

Agenda Item 4

**RULE SUMMARY**

**Subject: Revisions to New Source Review and Prevention of Significant Deterioration (PSD) Nitrogen Oxides (NOx) Significance Level for PM2.5 (512) and PM2.5 Increment (516)**

<b>Rule Citation</b>	<b>What is Changed</b>	<b>Purpose of Change (Why)</b>	<b>Who Is Affected and How</b>	<b>Impacts</b>
<p>15A NCAC 02D .0530, Prevention of Significant Deterioration</p> <p>15A NCAC 02D .0531 Sources in Nonattainment Areas</p>	<p>The USEPA determined that the state significance level for NO<sub>x</sub> for PM<sub>2.5</sub> must be revised to reflect the federal 40 tpy significance level in the implementation rule.</p> <p>The USEPA promulgated the increments for PM<sub>2.5</sub> on October 20, 2010 (75 FR 64864). The PSD rule needs to be updated to incorporate the new 24 hour and annual PM<sub>2.5</sub> increments.</p>	<p>The proposed rule amendments would revise North Carolina’s nitrogen oxides significance level from 140 tons per year to 40 tons per year.</p> <p>The proposed rule amendments also updates the federal cross-reference in the PSD rule to reflect the current federal increments for fine particulate matter (PM<sub>2.5</sub>).</p>	<p>There are no affected parties due to the change in NO<sub>x</sub> significance level for PM<sub>2.5</sub>.</p> <p>A PSD increment analysis requires additional engineering and modeling by a facility submitting a PSD permit application. The Division of Air Quality (DAQ) would require additional time to review the PM<sub>2.5</sub> increment analysis in a PSD permit application. There will not be any change in the health benefits to the public as a result of these amendments.</p>	<p>There are no anticipated costs or benefits associated with the change in NO<sub>x</sub> significance level for PM<sub>2.5</sub> because the significance level for NO<sub>x</sub> for ozone is already 40 tpy.</p> <p>Based on an average of six PSD applications received by the DAQ per year, the total annual impact to the private sector to incorporate the federal PM<sub>2.5</sub> increments would be approximately \$132,000. DAQ would have about \$17,000 in additional permit review time. The overall total cost increase to all entities would be approximately \$149,000 per year.</p>

1 15A NCA 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  
5 as 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 apply except  
7 the definition of "baseline actual emissions." For the purposes of this Rule:

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

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

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

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

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

- 1 (v) For a regulated NSR pollutant, when a project involves multiple emissions units,
- 2 only one consecutive 24-month period shall be used to determine the baseline
- 3 actual emissions for all the emissions units being changed. A different
- 4 consecutive 24-month period for each regulated NSR pollutant can be used for
- 5 each regulated NSR pollutant; and
- 6 (vi) The average rate shall not be based on any consecutive 24-month period for
- 7 which there is inadequate information for determining annual emissions, in tons
- 8 per year, and for adjusting this amount if required by Subparts (ii) and (iii) of
- 9 this Part;
- 10 (B) For a new emissions unit, the baseline actual emissions for purposes of determining the
- 11 emissions increase that will result from the initial construction and operation of such unit
- 12 shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to
- 13 emit; and
- 14 (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual
- 15 emissions shall be calculated for existing emissions units in accordance with the
- 16 procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in
- 17 accordance with the procedures contained in Part (B) of this Subparagraph;
- 18 (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR
- 19 51.166(b)(3)(ii) is seven years;
- 20 (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) does not apply; and
- 21 (4) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by
- 22 reference except as otherwise provided in this Rule. ~~A net emission increase or the potential of a~~
- 23 ~~source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or~~
- 24 ~~exceed 140 tons per year.~~ Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all
- 25 attainment and unclassifiable areas. Volatile organic compounds and ammonia are not significant
- 26 precursors to PM<sub>2.5</sub>.
- 27 (c) All areas of the State are classified as Class II except that the following areas are Class I:
- 28 (1) Great Smoky Mountains National Park;
- 29 (2) Joyce Kilmer Slickrock National Wilderness Area;
- 30 (3) Linville Gorge National Wilderness Area;
- 31 (4) Shining Rock National Wilderness Area; and
- 32 (5) Swanquarter National Wilderness Area.
- 33 (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the
- 34 Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be
- 35 proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may
- 36 not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of
- 37 Indian Reservations may be redesignated only by the appropriate Indian Governing Body.

- 1 (e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall  
2 be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed  
3 standards set forth in 40 CFR 51.166(d).
- 4 (f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining  
5 compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or  
6 (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).
- 7 (g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR  
8 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by  
9 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum  
10 requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the  
11 requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the  
12 portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein  
13 shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of  
14 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain  
15 requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted  
16 under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested  
17 from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).
- 18 (h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-  
19 133.6 shall install best available control technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of applicability of the rest of this  
20 Rule.
- 21 (i) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph  
22 (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the  
23 Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.
- 24 (j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or  
25 operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC  
26 02Q .0300 or .0500.
- 27 (k) When a particular source or modification becomes a major stationary source or major modification solely by  
28 virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of  
29 the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this  
30 Rule shall apply to the source or modification as though construction had not yet begun on the source or  
31 modification.
- 32 (l) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated  
33 by reference except that the term "Administrator" is replaced with "Director".
- 34 (m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall be exempted when calculating  
35 source applicability and control requirements under this Rule.
- 36 (n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected  
37 by:

- 1           (1)       that amount of a stack height, not in existence before December 31, 1970, that exceeds good  
2                    engineering practice; or
- 3           (2)       any other dispersion technique not implemented before then.
- 4           (o)       A substitution or modification of a model as provided for in 40 CFR 51.166(l) is subject to public comment  
5                    procedures in accordance with the requirements of 40 CFR 51.102.
- 6           (p)       Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the  
7                    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  
8                    allowance set forth in 40 CFR 51.166(s)(4).
- 9           (q)       If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e),  
10                   notice to EPA shall be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a  
11                   demonstration described in 40 CFR 51.166(p)(3) during the public comment period or public hearing to the Director  
12                   and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on  
13                   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  
14                   (p)(7) have been satisfied.
- 15           (r)       A permit application subject to this Rule shall be processed in accordance with the procedures and requirements  
16                    of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is  
17                    complete as to initial information submitted. Commencement of construction before full prevention of significant  
18                    deterioration approval is obtained constitutes a violation of this Rule.
- 19           (s)       Approval of an application with regard to the requirements of this Rule does not relieve the owner or operator of  
20                    the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this  
21                    Title and any other requirements under local, state, or federal law.
- 22           (t)       When a source or modification is subject to this Rule the following procedures apply:
- 23                    (1)       Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days  
24                            after receipt of an application, notify the Federal Land Manager with the U.S. Department of  
25                            Interior and U.S. Department of Agriculture of an application from a source or modification  
26                            subject to this Rule;
- 27                    (2)       When a source or modification may affect visibility of a Class I area the Director shall provide  
28                            written notification to all affected Federal Land Managers within 30 days of receiving the permit  
29                            application or within 30 days of receiving advance notification of an application. The notification  
30                            shall be at least 30 days prior to the publication of notice for public comment on the application.  
31                            The notification shall include a copy of all information relevant to the permit application including  
32                            an analysis provided by the source of the potential impact of the proposed source on visibility;
- 33                    (3)       The Director shall consider any analysis concerning visibility impairment performed by the  
34                            Federal Land Manager if the analysis is received within 30 days of notification. If the Director  
35                            finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an  
36                            adverse impact on visibility will result in the Class I area, the Director shall provide in the notice

1 of public hearing on the application, an explanation of his decision or notice as to where the  
2 explanation can be obtained; and

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

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

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

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

27 (v) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a  
28 specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of ~~May 16, 2008~~  
29 October 20, 2010 at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-20/pdf/2010-25132.pdf> and does not include any  
30 subsequent amendments or editions to the referenced material.

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32 *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-*  
33 *215.108(b); 150B-21.6;*  
34 *Eff. June 1, 1981;*  
35 *Amended Eff. December 1, 1992; August 1, 1991; October 1, 1989; July 1, 1988; October 1,*  
36 *1987; June 1, 1985; January 1, 1985; February 1, 1983;*

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. \_\_\_\_\_; January 2, 2011; September 1, 2010; May 1, 2008; July 28, 2006; July*  
4                    *1, 1997; February 1, 1995; July 1, 1994.*

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1 15A NCA 02D .0531 is proposed for amendment as follows:

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3 **15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS**

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

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

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

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

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

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



- 1 actual emissions for all the emissions units being changed. A different  
2 consecutive 24-month period for each regulated NSR pollutant; and
- 3 (vi) The average rate shall not be based on any consecutive 24-month period for  
4 which there is inadequate information for determining annual emissions, in tons  
5 per year, and for adjusting this amount if required by Subparts (ii) and (iii) of  
6 this Part;
- 7 (B) For a new emissions unit, the baseline actual emissions for purposes of determining the  
8 emissions increase that will result from the initial construction and operation of such unit  
9 shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to  
10 emit; and
- 11 (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual  
12 emissions shall be calculated for existing emissions units in accordance with the  
13 procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in  
14 accordance with the procedures contained in Part (B) of this Subparagraph;
- 15 (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR  
16 51.165(a)(1)(vi)(C)(1) is seven years; and
- 17 (3) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by  
18 reference except as otherwise provided in this Rule. ~~A net emission increase or the potential of a~~  
19 ~~source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or~~  
20 ~~exceed 140 tpy.~~ Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all nonattainment  
21 areas. Volatile organic compounds and ammonia are not significant precursors to PM<sub>2.5</sub>.
- 22 (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in  
23 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall  
24 continue to comply with this Rule.
- 25 (c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as  
26 nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.
- 27 (d) This Rule is not applicable to:
- 28 (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not  
29 under any other rule in this Subchapter;
- 30 (2) emission of pollutants at the new major stationary source or major modification located in the  
31 nonattainment area that are pollutants other than the pollutant or pollutants for which the area is  
32 nonattainment. (A major stationary source or major modification that is major for volatile organic  
33 compounds or nitrogen oxides is also major for ozone.);
- 34 (3) emission of pollutants for which the source or modification is not major;
- 35 (4) a new source or modification that qualifies for exemption under the provision of 40 CFR  
36 51.165(a)(4); or

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

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

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

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

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

16 (3) The owner or operator of the proposed new major stationary source or major modification will  
17 obtain sufficient emission reductions of the nonattainment pollutant from other sources in the  
18 nonattainment area so that the emissions from the new major source and associated new minor  
19 sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile  
20 organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon  
21 monoxide. The baseline for this emission offset shall be the actual emissions of the source from  
22 which offset credit is obtained. Emission reductions shall not include any reductions resulting  
23 from compliance (or scheduled compliance) with applicable rules in effect before the application.  
24 The difference between the emissions from the new major source and associated new minor  
25 sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable  
26 further progress toward attaining the National Ambient Air Quality Standards. The emissions  
27 reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G)  
28 and (J); and

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

31 (g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-  
32 133.6 shall install lowest achievable emission rate technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of the applicability of the  
33 rest of this Rule.

34 (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  
35 the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80  
36 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  
37 incorporated by reference.

1 (i) 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 established after August 7, 1980, on the capacity of the source or  
3 modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall  
4 apply to the source or modification as though construction had not yet begun on the source or modification.

5 (j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with  
6 Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis  
7 (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control  
8 techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and  
9 social costs imposed as a result of its location, construction, or modification.

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

12 (l) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the  
13 responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements under  
14 local, state, or federal law.

15 (m) Except as provided in 40 CFR 52.28(c)(6), for a source or modification subject to this Rule the following  
16 procedures shall be followed:

17 (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days  
18 after receipt of an application, notify the Federal Land Manager with the U.S. Department of  
19 Interior and U.S. Department of Agriculture of an application from a source or modification  
20 subject to this Rule;

21 (2) The owner or operator of the source shall provide an analysis of the impairment to visibility that  
22 would occur because of the source or modification and general commercial, industrial and other  
23 growth associated with the source or modification;

24 (3) When a source or modification may affect the visibility of a Class I area the Director shall provide  
25 written notification to all affected Federal Land Managers within 30 days of receiving the permit  
26 application or within 30 days of receiving advance notification of an application. The notification  
27 shall be at least 30 days before the publication of the notice for public comment on the application.  
28 The notification shall include a copy of all information relevant to the permit application including  
29 an analysis provided by the source of the potential impact of the proposed source on visibility;

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

36 (5) The Director shall issue permits only to those sources whose emissions will be consistent with  
37 making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national

1 goal of preventing any future, and remedying any existing, impairment of visibility in mandatory  
2 Class I areas when the impairment results from manmade air pollution. In making the decision to  
3 issue a permit, the Director shall consider the cost of compliance, the time necessary for  
4 compliance, the energy and nonair quality environmental impacts of compliance, and the useful  
5 life of the source; and

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

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

10 (n) If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment  
11 new source review, the owner or operator shall notify the director of the modification before beginning actual  
12 construction. The notification shall include:

- 13 (1) a description of the project;  
14 (2) identification of sources whose emissions could be affected by the project;  
15 (3) the calculated projected actual emissions and an explanation of how the projected actual emissions  
16 were calculated, including identification of emissions excluded by 40 CFR  
17 51.165(a)(1)(xxviii)(B)(3);  
18 (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions  
19 were calculated; and  
20 (5) any netting calculations if applicable.

21 If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review  
22 evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make  
23 the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required  
24 pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year on a calendar  
25 year basis related to the modifications for 10 years following resumption of regular operations after the change if the  
26 project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant;  
27 otherwise these records shall be maintained for five years following resumption of regular operations after the  
28 change. The owner or operator shall submit a report to the director within 60 days after the end of each year during  
29 which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A)  
30 through (C). The owner or operator shall make the information documented and maintained under this Paragraph  
31 available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

32 (o) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a  
33 specific reference states otherwise. Except for 40 CFR 81.334, the version of the CFR incorporated in this Rule is  
34 that as of May 16, 2008 and does not include any subsequent amendments or editions to the referenced material.

35  
36 *History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b);  
37 *Eff. June 1, 1981;*

1                    *Amended Eff. December 1, 1993; December 1, 1992; August 1, 1991; December 1, 1989; October*  
2                    *1, 1989; July 1, 1988; October 1, 1987; June 1, 1985; January 1, 1985; February 1, 1983;*  
3                    *Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule is*  
4                    *effective, whichever is sooner;*  
5                    *Amended Eff. \_\_\_\_\_; January 2, 2011; September 1, 2010; May 1, 2008; May 1, 2005; July 1,*  
6                    *1998; July 1, 1996; July 1, 1995; July 1, 1994.*  
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