

## **Part VI: Attachments**

# ANNOUNCEMENT

## PROPOSED CENTRAL COASTAL PLAIN CAPACITY USE AREA PUBLIC HEARING SET FOR AUGUST 8, 2000

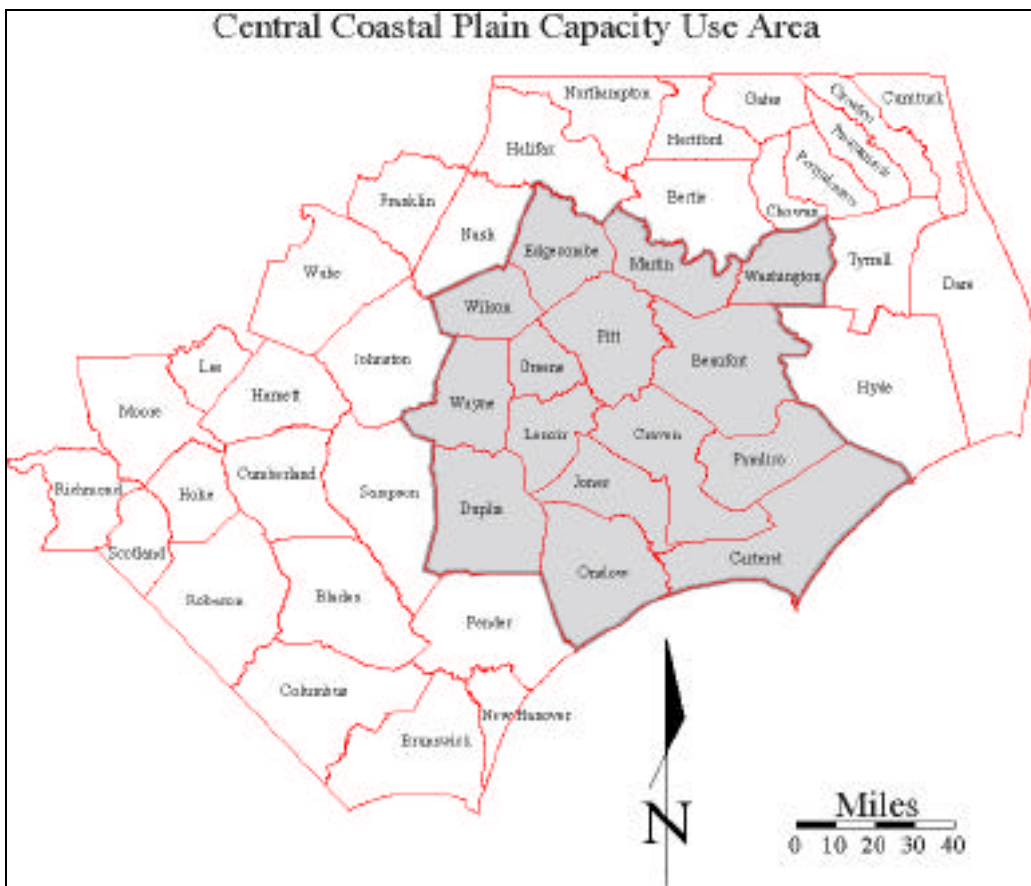
The NC Department of Environment and Natural Resources on behalf of the Environmental Management Commission (EMC) will conduct a public hearing in order to receive public comments on the proposed Central Coastal Plain Capacity Use Area.

### Public Hearing

Location: NC Global TransPark Authority  
Education & Training Center  
3800 Hwy 58 North  
Kinston, NC

Date: August 8, 2000

Time: 3:00 - 5:00 p.m. and 7:00 - 8:00 p.m.



(Over)

## **BACKGROUND**

There is increasing evidence of present and future ground water supply shortages within the area encompassed by the following 15 North Carolina counties: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne and Wilson (see preceding figure). Within these counties ground water from the Cretaceous aquifer system (Black Creek, Upper Cape Fear, and Peedee aquifers) is being withdrawn at a rate that exceeds the available recharge. To address threatened ground water supplies in the region, the Environmental Management Commission (EMC) proposes to create the Central Coastal Plain Capacity Use Area. The proposed rules would establish a permit system for ground water withdrawals that exceed 100,000 gallons per day.

The rules were developed through a vigorous stakeholder process which involved representatives of all major interest groups. The stakeholder group met weekly from February 7 to April 3, 2000. Some stakeholders objected to the previous version of the proposed rule that had been developed by the Division of Water Resources. The new proposed rules replace the case-by-case technical evaluation of each permit application with prescriptive requirements depending on location. These requirements are designed to reduce demand on stressed aquifers in areas where monitoring indicates moderate to severe impacts. The approach calls for three rounds of reductions in ground water withdrawals. Implementation of the latter two rounds of reductions will be conditional, based on the Division's ongoing evaluation of water levels in the aquifers, and may be adjusted to assure that the prescribed cutbacks are aligned with achieving sustainable use of the aquifers.

In addition to the ground water permitting requirements, surface and ground water users who withdraw more than 10,000 gallons per day and are not subject to the permitting provisions will be required to register their water use. This information will assist the Division in assessing the impact of smaller withdrawals on available water resources

## **HOW TO SUBMIT COMMENTS**

Persons interested in this proposal are encourage to attend the public hearing and make relevant verbal comments or submit written comments by September 15, 2000. It is very important that all interested parties make their views known to the Environmental Management Commission whether in favor or opposed to any and all provisions of the proposal. We encourage you to submit written comments as well. The proposed effective date for the final rules pursuant to this hearing process is April 1, 2001. Written comments, data, or other information relevant to this proposal may be submitted to Nat Wilson in the Division of Water Resources at the address listed below.

## **FOR ADDITIONAL INFORMATION**

The Division of Water Resources has prepared a fiscal note and Notice of Text for these rules. This information will be published in the July 17, 2000 issue of the North Carolina Register. Copies of the proposed rules in pdf format can be found on the internet at <http://www.ncwater.org/hms/gwbranch/gwb.htm> A copy of the proposed rules and notice of text may also be obtained by writing or calling:

Nat Wilson  
DENR/Division of Water Resources  
1611 Mail Service Center  
Raleigh, NC 27699-1611  
(919) 715-5445

## Combined List of Registered Attendees for August 8, 2000 Public Hearings

<b>Name</b>	<b>Title</b>	<b>Association</b>
Ralph C Heath	Consulting Hydrogeologist	
Harry E. LeGrand	Independent Hydrogeologist	
Tony Ballance	Northern Wayne County Farmer	
Vines Cobb		
Mark Loomis		Carolina Classics Catfish
Louise England		Carolina Power & Light Company
Michael D. Bliss		Carolina Turkey
Taylor Peel		Carolina Turkey
Dave Clark, PE		Carteret County
Helen Anderson Boyette		Chinquapin Water Association
Maria Alge		City of Greenville
Ricky G Langley	WS	City of Greenville Utilities Commission
Susan Rexrode	DPU	City of Havelock
Sean Duffy		City of Jacksonville
John A. Jarrell III		City of Kinston
Wayne D. Malone	City Council	City of Kinston
Scott Stevens	Engineer	City of Kinston
Allen Parrott		City of Kinston
Harold Herring	Assistant Director of Public Utilities	City of Kinston/Neuse Regional W & S Authority
Doug Ellington		Clean East Associates
Clifton W. Whitfield		Clean East Associates
Chester Ellis	Environmental Manager	Collins & Aikman Products Co
HAROLD BLIZZARD	MANAGER	Craven County
Roy Hayes	Superintendent	Craven County
Gerald Underwood		CWS of NC
BILL GRAY		DEEP RUN Water CORPORATION
Avonna Johnson		DEEP RUN Water CORPORATION
Judy Brown	Assistant County Manager	Duplin County
Arliss Albertson	Commissioner	Duplin County
Woody Brinson	Economic Development Director	Duplin County
Robert T. Hatcher		Duplin County Water
Clifford Lee	Environmental Manager	DuPont Kinston Plant
Eric G. Lappala		Eagle Water Co/Eagle Resources
Chris Foldesi		East Carolina University
Richard Spruill		East Carolina University - Dept of Geology
Joe C McKinney	Executive Director	Eastern Carolina Council
Steve Hines		Eastern Carolina Council of Govt's

<b>Name</b>	<b>Title</b>	<b>Association</b>
Barry T Sutton	Manager	Eastern Pines Water Corp
Walter J. Bean		Eastern Wayne Sanitary District
EDWIN E ANDREWS, III	Consulting Hydrogeologist	Edwin Andrews & Associates
Angie Frizzell		ENSR International
H. Jack Edwards		FORK TOWNSHIP Sanitary District
Denny Garner	Chairman, County Commissioners	Greene County
Greg Martin		Greene County
Curtis Consolvo	Hydrogeologist	Groundwater Management Associates, Inc
James K. Holley		Groundwater Management Associates, Inc
Brent Turner		Guilford Mills Inc.
Donald A. Heath		Heath Farms
LARRY P. MEADOWS	MANAGER	JONES COUNTY
Sondra Ipock Riggs	Commissioner	Jones County
LEE O. HAWKINS		JONES COUNTY
Horace Phillips	Chairman, Board of Commissioners	Jones County
Jennifer J Shrader		Kinston Free Press
John Bauer	County Manager	Lenoir County
Joey Taylor		Lenoir County
Steve Whitt		Martin Marietta Materials, Inc.
ALBERT V. LEWIS, JR.		McDavid Associates
Tyndall Lewis		McDavid Associates
Cindy Kilborn		McDavid Associates
GARY R MCGILL	PRESIDENT	MCGILL ASSOCIATES, PA
Kevin Eberle		McKim & Creed, PA
Chris Windley		McKim & Creed, PA
Ed Regan		NC Association of County Commissioners
Michael Wade Worthington		NC Association of Nurserymen, Worthington Farms
Lee Padrick		NC Division of Community Assistance
Mitch Peele		NC Farm Bureau Federation
Larry B. Wooten		NC Farm Bureau Federation
Chester Lowder		NC Farm Bureau Federation
Marian McLawhorn	Representative	NC General Assembly
Edith Warren	Representative	NC General Assembly
Russell Tucker		NC General Assembly
Joe P. Tolson		NC General Assembly
Pryor Gibson		NC General Assembly
Paul Bu sick	President	NC Global Transpark Authority
Michaela Durkin		NC Global Transpark Authority
Jim Sughrue		NC Global Transpark Authority
Van W. Noah		NC Global Transpark Authority

<b>Name</b>	<b>Title</b>	<b>Association</b>
Tom Greenwood		NC GTP Development Commission
Paula S Thomas	Manager of Environmental Policy	NC League of Municipalities
Tina Murphrey		NC Rural Center
Dennis Lassiter		NC Rural Center
Keith Starner	geologist	NC Rural Water Association
Mike Hill		NC Rural Water Association
Debbie Maner		NC Rural Water Association
Tripp Pittman	Clean Water Campaign Coordinator	NC Sierra Club
Jim Cummings		NCDA & CS
Michael P Bell	Regional Engineer	NC DENR Division of Environmental Health
David C Yaeck	Consultant	Neuse River Foundation
Marion Smith	Executive Director	Neuse River Foundation
Melvin Albritton		North Lenoir Water Corp
S. Jerome Shaun		NORTHWEST ONSLOW WATER ASSOC
David Pittman	Board member	Northwestern Wayne Sanitation District
Nan Freeland		NRLI
Bob McLeod		Old Courthouse Nursery
Bill Harvey	Technical Director	Onslow County
Cynthia Pipkin		Pamlico County Water
Terry L Baker		PCS Phosphate Company
Linda McCarthy		PCS Phosphate Company, Kinston Div
PHIL DICKERSON	ENGINEER	PITT COUNTY
Dan Wynne		Pitt County Farm Bureau
Tom Howell, P.E.	Vice-President	Rivers & Associates, Inc.
Randy Gould		Rivers & Associates, Inc.
Mark Garner		Rivers & Associates, Inc.
Robert E. Pittman		Rivers & Associates, Inc.
Chris Reinhardt		Skelly and Loy, Inc.
Adolph Thomas		SOUTH GREENE Water CORP
James A. Taylor		Southeastern Wayne Sanitary District
Jean Hood	Chairman	Southwestern Wayne Sanitary District
Billy M. Kornegay, II		Southwestern Wayne Sanitary District
David A. Bennett		Southwestern Wayne Sanitary District
Gail P. Jones		Southwestern Wayne Sanitary District
Alan Lumpkin		Southwestern Wayne Sanitary District
BRUCE BLAND		STOKES REGIONAL WATER CORP
Arthur L. Kennedy		The Wooten Company
Todd Bullock		Town of Bethel
Joseph H. Edwards	Mayor Pro Tem	TOWN OF BEULAVILLE
Sam Blizzard		TOWN OF BEULAVILLE
Dale A. Evans		TOWN OF BEULAVILLE

<b>Name</b>	<b>Title</b>	<b>Association</b>
KAY H. EVANS		TOWN OF CHINQUAPIN
Bill Igoe	Mayor	Town of Faison
HON ROBERT L. EVANS	MAYOR	TOWN OF FARMVILLE
Richard Hicks	Manager	Town of Farmville
Gerald Severson		TOWN OF LA GRANGE
Hank Perkins	Town Administrator	Town of Lucama
DONNIE H BARNES	DPW	TOWN OF LUCAMA
Joe Clayton	DPW	Town of Morehead City
Phil O Webb		Town of Pinetops
David B. Drake		Town of Pinetops
JOHNNY J CHADWICK	DPW	TOWN OF POLLOCKSVILLE
Dale B. Manning		Town of Snow Hill
Gary Wayne Barmer		TOWN OF WILLIAMSTON
Teresa Savarino		UNC Chapel Hill
Lieutenant Colonel Stephen Finn	Associate Counsel, Environmental Law	US MARINE CORPS Camp LeJeune
John Brinkley		W K Dickson Inc
Eddie Coltrain		Wayne Water District
Albert Williams, Jr		Wayne Water District
Ben Casey		Wayne Water District
Ray Sullivan		Wayne Water District
Fred J. Newcomb		Wayne Water District (Belfast-Patetown Sanitary)
Landis H. Davis		Wayne Water Districts
Homer Naylor		Wayne Water Systems
George F Cribb		West Carteret Water Corp
James E Scoggins		Wight Nurseries of NC
Jerry Lee		Wight Nurseries of NC
Chris J. Brown		Wight Nurseries of NC
R. Sean Gunkin		Worthington Farms
Johnny Mac Stanley		Zelenka Nursery
Jonathan H. Ervin		Zelenka Nursery

## PART 2.

### REGULATION OF USE OF WATER RESOURCES.

#### § 143-215.11. Short title.

This Part shall be known and may be cited as the Water Use Act of 1967.  
(1967, c. 933, s. 1.)

#### § 143-215.12. Declaration of purpose.

It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources.

(1967, c. 933, s. 2.)

#### § 143-215.13. Declaration of capacity use areas.

- (a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.
- (b) Within the meaning of this Part "a capacity use area" is one where the Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.
- (c) The Commission may declare and delineate capacity use areas in accordance with the following procedures:
  - (1) Whenever the Commission believes that a capacity use situation exists or may be emerging in any area of the State, it may direct the Department to investigate and report to the Commission thereon.
  - (2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under Part 1 of this Article and the criteria for such classifications. Following its investigation the Department shall render a written report to the Commission. This report shall indicate whether the water use problems of the area involve surface waters, groundwaters or both and shall identify the Department's suggested boundaries for any capacity use area that may be proposed. It shall present such alternatives as the Department deems appropriate, including actions by any agency or person which might preclude the need for additional regulation at that time, and measures which might be employed limited to surface water or groundwater.
  - (3) If the Commission finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt a rule declaring said capacity use area. A rule declaring an area to be a capacity use area shall delineate the boundaries of the area.
  - (4) to (6) Repealed by Session Laws 1981, c. 585, s. 3.
  - (7) Repealed by Session Laws 1987, c. 827, s. 167.
- (d) The Commission may conduct a public hearing pursuant to the provisions of this subsection in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Commission determines that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized



condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Commission may issue a rule:

- (1) Prohibiting any person withdrawing waters in excess of 100,000 gallons per day from increasing the amount of the withdrawal above such limit as may be established in the rule.
- (2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the rule; but such prohibition shall not extend to any new well or facility having a capacity of less than 10,000 gallons per day.
- (3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the rule.
- (4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the rule.
- (5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the rule.

The determination of the Commission shall be based upon the record of the public hearing and other information considered by the Commission in the rule-making proceeding. The rule shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Commission that the generalized condition of water depletion or water pollution within the area has ceased.

Upon issuance of any rule by the Commission pursuant to this subsection, a certified copy of such rule shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the rule shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the rule shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such rule after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17.

(1967, c. 933, s. 3; 1973, c. 698, s. 14; c. 1262, s. 23; 1977, c. 771, s. 4; 1981, c. 585, ss. 1-4; 1987, c. 827, ss. 154, 167.)

#### **§ 143-215.14. Rules within capacity use areas; scope and procedures.**

(a) Following the declaration of a capacity use area by the Commission, it shall prepare proposed rules to be applied in said area, containing such of the following provisions as the Commission finds appropriate concerning the use of surface waters or groundwaters or both:

- (1) Provisions requiring water users within the area to submit reports not more frequently than at 30-day intervals concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.
- (2) With respect to surface waters, groundwaters, or both: provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on

- public use.
- (3) With respect to groundwaters: provisions concerning well-spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.
  - (4) Such other provisions not inconsistent with this Part as the Commission finds necessary to implement the purposes of this Part.
- (b) In adopting rules for a capacity use area, the Commission shall consider the factors listed in G.S. 143-215.15(h).  
(1967, c. 933, s. 4; 1973, c. 1262, s. 23; 1981, c. 585, s. 5; 1987, c. 827, ss. 154, 168.)

**§ 143-215.15. Permits for water use within capacity use areas - Procedures.**

- (a) In areas declared by the Commission to be capacity use areas no person shall (after the expiration of such period, not in excess of six months, as the Commission may designate) withdraw, obtain, or utilize surface waters or groundwaters or both, as the case may be, in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the Commission.
- (b) When sufficient evidence is provided by the applicant that the water withdrawn or used from a stream or the ground is not consumptively used, a permit therefor shall be issued by the Commission without a hearing and without the conditions provided in subsection (c) of this section. Applications for such permits shall set forth such facts as the Commission shall deem necessary to enable it to establish and maintain adequate records of all water uses within the capacity use area.
- (c) In all cases in which sufficient evidence of a nonconsumptive use is not presented the Department shall notify each person required by this Part to secure a permit of the Commission's proposed action concerning such permit, and shall transmit with such notice a copy of any permit it proposes to issue to such persons, which permit will become final unless a request for a hearing is made within 15 days from the date of service of such notice. If sufficient evidence of a nonconsumptive use is not presented, the Commission may: (i) grant such permit with conditions as the Commission deems necessary to implement the rules adopted pursuant to G.S. 143-215.14; (ii) grant any temporary permit for such period of time as the Commission shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the Commission's rules applicable to such capacity use area; (iii) modify or revoke any permit upon not less than 60 days' written notice to any person affected; and (iv) deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Before issuing a permit under this subsection, the Commission shall notify the permit applicant of its proposed action by sending the permit applicant a copy of the permit the Commission proposes to issue. Unless the permit applicant contests the proposed permit, the proposed permit shall become effective on the date set in the proposed permit. A water user who is dissatisfied with a decision of the Commission concerning that user's or another user's permit application or permit may commence a contested case under G.S. 150B-23.
- (d) The Commission shall give notice of receipt of an application for a permit under this Part to all other holders of permits and applicants for permits under this Part within the same capacity use area, and to all other persons who have requested to be notified of permit applications. Notice of receipt of an application shall be given within 10 days of the receipt of the application by the Commission. The Commission shall also give notice of its proposed action on any permit application under this Part to all permit holders or permit applicants within the same capacity use area at least 18 days prior to the effective date of the

proposed action. Notices of receipt of applications for permits and notice of proposed action on permits shall be by first-class mail and shall be effective upon depositing the notice, postage prepaid, in the United States mail.

- (e) Repealed by Session Laws 1981, c. 585, s. 8.
- (f) (1) Recodified as 143-215.4(d) by Session Laws 1987, c. 827, s. 169.  
(2), (3) Repealed by Session Laws 1987, c. 827, s. 169.
- (g) Repealed by Session Laws 1987, c. 827, s. 169.
- (h) In determining whether to issue, modify, revoke, or deny a permit under this section, the Commission shall consider:
  - (1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;
  - (2) The nature and size of the stream or aquifer;
  - (3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);
  - (4) The probable severity and duration of such impairment under foreseeable conditions;
  - (5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;
  - (6) The kinds of businesses or activities to which the various uses are related;
  - (7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under G.S. 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);
  - (8) Diversion from or reduction of flows in other watercourses or aquifers; and
  - (9) Any other relevant factors.

(1967, c. 933, s. 5; 1973, c. 108, s. 89; c. 698, s. 15; c. 1262, s. 23; 1977, c. 771, s. 4; 1981, c. 585, ss. 6-10; 1987, c. 827, ss. 154, 169.)

**§ 143-215.16. Permits for water use within capacity use areas - Duration, transfer, reporting, measurement, present use, fees and penalties.**

- (a) No permit under G.S. 143-215.15 shall be issued for a longer period than the longest of the following: (i) 10 years, or (ii) the duration of the existence of a capacity use area, or (iii) the period found by the Commission to be necessary for reasonable amortization of the applicant's water-withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of G.S. 143-215.15.
- (b) Permits shall not be transferred except with the approval of the Commission.
- (c) Every person in a capacity use area who is required by this Part to secure a permit shall file with the Commission in the manner prescribed by the Commission a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals. Such statements shall be filed on forms furnished by the Department within 90 days after the adoption of an order by the Commission declaring a capacity use area. Water users in a capacity use area not required to secure a permit shall comply with procedures established to protect and manage the water resources of the area. Such procedures shall be adapted to the specific needs of the area, shall be within the provisions of this and other North Carolina water resource acts, and shall be adopted after public hearing in the area. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.
- (d) If any person who is required to secure a permit under this Part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the

Commission, the Commission shall have the authority to require such person to install water meters, or some other more economical means for measuring water use acceptable to the Commission. In determining the amount of water being withdrawn or used by a permit holder or applicant the Commission may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

- (e) In any case where a permit applicant can prove to the Commission's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Commission shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Commission to meet its needs, and shall grant a permit which shall meet those reasonable needs. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.
  - (f) The Commission shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Commission within a reasonable time after June 27, 1967. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.
  - (g) It is the intention of the General Assembly that if the provisions of subsection (e) or subsection (f) of this section are held invalid as a grant of an exclusive or separate emolument or privilege, within the meaning of Article I, Sec. 7 of the North Carolina Constitution, the remainder of this Part shall be given effect without the invalid provision or provisions.
  - (h) Pending the issuance or denial of a permit pursuant to subsection (e) or (f) of this section, the applicant may continue the same withdrawal or use which existed prior to the date of declaration of the capacity use area.
- (1967, c. 933, s. 6; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, s. 154.)

#### **§ 143-215.17. Enforcement procedures.**

- (a) Criminal Penalties. - Any person who shall be adjudged to have violated any provision of this Part shall be guilty of a Class 3 misdemeanor and shall only be liable to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.
- (b) Civil Penalties. -
  - (1) The Secretary may assess a civil penalty of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates a rule of the Commission implementing this Part.
  - (2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Secretary may assess a penalty not to exceed two hundred fifty dollars (\$250.00) per day for each day of violation.
  - (3) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.
  - (4) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means

authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

- (5) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).
  - (6) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subdivision (4) of this subsection, or requests remission of the assessment in whole or in part as provided in subdivision (5) of this subsection. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment.
  - (7) The Secretary may delegate his powers and duties under this section to the Director of the Division of Environmental Management of the Department.
- (c) Injunctive Relief. - Upon violation of any of the provisions of this Part, a rule implementing this Part, or an order issued under this Part, the Secretary may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same.

(1967, c. 933, s. 7; 1973, c. 698, s. 16; c. 1262, s. 23; 1975, c. 842, s. 2; 1977, c. 771, s. 4; 1981, c. 585, s. 11; 1987, c. 827, ss. 154, 170; 1989 (Reg. Sess., 1990), c. 1036, s. 4; 1993, c. 539, s. 1020; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 143-215.18. Map or description of boundaries of capacity use areas.**

- (a) The Commission in designating and the Department in recommending the boundaries of any capacity use area may define such boundaries by showing them on a map or drawings, by a written description, or by any combination thereof, to be designated appropriately and filed permanently with the Department. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries shall be made under the direction of the Secretary of Environment, Health, and Natural Resources. Photographic, typed or other copies of such map or description, certified by the Secretary of Environment, Health, and Natural Resources, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. If the boundaries are changed pursuant to other provisions of this Part, the Department may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or all maps which it is designated to replace.

- (b) The Department shall file with the Secretary of State a certified copy of the map, drawings, description or combination thereof, showing the boundaries of any capacity use area designated by the Commission; and a certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said boundaries.

(1967, c. 933, s. 8; 1973, c. 1262, s. 23; c. 1331, s. 3; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 171; 1989, c. 727, s. 218(107).)

**§ 143-215.19. Administrative inspection; reports.**

- (a) When necessary for enforcement of this Part, and when authorized by rules of the Commission, employees of the Commission may inspect any property, public or private, to investigate:

- (1) The condition, withdrawal or use of any waters;
- (2) Water sources; or
- (3) The installation or operation of any well or surface water withdrawal or use facility.

- (b) The Commission's rules must state appropriate standards for determining when property may be inspected under subsection (a).

- (c) Entry to inspect property may be made without the possessor's consent only if the employee seeking to inspect has a valid administrative inspection warrant issued pursuant to G.S. 15-27.2.

- (d) The Commission may also require the owner or possessor of any property to file written statements or submit reports under oath concerning the installation or operation of any well or surface water withdrawal or use facility.

- (e) The Commission shall accompany any request or demand for information under this section with a notice that any trade secrets or confidential information concerning business activities is entitled to confidentiality as provided in this subsection. Upon a contention by any person that records, reports or information or any particular part thereof to which the Commission has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets or would divulge confidential information concerning business activities, the Commission shall consider the material referred to as confidential, except that it may be made available in a separate file marked "Confidential Business Information" to employees of the department concerned with carrying out the provisions of this Part for that purpose only. The disclosure or use of such information in any administrative or judicial proceeding shall be governed by the rules of evidence, but the affected business shall be notified by the Commission at least seven days prior to any such proposed disclosure or use of information, and the Commission will not oppose a motion by any affected business to intervene as a party to the judicial or administrative proceeding.

(1967, c. 933, s. 9; 1973, c. 1262, s. 23; 1981, c. 585, s. 12; 1987, c. 827, ss. 154, 172.)

**§ 143-215.20: Repealed by Session Laws 1987, c. 827, s. 173.**

**§ 143-215.21. Definitions.**

Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

- (1), (2) Repealed by Session Laws 1987, c. 827, s. 174.
- (3) "Consumptive use" means any use of water withdrawn from a stream or the ground other than a "nonconsumptive use," as defined in this Part.
- (4) Repealed by Session Laws 1987, c. 827, s. 174.
- (5) "Nonconsumptive use" means (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point

of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a groundwater system or aquifer in such a manner that it is returned to the groundwater system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of groundwater is nonconsumptive) the Commission may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the aquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(6), (7) Repealed by Session Laws 1987, c. 827, s. 174.  
(1967, c. 933, s. 11; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1987, c. 827, ss. 154, 174.)

**§ 143-215.22. Law of riparian rights not changed.**

Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State.  
(1967, c. 933, s. 12.)

**§ 143-215.22A. Water withdrawal policy; remedies.**

- (a) It is against the public policy of North Carolina to withdraw water from any major river or reservoir if both of the following factors are present: (i) the withdrawal will cause the natural flow of water in the river or a portion of the reservoir to be reversed; and (ii) substantial portions of the water are not returned to the river system after use. For purposes of this section, a withdrawal will cause natural flow to be reversed if as a result of the withdrawal, the rate of flow in the river or discrete portion of the reservoir is 15 cubic feet per second or more, moving in a generally opposite direction than prior to the withdrawal, over a distance of more than one mile. To correct for periodic effects, including tidal influences and reservoir fluctuations, flow speed and direction shall be calculated by using annual average flow data to determine pre-withdrawal flows, and projected annual average flow assuming the maximum practical rate of withdrawal, to determine post-withdrawal flows.
- (b) This section shall not be construed to create an independent cause of action by the State or by any person. This section shall not apply to any project or facility for which a withdrawal of water began prior to the date this section is effective.

(1991, c. 567, s. 1; c. 712, ss. 5, 6.)

**§ 143-215.22B. Roanoke River Basin water rights.**

The State reserves and allocates to itself, as protector of the public interest, all rights in the water located in those portions of Kerr Lake and Lake Gaston that are in the State.  
(1995, c. 504, s. 1.)

**§§ 143-215.22C through 143-215.22F: Reserved for future codification purposes.**

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