

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 submitted by the applicant to the Commission. The application shall be submitted in writing to the chairman of the Commission in care of the Director.

(c) The application shall contain the following information:

- (1) Applications filed by counties or municipalities shall 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 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 including numbered roads, named streams/rivers, etc. shall be included.
- (4) Supporting information to establish that the variance will not endanger the public health, including health and environmental effects from exposure to groundwater contaminants. Location of wells and other water supply sources including details of well construction, if known, within 1/2 mile of site shall 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 shall identify specific technology considered, 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 property owners adjacent to the site covered by the variance.

(d) Upon receipt of the application, the Director shall review it for completeness and request additional information if incomplete. 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 (e) of this Rule.

(e) Notice of Public Hearing:

- (1) Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance. At least 20 days prior to the date of the hearing, the Director shall:
 - (A) publish the notice one time in a newspaper having general circulation in said county;
 - (B) submit the notice to the North Carolina Department of Health and Human Services, Environmental Health Section and appropriate local health director;
 - (C) submit the notice to any other federal, state or local agency upon request;
 - (D) submit the notice to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;
 - (E) submit the notice 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;
 - (F) submit the notice to any person or group upon request; and
 - (G) post the notice on the Department website.
- (2) The contents of public notice of any hearing shall include 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) a brief summary of the variance request;
 - (D) a geographic description of a proposed area for which a variance is requested;
 - (E) a brief description of activities or operations which have or will result in the discharge of contaminants to the waters of the State 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) the 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.

(f) All comments received within 30 days following the date of publication in the newspaper in Part (e)(1)(A) of this Rule shall be made part of the application file and shall be considered by the Commission prior to taking final action on the application.

(g) In determining whether to grant a variance, 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.

(h) The applicant may file 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 decision on the variance shall be final and binding.

(i) 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;
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