

15A NCAC 02L .0113 VARIANCE

(a) The Commission, on its own initiative or pursuant to a request under G.S. 143-215.3(e), may grant variances to the rules of this Subchapter.

(b) Requests for variances are filed by letter from the applicant to the Environmental Management Commission. The application shall be mailed to the chairman of the Commission in care of the Director, Division of Environmental Management, Post Office Box 29535, Raleigh, N.C. 27626-0535.

(c) For site-specific variances, the application shall contain the following information:

- (1) Applications filed by counties or municipalities must include a resolution of the County Board of Commissioners or the governing board of the municipality requesting the variance.
- (2) A description of the past, existing or proposed activities or operations that have or would result in a discharge of contaminants to the groundwaters.
- (3) Description of the proposed area for which a variance is requested. A detailed location map, showing the orientation of the facility, potential for groundwater contaminant migration, as well as the area covered by the variance request, with reference to at least two geographic references (numbered roads, named streams/streams, etc.) must be included.
- (4) Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to groundwater contaminants. (Location of wells and other water supply sources including details of well construction within 1/2 mile of site must be shown on a map).
- (5) Supporting information to establish that requirements of this Rule cannot be achieved by providing the best available technology economically reasonable. This information must identify specific technology considered, and the costs of implementing the technology and the impact of the costs on the applicant.
- (6) Supporting information to establish that compliance would produce serious financial hardship on the applicant.
- (7) Supporting information that compliance would produce serious financial hardship without equal or greater public benefit.
- (8) A copy of any Special Order that was issued in connection with contaminants in the proposed area and supporting information that applicant has complied with the Special Order.
- (9) A list of the names and addresses of any property owners within the proposed area of the variance as well as any property owners adjacent to the site covered by the variance.

(d) For state-wide variances to groundwater standards established in Section .0202, the application shall contain the following information:

(1) Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to groundwater at the proposed constituent levels. This should include information obtained from the following references.

(a) Integrated risk Information System (U.S. EPA).

(b) Health Advisories (U.S. EPA Office of Drinking Waters).

(c) Other health risk assessment data published by U.S. EPA.

(d) Other relevant, published health and ecological risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(2) A list of all known potentially affected sites, to include permitted sites and incident sites. For each site listed, a map for each site with the location of wells and other water supply sources within 1/2 mile of the affected site must be provided.

(3) A list of increased costs for treatment for any of the wells or water supply sources listed in Paragraph (2) above due to the proposed variance to Section .0202.

(e) Upon receipt of the application, the Director will review it for completeness and request additional information if necessary. When the application is complete, the Director shall give public notice of the application and schedule the matter for a public hearing in accordance with G.S. 143-215.4(b) and the procedures set out in Paragraph (f) of this Rule.

(f) Notice of Public Hearing:

- (1) Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance by the Director at least 30 days prior to the date of the hearing:
 - (A) by publishing the notice one time in a newspaper having general circulation in said county;

- (B) by mailing to the North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental Health and appropriate local health agency;
 - (C) by mailing to any other federal, state or local agency upon request;
 - (D) by mailing to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;
 - (E) by mailing to any property owner within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance; and
 - (F) by mailing to any person or group upon request.
- (2) The contents of public notice of any hearing shall include at least the following:
- (A) name, address, and phone number of agency holding the public hearing;
 - (B) name and address of each applicant whose application will be considered at the meeting;
 - (C) brief summary of the variance request;
 - (D) geographic description of a proposed area for which a variance is requested;
 - (E) brief description of activities or operations which have or will result in the discharge of contaminants to the groundwaters described in the variance application;
 - (F) a brief reference to the public notice issued for each variance application;
 - (G) information regarding the time and location for the hearing;
 - (H) the purpose of the hearing;
 - (I) address and phone number of premises at which interested persons may obtain further information, request a copy of each application, and inspect and copy forms and related documents; and
 - (J) a brief description of the nature of the hearing including the rules and procedures to be followed. The notice shall also state that additional information is on file with the Director and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost or reproduction.

(g) All comments received within 30 days following the date of the public hearing shall be made part of the application file and shall be considered by the Commission prior to taking final action on the application.

(h) In determining whether to grant a variance under Paragraph (c), the Commission shall consider whether the applicant has complied with any Special Order, or Special Order by Consent issued under G.S. 143-215.2.

(i) ~~If the Commission's final decision is unacceptable, the applicant may file~~ The applicant may appeal the Commission's final decision by filing a petition for a contested case in accordance with Chapter 150B of the General Statutes. If the petition is not filed within 60 days, the Commission's decision on the variance shall be final and binding.

(j) ~~A variance shall not operate as a defense to an action at law based upon a public or private nuisance theory or any other cause of action.~~

History Note: Authority G.S. 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.3(e); 143-215.4;
Eff. August 1, 1989;
Amended Eff. October 1, 1993.