

### **15A NCAC 05H .1603 VARIANCE FOR SETBACKS**

(a) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a tank or tank battery, and a pit from an occupied dwelling required by Rule .1601 of this Section. The variance, if granted, shall provide equal or greater protection of public health, safety, and the environment. Variances from setbacks established for high occupancy buildings are prohibited. The Commission in granting or denying variances shall:

- (1) require additional measures that eliminate, minimize, or mitigate potential adverse impacts to public health, welfare, and the environment, such as the use of non-diesel fuels with lower emissions; and
  - (2) require site-specific mitigation measures to address location specific considerations.
- (b) The Commission shall require the following conditions in any approved variance from an occupied dwelling:
- (1) the wellhead, tank or tank battery, or production facility shall be a minimum of 400 feet from an occupied dwelling; and
  - (2) freshwater storage pits, reserve pits to drill surface casing, and emergency pits shall be a minimum of 400 feet from an occupied dwelling.

The Commission shall not grant a variance for any E & P waste pit setback from an occupied dwelling.

(c) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a tank, or tank battery from an intermittent stream, a pond, or other natural or artificial water body, which is not a water of the State, wholly contained within the drilling unit. The Commission shall determine that the measures proposed to eliminate, minimize or mitigate potential adverse impacts to public health, welfare and the environment are adequate to address all the risks at the well site and justify the reduction of setback distances as requested in the variance and that the variance, if granted, shall provide equal or greater protection of public health, safety, and the environment. The variance shall include the following conditions:

- (1) additional measures that eliminate, minimize, or mitigate potential adverse impacts to public health, welfare, and the environment, such as the use of secondary or backup containment measures;
- (2) the oil or gas wellhead, freshwater storage pit, tank, tank battery, or production facility shall be a minimum of 50 feet from any intermittent stream, pond, or other natural or artificial water body, that is not a water of the State, and that is wholly contained within the drilling unit; and
- (3) oil or gas wellheads, a tank, a tank battery, or pits less than 650 feet from, and up-gradient of, a surface water body shall use tertiary containment, such as an earthen berm.

The Commission shall not grant a variance for any E & P waste pit setback from an intermittent stream.

(d) The Commission shall require green completions in any approved variance, which include:

- (1) flow lines, separators, and sand traps capable of supporting green completions shall be installed;
- (2) prevention of uncontrolled venting; and
- (3) temporary flowback flaring and oxidizing equipment shall include the following:
  - (A) equipment sized to handle one and one half times the largest flowback volume of gas experienced within a 10-mile radius;
  - (B) valves and porting available to divert gas to temporary equipment or to permanent flaring and oxidizing equipment; and
  - (C) auxiliary fuel and heat to sustain combustion or oxidation of the gas mixture when the mixture includes noncombustible gases.

(e) An applicant or permittee may submit a surface use agreement from a surface landowner as justification to request a variance to setback distances for the wellheads, tank or tank battery, and pits from occupied dwellings. The surface use agreement may include additional site-specific mitigation measures. The surface use agreement shall include written consent of the landowner, which may be provided by any of the following:

- (1) a copy of an original lease agreement text filed with the county Registrar of Deeds that shows the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling;
- (2) a copy of a deed severing the oil and gas mineral rights, as applicable, from the owner's parcel of land as filed with the county Registrar of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling; or
- (3) a copy of a written surface use agreement signed by the property owner that consents to the proposed location of an oil or gas wellhead, well pad, tank, tank battery, or pit(s), as applicable. An applicant or permittee may submit a copy of a written statement filed with the county Register

of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling in lieu of a copy of a written surface use agreement.

(f) Variance requests shall be submitted in accordance with Rule .0301 of this Subchapter. In addition to the information required by Rule .0301 of this Subchapter, any permittee seeking to use surface use agreement as a basis for a variance shall submit a copy of the surface use agreement containing the information in Paragraph (e) of this Rule.

*History Note: Authority G.S. 113-391(a)(5)d;  
Eff. March 17, 2015.*