



State of Utah

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Governor

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Lieutenant Governor

Department of  
Environmental Quality

Alan Matheson  
Executive Director

DIVISION OF AIR QUALITY  
Bryce C. Bird  
Director

DAQ-004-16

**MEMORANDUM**

**TO:** Air Quality Board

**THROUGH:** Bryce C. Bird, Executive Secretary

**THROUGH:** Regg Olsen, Permitting Branch Manager

**FROM:** David Beatty, Operating Permit Section Manager

**DATE:** January 21, 2016

**SUBJECT:** FINAL ADOPTION: Amend R307-405-3. Definitions; and R307-415-3. Definitions.

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On August 12, 2015, the EPA issued a good cause final rule to remove portions of its Prevention of Significant Deterioration (PSD) and Title V permitting regulations that were initially promulgated in 2010 and that the Court of Appeals for the District of Columbia Circuit specifically identified as vacated in the amended version of *Coalition for Responsible Regulation v. EPA*. The amended judgment was a response to the U.S. Supreme Court decision in *Utility Air Regulatory Group (UARG) v. EPA*.

In *UARG v. EPA*, the U.S. Supreme Court said that the EPA may not treat greenhouse gases (GHG) as an air pollutant for the specific purpose of determining whether a source (or modification thereof) is required to obtain a PSD or Title V permit, and thus declared that the EPA regulations implementing that approach for determining whether a PSD or Title V permit is necessary, are invalid.

On October 7, 2015, the Board proposed changes to R307-405-3 and R307-415-3 so that Utah's rules align with federal regulations and case law. The effect of these amendments is the withdrawal of five Title V sources that were identified as GHG sources as a result of the now partially vacated federal regulation.

A 30 day comment period was held, no comments were received, and a hearing was not requested.

**Staff Recommendation:** Staff recommends that the Board adopt amendments to R307-405-3 and R307-415-3 as proposed.

1 **R307. Environmental Quality, Air Quality.**

2 **R307-405. Permits: Major Sources in Attainment or Unclassified**  
3 **Areas (PSD).**

4

5 **R307-405-3. Definitions.**

6 (1) Except as provided in (2) and (9) below, the definitions  
7 contained in 40 CFR 52.21(b) are hereby incorporated by reference.

8 (2)(a) In the definition of "baseline area" in 40 CFR  
9 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is  
10 subject to 40 CFR 52.21".

11 (b) "Reviewing Authority" means the director.

12 (c)(i) The term "Administrator" shall be changed to  
13 "director" throughout R307-405, except as provided in (ii).

14 (ii) The term "Administrator" shall be changed to "EPA  
15 Administrator" in the following incorporated sections:

- 16 (A) 40 CFR 52.21(b)(17),  
17 (B) 40 CFR 52.21(b)(37)(i),  
18 (C) 40 CFR 52.21(b)(43),  
19 (D) 40 CFR 52.21(b)(48)(ii)(c),  
20 (E) 40 CFR 52.21(b)(50)(i),  
21 (F) 40 CFR 52.21(l)(2),  
22 (G) 40 CFR 52.21(p)(2), and  
23 (H) 40 CFR 51.166(q)(2)(iv).

24 (d) The following definitions or portions of definitions  
25 that apply to the equipment repair and replacement provisions are  
26 not incorporated because these provisions were vacated by the DC  
27 Circuit Court of Appeals on March 17, 2006:

28 (i) in the definition major modification in 40 CFR  
29 52.21(b)(2), the second sentence in subparagraph (iii)(a),

30 (ii) the definition of "process unit" in 40 CFR  
31 52.21(b)(55),

32 (iii) the definition of "functionally equivalent component"  
33 in 40 CFR 52.21(b)(56),

34 (iv) the definition of "fixed capital cost" in 40 CFR 52.21  
35 (b)(57), and

36 (v) the definition of "total capital investment" in 40 CFR  
37 52.21(b)(58).

38 (e) In the definition of "Regulated NSR pollutant" in 40 CFR  
39 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any  
40 pollutant that otherwise is subject to regulation under the Act."  
41 A new subparagraph (v) shall be added that reads, "The term  
42 regulated NSR pollutant shall not include any or all hazardous air  
43 pollutants either listed in section 112 of the federal Clean Air  
44 Act, or added to the list pursuant to section 112(b)(2) of the  
45 federal Clean Air Act, and which have not been delisted pursuant

1 to section 112(b)(3) of the federal Clean Air Act, unless the  
2 listed hazardous air pollutant is also regulated as a constituent  
3 or precursor of a general pollutant listed under section 108 of  
4 the federal Clean Air Act."

5 (3) "Air Quality Related Values," as used in analyses under  
6 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17,  
7 means those special attributes of a Class I area, assigned by a  
8 federal land manager, that are adversely affected by air quality.

9 (4) "Heat input" means heat input as defined in 40 CFR  
10 52.01(g), that is hereby incorporated by reference.

11 (5) "Title V permit" means any permit or group of permits  
12 covering a Part 70 source that is issued, renewed, amended, or  
13 revised pursuant to R307-415.

14 (6) "Title V Operating Permit Program" means R307-415.

15 (7) The definition of "Good Engineering Practice (GEP) Stack  
16 Height" as defined in R307-410 shall apply in this rule.

17 (8) The definition of "Dispersion Technique" as defined in  
18 R307-410 shall apply in this rule.

19 (9) "Subject to regulation" means, for any air pollutant,  
20 that the pollutant is subject to either a provision in the federal  
21 Clean Air Act, or a nationally-applicable regulation codified by  
22 the Administrator in subchapter C of 40 CFR Chapter I, that  
23 requires actual control of the quantity of emissions of that  
24 pollutant, and that such a control requirement has taken effect  
25 and is operative to control, limit or restrict the quantity of  
26 emissions of that pollutant released from the regulated activity.  
27 Except that:

28 (a) "Greenhouse gases (GHGs)," the air pollutant defined in  
29 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as  
30 the aggregate group of six greenhouse gases: carbon dioxide,  
31 nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and  
32 sulfur hexafluoride, shall not be subject to regulation except as  
33 provided in paragraph (d) of this section.

34 (b) For purposes of paragraphs (c) through (d) of this  
35 section, the term "tons per year (tpy) CO<sub>2</sub> equivalent emissions  
36 (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be  
37 computed as follows:

38 (i) Multiplying the mass amount of emissions (tpy), for each  
39 of the six greenhouse gases in the pollutant GHGs, by the gas's  
40 associated global warming potential published at Table A-1 to  
41 subpart A of 40 CFR Part 98 - Global Warming Potentials, that is  
42 hereby incorporated by reference (Federal Register, Vol. 74, Pages  
43 56395-96).

44 (ii) Sum the resultant value from paragraph (b)(i) of this  
45 section for each gas to compute a tpy CO<sub>2</sub>e.

1 (c) The term "emissions increase" as used in paragraph (d)  
2 of this section shall mean that both a significant emissions  
3 increase (as calculated using the procedures in 40 CFR 52.21  
4 (a)(2)(iv) that is incorporated by reference in R307-405-2) and a  
5 significant net emissions increase (as defined in paragraphs 40  
6 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in  
7 R307-405-3) occur. For the pollutant GHGs, an emissions increase  
8 shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the  
9 pollutant GHGs is a regulated NSR pollutant, and 'significant'  
10 is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in  
11 paragraph 40 CFR 52.21(b)(23)(ii).

12 (d) Beginning January 2, 2011, the pollutant GHGs is subject  
13 to regulation if:

14 (i) The stationary source is a new major stationary source  
15 for a regulated NSR pollutant that is not GHGs, and also will emit  
16 or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

17 (ii) The stationary source is an existing major stationary  
18 source for a regulated NSR pollutant that is not GHGs, and also  
19 will have an emissions increase of a regulated NSR pollutant, and  
20 an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

21

22

23 **KEY: air pollution, PSD, Class I area, greenhouse gases**

24 **Date of Enactment or Last Substantive Amendment: 2015**

25 **Notice of Continuation: January 28, 2014**

26 **Authorizing, and Implemented or Interpreted Law: 19-2-104**

1 **R307. Environmental Quality, Air Quality.**

2 **R307-415. Permits: Operating Permit Requirements.**

3

4 **R307-415-3. Definitions.**

5 (1) The definitions contained in R307-101-2 apply throughout  
6 R307-415, except as specifically provided in (2).

7 (2) The following additional definitions apply to R307-415.

8 "Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et  
9 seq.

10 "Administrator" means the Administrator of EPA or his or her  
11 designee.

12 "Affected States" are all states:

13 (a) Whose air quality may be affected and that are  
14 contiguous to Utah; or

15 (b) That are within 50 miles of the permitted source.

16 "Air Pollutant" means an air pollution agent or combination  
17 of such agents, including any physical, chemical, biological, or  
18 radioactive (including source material, special nuclear material,  
19 and byproduct material) substance or matter which is emitted into  
20 or otherwise enters the ambient air. Such term includes any  
21 precursors to the formation of any air pollutant, to the extent  
22 the Administrator has identified such precursor or precursors for  
23 the particular purpose for which the term air pollutant is used.

24 "Applicable requirement" means all of the following as they  
25 apply to emissions units in a Part 70 source, including  
26 requirements that have been promulgated or approved by the Board  
27 or by the EPA through rulemaking at the time of permit issuance  
28 but have future-effective compliance dates:

29 (a) Any standard or other requirement provided for in the  
30 State Implementation Plan;

31 (b) Any term or condition of any approval order issued under  
32 R307-401;

33 (c) Any standard or other requirement under Section 111 of  
34 the Act, Standards of Performance for New Stationary Sources,  
35 including Section 111(d);

36 (d) Any standard or other requirement under Section 112 of  
37 the Act, Hazardous Air Pollutants, including any requirement  
38 concerning accident prevention under Section 112(r)(7) of the Act;

39 (e) Any standard or other requirement of the Acid Rain  
40 Program under Title IV of the Act or the regulations promulgated  
41 thereunder;

42 (f) Any requirements established pursuant to Section 504(b)  
43 of the Act, Monitoring and Analysis, or Section 114(a)(3) of the  
44 Act, Enhanced Monitoring and Compliance Certification;

45 (g) Any standard or other requirement governing solid waste  
46 incineration, under Section 129 of the Act;

47 (h) Any standard or other requirement for consumer and

1 commercial products, under Section 183(e) of the Act;

2 (i) Any standard or other requirement of the regulations  
3 promulgated to protect stratospheric ozone under Title VI of the  
4 Act, unless the Administrator has determined that such  
5 requirements need not be contained in an operating permit;

6 (j) Any national ambient air quality standard or increment  
7 or visibility requirement under part C of Title I of the Act, but  
8 only as it would apply to temporary sources permitted pursuant to  
9 Section 504(e) of the Act;

10 (k) Any standard or other requirement under rules adopted by  
11 the Board.

12 "Area source" means any stationary source that is not a major  
13 source.

14 "Designated representative" shall have the meaning given to  
15 it in Section 402 of the Act and in 40 CFR Section 72.2, and  
16 applies only to Title IV affected sources.

17 "Draft permit" means the version of a permit for which the  
18 director offers public participation under R307-415-7i or affected  
19 State review under R307-415-8(2).

20 "Emissions allowable under the permit" means a federally-  
21 enforceable permit term or condition determined at issuance to be  
22 required by an applicable requirement that establishes an  
23 emissions limit, including a work practice standard, or a  
24 federally-enforceable emissions cap that the source has assumed to  
25 avoid an applicable requirement to which the source would  
26 otherwise be subject.

27 "Emissions unit" means any part or activity of a stationary  
28 source that emits or has the potential to emit any regulated air  
29 pollutant or any hazardous air pollutant. This term is not meant  
30 to alter or affect the definition of the term "unit" for purposes  
31 of Title IV of the Act, Acid Deposition Control.

32 "Final permit" means the version of an operating permit  
33 issued by the director that has completed all review procedures  
34 required by R307-415-7a through 7i and R307-415-8.

35 "General permit" means an operating permit that meets the  
36 requirements of R307-415-6d.

37 "Hazardous Air Pollutant" means any pollutant listed by the  
38 Administrator as a hazardous air pollutant under Section 112(b) of  
39 the Act.

40 "Major source" means any stationary source (or any group of  
41 stationary sources that are located on one or more contiguous or  
42 adjacent properties, and are under common control of the same  
43 person (or persons under common control)) belonging to a single  
44 major industrial grouping and that are described in paragraphs  
45 (a), (b), or (c) of this definition. For the purposes of defining  
46 "major source," a stationary source or group of stationary sources  
47 shall be considered part of a single industrial grouping if all of

1 the pollutant emitting activities at such source or group of  
2 sources on contiguous or adjacent properties belong to the same  
3 Major Group (all have the same two-digit code) as described in the  
4 Standard Industrial Classification Manual, 1987. Emissions  
5 resulting directly from an internal combustion engine for  
6 transportation purposes or from a non-road vehicle shall not be  
7 considered in determining whether a stationary source is a major  
8 source under this definition.

9 (a) A major source under Section 112 of the Act, Hazardous  
10 Air Pollutants, which is defined as: for pollutants other than  
11 radionuclides, any stationary source or group of stationary  
12 sources located within a contiguous area and under common control  
13 that emits or has the potential to emit, in the aggregate, ten  
14 tons per year or more of any hazardous air pollutant or 25 tons  
15 per year or more of any combination of such hazardous air  
16 pollutants. Notwithstanding the preceding sentence, emissions  
17 from any oil or gas exploration or production well, with its  
18 associated equipment, and emissions from any pipeline compressor  
19 or pump station shall not be aggregated with emissions from other  
20 similar units, whether or not such units are in a contiguous area  
21 or under common control, to determine whether such units or  
22 stations are major sources.

23 (b) A major stationary source of air pollutants, as defined  
24 in Section 302 of the Act, that directly emits or has the  
25 potential to emit, 100 tons per year or more of any air pollutant  
26 including any major source of fugitive emissions or fugitive dust  
27 of any such pollutant as determined by rule by the Administrator.  
28 The fugitive emissions or fugitive dust of a stationary source  
29 shall not be considered in determining whether it is a major  
30 stationary source for the purposes of Section 302(j) of the Act,  
31 unless the source belongs to any one of the following categories  
32 of stationary source:

- 33 (i) Coal cleaning plants with thermal dryers;  
34 (ii) Kraft pulp mills;  
35 (iii) Portland cement plants;  
36 (iv) Primary zinc smelters;  
37 (v) Iron and steel mills;  
38 (vi) Primary aluminum ore reduction plants;  
39 (vii) Primary copper smelters;  
40 (viii) Municipal incinerators capable of charging more than  
41 250 tons of refuse per day;  
42 (ix) Hydrofluoric, sulfuric, or nitric acid plants;  
43 (x) Petroleum refineries;  
44 (xi) Lime plants;  
45 (xii) Phosphate rock processing plants;  
46 (xiii) Coke oven batteries;  
47 (xiv) Sulfur recovery plants;

1 (xv) Carbon black plants, furnace process;  
2 (xvi) Primary lead smelters;  
3 (xvii) Fuel conversion plants;  
4 (xviii) Sintering plants;  
5 (xix) Secondary metal production plants;  
6 (xx) Chemical process plants;  
7 (xxi) Fossil-fuel boilers, or combination thereof, totaling  
8 more than 250 million British thermal units per hour heat input;  
9 (xxii) Petroleum storage and transfer units with a total  
10 storage capacity exceeding 300,000 barrels;  
11 (xxiii) Taconite ore processing plants;  
12 (xxiv) Glass fiber processing plants;  
13 (xxv) Charcoal production plants;  
14 (xxvi) Fossil-fuel-fired steam electric plants of more than  
15 250 million British thermal units per hour heat input;  
16 (xxvii) Any other stationary source category, which as of  
17 August 7, 1980 is being regulated under Section 111 or Section 112  
18 of the Act.

19 (c) A major stationary source as defined in part D of Title  
20 I of the Act, Plan Requirements for Nonattainment Areas,  
21 including:

22 (i) For ozone nonattainment areas, sources with the  
23 potential to emit 100 tons per year or more of volatile organic  
24 compounds or oxides of nitrogen in areas classified as "marginal"  
25 or "moderate," 50 tons per year or more in areas classified as  
26 "serious," 25 tons per year or more in areas classified as  
27 "severe," and 10 tons per year or more in areas classified as  
28 "extreme"; except that the references in this paragraph to 100,  
29 50, 25, and 10 tons per year of nitrogen oxides shall not apply  
30 with respect to any source for which the Administrator has made a  
31 finding, under Section 182(f)(1) or (2) of the Act, that  
32 requirements under Section 182(f) of the Act do not apply;

33 (ii) For ozone transport regions established pursuant to  
34 Section 184 of the Act, sources with the potential to emit 50 tons  
35 per year or more of volatile organic compounds;

36 (iii) For carbon monoxide nonattainment areas that are  
37 classified as "serious" and in which stationary sources contribute  
38 significantly to carbon monoxide levels as determined under rules  
39 issued by the Administrator, sources with the potential to emit 50  
40 tons per year or more of carbon monoxide;

41 (iv) For PM-10 particulate matter nonattainment areas  
42 classified as "serious," sources with the potential to emit 70  
43 tons per year or more of PM-10 particulate matter.

44 "Non-Road Vehicle" means a vehicle that is powered by an  
45 internal combustion engine (including the fuel system), that is  
46 not a self-propelled vehicle designed for transporting persons or  
47 property on a street or highway or a vehicle used solely for

1 competition, and is not subject to standards promulgated under  
2 Section 111 of the Act (New Source Performance Standards) or  
3 Section 202 of the Act (Motor Vehicle Emission Standards).

4 "Operating permit" or "permit," unless the context suggests  
5 otherwise, means any permit or group of permits covering a Part 70  
6 source that is issued, renewed, amended, or revised pursuant to  
7 these rules.

8 "Part 70 Source" means any source subject to the permitting  
9 requirements of R307-415, as provided in R307-415-4.

10 "Permit modification" means a revision to an operating permit  
11 that meets the requirements of R307-415-7f.

12 "Permit revision" means any permit modification or  
13 administrative permit amendment.

14 "Permit shield" means the permit shield as described in R307-  
15 415-6f.

16 "Proposed permit" means the version of a permit that the  
17 director proposes to issue and forwards to EPA for review in  
18 compliance with R307-415-8.

19 "Renewal" means the process by which a permit is reissued at  
20 the end of its term.

21 "Responsible official" means one of the following:

22 (a) For a corporation: a president, secretary, treasurer, or  
23 vice-president of the corporation in charge of a principal  
24 business function, or any other person who performs similar policy  
25 or decision-making functions for the corporation, or a duly  
26 authorized representative of such person if the representative is  
27 responsible for the overall operation of one or more  
28 manufacturing, production, or operating facilities applying for or  
29 subject to a permit and either:

30 (i) the operating facilities employ more than 250 persons or  
31 have gross annual sales or expenditures exceeding \$25 million in  
32 second quarter 1980 dollars; or

33 (ii) the delegation of authority to such representative is  
34 approved in advance by the director;

35 (b) For a partnership or sole proprietorship: a general  
36 partner or the proprietor, respectively;

37 (c) For a municipality, State, Federal, or other public  
38 agency: either a principal executive officer or ranking elected  
39 official. For the purposes of R307-415, a principal executive  
40 officer of a Federal agency includes the chief executive officer  
41 having responsibility for the overall operations of a principal  
42 geographic unit of the agency;

43 (d) For Title IV affected sources:

44 (i) The designated representative in so far as actions,  
45 standards, requirements, or prohibitions under Title IV of the  
46 Act, Acid Deposition Control, or the regulations promulgated  
47 thereunder are concerned;

1 (ii) The responsible official as defined above for any other  
2 purposes under R307-415.

3 "Stationary source" means any building, structure, facility,  
4 or installation that emits or may emit any regulated air pollutant  
5 or any hazardous air pollutant.

6 "Title IV Affected source" means a source that contains one  
7 or more affected units as defined in Section 402 of the Act and in  
8 40 CFR, Part 72.

9

10 **KEY: air pollution, greenhouse gases, operating permit, emission**  
11 **fees**

12 **Date of Enactment or Last Substantive Amendment: 2015**

13 **Notice of Continuation: June 6, 2012**

14 **Authorizing, and Implemented or Interpreted Law: 19-2-109.1; 19-**  
15 **2-104**