

1 *NOTE: Text shown in italics reflects changes that are included in the proposed rule published 03-01-2010 on OAH's*  
2 *website for which the public comment period closes 04-30-2010.*  
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4 15A NCAC 02D .0530 is proposed for amendment as follows:  
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6 **15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION**

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

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

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

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

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

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

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

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

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

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

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

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

54 (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR  
55 51.166(b)(3)(ii) shall be seven years.

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

2 (4) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by reference  
3 except as otherwise provided in this Rule. A net emission increase or the potential of a source to emit  
4 nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tons  
5 per year. Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all attainment and unclassifiable  
6 areas. Volatile organic compounds and ammonia are not precursors to PM<sub>2.5</sub>.

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

- 8 (1) Great Smoky Mountains National Park;
- 9 (2) Joyce Kilmer Slickrock National Wilderness Area;
- 10 (3) Linville Gorge National Wilderness Area;
- 11 (4) Shining Rock National Wilderness Area;
- 12 (5) Swanquarter National Wilderness Area.

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

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

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

24 (g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i)  
25 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  
26 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in  
27 the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this  
28 Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in  
29 this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain,  
30 except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide  
31 that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and  
32 provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted  
33 so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR  
34 51.166(n)(2).

35 (h) New natural gas-fired electrical utility generating units *for which cost recovery is sought pursuant to G. S. 62-133.6*  
36 *shall install best available control technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of applicability of the rest of this rule.*

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

40 (j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator  
41 of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or  
42 .0500.

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

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

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

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

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

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

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

6 (q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e),  
7 notice to EPA will be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a  
8 demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director and  
9 if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis  
10 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  
11 satisfied.

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

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

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

21 (1) When a source or modification may affect visibility of a Class I area named in Paragraph (c) of this  
22 Rule, ~~The~~ the Director shall provide written notification to all affected Federal Land Managers within  
23 30 days of receiving the permit application or within 30 days of receiving advance notification of an  
24 application. The notification shall be at least 30 days prior to the publication of notice for public  
25 comment on the application. The notification shall include a copy of all information relevant to the  
26 permit application including an analysis provided by the source of the potential impact of the proposed  
27 source on visibility.

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

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

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

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

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

1 (v) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific  
2 reference states otherwise. The version of the Code of Federal Regulations incorporated in this Rule is that as of ~~June 13,~~  
3 ~~2007-2007. 2007. May 16, 2008~~ except those provisions noticed as stayed in 69 FR 40274, and does not include any  
4 subsequent amendments or editions to the referenced material. and does not include any subsequent amendments or  
5 editions to the referenced material.

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7 *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-  
8 215.108(b); 150B-21.6;  
9 Eff. June 1, 1981;  
10 Amended Eff. December 1, 1992; August 1, 1991;  
11 Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is  
12 effective, whichever is sooner;  
13 Amended Eff. \_\_\_\_\_; May 1, 2008; July 28, 2006; July 1, 1997; February 1, 1995; July 1,  
14 1994.