

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02D .0544

DEADLINE FOR RECEIPT: Wednesday, November 19, 2014

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

Line 16, define or delete "actually"

Lines 17 and 19, define or delete "immediately"

Line 30, replace "must" with "shall"

Page 2, lines 22 thru 23; and page 3, lines 6 thru 7, references an outside material that should have information set forth in Paragraph (n) about how to obtain a copy of the incorporated 40 CFR 52.21.

Page 3, line 2, replace "which" with "that"

Page 3, line 16, delete or define "fully"

Page 3, line 27, add a comma after "calculations"

Page 3, line 28, replace "will" with "may"

Page 4, lines 3 thru 8, include a reference to 40 CFR 52.21. Please clarify if it has the same date restriction of July 20, 2011.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond
Commission Counsel
Date submitted to agency: Monday, November 17, 2014



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02D .0544 Prevention of Significant Deterioration Requirements for Greenhouse Gases

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 09-11-2014
- b. Proposed Temporary Rule published on the OAH website: 09-16-2014
- c. Public Hearing date: 10-01-2014
- d. Comment Period: 09-11-2014 through 10-09-2014
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 09-11-2014
- f. Adoption by agency on: 11-13-2014
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.

Cite:

Effective date:

- ☐ A recent change in federal or state budgetary policy.

Effective date of change:

- ☐ A recent federal regulation.

Cite:

Effective date:

- ☒ A recent court order.

Cite order: Utility Air Regulatory Group v. Environmental Protection Agency, US Supreme Court, Docket No. 12-1146, 6/23/2014

- ☐ State Medical Facilities Plan.

- ☐ Other:

Explain: See attached.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

See attached.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: (919) 707-8614

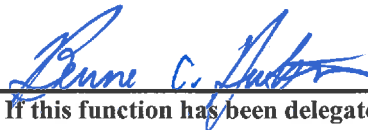
E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Joelle Burleson

Phone: (919) 707-8720

E-Mail: joelle.burleson@ncdenr.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Benne C. Hutson

Title: Chairman

E-Mail: Benne.Hutson@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Greenhouse Gas PSD & Title V Permit Applicability Rules

Form 0500, Block 6

Explain: On June 23, 2014, the United States Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)* addressing the application of stationary source permitting requirements to greenhouse gas (GHG) emissions. In its decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for the purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or Title V permit.

To reflect the Court decision, 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for temporary amendment to remove the requirement that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions. 15A NCAC 02Q .0502, Applicability, is proposed for temporary amendment to remove the requirement that facilities obtain a Title V permit on the sole basis of its GHG emissions.

Form 0500, Block 7

Under G.S. 150B-19.1(a)(2), an agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. Under G.S. 150B-19.1(a)(6), rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner. Therefore, temporary rule amendments are necessary to ensure that stationary sources would not be required to unnecessarily obtain a PSD or Title V permit on the sole basis of their GHG emissions while the Environmental Management Commission completes the permanent rulemaking process.

1 15A NCAC 02D .0544 is proposed with changes as a temporary rule as follows:

2
3 **15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR**
4 **GREENHOUSE GASES**

5 (a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality
6 for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule
7 shall apply rather than the provisions of Rule .0530 of this Section. A major stationary source or major modification
8 shall not be required to obtain a prevention of significant deterioration (PSD) permit on the sole basis of its
9 greenhouse gases emissions. For all other regulated new source review (NSR) pollutants, the provisions of Rule
10 .0530 of this Section apply.

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

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

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

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

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

- (D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
- (E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and
- (F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph;
- (2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
- (3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.
- (c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.
- (d) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.
- (e) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).
- (f) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.
- (g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

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

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

8 (j) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the
9 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
10 allowance set forth in 40 CFR 51.166(s)(4).

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

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

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

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

28 If upon reviewing the notification, the Director finds that the project will cause a prevention of significant
29 deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator
30 shall not make the modification until the owner or operator has received a permit issued pursuant to this Rule. If a
31 permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual
32 emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of
33 regular operations after the change if the project involves increasing the emissions unit's design capacity or its
34 potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following
35 resumption of regular operations after the change. The owner or operator shall submit a report to the Director within
36 60 days after the end of each year during which these records must be generated. The report shall contain the items
37 listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and

maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(n) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of July 20, 2011 as set forth here <http://www.gpo.gov/fdsys/pkg/CFR-2011-title40-vol2/pdf/CFR-2011-title40-vol2-sec51-166.pdf> and with the amendment set forth on page 19 of the Federal Register at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-20/pdf/2011-17256.pdf> and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;
Eff. January 28, 2011 pursuant to E.O. 81, Beverly E. Perdue;
Pursuant to G.S. 150B-21.3(c), a bill was not ratified by the General Assembly to disapprove this rule;
Temporary Amendment Eff. December 23, 2011;
Amended Eff. July 1, ~~2012~~ 2012;
Temporary Amendment Eff. December 2, 2014.



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Environmental Management Commission

2. Rule citation & name: 15A NCAC 02Q .0502, Applicability

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: 09-11-2014
- b. Proposed Temporary Rule published on the OAH website: 09-16-2014
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- f. Adoption by agency on: 11-13-2014
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☐ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite:
Effective date:
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☒ A recent court order.
Cite order: Utility Air Regulatory Group v. Environmental Protection Agency, US Supreme Court, Docket No. 12-1146, 6/23/2014
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: See attached.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

See attached.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: (919) 707-8614

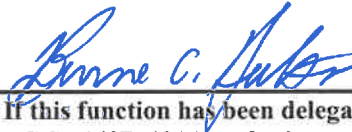
E-Mail: jennifer.everett@ncdenr.gov

Agency contact, if any: Joelle Burleson

Phone: (919) 707-8720

E-Mail: joelle.burleson@ncdenr.gov

10. Signature of Agency Head*:



* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Benne C. Hutson

Title: Chairman

E-Mail: Benne.Hutson@gmail.com

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

Greenhouse Gas PSD & Title V Permit Applicability Rules

Form 0500, Block 6

Explain: On June 23, 2014, the United States Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. Environmental Protection Agency (EPA)* addressing the application of stationary source permitting requirements to greenhouse gas (GHG) emissions. In its decision, the Supreme Court said that the EPA may not treat greenhouse gases as an air pollutant for the purposes of determining whether a source is a major source required to obtain a Prevention of Significant Deterioration (PSD) or Title V permit.

To reflect the Court decision, 15A NCAC 02D .0544, Prevention of Significant Deterioration Requirements for Greenhouse Gases, is proposed for temporary amendment to remove the requirement that major stationary sources obtain a PSD permit on the sole basis of its GHG emissions. 15A NCAC 02Q .0502, Applicability, is proposed for temporary amendment to remove the requirement that facilities obtain a Title V permit on the sole basis of its GHG emissions.

Form 0500, Block 7

Under G.S. 150B-19.1(a)(2), an agency shall seek to reduce the burden upon those persons or entities who must comply with the rule. Under G.S. 150B-19.1(a)(6), rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner. Therefore, temporary rule amendments are necessary to ensure that stationary sources would not be required to unnecessarily obtain a PSD or Title V permit on the sole basis of their GHG emissions while the Environmental Management Commission completes the permanent rulemaking process.

1 15A NCAC 02Q .0502 is proposed as a temporary rule as follows:

2
3 **15A NCAC 02Q .0502 APPLICABILITY**

4 (a) Except as provided in Paragraph (b) or (c) of this Rule, the following facilities are required to obtain a permit
5 under this Section:

- 6 (1) major facilities;
7 (2) facilities with a source subject to 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential
8 wood heaters;
9 (3) facilities with a source subject to 15A NCAC 2D .1110 or 40 CFR Part 61, except asbestos
10 demolition and renovation activities;
11 (4) facilities with a source subject to 15A NCAC 2D .1111 or 40 CFR Part 63 or any other standard or
12 other requirement under Section 112 of the federal Clean Air Act, except that a source is not
13 required to obtain a permit solely because it is subject to rules or requirements under Section
14 112(r) of the federal Clean Air Act;
15 (5) facilities to which 15A NCAC 2D .0517(2), .0528, .0529, or .0534 applies;
16 (6) facilities with a source subject to Title IV or 40 CFR Part 72; or
17 (7) facilities in a source category designated by EPA as subject to the requirements of 40 CFR Part
18 70.

19 (b) This Section does not apply to minor facilities with sources subject to requirements of 15A NCAC 2D .0524,
20 .1110, or .1111 or 40 CFR Part 60, 61, or 63 until EPA requires these facilities to have a permit under 40 CFR Part
21 70.

22 (c) A facility shall not be required to obtain a permit under this Section on the sole basis of its greenhouse gas
23 emissions.

24 ~~(e)(d)~~ Once a facility is subject to this Section because of emissions of one pollutant, the owner or operator of that
25 facility shall submit an application that includes all sources of all regulated air pollutants located at the facility
26 except for insignificant activities because of category.

27
28 *History Note: Filed as a Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent*
29 *rule becomes effective, whichever is sooner;*

30 *Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108;*

31 *Eff. July 1, 1994;*

32 *Amended Eff. July 1, 1996;*

33 *Temporary Amendment Eff. December 1, 1999;*

34 *Amended Eff. July 1, 2000-2000;*

35 *Temporary Amendment Eff. December 2, 2014.*
36