



Request Approval of Hearing Officer's Report on Proposed Rule Re-adoptions to 15A NCAC 02E Water Use Registration and Allocation Rules

Environmental Management Commission – November 18, 2021

Linwood Peele & Gabrielle Chianese, DWR



Rules – 15A NCAC 02E

Subchapter	Section	Description
02E	.0100 Section	General Provisions
02E	.0300 Section	Registration of Water Withdrawals and Transfers
02E	.0500 Section	Central Coastal Plain Capacity Use Area
02E	.0600 Section	Water Use During Droughts and Water Supply Emergencies



Background

- 02E Water Use Registration and Allocation Program rules underwent rule review during 2017
- Rulemaking process began early 2017 by inviting stakeholders to comment on draft rules
- WAC update in 2019 and RRC pre-review
- Regulatory Impact Analysis was approved by OSBM in December 2020
- WAC and EMC approved to public notice and hearing in 2021





Public Comment and Hearing

- Public comment period: May 3, 2021 - July 2, 2021
- Virtual public hearing: May 20, 2021
 - 13 people attended
 - 1 person registered to speak
- 5 individual written comments were received prior to the close of the comment period





Summary of Comments Received

- Comments received include:
 - Proposed additions and changes to rule language
 - General comments on purpose and intent of these rules
 - General comments on procedural processes for the permitting and registration
- All comments are summarized with responses in the Hearing Officer's Report
- Recommended changes made to the rule text in response to the comments received are shown in Attachment A of the Hearing Officer's Report



Recommended Rule Changes After Comment Period

15A NCAC 02E .0301(a) APPLICATION; PROCESSING FEES

- Comment: Needs a period after “Quality” and before “Mailing Address”.

(a) Any person subject to G.S. 143-215.22H, shall complete, sign, and submit an application for registration, on a form provided by the Department, to the Director of the Division of Water Resources. The registration application and registration processing fee as set forth in Paragraph (b) of this Rule (~~if applicable~~) shall be mailed to the Division of Water Resources, North Carolina Department of ~~Environment, Health, and Natural Resources, Post Office Box 27687, Raleigh, North Carolina 27611-7687~~ Environmental [Quality,] Quality. The mailing address shall be provided by Division of Water Resources.



Recommended Rule Changes-continued

15A NCAC 02E.0502(c) WITHDRAWAL PERMITS

- Comment: Concerns that the proposed language, “no groundwater withdrawal shall result in adverse impacts”, could result in permit denials for withdrawals considered to have only de minimis impacts.
- Response: DWR recommends not using the proposed language that went out to notice and keep the original language for 02E .0502(c).

.0502(c) ~~[No ground water withdrawal shall result in adverse impacts, including dewatering of aquifers, encroachment of salt water, land subsidence or sinkhole development, or decline in aquifer water levels that indicate aggregate water use exceeds the aquifer recharge rate.]~~

Ground water withdrawals shall be governed by the following standards:

- (1) Adverse impacts of ground water withdrawals shall be avoided or minimized. Adverse impacts include, but are not limited to:
 - (A) dewatering of aquifers;
 - (B) encroachment of salt water;
 - (C) land subsidence or sinkhole development; or
 - (D) declines in aquifer water levels that indicate that aggregate water use exceeds the aquifer replenishment rate.
- (2) Adverse impacts on other water users from ground water withdrawals shall be corrected or minimized through efficient use of water and development of sustainable water sources.
- (3) In determining the importance and necessity of a proposed withdrawal the efficiency of water use and implementation of conservation measures shall be considered.



Recommended Rule Changes-continued

15A NCAC 02E.0502(d)(3) WITHDRAWAL PERMITS

- Comment: Concern that there are references in the proposed rules to the Cretaceous Aquifer System zones. The rules are not specific as to how the recognitions of these zones will be applied relative to future permitting. Because all the prescribed reductions in withdrawals (previously laid out in 15A NCAC 02E .0503) have been completed, and that section of the rules is being eliminated, how will those prior zones be considered?
- Response: DWR agrees language should be clarified. Large investments have been made by current permit holders to meet Cretaceous aquifer zone reductions. DWR does not believe the intent of these rules is to allow new users in aquifer zones that have been mandated to require existing users to reduce their water withdrawals. DWR recommends changing the word “recognizing” to “protecting”.

.0502(d)(3) ~~withdrawal~~ ~~Withdrawal~~ permit applications for use of ground water from the Cretaceous aquifer system shall be reviewed protecting [recognizing] the Cretaceous aquifer system zones, include plans to reduce water use from these aquifers as specified in Rule .0503 of this Section. Withdrawal rates from the Cretaceous aquifer system that exceed the approved base rate may be permitted during Phase I of Rule .0503 of this Section if the applicant can demonstrate to the Director's satisfaction a need for the greater amount. Cretaceous aquifer system wells shall be identified using the specifications in Rule .0502(d)(1) and .0502(d)(2) of this Section and the hydrogeological framework;



Recommended Rule Changes-continued

15A NCAC 02E.0502(m) WITHDRAWAL PERMITS

- Comment: Concern that permitted water users are currently allowed to sell or transfer to other users a portion of their permitted withdrawal. The proposed rule revision would not allow permitted users to sell a portion of their withdrawal, but they would still be allowed to transfer a portion to another user. This change would put additional limits on businesses that may be struggling financially and could benefit from the additional revenue.
- Response: DWR agrees and recommends to un-strike the words “sell or” to be consistent with 02E .0502(l).

.0502(m) A permitted water user may sell or transfer to other users a portion of his permitted withdrawal. To carry out such a transfer, the original permittee must request a permit modification to reduce his permitted withdrawal and the proposed recipient of the transfer must apply for a new or amended withdrawal permit. ~~permit under Section .0500 of this Subchapter.~~



Recommended Rule Changes-continue

15A NCAC 02E .0507 DEFINITIONS

(3) AQUIFER RECHARGE

- Comment: Concerns that the proposed definition is not standard in literature and over simplified. One suggestion is to use the following definition: “the addition of water to the zone of saturation” (Driscoll, 1986, Pg 890) instead of “precipitation that infiltrates into the subsurface”.
- Response: Based on the public comments, DWR recommends replacing the definition of aquifer recharge with “the addition of water to the zone of saturation.”

.0507(3) Aquifer recharge: [~~Precipitation that infiltrates into the subsurface.~~] The addition of water to the zone of saturation.



Recommended Rule Changes-continued

15A NCAC 02E .0507 DEFINITIONS

(15) INTERMITTENT USERS

- Comment: Concern that the definition is changed in the proposed rule from persons who withdraw groundwater less than 60 days or less than 15 million gallons in a calendar year. The proposed rule would define intermittent users as persons who withdraw groundwater less than 60 days and less than 15 million per calendar year. This would reduce the number of agricultural users being classified as intermittent users without any reason given.
- Response: DWR recommends that the proposed change be deleted and that the definition of intermittent users remain as currently defined in 02E .0507.

.0507(15) Intermittent users: Persons who withdraw ground water less than 60 days per calendar year ~~[and]~~ or who withdraw less than 15 million gallons of ground water in a calendar year; or aquaculture operations registered by the Board of Agriculture in accordance with G.S. 106-761 ~~licensed under the authority of G.S. 106-761~~ using water for the initial filling of ponds or refilling of ponds no more frequently than every five years.



Recommended Rule Changes-continued

15A NCAC 02E .0507 DEFINITIONS

(19) RECHARGE RATE

- Comments: Concerns that the proposed definition is ambiguous and ties recharge determinations for the Cretaceous aquifers to the NCDWR's monitoring well network. It also does not define the "given time interval" that will be the basis for determining whether or not the recharge rate is exceeded by aggregate withdrawals. Suggest the definition should be limited to the first sentence and delete the last two sentences.
- Response: DWR recommends striking the following proposed language: "Recharge rates for the Cretaceous aquifer system vary depending on the thickness and hydraulic conductivity of the overlying sedimentary layers. A best fit line through water levels from the Division operated monitoring wells over a given time interval will show if withdrawals exceed, are less than, or are equal to the aquifer recharge rate."

.0507(19) Recharge rate: The rate of which water replenishes an aquifer. ~~[Recharge rates for the Cretaceous aquifer system vary depending on the thickness and hydraulic conductivity of the overlying sedimentary layers. A best fit line through water levels from the Division operated monitoring wells over a given time interval will show if withdrawals exceed, are less than, or are equal to the aquifer recharge rate.]~~



Subset of Comments Received - No Recommended Rule Changes

15A NCAC 02E .0505(c) Acceptable Withdrawal Methods that do not require a permit

- Comment: Concern with the removal of the rule which allows agricultural users to report water use through the NCDA&CS water use survey.
- Response: The NCDA&CS water use survey was conducted on an annual basis from 2002 to 2012 which complies with the annual registration reporting requirement of .0505(a)(2). As of 2012, the NCDA&CS water use survey has been conducted every two years which is out of compliance with the annual reporting requirement in .0505(a)(2). A 2-year water use reporting scheme could miss significant changes in water use, which could result in permitting a new water withdrawal that may not be sustainable with the existing water users.

15A NCAC 02E .0502(n) Withdrawal Permits

- Comment: Concern with necessity to retain language concerning Temporary Permits.
- Response: This rule is necessary since it allows existing Cretaceous aquifer users located in the reduction zones the ability to request a higher withdrawal amount from their prescribed reduced permit amount. Authority under GS 143-215.15(c).

Rulemaking – Schedule

January 2021	WAC approves draft rules to full EMC (Sections .0100, .0300, .0500 & .0600)
March 2021	EMC approves draft rules to public notice
May – July 2021	Public comment period (notice and hearings)
July – September 2021	Review comments/draft HO report
November 2021	EMC adopts rules
December 2021	RRC review/approval
January 1, 2022	Proposed effective date





Recommended Motion

The recommended motion is for the EMC to approve the Hearing Officer's Recommendations:

- **Readopt with substantive changes** 15A NCAC 02E .0301, .0501, .0502, .0504, .0505, .0507, .0602, .0603, .0605-.0615,
- **Readopt without substantive changes** 15A NCAC 02E .0106, .0107, .0601, .0604, and
- **Repeal** 15A NCAC 02E .0503 and .0506
- As written in Attachment A (Proposed 15A NCAC 02E Rules) of the HO's report,
- and associated Regulatory Impact Analyses in Appendix B of the Hearing Officer's Report.

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Questions Related to CCPCUA

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