

May 22, 2008

**H 2499. DROUGHT/WATER MANAGEMENT RECOMMENDATIONS.** Filed 5/21/08. *TO IMPLEMENT WATER MANAGEMENT AND DROUGHT PREPAREDNESS AND RESPONSE MEASURES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.*

Effective October 1, 2008, amends GS 143-215.22H (Registration of water withdrawals and transfers required) to: (1) reduce the period of time in which a person initiating a new water withdrawal or transfer of 100,000 gallons per day must register with the Environmental Review Commission (ERC) from within six months to within two months after the initiation of the withdrawal or transfer, (2) eliminate the exception to the registration requirement for persons who withdraw or transfer less than 100,000 gallons per day of water for activities directly related or incidental to the production of crops, plants, dairy products, livestock, poultry and other agricultural products, (3) change the penalty for failure to register from \$5.00 per day for each day the registration is late, up to a maximum of \$500, to a flat rate of \$100, (4) change the penalty for failure to update a registration from \$5.00 per day for each day the updated information is late, up to a maximum of \$500, to a flat rate of \$50.00, and (5) authorize the ERC to assess a separate penalty for each day a person willfully fails to register or fails to update information once the ERC provides notice of the violation.

Amends GS 143-350 (Definitions) to define the terms essential water use, large community water system, and unit of local government.

Enacts new GS 143-354.1 to direct the ERC to adopt rules establishing minimum water conservation measures, subject to certain requirements, for cities, counties, and unified local governments located in areas designated by the Drought Management Advisory Council as areas of severe, extreme, or exceptional drought. Requires each city, county, or unified local government located in areas of severe, extreme, or exceptional drought to implement the rules established by the ERC. Authorizes any city, county, or unified local government to adopt water conservation ordinances pursuant to their general policy power. The local ordinance requirements must be at least as strict as the minimum water conservation rules adopted by the ERC. The local water conservation ordinances may apply to all water users within the city, county, or unified local government's jurisdiction, including water users served by an investor-owned utility or private water supply well.

Amends GS 143-355 (Powers and duties of the Department) to: (1) allow the Department of Environmental and Natural Resources (DENR) to require each local government water system and each large community water system to report water use on a weekly basis and report additional necessary information in the event of a drought or other water shortage, (2) require DENR to approve each unit of local government and large community water system's local water supply plan, (3) direct each unit of local government and large community water system to include a water audit and leak detection program, and identification of existing and planned interconnections to other water systems as part of its local water supply plan, (4) require each unit of local government and large community water system to submit a revised local water supply plan that specifies how the water system intends to address foreseeable future water needs when 80 percent of the water system's available water supply based on average daily demand as been allocated to current or prospective water users or the seasonal demand exceeds 90 percent, (5) direct DENR to approve each local water supply plan only if it finds that the plan includes the required statutory information and the water supply sources identified in the plan can be used to supply potable water and are adequate to meet the water supply needs projected in the plan, (6) authorize the Secretary of DENR to adopt rules necessary to implement the statutory requirements, and (7) make other conforming changes.

Effective October 1, 2008, enacts new GS 143-355.2 and accordingly modifies GS 143-354 to redefine water shortage emergency powers. Directs the Secretary of DENR to inform the Governor if the needs of human consumption, necessary sanitation, and public safety require emergency action. Authorizes the Governor to declare a water shortage emergency of up to 30 days in any affected area. Requires the Secretary of DENR to exercise the following powers within a designated water shortage emergency area if needed: (1) require any water system that has water supply in excess of that required to meet essential water uses to provide water to a water system experiencing a water shortage emergency, (2) adopt rules governing the conservation and use of water within the water shortage emergency area, and (3) adopt rules

governing conservation and use of water within the service area of the water system from which water is being diverted. Authorizes any water or wastewater system receiving diverted waters from another water system to lay necessary temporary waterlines for the period of the water shortage emergency across, under, or above any and all properties to connect the emergency water supply to an intake of the supplying water or wastewater system without first acquiring right-of-way. Requires any water or wastewater system receiving water from another system during a water shortage emergency to reimburse the supplying water system the cost of the water, subject to certain limitations. The receiving water system is liable for any damage caused or loss suffered as a result of laying of the temporary waterlines and must post a bond with a surety approved by the Secretary of DENR before the diversion occurs.

Effective July 1, 2009, enacts new GS 143-355.3 to require local governments and large community water systems to ensure that water delivered by the water system is metered to the maximum extent practicable and to require separate meters for newly installed in-ground irrigation systems. Conditions the receipt of State water infrastructure funds from the Drinking Water Revolving Fund or the Drinking Water Reserve Fund or any other grant or loan of funds allocated by the General Assembly on a local government or large community water system demonstrating that its water system: (1) has established a fee structure that is adequate to pay the cost of maintaining, repairing, and operating the system, (2) has implemented a leak detection and repair program, and (3) has a water supply plan approved pursuant to GS 143-355. Prohibits declining-block rate structures for residential customers.

Effective December 1, 2008, adds new GS 143-355.4 to authorize the Secretary of DENR to assess civil penalties for certain violations of water shortage emergency regulations. Makes it a Class 1 misdemeanor to violate emergency water conservation rules adopted by the Secretary of DENR.

Effective October 1, 2008, adds new GS 130A-329 to direct that all reports required to be submitted must be submitted electronically on a form specified by DENR may waive the electronic submission requirement if the water system demonstrates that it lacks the technical capability to report electronically.

Amends GS 130A-335(a) (Wastewater collection, treatment and disposal; rules) to direct that all wastewater from water-using fixtures and appliances in a residence, place of business, or place of public assembly, must discharge to an approved wastewater system.

Enacts new GS 130A-345 to define allowable uses for untreated gray water, defined as wastewater removed from household wash basins, bathtubs, and showers, during periods of drought.

Amends GS 159G-23 (Common criteria for loan or grant from Wastewater Reserve or Drinking Water Reserve) to include reduction of vulnerability to drought in the definition of the efficiency factor and to add the following methods of achieving efficiency: (1) bulk water reuse facilities and waterlines to supply reuse water for irrigation and other approved uses, (2) construction of an interconnection between water systems intended for use in drought or other water shortage emergency, (3) repair or replacement of leaking waterlines, and (4) replacement of meters and installation of new metering systems.

Directs the State Water Infrastructure Commission, in consultation with DENR and the UNC-CH School of Government, to develop guidelines for water rate structures and recommend rate structures that support water conservation. Directs the Commission to report to the ERC on its progress in developing the guidelines by January 1, 2009.

Directs DENR to develop recommendations for water efficiency standards for water-using fixtures in residential and commercial buildings and in-ground irrigation systems and for the efficient metering of water use. DENR must submit its recommendations to the Commissioner of Insurance, the Chair of the Building Code Council, and the ERC by January 1, 2009.

**Intro. by Allen, Gibson, Tucker.**

GS 130A, 143, 159G

July 8, 2008

**H 2499. DROUGHT/WATER MANAGEMENT RECOMMENDATIONS.** Filed 5/21/09. House committee substitute makes the following changes to 1st edition. Restores existing language deleted from proposed revised GS 143-215.22H, which would have eliminated an exemption from

registration with the Environmental Review Commission (ERC) for certain withdrawals or transfers of water for a person withdrawing or transferring less than 1,000,000 gallons per day 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. Instead, effective October 1, 2008, amends GS 106-24 to require the Department of Agriculture and Consumer Services (DACS) to annually collect information on water use by persons who withdraw 10,000 gallons or more per day of water from surface or groundwater sources for those activities. Directs DACS to develop a survey form in consultation with the Department of Environment and Natural Resources (DENR) and requires an initial report to ERC (with a copy submitted to DENR) by July 1, 2009, and subsequent annual reports by July 1 of each year. Sets forth information to be included in the report.

Expands the definition of *essential water use*, in proposed revised GS 143-350, to include a minimum amount of water necessary to maintain the economy of the state, region, or area. Adds definitions for *U.S. Drought Monitor* and *water shortage emergency*.

Deletes proposed new GS 143-354.1, which would have required ERC to adopt rules establishing minimum water conservation measures to be implemented by units of local government located in areas designated by the Drought Management Advisory Council as areas of severe, extreme, or exceptional drought. Instead, enacts a new GS 143-355.2, which directs units of local government that provide public water service and large community water systems to develop and implement water conservation measures to respond to drought or other water shortage conditions. Renumbers proposed newly enacted sections accordingly. Requires that water conservation measures be set out in a water shortage response plan and be submitted to DENR for approval, pursuant to GS 143-355(l). Sets forth criteria required to be included in the plan to receive DENR approval. Authorizes DENR to require more stringent conservation measures if DENR makes findings that any county in which the source of water for the public water system is in: (1) severe, extreme, or exceptional drought and (a) the unit of local government has not begun any level of conservation measures set out in the water shortage response plan and (b) implementation of measures is necessary to minimize harmful impacts as described in this sub-subdivision or (2) extreme or exceptional drought and a plan has been implemented for 30 days or more but water use has not been reduced in an amount to minimize harmful impacts as described in this sub-subdivision. Establishes factors for DENR to consider in making those findings. Sets forth subsequent options available to DENR, including requiring the implementation of measures up to two levels more stringent than the tier currently implemented by the plan. Specifies that the US Drought Monitor designation will be used for drought designation in an area. Provides the Secretary of DENR with discretion in changing drought designations. Requires a unit of local government without a plan to implement default conservation measures for extreme and exceptional drought as set forth in rules adopted by ERC. Requires those measures to be implemented within 10 days following a corresponding drought designation. Provides that a plan is presumed to be approved until DENR notifies the unit of local government or large community water system that it has been disapproved. Establishes that the unit of local government or large community water system is deemed in compliance with this section if within 10 days measures are implemented as required by its plan, and that it must report within 72 hours to DENR after beginning implementation. Lists exceptions to this section, including regulation of deepwater wells that do not impact surface water. Requires Water Shortage Response Plans revised to comply with this section to be submitted by July 1, 2009.

Directs ERC, as part of its ongoing study of allocation of water resources, to study whether and to what extent private ground water wells should be regulated by state or local government. Requires ERC to report to the General Assembly as provided by SL 2007-518, as amended.

Amends proposed new GS 143-355.3 (was, GS 143-355.2) by making technical, clarifying, and conforming changes. Provides that the Secretary will give preference to diversion of water from a water system within the same river basin as the water system that is experiencing a water shortage emergency. Provides that rules adopted by the Secretary to govern conservation and use of water, regarding the water shortage emergency area and the service area of the water system requiring diversion, do not apply to regulation of deepwater wells that do not impact surface water. Requires temporary waterlines installed under this statute to be removed within 90 days following the end of the emergency period unless the Secretary, for good cause, authorizes

a 30-day extension. Allows costs charged to the receiving system for water allocated during an emergency to be provided for by an interlocal agreement. Changes the effective date from October 1, 2008, to when the act becomes law.

Amends proposed new GS 143-355.4(b) (was, GS 143-355.3) by adding that a local government or large community water system must demonstrate that it has evaluated the extent to which the future water needs of the water system can be met by reclaimed water to be eligible for state water infrastructure funds, including those from the Drinking Water Revolving Fund or the Drinking Water Reserve Fund and General Assembly allocations.

Enacts a new GS 143-355.5 to establish a policy on the reuse of treated wastewater or reclaimed water and provide rulemaking authority for the ERC to promote that purpose.

Amends proposed new GS 143-355.6 (was, GS 143-355.4) by authorizing the Secretary to assess a maximum civil penalty of \$10,000 per month (was, \$1,000) against a *unit of local government* providing water service or a large community water system that fails to comply with water conservation measures set out in GS 143-355.2 or the default rules adopted by ERC.

Deletes proposed new GS 130A-345, which allowed untreated *gray water* (wastewater removed from household wash basins, bathtubs, and showers) to be used in periods of drought to hand water trees, shrubs, and inedible plants under certain conditions. Instead, creates uncodified provisions, related to gray water, to include directing the Commission for Health Services (CHS) to adopt rules authorizing use of gray water under certain conditions. Sets forth immediate guidelines, expiring upon the effective date of CHS rules, in which untreated gray water may be used in periods of drought to hand water trees, shrubs, and inedible plants on single-family residential properties.

Amends GS 143-355.1 by expanding the Drought Management Advisory Council's (Council) duty to provide consistent and accurate information to include reporting to *the US Drought Monitor, the Environmental Management Commission, the Secretary, ERC, and the public*. Adds representatives from the North Carolina League of Municipalities, the North Carolina Association of County Commissioners, and the North Carolina Utilities Commission among those invited to serve on the Council. Sets forth expertise required for designated organization representatives to be able to serve on the Council. Requires DENR to also invite investor-owned water utilities regulated by the NC Utilities Commission to participate in work of the Council. Makes technical changes and conforming changes regarding the use of the US Drought Monitor or Secretary-approved drought designations. Allows the Council to recommend drought designations that differ from those established by the US Drought Monitor.

Adds the North Carolina Utilities Commission, the Public Staff of the North Carolina Utilities Commission, and the Local Government Commission to the entities working in consultation with the State Water Infrastructure Commission on developing guidelines for water rate structures.

Directs DENR to develop recommendations for water efficiency standards for water-using fixtures in residential and commercial building and in-ground irrigation systems, *in consultation with the technical working group that consists of scientists from UNC and industry experts*.

Effective October 1, 2008, enacts new GS 47C-3-122 (related to condominiums) and GS 47F-3-122 (related to planned communities) to allow homeowners that entered into a covenant or a declaration of covenant registered prior to October 1, 2008, which requires irrigation of landscaping regardless of imposed water conservation measures, to violate the irrigation requirement, in an area affected by severe, extreme, or exceptional drought with imposed conservation measures, without fine or penalty unless the covenant explicitly authorized fines or penalties. Requires that covenants registered on or after October 1, 2008, must specifically state that any requirement to irrigate landscape is suspended during a period in which water conservation measures are imposed. Allows for covenants to specifically authorize fines or other penalties. Defines *landscaping* to include lawns, trees, shrubbery, and other ornamental or decorative plants.

Makes a technical change to proposed revised GS 143-354 and changes the effective date of amendments from October 1, 2008, to when the act becomes law. Makes clarifying and conforming changes to proposed new language in GS 143-355. Makes technical changes to proposed revised GS 130A-335(a) and proposed revised GS 159G-23. Changes the effective date of new GS 130A-329 (electronic reporting requirement) from October 1, 2008, to when the act becomes law.

Changes title to *AN ACT TO IMPROVE DROUGHT PREPAREDNESS AND RESPONSE IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION*.

July 14, 2008

**H 2499. DROUGHT/WATER MANAGEMENT RECOMMENDATIONS.** Filed 5/21/08. House amendment makes the following changes to 2nd edition. Amendment #1 amends proposed revised GS 143-215.22H(e) by clarifying that the amounts charged to a person who fails to register or update a registration for a water transfer or withdrawal are *civil penalties*.

Amendment #3.1 amends proposed GS 143-355.2(h) by clarifying that the exception from local government water regulation for deepwater wells that do not impact surface water does not include an exception for a well that is a water supply source for a water system.

Amendment #3.3 requires the Environmental Review Commission, as part of its study on the allocation of water resources, to study issues related to increasing water supply, including reservoir construction. Requires report on its findings to the General Assembly as provided by Section 1 of SL 2007-518, as amended. Amendment #3.2 makes a conforming change.

Amendment #3.4 amends proposed GS 143-355.3(a) by requiring that a successive emergency period may only be declared by the Governor based upon the *written findings* (was, upon recommendation) of the Secretary of the Department of Environment and Natural Resources.

Amendment #3.5 amends proposed GS 143-355.3(d) by setting the maximum cost charged to the receiving system (water supply experiencing a water shortage emergency) as *110%* of the retail cost (was, the retail cost) that would be charged to a customer of the supplying system and any additional costs incurred for alterations to its infrastructure or water treatment to effectuate the diversion.

Amendment #3.6 amends proposed GS 143-355.4(a) by allowing (was, requiring) local government water systems and large community water systems to require separate meters for new in-ground irrigation systems. Amendment #3.7 amends proposed GS 143-355.4(b) by adding the requirement that a local government or large community water system implement a consumer education program that emphasizes the importance of water conservation to be eligible for state water infrastructure funds.

Amendment #3.8 amends proposed revised GS 143-355.1(b) by adding the North Carolina Ground Water Association and the North Carolina Farm Bureau to the list of organizations invited to designate a representative to serve on the Drought Management Advisory Council.

Amendment #3.9 amends proposed GS 47C-3-122 to reflect that no requirements in any declaration of covenants will be construed to require (was, regulate) the irrigation of landscaping during drought conditions.

July 15, 2008

**H 2499. DROUGHT/WATER MANAGEMENT RECOMMENDATIONS.** Filed 5/21/08. House amendments make the following changes to 2nd edition, as amended.

Amendment #5 adds a new section to provide that for the purpose of proposed new GS 47F-3-122 (irrigation of landscaping), *contamination of drinking water* is defined to mean any exceedance of the drinking water standards adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act or those adopted by the Commission for Health Services under GS Chapter 130A, Article 10. Specifies that it is the intent of the General Assembly that the Department of Environment and Natural Resources (DENR) aggressively compel persons who are responsible for groundwater contamination that results in the contamination of drinking water to assess and remediate the groundwater contamination as required by law.

Amendment #4 amends GS 143-355.1(b) to direct DENR to add the following organizations to the list of those invited to designate a representative to serve on the Drought Management Advisory Council: (1) the Conservation Council of North Carolina, (2) the North Carolina Environmental Defense Fund, and (3) the North Carolina Chapter of the Sierra Club.

Amendment #10 amends proposed new (1) GS 143-355.2.(h) [permitting local governments to impose more stringent water conservation measures], (2) GS 143-355.3(b)(2) [adopting rules governing water conservation within a water shortage emergency area], and (3) GS 143-355.3(b)(3) [adopting rules governing water conservation within a service area from which water is being diverted], to provide that the respective subdivisions are not to be construed to authorize a unit of government, or public or private water supply system to regulate water use from a well that is (1) outside of its jurisdiction, (2) not connected to its water system, or (3) any other private well (was, not to be construed to authorize the regulation of deepwater wells that do not impact surface water).

Amendment #6 amends proposed new GS 143-355.3(d) to provide that when water is diverted pursuant to this section (regarding water shortage emergency powers), the receiving water system is liable to all persons that suffer any loss or damage caused by or resulting from effectuating the diversion unless there is an interlocal agreement that assigns liability differently. Directs the liable water system to begin a civil action within 10 days of placing the temporary water lines under the procedures set out in GS Chapter 136, Article 9 (regarding instituting an action for a taking for public use) to compensate the property owners for any taking resulting from the laying of temporary waterlines to facilitate the diversion. Directs that the liable water system is to take on the role ascribed to the Department of Transportation in GS Chapter 136, Article 9, and the governing board of the liable water system is to take on the role of the Secretary of Transportation under the Article.

July 16, 2008

**H 2499. DROUGHT/WATER MANAGEMENT RECOMMENDATIONS.** Filed 5/21/08. Senate committee substitute makes the following changes to 3rd edition. Amends GS 143-215.22H to include the creation or maintenance of waterfowl impoundments in the uses of water for which those withdrawing or transferring less than 1 million gallons of water per day are exempt from registration requirements. Provides that registration of withdrawal or transfer of water in information provided by a water user under GS 106-24 and authorized for release to the Environmental Management Commission by the individual water user may be used as evidence of historic water use if it is necessary to allocate available water resources among specific classes, persons, or individuals. Amends proposed new GS 143-355.2 to allow the Department of Environment and Natural Resources to require a (was, each) unit of local government that provides public water service *or a* (was, and each) large community water system to implement more stringent water conservation measure. Provides that if the water source is located in counties with different drought designations, the Drought Management Advisory Council must recommend the drought designation to be applied (was, recommend the level of water conservation measures to be implemented) to the water systems that withdraw water from the water source. Clarifies that a unit of local government that provides *public* water service is deemed in compliance if specified conditions are met and that a local government that provides *public* water service must report when the system begins implementing water conservation measures within 72 hours. Deletes the provision stating that except for a well that supplies a water system, the subsection is not to be construed to authorize the regulation of deepwater wells that do not impact surface water and that the subsection is not to be construed to authorize a unit of government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well.

Amends GS 143-355.3(b)(2) and (b)(3) to delete provisions stating that the subdivisions are not to be construed to authorize a unit of government, public water supply system, or private water supply system to regulate water use from a well located outside of its jurisdiction, a well not connected to its water system, or any other private well. Amends GS 143-355.3(d) to provide that the placing of temporary waterlines is not subject to the provisions of GS 153A-15 (consent of board of commissioners necessary in certain counties before land may be condemned or acquired by a unit of local government outside the county).

Amends proposed new GS 143-355.4 to *require* local government water systems and large community water systems to require separate meters for new in ground irrigation systems *that are connected to their systems*.

Amends proposed new GS 143-355.6 to limit the Secretary's civil penalty to \$10,000 per month against a unit of local government that provides *public* water service that fails to implement the required conservation measures.

Makes technical changes.

July 17, 2008

**H 2499. DROUGHT/WATER MANAGEMENT RECOMMENDATIONS.** Filed 5/21/08. Senate amendments make the following changes to 4th edition. Amendment #1 deletes the requirement that the Environmental Review Commission, as part of its ongoing study of allocation of water resources, study whether and to what extent private groundwater wells and the use of water produced by private groundwater wells should be regulated by the state or units of local government.

Amendment #2 amends proposed GS 143-355.2(a) by adding to criteria necessary for the Department of Environment and Natural Resources' approval of a unit of local government's water shortage response plan that the plan does not contain any provision that meters or regulates a private drinking water well, as defined in GS 87-85.

August 8, 2008

**SL 2008-143 (H 2499). DROUGHT/WATER MANAGEMENT RECOMMENDATIONS. AN ACT TO IMPROVE DROUGHT PREPAREDNESS AND RESPONSE IN NORTH CAROLINA, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.** Summarized in *Daily Bulletin* 5/22/08, 7/8/08, 7/14/08, 7/15/08, 7/16/08, and 7/17/08. Enacted July 31, 2008. Sections 3–8, 10, 12–18, 20, and 21 are effective July 31, 2008. Sections 1, 2, and 19 are effective October 1, 2008. Section 11 is effective December 1, 2008. Section 9 is effective July 1, 2009.