**Regulatory Impact Analysis**

**Rule Citation Number:** 15A NCAC 02E .0301

**Rule Topic:** Application; Processing Fees

**DEQ Division:** Division of Water Resources (DWR)

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**Impact Summary:** State government: No

Local government: No Private entities: No Agricultural entities: No Substantial Impact: No

**Necessity:** [N.C. Gen. Stat. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf)(c)(c1) requires review of existing rules every 10 years, conduct an analysis of the rule and make a determination as to whether the rule is necessary with substantive public interest, necessary without substantive public interest, or unnecessary. The proposed rule change satisfies the requirement for 15A NCAC 02E .0301.

# Summary

DWR reviewed 15A NCAC 02E .0301 Application; Processing Fees rule in accordance to [G.S.](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf)

[§150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) and proposes to re-adopt the rule. DWR identified necessary changes which include:

* + Updating agency names and addresses;
  + Removing language already codified in statute §143-215.22H; and
  + Removing incorrect reporting requirements already codified in statue §143-215.22H.

The proposed changes include the removal of Paragraphs (e) and (f) and Subparagraph (b)(2). These provisions are contained in N.C. Gen. Stat. §143-215.22H; as such, their proposed removal will have no impact to the overall purpose of the rule.

# Background

## Water Withdrawal and Transfer Registration (WWATR)

WWATR collects annual self-supplied water use data from 85 counties outside of the Central Coastal Plain Capacity Use Area. North Carolina §143-215.22H requires any person who withdraws 100,000 gallons per day or more of water from the surface or groundwaters of the State or who transfers 100,000 gallons per day or more of water from one river basin to another shall register the withdrawal or transfer. Any person who withdraws or transfers 1,000,000

gallons per day of water for activities directly related or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy products, livestock, poultry, and other agricultural products, or to the creation or maintenance of waterfowl impoundments are also required to report. WWATR has over 1,300 active facilities throughout the state reporting information such as monthly average withdrawal, maximum daily amount and location of withdrawal.

## Rules Review and Readoption Process

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate. The Division categorized all the subject rules as “Necessary with substantive public interest.”

A staff attorney to the NC Rules Review Commission performed a pre-review of the rules, and the Division has edited the rules in accordance with the pre-review comments where applicable.

# Economic Impact Analysis

The following table briefly describes the proposed rule change and summarize the anticipated impact.

# : Subchapter 02E – Water Use Registration and Allocation Section .0300 – Registration of Water Withdrawals and Transfers

|  |  |
| --- | --- |
| **Rule** | **Proposed Change** |
| 15A NCAC 02E .0301  Application Processing Fees | Removed language deemed unnecessary. Updated agency name. Removed incorrect information. |
| 15A NCAC 02E .0301  Application Processing Fees | Removed subsection (b)(2) already codified in GS 143.215-22H |
| 15A NCAC 02E .0301  Application Processing Fees | Removed sections (e) and (f) already codified in GS 143.215-22H |

* 1. **: Costs and Benefits Analysis**

# State Government, Local Government, Regulated Community, and the Environment

Changes made to subsection .0301 Application; Processing Fees are mainly for clarification and removal of information already defined under N.C. Gen. Stat. §143- 215.22H. None of the changes suggested will change existing registrant’s procedures or burden future registrants with new requirements.

# Total Economic Impact

The changes proposed will have no financial impact on already registered users or exempt users as defined in North Carolina §143-215.22H(c) for units of local government or agriculture as defined by 15A NCAC 02E .0301(d) and §143-215.22H(b1). The registration requirement has no impact on how much water is withdrawn or from what source. Registration of a withdrawal or transfer no later than two months after initiation remains.

Implementation of the registration fee is authorized under General Powers of the Commission and Department; Auxiliary Powers §143-215.3.

**Regulatory Impact Analysis**

**Rule Citation Number:** 15A NCAC 02E, Section .0501 - .0507

**Rule Topic:** Amendment and Readoption of Rules under 02E - .0500 Central Coastal Plain Capacity Use Area (CCPCUA)

**DEQ Division:** Division of Water Resources (DWR)

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**Impact Summary:** State government: No

Local government: No Private entities: No Substantial Impact: No Federal government: No

**Necessity:** [N.C. Gen. Stat. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department’s rules.

# Summary

The DWR reviewed the Central Coastal Plain Capacity Use Area (CCPCUA) rules in accordance with [G.S. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) and proposes to re-adopt all the rules with minor changes including removal of text which is deemed to be no longer necessary and changes to text to improve clarity.

As measured from the baseline conditions, these rule readoptions are proposed with no substantive changes. [G.S. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) (d)(2) states: “If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.” As such, a fiscal note has not been prepared for this rulemaking package.

# Background

## Central Coastal Plain Capacity Use Area (CCPCUA)

The Water Use Act of 1967 gives the Environmental Management Commission the authority to declare capacity use areas in the State where it finds that the use of ground or surface water requires coordination and limited regulation for protection of the resource. The Act defines a capacity use area as “one where the Commission finds that the aggregate uses of ground water 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.”

The CCPCUA was created due to unsustainable ground water withdrawals of two major aquifers in the central coastal plain: the Black Creek and Upper Cape Fear. There is evidence of present and future ground water supply shortages within the area encompassed by the following 15 counties: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne, and Wilson. Within this area, ground water from the Black Creek and Upper Cape Fear aquifers is being withdrawn at a rate that exceeds the available recharge. To address this problem, DWR created the CCPCUA to regulate water use through permitting to avoid damage to the ground water resources and to maintain those sources of water indefinitely.

CCPCUA permit holders were required to reduce their water withdrawals from these two aquifers by 30% or 75% depending on location over a 16-year period which ended on August 1, 2018. Large investments totaling over $386 million have been spent to date on developing alternate water sources. Permit holders that can demonstrate sustainable water use at a higher amount than their reduced permit amount are issued a temporary permit at the higher withdrawal rate.

## Rules Review and Readoption Process

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the regulated public, and the agency knows or suspects that any person may object to the rule.
2. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
3. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate. The Division categorized all the subject rules as “Necessary with substantive public interest.”

The Division presented the timeline for the proposed draft rules to the Water Allocation Committee (WAC) of the Environmental Management Commission (EMC) on July 10, 2019. A staff attorney to the NC Rules Review Commission performed a pre-review of the rules, and the Division has edited the rules in accordance with the pre-review comments.

The Division prepared draft rules and solicited input on the proposed actions from stakeholders through public notice and posted the proposed rule changes on the Division’s webpage from August 19, 2019 to September 20, 2019. The initial public comment period gave stakeholders the opportunity to review and submit comments on the Division’s draft proposed rules.

# Economic Impact Analysis

The following table briefly describes the proposed rule. None of these changes will result in an economic or environmental impact.

# : Subchapter 02E – Water Use Registration and Allocation Section .0500 – Central Coastal Plain Capacity Use Area

|  |  |
| --- | --- |
| **Rule** | **Proposed Change** |
| 15A NCAC 02E .0501  Declaration and Delineation of Central Coastal Plain Capacity Use Area | Format changes and removed language deemed unnecessary. |
| 15A NCAC 02E .0502  Withdrawal Permits | Format changes and removed language deemed unnecessary. Updated language for clarification. |
| 15A NCAC 02E .0503  Prescribed Water Use Reductions in Cretaceous Aquifer Zones | Repeal rule. Removed language deemed unnecessary. |
| 15A NCAC 02E .0504  Requirements for Entry and Inspection | Updated language for clarification. |
| 15A NCAC 02E .0505  Acceptable Withdrawal Methods that Do Not Require a Permit | Format changes and removed language deemed unnecessary. |
| 15A NCAC 02E .0506  Central Coastal Plain Capacity Use Area Status Report | Repeal rule. Removed language deemed unnecessary. |
| 15A NCAC 02E .0507  Definitions | Updated language for clarification. Added 3 definitions (aquifer recharge, cretaceous aquifer system zones, and recharge rate). |

* 1. **Costs and Benefits Analysis**

# State Government, Local Government, Regulated Community, and the Environment

Changes to the CCPCUA rules are technical in nature and include the removal of unnecessary language since the prescribed water withdrawal reductions have been implemented as of August 1, 2018. There are no substantive changes, and no changes that will impose an additional burden on the regulated community. None of these changes will require DEQ or local governments to revise their existing procedures or to procure additional staff; as such, there should be no economic cost to state agencies or local governments.

The improved clarity of the rules should translate into less time spent by the regulated community on the water withdrawal permitting process as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

# Total Economic Impact

As measured from the baseline conditions, there are no substantive changes associated with the proposed rule readoptions. Consequently, no new economic or environmental impacts are anticipated to result from the proposed rule readoptions.

**Regulatory Impact Analysis**

**Rule Citation Number:** 15A NCAC 02E, Section .0601 - .0615

**Rule Topic:** Readoption of Rules under 02E - .0600

Water Use During Droughts and Water Supply Emergencies

**DEQ Division:** Division of Water Resources (DWR)

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**Impact Summary:** State government: No

Local government: No Private entities: No Substantial Impact: No Federal government: No

**Necessity:** [N.C. Gen. Stat. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) requires state agencies to review existing rules every 10 years, determine which rules are still necessary, and either re-adopt or repeal each rule as appropriate. The proposed rulemaking satisfies these requirements for a portion of the Department’s rules.

# Summary

The DWR reviewed the Water Use During Droughts and Water Supply Emergencies rules in accordance with [G.S. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) and proposes to re-adopt all the rules with minor changes including removal of text which is deemed to be no longer necessary and changes to text to improve clarity.

As measured from the baseline conditions, these rule readoptions are proposed with no substantive changes. [G.S. §150B-21.3A](http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H74v5.pdf) (d)(2) states: “If a rule is readopted without substantive change, or if the rule is amended to impose a less stringent burden on regulated persons, the agency is not required to prepare a fiscal note as provided by G.S. 150B-21.4.” As such, a fiscal note has not been prepared for this rulemaking package.

# Background

## Water Use During Drought and Water Supply Emergencies

The multi-year drought that culminated in 2002 affected most of North Carolina’s water users. The drought emphasized the importance of efficient water resources management in North Carolina. Steady growth in population and in water needs for economic development, together with the prospect of future droughts, highlight the need to continually improve water resources management, water conservation and water use efficiency.

As one response to the drought, the North Carolina General Assembly passed House Bill 1215 (Session Law 2002-167) in the 2002 legislative session. Session Law 2002-167 required the Environmental Management Commission to develop rules establishing minimum standards and practices for water conservation and water reuse during drought and water supply emergencies. The rules must address water use by publicly and privately owned water systems, state agencies, local governments, business, industry, agriculture and horticulture. The purpose of the rules is to minimize harmful impacts on public health and safety, environmental quality, and the economy by establishing minimum standards and practices for water shortage response planning, water use reporting, water conservation, and water reuse during droughts and water supply emergencies.

Also in response to the 2002 drought, the North Carolina General Assembly passed House Bill 1062 (Session Law 2002-387) in the 2003 legislative session. Session Law 2002-387 requires all community water systems that regularly serve at least 1,000 connections or 3,000 individuals to submit a Local Water Supply Plan as well as all units of local government that supply water to the public. The Local Water Supply Planning process was originally established in 1989 by North Carolina General Statute 143-355(l). The Local Water Supply Plans must include the following information: water system statistics for a given calendar year, a service area map, projected service area populations and water demands, water conservation and demand management activities, a water shortage response plan, and interbasin transfer worksheets with past, present, and projected future transfer amounts. Local Water Supply Plans must be updated at least every five years.

Session Law 2002-387 also added the requirement that all units of local government and community water systems that prepare a Local Water Supply Plan provide in the plan a description of how the water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs. This part of the plan is known as the Water Shortage Response Plan.

North Carolina General Statute 143-215.22H applies to systems not required to prepare a Local Water Supply Plan. It requires water users who withdraw or transfer 100,000 gallons of water or more in any single day, for all purposes except agriculture, to register the withdrawal or transfer. This statute also requires that agricultural water users who withdraw or transfer 1,000,000 gallons of water or more in any single day to register the withdrawal or transfer. Registrations must be updated every five years. Water users in the Central Coastal Plain Capacity Use Area are currently required to register their water use of 10,000 gallons or more of surface or ground water in any single day under the Capacity Use Area Rules.

The Water Withdrawal & Transfer Registration Statute (NCGS 143-215.22H) requires water users to report the following information: facility information, water users’ contact information, type of water use, amount of water use, water source, discharge amounts and methods, and surface water interbasin transfers.

## Rules Review and Readoption Process

G.S. §150B-21.3A requires the Department to evaluate each of its existing rules and make an initial determination as to whether the rules are:

1. Necessary with substantive public interest – the agency has received public comment on the rule within the past two years or the rule affects the property interest of the

regulated public, and the agency knows or suspects that any person may object to the rule.

1. Necessary without substantive public interest – the agency determines that the rule is needed, and the rule has not had public comment in the last two years. This category includes rules that identify information that is readily available to the public, such as an address or telephone number.
2. Unnecessary – the agency determines that the rule is obsolete, redundant or otherwise not needed.

The Department must then determine which rules are still necessary and propose to re-adopt, with or without modifications, or to repeal each rule as appropriate. The Division categorized all the subject rules as “Necessary with substantive public interest.”

A staff attorney to the NC Rules Review Commission performed a pre-review of the rules, and the Division has edited the rules accordingly.

# Economic Impact Analysis

The following table briefly describes the proposed rule changes. None of these changes will result in an economic or environmental impact.

# : Subchapter 02E – Water Use Registration and Allocation

**Section .0600 – Water Use During Drought and Water Supply Emergencies**

|  |  |
| --- | --- |
| **Rule** | **Proposed Change** |
| 15A NCAC 02E .0601  Scope | No changes. |
| 15A NCAC 02E .0602  Definitions | Alphabetized the definitions, added definitions and reworded language for clarification. |
| 15A NCAC 02E .0603  General Information | Updated language for clarification, updated rule cross-  reference and added statutory authority to History Note. |
| 15A NCAC 02E .0604  Annual Reporting of Water Use Data | No changes. |
| 15A NCAC 02E .0605  Water Use Reduction Reporting, New Water Withdrawal Reporting and Regional Coordination During Droughts | No changes. |
| 15A NCAC 02E .0606  Water Shortage Response Planning Requirements | Updated language for clarification. |
| 15A NCAC 02E .0607  Publicly and Privately owned Water System Water Shortage Response Planning Requirements | Updated language for clarification. |
| 15A NCAC 02E .0608  State Agency Water Shortage Response Planning Requirements | No changes. |
| 15A NCAC 02E .0609  Local Government Water Shortage Response Planning Requirements | Updated language for clarification. |
| 15A NCAC 02E .0610  Business and Industrial Water Shortage Response Planning Requirements | No changes. |

|  |  |
| --- | --- |
| 15A NCAC 02E .0611  Agricultural and Horticultural Water Shortage Response Planning Requirements | No changes. |
| 15A NCAC 02E .0612  Default Water Shortage Response Planning Measures | No changes. |
| 15A NCAC 02E .0613  Default Water Use Reduction Measures During NCDMAC Extreme Drought Designations | Updated language for clarification and updated rule cross-reference. |
| 15A NCAC 02E .0614  Default Water Use Reduction Measures During NCDMAC Exceptional Drought  Designations | Updated language for clarification and updated rule cross-reference. |
| 15A NCAC 02E .0615  Water Reuse During Droughts and Water Emergencies | Updated language for clarification and updated rule cross-reference. |

# Costs and Benefits Analysis

**State Government, Local Government, Regulated Community, and the Environment**

Changes to the Water Use During Drought and Water Supply Emergencies Rules are technical in nature and include updated language for clarification, added definitions, and updated rule cross-reference language. There are no substantive changes, and no changes that will impose an additional burden on the regulated community. None of the changes will require DEQ or local governments to revise their existing procedures or to procure additional staff; as such, there should be no economic cost to state agencies or local governments.

The improved clarity of the rules should translate into less time spent by the regulated community on the registration and reporting processes as well as less time spent by regulatory staff providing technical assistance. The amount of time saved will be negligible and will not provide a significant financial benefit; however, it is noted here for completeness.

Lastly, as measured from the baseline conditions, the proposed changes will maintain existing environmental protections at an equivalent level with no cost or benefit to the environment.

# Total Economic Impact

As measured from the baseline conditions, there are no substantive changes associated with the proposed rule readoptions. Consequently, no new economic or environmental impacts are anticipated to result from the proposed rule readoptions.