that it is more representative of normal
 19 source operation. For the purpose of determining baseline actual emissions, the following
 20 shall apply:
 21 (i) The average rate shall include fugitive emissions to the extent quantifiable, and
 22 emissions associated with startups, shutdowns, and malfunctions.
 23 (ii) The average rate shall be adjusted downward to exclude any non-compliant
 24 emissions that occurred while the source was operating above any emission
 25 limitation that was legally enforceable during the consecutive 24-month period.
 26 (iii) For an existing emission unit (other than an electric utility steam generating unit),
 27 the average rate shall be adjusted downward to exclude any emissions that would
 28 have exceeded an emission limitation with which the major stationary source must
 29 currently comply. However, if the State has taken credit in an attainment
 30 demonstration or maintenance plan consistent with the requirements of 40 CFR
 31 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable
 32 control technology standard that the Administrator proposed or promulgated under
 33 part 63 of the Code of Federal Regulations, the baseline actual emissions shall be
 34 adjusted to account for such emission reductions.
 35 (iv) For an electric utility steam generating unit, the average rate shall be adjusted
 36 downward to reflect any emissions reductions under G.S. 143-215.107D and for
 37 which cost recovery is sought pursuant to G.S. 62-133.6.
 38 (v) For a regulated NSR pollutant, when a project involves multiple emissions units,
 39 only one consecutive 24-month period shall be used to determine the baseline actual
 40 emissions for all the emissions units being changed. A different consecutive 24-
 41 month period for each regulated NSR pollutant.
 42 (vi) The average rate shall not be based on any consecutive 24-month period for which
 43 there is inadequate information for determining annual emissions, in tons per year,
 44 and for adjusting this amount if required by Subparts (ii) and (iii) of this Part.
 45 (B) For a new emissions unit, the baseline actual emissions for purposes of determining the
 46 emissions increase that will result from the initial construction and operation of such unit
 47 shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.
 48 (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual
 49 emissions shall be calculated for existing emissions units in accordance with the procedures
 50 contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with
 51 the procedures contained in Part (B) of this Subparagraph.
 52 (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR
 53 51.165(a)(1)(vi)(C)(1) shall be seven years.

1 (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40
 2 CFR 81.334 as attainment ~~for ozone or carbon monoxide~~, all sources in that county subject to this Rule before the
 3 redesignation date shall continue to comply with this Rule.

4 (c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as
 5 nonattainment in 40 CFR 81.334, including any subsequent amendments or editions. ~~the following areas:~~

6 ~~(1) Ozone Nonattainment Areas, to major stationary sources and major modifications of sources of~~
 7 ~~volatile organic compounds or nitrogen oxides for which construction commences after the area in~~
 8 ~~which the source is located is designated according to Part (A) or (B) of this Subparagraph:~~

9 ~~(A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or~~

10 ~~(B) any of the following areas and in that area only when the Director notices in the North~~
 11 ~~Carolina Register that the area is in violation of the ambient air quality standard for ozone:~~

12 ~~(i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties; with the~~
 13 ~~exception allowed under Paragraph (1) of this Rule;~~

14 ~~(ii) Greensboro/Winston Salem/High Point, consisting of Davidson, Forsyth, and~~
 15 ~~Guilford Counties and that part of Davie County bounded by the Yadkin River,~~
 16 ~~Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin~~
 17 ~~River; or~~

18 ~~(iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville~~
 19 ~~Township in Granville County.~~

20 ~~Violations of the ambient air quality standard for ozone shall be determined according to 40~~
 21 ~~CFR 50.9.~~

22 ~~(2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major~~
 23 ~~modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as~~
 24 ~~nonattainment for carbon monoxide and for which construction commences after the area in which the~~
 25 ~~source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.~~

26 (d) This Rule is not applicable to:

27 (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under
 28 any other rule in this Subchapter;

29 (2) emission of pollutants at the new major stationary source or major modification located in the
 30 nonattainment area that are pollutants other than the pollutant or pollutants for which the area is
 31 nonattainment. (A major stationary source or major modification that is major for volatile organic
 32 compounds or nitrogen oxides is also major for ozone.);

33 (3) emission of pollutants for which the source or modification is not major;

34 (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4);
 35 or

36 (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible
 37 photochemical reactivity except carbon monoxide.

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

40 (f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the
 41 following requirements:

42 (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate
 43 no more than the lowest achievable emission rate;

44 (2) The owner or operator of the proposed new major stationary source or major modification has
 45 demonstrated that all major stationary sources in the State that are owned or operated by this person
 46 (or any entity controlling, controlled by, or under common control with this person) are subject to
 47 emission limitations and are in compliance, or on a schedule for compliance that is federally
 48 enforceable or contained in a court decree, with all applicable emission limitations and standards of
 49 this Subchapter that EPA has authority to approve as elements of the North Carolina State
 50 Implementation Plan for Air Quality;

51 (3) The owner or operator of the proposed new major stationary source or major modification will obtain
 52 sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment
 53 area so that the emissions from the new major source and associated new minor sources will be less
 54 than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and
 55 nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this

1 emission offset shall be the actual emissions of the source from which offset credit is obtained.
 2 Emission reductions shall not include any reductions resulting from compliance (or scheduled
 3 compliance) with applicable rules in effect before the application. The difference between the
 4 emissions from the new major source and associated new minor sources of carbon monoxide and the
 5 emission reductions shall be sufficient to represent reasonable further progress toward attaining the
 6 National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the
 7 provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and

- 8 (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the
 9 nonattainment area in which the proposed source is located.

10 (g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-133.6
 11 shall install lowest achievable emission rate technology for NO_x and SO₂, regardless of the applicability of the rest
 12 of this Rule.

13 (h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the
 14 emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the
 15 PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by
 16 reference.

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

21 (j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other
 22 requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production
 23 processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly
 24 outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

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

27 (l) Approval of an application regarding the requirements of this Rule shall not relieve the owner or operator of the
 28 responsibility to comply fully with applicable provisions of other rules of this Chapter and any other requirements under
 29 local, state, or federal law.

30 (m) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c)
 31 of Rule .0530 of this Section, the following procedures shall be followed:

- 32 (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would
 33 occur because of the source or modification and general commercial, industrial and other growth
 34 associated with the source or modification;
- 35 (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of
 36 receiving the permit application or within 30 days of receiving advance notification of an application.
 37 The notification shall be at least 30 days before the publication of the notice for public comment on the
 38 application. The notification shall include a copy of all information relevant to the permit application
 39 including an analysis provided by the source of the potential impact of the proposed source on
 40 visibility;
- 41 (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal
 42 Land Manager if the analysis is received within 30 days of notification. If the Director finds that the
 43 analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on
 44 visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the
 45 application, an explanation of his decision or notice where the explanation can be obtained;
- 46 (4) The Director shall issue permits only to those sources whose emissions will be consistent with making
 47 reasonable progress toward the national goal of preventing any future, and remedying any existing,
 48 impairment of visibility in mandatory Class I areas when the impairment results from manmade air
 49 pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance,
 50 the time necessary for compliance, the energy and nonair quality environmental impacts of
 51 compliance, and the useful life of the source; and
- 52 (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new
 53 source or modification when the visibility impact analysis indicates possible visibility impairment.

54 The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

~~(n) Paragraphs (f) and (j) of this Rule shall not apply to a new major stationary source or a major modification of a source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located has been designated according to Part (e)(1)(B) of this Rule and before the area is designated in 40 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using the Urban Airshed Model (UAM), that the new source or modification will not contribute to or cause a violation. The model used shall be that maintained by the Division. The Division shall run the model only after the permit application has been submitted. The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source will not cause or contribute to a violation.~~

~~(n)~~ If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, 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 51.165(a)(1)(xxviii)(B)(3),
- (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 nonattainment new source review 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 51.165(a)(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).

~~(o)~~ The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The Except for 40 CFR 81.334, the version of the Code of Federal Regulations incorporated in this Rule is that as of June 13, 2007 except those provisions noticed as stayed in 69 FR 40274, and does not include any subsequent amendments or editions to the referenced material. 2007.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b); Eff. June 1, 1981; Amended Eff. December 1, 1993; December 1, 1992; Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Amended Eff. _____; May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994.

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CHAPTER III

REPORT OF PROCEEDINGS

Introduction

The Department of Environmental and Natural Resources, Division of Air Quality, held two public hearings on April 27, 2010, at 6:00 P.M. at Mecklenburg Government Center, Room CH-14, 600 E. 4th Street, Charlotte, NC 28202 and on April 29, 2010, at 6:00 P.M., at DENR – Division of Air Quality Annex Training Room (AQ 526) 2728 Capital Blvd., Raleigh, NC 27604.

The hearing considered the proposed amendments to Rules 15A NCAC 02D .0530 and .0531.

The proposed effective date for these rules is projected to be September 1, 2010.

A public notice announcing this hearing was mailed to each person on the official mailing list for rule-making hearings. The public notice was also published in the North Carolina Register at least 20 days before the public hearing and in the *Charlotte Observer*, the *Wilmington Star News*, the *Asheville Citizen Times*, the *Winston Salem Journal*, and the *Raleigh News and Observer* at least 30 days prior to the public hearing.

**ENVIRONMENTAL MANAGEMENT COMMISSION**NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCESStephen T. Smith
Chairman
Charles Peterson
Vice ChairmanBeverly Eaves Perdue, Governor
Dee Freeman, SecretaryYvonne C. Bailey
Donnie Brewer
Thomas F. Cecich
Stan L. Crowe
John S. Curry
Marion Deerhake
Tom Ellis
William L. Hall, Jr.Ernest W. Larkin
Kevin Martin
David H. Moreau
Jeffrey V. Morse
Darryl D. Moss
David B. Peden
Dickson Phillips III
Forrest R. Westall, Sr.**MEMORANDUM****TO:** Mr. Tom Ellis**FROM:** Mr. Stephen Smith**SUBJECT:** Hearing Officer Appointment**DATE:** March 4, 2010

Public hearings have been scheduled for Tuesday, April 27, 2010, in Charlotte at 6:00 p.m. and Thursday, April 29, 2010, in Raleigh at 6:00 p.m. The attached public notice describes the purpose of these hearings.

I am hereby appointing you to serve as hearing officer for these hearings. Please receive all relevant public comment and report your findings and recommendations to the Environmental Management Commission. Mr. Mike Abraczinskas will provide staff support for you.

If you have any questions, please feel free to contact Joelle Burleson at (919) 733-1474 or me.

BKO/jb

Attachment

cc: Keith Overcash
Lois Thomas
Hearing Record File

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION

PUBLIC NOTICE

Notice is hereby given for two public hearings to be heard by the North Carolina Department of Environment and Natural Resources, Division of Air Quality concerning the proposed amendments to air quality rules.

PURPOSE:

Hearing 1: To receive comments on amendments to 15A NCAC 2D .0530, Prevention of Significant Deterioration, to clarify that installation of best available control technology (BACT) applies to all new natural gas-fired electrical utility generating units for which cost recovery is sought under the Clean Smokestacks Act; and amendments to 15A NCAC 2D .0531, Sources in Nonattainment Areas, to remove pollutant specific references that require sources to continue measures after an area's redesignation to attainment and replace the description of nonattainment areas with reference to 40 CFR 81.334 that identifies nonattainment areas.

Hearing 2: To receive comments on amendments to 15A NCAC 2D Section .0900, Volatile Organic Compounds, to incorporate USEPA Control Techniques Guidelines level of Reasonably Available Control Technology to comply with Sections 172(c)(1) and 182(b) of the Clean Air Act including: amendments to 2D Rules .0909, Compliance Schedules for Sources in Nonattainment Areas; .0922, Metal Furniture Coatings; .0923, Surface Coating of Large Appliance Parts; .0935, Factory Surface Coating Of Flat Wood Paneling; .0902, Applicability; .0951, Miscellaneous Volatile Organic Compound Emissions, .0952 Petition for Alternative Controls for RACT, and 15A NCAC 2Q .0306, Permits Requiring Public Participation; adoption of rules 2D .0961, Offset Lithographic Printing and Letterpress Printing; .0962, Industrial Cleaning Solvents; .0963, Fiberglass Boat Manufacturing; .0964, Miscellaneous Industrial Adhesives; .0965, Flexible Package Printing; .0966, Paper, Film and Foil Coatings; .0967, Miscellaneous Metal and Plastic Parts Coatings; and .0968, Automobile and Light-Duty Truck Assembly Coatings; and repeals of current 2D Rules .0917, Automobile and Light-duty Truck Manufacturing; .0921, Fabric and Vinyl Coating; .0920, Paper

Coating; .0934, Coating of Miscellaneous Metal Parts and Products; and .0936, Graphic Arts.

NOTE: The proposed amendments considered in this hearing, if adopted, will be effective statewide; if they are later adopted by a local air pollution control agency, then that agency will enforce them in its area of jurisdiction.

DATES AND LOCATION:

April 27, 2010, 6:00 P.M.
 Mecklenburg Government Center, Room CH-14
 600 E. 4th Street
 Charlotte, NC 28202

April 29, 2010, 6:00 P.M.
 DENR - Division of Air Quality, Central Office
 Air Quality Annex Training Room (AQ 526)
 2728 Capital Blvd., Raleigh, NC 27604

COMMENT PROCEDURES:

All persons interested in these matters are invited to attend the public hearings. **Any person desiring to comment is requested to submit a written statement for inclusion in the record of proceedings at the public hearing.** The hearing officer may limit oral presentation lengths if many people want to speak. The hearing record will remain open until April 30, 2010 to receive additional written statements. To be included, the statement must be received by the Division by April 30, 2010.

INFORMATION:

Copies of the proposed rule changes may be downloaded at <http://daq.state.nc.us/Rules/Hearing/>. Copies of the proposals may also be reviewed at the regional offices of the North Carolina Department of Environment and Natural Resources, Division of Air Quality, located at the following cities:

Asheville	828/296-4500
Fayetteville	910/433-3300
Mooreville	704/663-1699
Raleigh	919/791-4200
Washington	252/946-6481
Wilmington	910/796-7215
Winston-Salem	336/771-5000

Comments should be sent to and additional information concerning the hearings or the proposals may be obtained by contacting:

Mr. Michael Abraczinskas
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641
(919) 715-3743 Phone
(919) 715-7476 Fax
Michael.Abraczinskas@ncdenr.gov

DATE: 2/24/10



for B. Keith Overcash, P.E.
Director

Transcript

Transcripts of the April 27 and April 29, 2010 hearings have not been prepared; however, an audio recording of each proceeding will be kept on file with the Division of Air Quality for one year from the date of the final actions by the Environmental Management Commission.

A list of those attending the hearing as follows:

Hearing Officer: Mr. Tom Ellis, member of the Environmental Management Commission

Staff Members at both hearings:

Mr. Glenn Sappie, DAQ, DENR

Mr. Vladimir Zaytsev, DAQ, DENR

Ms. Joelle Burleson, DAQ, DENR

Staff Member at the April 27, Charlotte hearing:

Mr. Chuck Greco, Mecklenburg County Air Quality

Staff Member at the April 29, Raleigh hearing:

Mr. Michael Abraczinskas, DAQ, DENR

Members of the General Public at the April 27, Charlotte hearing:

Mr. Jeff Stoudt, President, Printing Industry of the Carolinas

Mr. Andy Munn, Public Policy Director, Real Estate and Building Industry Coalition

Members of the General Public at the April 29, Raleigh hearing:

Mr. James Sell, Senior Council, American Coatings Association

CHAPTER IV

EXHIBITS

<u>EXHIBIT</u>	<u>PAGE</u>
Proposed Regulations as Published in the Public Notice and Presented at the Hearing	IV-2
Hearing Officer Comments at the Public Hearing	IV-9

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .0961-.0968, amend the rules cited as 15A NCAC 02D .0530-.0531, .0902, .0909, .0922, .0923, .0935, .0951-.0952; 02Q .0306, and repeal the rules cited as 15A NCAC 02D .0917, .0920-.0921, .0934, .0936.

Proposed Effective Date: July 1, 2010

Public Hearing:

Date: April 27, 2010

Time: 6:00 p.m.

Location: Mecklenburg Government Center, Room CH-14, 600 E. 4th Street, Charlotte, NC 28202

Date: April 29, 2010

Time: 6:00 p.m.

Location: DENR-Division of Air Quality, Central Office, Air Quality Annex Training Room (AQ-526), 2728 Capital Blvd, Raleigh, NC 27604

Reason for Proposed Action:

Hearing 1: 15A NCAC 02D .0530, *Prevention of Significant Deterioration*, is proposed for amendment, to clarify that installation of BACT applies to all new natural gas-fired electrical utility generating units for which cost recovery is sought under the Clean Smokestacks Act. Amendments to Rule 15A NCAC 02D .0531, *Sources in Nonattainment Areas*, is proposed for amendment to remove pollutant specific references that require sources to continue measures after an area's redesignation to attainment and replace description of nonattainment areas with reference to 40 CFR 81.334 that identifies nonattainment areas.

Hearing 2: 15A NCAC 02D .0900, *Volatile Organic Compounds*, is proposed for amendment to incorporate EPA Control Techniques Guidelines concerning what types of controls could constitute RACT for eleven source categories to comply with the requirements of Sections 172(c)(1) and 182(b)(2).

1. Amendments to 15A NCAC 02D Rules -

.0909 *Compliance Schedules for Sources in Nonattainment Areas*; .0922, *Metal Furniture Coatings*; .0923, *Surface Coating of Large Appliance Parts*; .0935, *Factory Surface Coating Of Flat Wood Paneling*; .0902, *Applicability*; .0951, *Miscellaneous Volatile Organic Compound Emissions*, .0952 *Petition for Alternative Controls for RACT*.

Also proposes amendments to 15A NCAC 02Q .0306, *Permits Requiring Public Participation*.

2. Adoptions of the Rules to 15A NCAC 02D Rules -

.0961, *Offset Lithographic Printing and Letterpress Printing*; .0962, *Industrial Cleaning Solvents*; .0963, *Fiberglass Boat Manufacturing*; .0964, *Miscellaneous Industrial Adhesives*; .0965, *Flexible Package Printing*; .0966, *Paper, Film and Foil Coatings*; .0967, *Miscellaneous Metal and Plastic Parts Coatings*; .0968, *Automobile and Light-Duty Truck Assembly Coatings*.

3. Repeals of the current 15A NCAC 02D Rules -

.0917, *Automobile and Light-duty Truck Manufacturing*; .0921, *Fabric and Vinyl Coating*; .0920, *Paper Coating*; .0934,

Coating of Miscellaneous Metal Parts and Products; and .0936, *Graphic Arts*.

Procedure by which a person can object to the agency on a proposed rule: Mail a letter including your specific reasons to: Mr. Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.

Comments may be submitted to: Michael Abraczinskas, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)715-3473, fax (919)715-7476, email Michael.abraczinskas@ncdenr.gov

Comment period ends: April 30, 2010

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal Impact: A copy of the fiscal note can be obtained from the agency.

State

Local – 15A NCAC 02D .0530-.0531

Substantial Economic Impact (≥\$3,000,000)

None – 15A NCAC 02D, .0902, .0909, .0917, .0920-.0921, .0922, .0923, .0935, .0934, .0936, .0951-.0952, .0961-.0968; 02Q .0306

Fiscal Note posted at

http://www.osbm.state.nc.us/pdf_files/DENR110609.pdf

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0500 - EMISSION CONTROL STANDARDS

15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.

(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."

(1) "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 Parts (A) through (C) of this Subparagraph:

(A) 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:

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

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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 Subparts (ii) and (iii) of this Part.

(B) 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.

(C) 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 Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.

- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.
- (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.
- (c) All areas of the State shall be classified as Class II except that the following areas are Class I:
- (1) Great Smoky Mountains National Park;
 - (2) Joyce Kilmer Slickrock National Wilderness Area;
 - (3) Linville Gorge National Wilderness Area;
 - (4) Shining Rock National Wilderness Area;
 - (5) Swanquarter National Wilderness Area.
- (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.
- (e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).
- (f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).
- (g) 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).
- (h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install best available control technology for NO_x and SO₂, SO₂, regardless of applicability of the rest of this Rule.
- (i) 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.

(j) 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.

(k) 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.

(l) 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".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall also be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected in any manner by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before then.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) shall be subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of 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).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(r) 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.

(s) 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.

(t) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of this Rule, the following procedures shall apply:

- (1) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or

within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility.

- (2) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained.
- (3) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) 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).

(v) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the Code of Federal Regulations incorporated in this Rule is that as of June 13, 2007, ~~2007 except those provisions noticed as stayed in 69 FR 40274, and does not include any subsequent amendments or editions to the referenced material.~~

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.

15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS

(a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions."

- (1) "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 Parts (A) through (C) of this Subparagraph:

- (A) 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:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
- (ii) 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.

- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) 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 Subparts (ii) and (iii) of this Part.
- (B) 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.
- (C) 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 Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph.
- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) shall be seven years.
- (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment ~~for ozone or carbon monoxide~~, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.
- (c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions, the following areas:
- ~~(1) Ozone Nonattainment Areas, to major stationary sources and major modifications of sources of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located is designated according to Part (A) or (B) of this Subparagraph:~~
- ~~(A) areas designated in 40 CFR 81.334 as nonattainment for ozone, or~~
- ~~(B) any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:~~
- ~~(i) Charlotte/Gastonia, consisting of Mecklenburg and Gaston Counties; with the exception allowed under Paragraph (1) of this Rule;~~
- ~~(ii) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or~~
- ~~(iii) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.~~
- ~~Violations of the ambient air quality standard for ozone shall be~~

determined according to 40
CFR 50.9.

~~(2) Carbon Monoxide Nonattainment Areas. This Rule applies to major stationary sources and major modifications of sources of carbon monoxide located in areas designated in 40 CFR 81.334 as nonattainment for carbon monoxide and for which construction commences after the area in which the source is located is listed in 40 CFR 81.334 as nonattainment for carbon monoxide.~~

(d) This Rule is not applicable to:

- (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
- (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
- (3) emission of pollutants for which the source or modification is not major;
- (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or
- (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.

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

(f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:

- (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;
- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;
- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources

in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(4)

(g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G.S. 62-133.6 shall install lowest achievable emission rate technology for NO_x and SO₂, SO₂, regardless of the applicability of the rest of this Rule.

(h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation 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.

(j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(k) 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".

(l) Approval of an application regarding 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 Chapter and any other requirements under local, state, or federal law.

(m) When a source or modification subject to this Rule may affect the visibility of a Class I area named in Paragraph (c) of

Rule .0530 of this Section, the following procedures shall be followed:

- (1) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;
- (2) The Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice where the explanation can be obtained;
- (4) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and
- (5) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph shall not apply to nonprofit health or nonprofit educational institutions.

~~(n) Paragraphs (f) and (j) of this Rule shall not apply to a new major stationary source or a major modification of a source of volatile organic compounds or nitrogen oxides for which construction commences after the area in which the source is located has been designated according to Part (e)(1)(B) of this Rule and before the area is designated in 40 CFR 81.334 as nonattainment for ozone if the owner or operator of the source demonstrates, using the Urban Airshed Model (UAM), that the new source or modification will not contribute to or cause a violation. The model used shall be that maintained by the Division. The Division shall run the model only after the permit~~

~~application has been submitted. The permit application shall be incomplete until the modeling analysis is completed. The owner or operator of the source shall apply such degree of control and obtain such offsets necessary to demonstrate the new source or modified source will not cause or contribute to a violation.~~

~~(e)(n)~~ If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, 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 51.165(a)(1)(xxviii)(B)(3),
- (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 nonattainment new source review 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 51.165(a)(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).

~~(p)(o)~~ The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334, the version of the Code of Federal Regulations incorporated in this Rule is that as of June 13, 2007 2007. ~~those provisions noticed as stayed in 69 FR 40274, and does not include any subsequent amendments or editions to the referenced material.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b).

Hearing Officer's Suggested Hearing Comments

INTRODUCTION

[hearing officer]:

Good evening ladies and gentlemen. My name is Tom Ellis. I am a member of the Environmental Management Commission. My role as hearing officer is to listen to all relevant comment on these proceedings and report them to the full commission. Sitting with me is Ms. Joelle Burleson. She is with the North Carolina Division of Air Quality (DAQ), Planning Section.

Some of the staff from the Division of Air Quality are here to assist. Ms. Burleson, please introduce the staff present.

Ms. Burleson. (Introduce staff)

[hearing officer]:

This evening we are conducting two hearings. During the first hearing we will take comments concerning amendments to the Prevention of Significant (PSD) and New Source Review (NSR) rules. The second hearing concerns adoptions, repeals and amendments to rules in Subchapter 02D, Section .0900 that regulate volatile organic compound (VOC) emissions. These hearings will be held according to the North Carolina Administrative Procedures Act. The public notice for these hearings has been advertised in the North Carolina Register and five newspapers in the state. Copies of the notice have been sent to those on the official DAQ mailing list. I will enter the public notice and the proposed amendments, repeals and adoptions into the hearing record without reading them at this time.

Any person desiring to comment is requested to submit a written statement for inclusion into the hearing record. Once called to speak, please come to the podium and state your name clearly, identify the rule or rules you are commenting on, and whom you represent.

[first hearing]:

I will now open the first hearing and take relevant comments on rule amendments to the PSD and NSR requirements. The PSD requirements can be found in Rule 15 A NCAC 02D .0530, Prevention of Significant Deterioration and the NSR requirements can be found in Rule 15A NCAC 02D .0531, Sources in Nonattainment Areas. Being considered are rule amendments to clarify that installation of best available control technology (BACT) applies to all new natural gas-fired electrical utility generating units for which cost recovery is sought under the Clean Smokestacks Act and to remove pollutant specific references that require sources to continue measures after an area's redesignation to attainment and replace the description of nonattainment areas with reference to 40 CFR 81.334 that identifies nonattainment areas.

[hearing officer]: Optional Time Limit

Many people have requested to speak at this hearing. Due to time constraints, speakers' presentations will be limited to ___ minutes. Speakers are requested to submit a written statement by the close of the comment period for inclusion into the hearing record.

[hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then the first hearing is closed. The first hearing record will remain open until April 30, 2010, for additional written comments.

[second hearing]:

I will now open the second hearing and take relevant comments to the modification of 15A NCAC 2D Section .0900, Volatile Organic Compounds. Being considered are rule changes to incorporate United States Environmental Protection Agency (USEPA) Control Techniques Guidelines (CTG) level

of Reasonably Available Control Technology (RACT) to comply with Sections 172(c)(1) and 182(b) of the Clean Air Act (CAA).

DAQ is required, under provisions of CAA Section 172(c)(1), to revise its State Implementation Plan (SIP) in order to include an ozone attainment demonstration that will lead to attainment of the national ambient air quality standards (NAAQS) for ozone. Section 182(b)(2) of CAA provides that States must revise their ozone SIP to include RACT for each category of VOC sources covered by any CTG document issued after November 15, 1990, and prior to the date of attainment. After the USEPA revised VOC regulations several times through issuance of New Sources Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations to related industries, it finally provided States with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of CTGs to comply with the requirements of Section 182(b)(2). EPA has issued 11 CTGs since 2006. The changes in Section .0900-Volatile Organic Compounds presented at this hearing address recommendations made in these 11 CTGs.

[hearing officer]:

I will now take any comments that you may have.

[SPEAKERS]

[hearing officer]:

Is there anyone else who would like to comment? If there are no more comments, then this hearing is closed. The hearing record will remain open until April 30, 2010, for additional written comments.

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CHAPTER V

COMMENTS DURING THE COMMENT PERIOD

No comments were received for the rules in this hearing report during the comment period.

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CHAPTER VI

INDEX OF ATTACHMENTS

ATTACHMENTS

PAGE

1. PSD and Sources in Nonattainment Areas Economic Analysis

VI-2

ECONOMIC ANALYSIS: PSD & SOURCES IN NONATTAINMENT AREAS (490)**Contact Information**

1. Division of Air Quality File Number	(490)
2. Analyst:	Glenn Sappie glenn.sappie@ncdenr.gov
3. Office	DENR, Air Quality Planning, Rule Branch
4. Phone	919/715-3743 or 919/ 715-4398
5. Comments to Agency Contact	Mike Abraczinskas Michael.Abraczinskas@ncdenr.gov
6. Title of the Amended Rule	PSD & Sources in Nonattainment Areas
7. Rule Citation	15A NCAC 02D .0530 & 02D .0531
8. Brief Description of the Proposed Rule	Use CFR reference to specify nonattainment areas where BACT or LAER controls apply
9. Rule Category	Division 1 – Regulatory Behavior

Screening Analysis

Rule Actions	General Statute	Yes or No
10. Federal Law Certification Required - Does the proposed rule purport to implement a federal law requiring a certification statement by the rule-making coordinator under?	NCGS 150B-21(f)(1)	No
11. Temporary Rules - Does this rule meet the criteria listed relating to temporary rules?	NCGS 150B-21.1	No
12. Emergency Rules - Does this rule meet the criteria relating to emergency rules?	NCGS 150B-21.1(a)	No
13. Establishes or Increases Fees - Is the agency required to comply with the requirements of G.S. 12-3.1?	NCGS 150B-12-3.1 NCGS 150B-21.3(c1)	No
14. State Funds - Does the proposed rule require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143?	NCGS 150B-21.4(a)	No
15. NC DOT Analysis - Does the proposed rule affect NC DOT environmental permitting that will result in an increased cost?	NCGS 150B-21.4(a1)	No
16. Local Government Unit Funds - Does the proposed rule affect the expenditures or revenues of a unit of local government?	NCGS 150B-21.4(b)	No
17. Substantial Economic Impact Analysis - Federal Rule Exemption - Does this rule meet the criterion of Federal Exemption found in?	NCGS 150B-21.4(b1)	No
18. Technical Change - Are <u>only</u> technical changes being incorporated such that public notice and rule-making hearings are not required?	NCGS 150B-21.5	No
19. Repeal of Regulatory Deadwood - Is the Rule Obsolete?	NCGS 150B-21.5(b)	No

ECONOMIC ANALYSIS: PSD & SOURCES IN NONATTAINMENT AREAS**I. Executive Summary**

The purpose of this analysis is to conduct an evaluation of the costs and benefits that will be incurred by owners or operators of the affected facilities to comply with the proposed amendments. Included is a review of the potential fiscal impacts on state funds that could result due to permit conditions of any state-owned facility, or regulatory responsibilities the Division of Air Quality (DAQ) as the primary implementing agency. Potential impacts to units of local government are examined from the perspective as facility owners or through local air quality program expenditures due to administration responsibilities of re-adopted DAQ rules.

Under the federal Clean Air Act, a program known as “Prevention of Significant Deterioration” (PSD) which requires an analysis of new sources at facilities or significant modifications of existing sources further protects areas that attain the National Ambient Air Quality Standard (NAAQS). The PSD program is one element of the “new source review” (NSR) program.

The amendments in paragraph (h) to Rule 15A NCAC 02D .0530, *Prevention of Significant Deterioration*, clarify that Best Available Control Technology (BACT) is required for all new gas fired electrical generating units by adding the phrase “for which cost recovery is sought pursuant to G.S. 62-133.6”. This North Carolina statute is referred to as the Clean Smokestacks Act (CSA). This change clarifies that this paragraph of the rule applies only to certain CSA units. The Environmental Management Commission (EMC) inserted this paragraph during its December 2004 meeting. It’s clear from the meeting records that their intent was to prevent units that claimed cost recovery due to the CSA from using those emission reductions to avoid BACT under the PSD program and LAER under the nonattainment program. Given the intent of the paragraph as currently being implemented, the rule changes do not represent a change from baseline.

Under the federal Clean Air Act the program generally known as “nonattainment new source review” (NNSR) requires new major or significant modifications of existing major sources in nonattainment areas for all NAAQS pollutants. This nonattainment NSR program requires; (1) lowest achievable emission rates (LAER), (2) emission offsets, and (3) public involvement.

The amendments to paragraph (b) in Rule 15A NCAC 02D .0531, *Sources in Nonattainment Areas*, remove pollutant specific references that require sources to continue measures after an area’s redesignation to attainment. With this amendment, violations of any National Ambient Air Quality Standard (NAAQS) pollutant trigger provisions that require facilities to maintain control measures after an area regains attainment status.

North Carolina nonattainment areas for two NAAQS pollutants (ozone and carbon monoxide) are currently identified in paragraph (c). The amendment replaces the geographic description of these nonattainment areas for ozone or carbon monoxide with a reference to the Code of Federal Regulation (CFR) that includes subsequent revisions. There is no discretion for DAQ to deviate from the referenced 40 CFR 81.334 that identifies North Carolina nonattainment areas by NAAQS pollutant. This amendment removes the pollutant specific nonattainment areas and

relies on the 40 CFR 81.334 reference to update the identification of nonattainment areas for all NAAQS pollutants without the need for catch-up rulemaking that is out of sync with that federal code now.

The amendments to paragraph (g) in Rule 15A NCAC 02D .0531, *Sources in Nonattainment Areas*, clarify that Lowest Achievable Emission Rate (LAER) is required on all new gas fired electrical generating units by adding the phrase “for which cost recovery is sought pursuant to G.S. 62-133.6” (CSA). This amendment clarifies that this rule only applies to certain CSA units. The EMC inserted this paragraph during its December 2004 meeting. It’s clear from the meeting records that their intent was to prevent units that claimed cost recovery due to the CSA from using those emission reductions to avoid BACT under the PSD program and LAER under the nonattainment program. Given the intent of the paragraph as currently being implemented, the rule changes do not represent a change from baseline.

Deleting of Paragraph (n) in .0531 and re-lettering remaining paragraphs removes obsolete language that is no longer needed because there will be no time periods between the designation of nonattainment areas in the 40 CFR 81.334 and North Carolina’s Administrative Code when urban airshed modeling must be performed to determine whether an increase in emissions is associated with any new or modified source.

These amendments are not expected to impact air quality or result in any changes relative to a baseline of requirements already in effect on any affected facility. It also does not alter the permitting process and inspections routine from baseline responsibilities. There can be cost consequences when an area’s status is designated as nonattainment, but these are not directly related to the proposed rule amendments. For this reason the Office of State Budget and Management (OSBM) recommends their review of this economic analysis due to “significant” potential future impacts, while recognizing that current impacts estimates are not considered substantial. Therefore, the cost or cost-savings due to these rule amendments are negligible for the regulated community and the implementing agency.

II. Background and Rationale for Action

The reason for action is to amend Rule 15A NCAC 2D .0530, *Prevention of Significant Deterioration*, paragraph (h) to clarify that installation of BACT applies to all new natural gas-fired electrical utility generating units for which cost recovery is sought under CSA. Also, obsolete language is removed related to provisions earlier stayed by the court challenge to PSD rules.

Amendments to paragraph (b) of Rule 15A NCAC 02D .0531, *Sources in Nonattainment Areas*, remove the pollutant specific references that require sources to continue measures after an area is re-designated as attainment. The amendment replaces the description of pollutant specific nonattainment areas in paragraph (c) with a reference to the CFR, including subsequent revisions. The amendment to paragraph (g) proposes to clarify that all new natural gas-fired electrical utility generating units in nonattainment areas for which cost recovery is sought under CSA shall install lowest achievable emission rates (LAER) regardless of whether or not the

source is major. Also, an obsolete requirement to do interim urban airshed modeling in Paragraph (n) is removed, and the remaining paragraph lettering is revised.

Currently, 15A NCAC 02D .0531 applies only to ozone and carbon monoxide nonattainment areas. No part of North Carolina is nonattainment for carbon monoxide. However, the areas in North Carolina in nonattainment for ozone are not up to date. The amendment would extend this rule to cover all nonattainment areas, and provide automatic updates to 40 CFR 81.334 when revised. Davidson, Guilford, and Catawba Counties are currently classified as nonattainment for PM_{2.5} in the 40 CFR 81.334, but are not identified as such in the NCAC. Until this Rule is amended to cover new major sources and major modifications in all nonattainment areas, the procedures in 40 CFR Part 51, Appendix S are used to require offsets and lowest achievable control technology (LAER). These rule changes are being proposed at the suggestion of DAQ staff to satisfy EPA requirements.

These amendments remove the description of the nonattainment areas from the North Carolina Administrative Code and instead rely upon the CFR to keep those pollutant specific nonattainment designations updated. For more information on the NSR program, go to <http://www.epa.gov/nsr>.

III. Implementation

These rule changes are not expected to require any changes to procedures for State and local agency programs implementing part C of the PSD permit program in 40 CFR 51.166 or part D of the nonattainment NSR permit program in 40 CFR 51.165 currently approved under North Carolina's approved State Implementation Plan (SIP).

IV. Identification of the Affected Parties

The amendments have the potential to create two categories of interested parties: the regulated community and the implementing agency. The regulated community consists of the owners or operators of the facilities that fall under the category of NSR permitting. The implementing agency is DAQ, which has the responsibility for implementing the adopted and amended rules. To determine whether a facility would be affected by this action, they should carefully examine the applicability criteria in parts 51 and 52 of title 40 of the Code of Federal Regulations. It is impossible to predict and estimate the aggregate economic impacts associated with an area's attainment status due to these BACT or LAER determinations. There is a lot of variability in the cost of control for different source categories and uncertainty associated with the future status of NAAQS attainment areas, and ability to know in advance which facilities may someday submit a PSD/NSR permit application. Potential impacts might occur to units of local government from their perspective as facility owners or through local air quality program expenditures due to administration responsibilities of re-adopted DAQ rules.

V. Establishment of the Baseline

The baseline for this analysis is based on the current PSD and NSR rules found in Rule 15A NCAC 02D .0530, *Prevention of Significant Deterioration*, and .0531, *Sources in Nonattainment Areas*, respectively.

VI. Changes from the Baseline

These amendments are not expected to directly alter the status of certain existing North Carolina sources that are requesting modification a permit for a project relative to the baseline. Our current rule description of ozone nonattainment areas is out of date when compared to the Code of Federal Regulation reference that will be adopted. The State of North Carolina is ultimately held to 40 CFR 81.334 for NSR pollutant nonattainment designations regardless of what our rules contain. Therefore, it is of no marginal cost consequence to rely solely on that reference. In fact it is highly beneficial to do so because it eliminates the need to continually update the rule when nonattainment area change.

VII. Estimating the cost to Affected Parties

Both rules are proposed for amendment to clarify that all new natural gas electrical generation units that sought cost recovery under the CSA are subject to NSR. The DAQ has been interpreting these rule sections in a manner consistent with the proposed changes. These rule amendments do not alter the permitting process or inspection routine for affected facilities. These amendments also do not directly cause changes to operations of affected facilities relative to the baseline. Therefore, negligible costs (or savings) are associated with these rule amendments on the regulated community or implementing agency. There can be cost consequences when an area's status is designated as nonattainment, but these are not directly related to the proposed rule amendments.

VIII. Benefits

By using a reference to 40 CFR 81.334, the description of nonattainment areas remains consistent with federal designations, which avoids confusion and eliminates frequent rule updates. Most of the remaining amendments are ministerial in nature, which are necessary actions on the part of DAQ to clarify these rules. Unnecessary language was removed related to "stayed" court action that was resolved by the EPA in a June 13, 2007 rulemaking entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Removal of Vacated Elements".

IX. Conclusion

The rule amendments allow the nonattainment areas that are identified in the Code of Federal Regulation section to be automatically adopted by reference. The other proposed changes are

primarily for the purpose of clarification of existing practice, or deletion of obsolete language and paragraph re-numbering. The marginal effect of these amendments on the regulated community, and units of local government or State implementing agencies will not result in substantial economic impacts as defined in North Carolina's Administrative Procedures Act in NC § 150B-21.4 *Fiscal notes on rules*. The term "substantial economic impact" means an aggregate financial impact on all persons affected of at least three million dollars (\$3,000,000) in a 12-month period. The Office of State Budget and Management (OSBM) recommends their review of this economic analysis due to "significant" potential future impacts, while recognizing that current impacts estimates are not considered substantial. Therefore, the cost or cost-savings due to these rule amendments are negligible for the regulated community, and the State or local government agencies implementing these rules.

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Chapter VII

The following documentation of filing and notification is incorporated as part of this hearing record and is maintained on file:

1. ENR 101 Internal Approval Form.
2. Submission for Notice Form and material submitted to the Office of Administrative Hearings.
3. The public notice as it appears in *The North Carolina Register* Volume 24, Issue 17, pages 1508-1515.
4. Letters to newspapers requesting that the public notice be published.
5. Affidavits of Publication from newspaper.
6. Memorandum transmitting hearing notice and proposal to regional offices for public inspection.
7. Memorandum transmitting hearing notice and proposal to local programs.
8. Letter notifying EPA of hearing.
9. Submission of Filing Forms and material filed with Office of Administrative Hearings.
10. Letter transmitting hearing record to EPA.

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