

**§ 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- (4) to (6) Repealed by Session Laws 1981, c. 585, s. 3.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.)