Economic Impact Analysis for Amended Rule 15A NCAC 18C.0203
Variance Process for Certain Water Supply Well Setback Requirements
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Name of Commission: Commission for Public Health

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Impact Summary: State government: No
Local government: No
Private industry: No
Substantial impact: No
Federal government: No

Authority: It is the responsibility of the Public Water Supply Section to regulate public water systems within the state under the statutory authority of G.S. Chapter 130A, Article 10. Generally, public water systems are those which provide drinking water to 15 or more service connections or regularly serve 25 or more people. State rules governing public water systems are found in Title 15A, Subchapter 18C of the North Carolina Administrative Code.

Necessity: These rule changes are necessary to comply with a mandate from the North Carolina General Assembly to amend 15A NCAC 18C.0203 to establish a variance process for certain water supply well setback requirements. The proposed rules must be substantively identical to the provisions of Session Law 2011-394 which expires when the permanent rules have become effective.

I. Summary

The proposed rule changes establish a variance process for setback requirements for a certain type of public water supply well from known potential sources of pollution. The proposed rules are substantively identical to existing requirements in Session Law 2011-394. Specifically, the rule changes will allow the Department of Environment and Natural Resources to grant a variance from the minimum horizontal separation distances between public water supply wells and known potential sources of pollution, provided: (1) the well supplies a non-community water system; (2) it is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the existing rule; (3) there is no reasonable alternative source of water available to the public water system; and (4) the granting of the variance will not result in an unreasonable risk to public health.
There is no cost to the state, local governments, or private businesses to comply with these proposed rules because the proposed rules are substantively identical to the provisions of the existing session law under which they have already been operating since July 1, 2011.

The proposed effective date for the rule change is January 1, 2013.

II. Introduction

Session Law 2011-394, “AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO ... (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; ...” establishes law whereby the Department of Environment and Natural Resources may grant a variance from the minimum horizontal separation distances between a public water supply well supplying water to a non-community water system and certain known potential sources of pollution. The session law further directed the Commission for Public Health to adopt permanent rules that are substantively identical to the provisions of the law which expires when the permanent rules have become effective. The text of the proposed rule changes is located in Appendix A and Appendix B contains the relevant text from Session Law 2011-394. The proposed rule is substantively identical to the requirements of Session Law 2011-394.

III. Purpose of Rules

It is the responsibility of the Public Water Supply Section to regulate public water systems within the state under the statutory authority of G.S. Chapter 130A, Article 10. State rules governing public water systems are found in Title 15A, Subchapter 18C of the North Carolina Administrative Code. Public water systems are those which provide drinking water to at least 15 connections or regularly serve 25 or more individuals. Community water systems are public water systems which serve at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Non-community water systems are public water systems that are not community water systems and are further divided into non-transient non-community (NTNC) and transient non-community (TNC) water systems. NTNC water systems are public water systems that regularly serve at least 25 of the same people for more than six months per year. Some examples are rural schools, factories, office buildings, and hospitals that have their own water systems. A TNC water system is a non-community public water system that does not regularly serve at least 25 of the same persons over six months per year, such as rest areas, rural restaurants or churches.

Because NTNC water systems can supply much of a person’s daily water intake, often over many years, well construction and setback requirements for NTNC systems are the same as those for community water systems. Well construction and setback requirements for both community and NTNC water systems are regulated by the Public Water Supply Section. TNC water systems typically provide drinking water to a population that changes day to day. Well construction and setback requirements for TNC systems are regulated by local health departments.
Rule 15A NCAC 18C .0203 establishes minimum horizontal separation distances between a public water supply well serving a community or NTNC water system and known potential sources of pollution. The purpose of the proposed rule amendment is to allow the Department of Environment and Natural Resources the ability to grant a variance from the minimum horizontal separation distances between wells supplying NTNC water systems and certain potential sources of pollution. Specifically, the variance would be applicable to the minimum horizontal separation distance between a NTNC well and buildings, mobile homes, permanent structures and surface water bodies.

The impetus behind the amendment was to respond to situations where entities such as small businesses that formerly did not meet the threshold of 25 or more people become, as a result of growth, regulated as a NTNC water system. In these situations, existing wells supplying water to these entities may not meet the minimum horizontal separation distances specified in the rules. In such situations, compliance with the rules may necessitate the abandonment of existing wells, construction of new wells, purchasing of additional land, relocation of the business and other related expenses. The proposed amendment, which allows the Department the ability to grant a variance from the minimum horizontal separation distances, provides a reasonable alternative to these costly measures.

Pursuant to the proposed amended rule, granting of a variance would be contingent upon the following conditions: (1) the well supplies a NTNC water system; (2) it is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the existing rule; (3) there is no reasonable alternative source of drinking water available to the public water supply system; and (4) the granting of the variance will not result in an unreasonable risk to public health.

IV. Costs

Cost of Complying with Proposed Rule Changes

There is no cost to the state, local governments or private businesses to comply with these proposed rules because the proposed rules are substantively identical to the provisions of the existing session law under which they have already been operating since July 1, 2011.

V. Benefits

Technically, there are no benefits to the residents of North Carolina, the state, local governments or private businesses from the proposed rule changes because these actions would still be undertaken due to the session law. However, in practice, a business or institution, such as a school, that would otherwise be subject to existing regulations as a result of growth may avoid certain costs by seeking a variance in accordance with the revised rules. Examples of such costs include abandonment of existing wells, construction of new wells, purchasing of additional land, and business relocation.
Appendix A: Proposed Amended Rule Text

.0203 PUBLIC WELL WATER SUPPLIES

(a) Any site or sites for any water supply well to be used as a community or non-transient, non-community water system shall be investigated by an authorized representative of the Division of Environmental Health. Approval by the Division is required in addition to any approval or permit issued by any other state agency. The site shall meet the following requirements at the time of approval:

1. The well shall be located on a lot so that the area within 100 feet of the well shall be owned or controlled by the person supplying the water. The supplier of water shall be able to protect the well lot from potential sources of pollution and to construct landscape features for drainage and diversion of pollution.

2. The minimum horizontal separation between the well and known potential sources of pollution shall be as follows:

   (A) 100 feet from any sanitary sewage disposal system, sewer, or a sewer pipe unless the sewer is constructed of water main materials and joints, in which case the sewer pipe shall be at least 50 feet from the well;

   (B) 200 feet from a subsurface sanitary sewage treatment and disposal system designed for 3000 or more gallons of wastewater a day flows, unless it is determined that the well water source utilizes a confined aquifer;

   (C) 500 feet from a septage disposal site;

   (D) 100 feet from buildings, mobile homes, permanent structures, animal houses or lots, or cultivated areas to which chemicals are applied;

   (E) 100 feet from surface water;

   (F) 100 feet from a chemical or petroleum fuel underground storage tank with secondary containment;

   (G) 500 feet from a chemical or petroleum fuel underground storage tank without secondary containment;

   (H) 500 feet from the boundary of a ground water contamination area;

   (I) 500 feet from a sanitary landfill or non-permitted non-hazardous solid waste disposal site;

   (J) 1000 feet from a hazardous waste disposal site or in any location which conflicts with the North Carolina Hazardous Waste Management Rules cited as 15A NCAC 13A;

   (K) 300 feet from a cemetery or burial ground; and

   (L) 100 feet from any other potential source of pollution.
(3) The Department may require greater separation distances or impose other protective measures when necessary to protect the well from pollution; the Department shall consider as follows:
   (a)(A) The hazard or health risk associated with the source of pollution;
   (a)(B) The proximity of the potential source to the well;
   (a)(C) The type of material, facility or circumstance that poses the source or potential source of pollution;
   (a)(D) The volume or size of the source or potential source of pollution;
   (a)(E) Hydrogeological features of the site which could affect the movement of contaminants to the source water;
   (a)(F) The effect which well operation might have on the movement of contamination; and
   (a)(G) The feasibility of providing additional separation distances or protective measures.

(4) The lot shall be graded or sloped so that surface water is diverted away from the wellhead. The lot shall not be subject to flooding.

(5) When the supplier of water is unable to locate water from any other approved source and when an existing well can no longer provide water that meets the requirements of this Subchapter, a representative of the Division may approve a smaller well lot and reduced separation distances for temporary use.

(b) The Division of Water Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C.0203(a)(2)(D) and 15A NCAC 18C.0203(a)(2)(E).

(1) Such variance shall require the following findings:
   (A) The well supplies water to a non-community water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a non-community water system through an increase in the number of people served by the well.
   (B) It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C.0203(a)(2).
   (C) There is no reasonable alternative source of drinking water available to the public water supply system.
   (D) The granting of the variance will not result in an unreasonable risk to public health.

(2) Such variance shall require that the non-community public water supply well meet the following requirements:
(A) The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(a)(2)(D) and 15A NCAC 18C .0203(a)(2)(E) to the maximum extent practicable.

(B) The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.

(C) The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.

(D) The well shall meet a minimum horizontal separation distance of 50 feet from surface water.

(E) The well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203(a).
AN ACT TO AMEND CERTAIN ENVIRONMENTAL AND NATURAL RESOURCES LAWS TO (1) EXEMPT CERTAIN NEW RENEWABLE ENERGY FACILITIES FROM BEST AVAILABLE CONTROL TECHNOLOGY (BACT) REQUIREMENTS; (2) REDUCE CERTAIN OPEN BURNING SETBACK REQUIREMENTS AND PROVIDE THAT MINIMAL, UNINTENTIONAL NONCOMPLIANCE WITH AN OPEN BURNING SETBACK IS NOT A VIOLATION; (3) PROVIDE THAT DRAFT EROSION AND SEDIMENTATION CONTROL PLANS FOR THE CONSTRUCTION OF CERTAIN UTILITY LINES MAY BE SUBMITTED WITHOUT A LANDOWNER’S WRITTEN CONSENT; (4) CLARIFY THE PROHIBITION ON DISPOSAL IN LANDFILLS OR BY INCINERATION OF BEVERAGE CONTAINERS THAT ARE REQUIRED TO BE RECYCLED BY CERTAIN ABC PERMITTEES; (5) CLARIFY THE USE OF STATE FUNDS IN THE CONTEXT OF THE REMOVAL OF MERCURY-CONTAINING PRODUCTS FROM PUBLIC BUILDINGS; (6) DIRECT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP MODEL STORMWATER CAPTURE AND REUSE PRACTICES; (7) PROHIBIT THE DIVISION OF WATER QUALITY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FROM REQUIRING A WATER QUALITY PERMIT FOR A TYPE I SOLID WASTE COMPOST FACILITY; (8) AMEND THE WATERUSE STANDARD FOR PUBLIC MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS TO REQUIRE THE INSTALLATION OF WEATHER-BASED IRRIGATION CONTROLLERS; (9) PROVIDE THAT NO PERMIT IS REQUIRED FOR THE CONSTRUCTION OR ALTERATION OF A SEWER SYSTEM OR TREATMENT WORKS THAT ALREADY HAS A DISCHARGE PERMIT; (10) EXEMPT SMALL DAMS AND AGRICULTURAL POND DAMS FROM THE DAM SAFETY ACT; (11) MAKE VARIOUS CHANGES TO THE LAWS GOVERNING THE STATE’S UNDERGROUND STORAGE TANK PROGRAM AND PETROLEUM DISCHARGES; (12) PROMOTE THE USE OF GRAY WATER; (13) CLARIFY THAT NUTRIENT OFFSET PAYMENTS SHALL REFLECT ACTUAL COSTS AS ADOPTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION; (14) DELAY IMPLEMENTATION OF CERTAIN JORDAN LAKE RULE REQUIREMENTS; (15) AUTHORIZE THE COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES TO INCORPORATE THE FEDERAL FOOD CODE; (16) ESTABLISH A VARIANCE PROCESS FOR CERTAIN WATER SUPPLY WELL SETBACK REQUIREMENTS; (17) GRANDFATHER CERTAIN DEVELOPMENT UNDER THE NEUSE AND TAR-PAM RIVER BASIN BUFFER REQUIREMENTS; (18) PROVIDE THAT A GINSENG EXPORT CERTIFICATE MAY BE OBTAINED FREE OF CHARGE; (19) PROVIDE FOR AN EARLY SUNSET OF THE METHANE CAPTURE PILOT PROGRAM; (20) DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY STORMWATER MANAGEMENT REQUIREMENTS FOR AIRPORTS IN THE STATE; (21) DIRECT CERTAIN TRANSFERS OF FUNDS FOR NONPOINT SOURCE POLLUTION CONTROL PROGRAMS; (22) CONFORM THE STATUTORY DEFINITION OF "SOLID WASTE" TO FEDERAL LAW; AND (23) TO AMEND CERTAIN FINANCIAL ASSURANCE REQUIREMENTS APPLICABLE TO HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:

SECTION 16.1. Variance from Setbacks for Public Water Supply Wells. –

Fiscal Note for Amended Rule 15A NCAC 18C.0203, PUBLIC WELL WATER SUPPLIES (10/01/12)
(a) The Department of Environment and Natural Resources may grant a variance from the minimum horizontal separation distances for public water supply wells set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) upon finding that:

1. The well supplies water to a non-community water system as defined in G.S. 130A-313(10)(b) or supplies water to a business or institution, such as a school, that has become a non-community water system through an increase in the number of people served by the well.
2. It is impracticable, taking into consideration feasibility and cost, for the public water system to comply with the minimum horizontal separation distance set out in the applicable sub-subpart of 15A NCAC 18C .0203(2).
3. There is no reasonable alternative source of drinking water available to the public water supply system.
4. The granting of the variance will not result in an unreasonable risk to public health.

(b) A variance from the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) shall require that the non-community public water supply well meet the following requirements:

1. The well shall comply with the minimum horizontal separation distances set out in 15A NCAC 18C .0203(2)(d) and 15A NCAC 18C .0203(2)(e) to the maximum extent practicable.
2. The well shall meet a minimum horizontal separation distance of 25 feet from a building, mobile home, or other permanent structure that is not used primarily to house animals.
3. The well shall meet a minimum horizontal separation distance of 100 feet from any animal house or feedlot and from cultivated areas to which chemicals are applied.
4. The well shall meet a minimum horizontal separation distance of 50 feet from surface water.
5. The well shall comply with all other requirements for public well water supplies set out in 15A NCAC 18C .0203.

SECTION 16.2. Rule Making. – The Commission for Public Health shall adopt rules that are substantively identical to the provisions of Section 16.1. The Commission may reorganize or renumber any of the rules to which this section applies at its discretion. Rules adopted pursuant to this section are not subject to G.S. 150B-21.9 through G.S. 150B-21.14. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1) as though 10 or more written objections had been received as provided by G.S. 150B-21.3(b2).

SECTION 16.3. Effective Date. – Section 16.1 of this act expires when permanent rules to replace Section 16.1 have become effective as provided by Section 16.2 of this act.