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Division of Public Health

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POSITION STATEMENT: Issuance of Private Drinking Water Well Permits

PURSUANT TO: Session Law 2013-413

SOURCE: Layton Long, Environmental Health Section Chief

ISSUE: Amendments to GS 87-97

DISCUSSION AND RATIONALE:

In the 2013 Legislative Session the General Assembly amended language in GS 87-97(e). The amended language declares a well permit as "issued" if the health department fails to act, issue or deny the permit, within 30 days of receiving the permit application. It further provides that the local health department may challenge the "issuance" through the Office of Administrative Hearings.

The new language reads:

Within 30 days of receipt of an application to construct or repair a well, a local health department shall make a determination whether the proposed private drinking water well can be constructed or repaired and operated in compliance with this Article and the rules adopted pursuant to the Article and shall issue a permit or denial accordingly. If the health department fails to act within 30 days, the permit shall automatically be issued, and the local health department may challenge issuance of the permit as provided in Chapter 150B of the General Statutes.

The enactment of this new language has created serious questions on how local health departments are to respond and the potential implications to the "automatic" issuance of a well permit. While discussions continue between the Section and the Attorney General's office there remains legal uncertainty around the new language. The information below is intended to offer some guidance pending further clarifications. Local health departments are encouraged to submit questions that may not have been considered in the document.

RESPONSE/INTERPRETATION:

Questions

1. If the health department does not conduct a site evaluation within 30 days (regardless of reasons) the permit is issued under the new language. For a permit "automatically" issued under such a circumstance is the health department (DHHS) considered to have issued the permit?

   Response: Yes. The Department by statute, through the local health department, is responsible for issuing private drinking water well permits. The language passed in Session Law 2013-413 does not negate that responsibility but merely places an additional burden on the health department to issue the permit within 30 days. Failing to conduct the site evaluation, regardless of reason, within the prescribed 30 days simply causes the health department to "issue" the permit "automatically".

2. Does the 30 day time limit apply to applications that were submitted before the effective date of the legislation?

   Response: No. Since the legislation did not specifically address that issue only applications submitted after the effective date of the legislation would have the 30 day time limit.

3. Where a permit has been issued "automatically" after 30 days is the health department required to issue something in writing? If so, what?

   Response: Yes. The health department should issue a written permit indicating that the permit was issued "automatically" after 30 days pursuant to the statute. The permit should also include clear language that the well permit site was not evaluated by the health department in accordance with well permitting rules and the potential implications of acting on a permit without a site evaluation having been performed. Potential implications include wells being located in unapproved locations and failing inspection, well locations negatively impacting adjoining properties such as voiding septic permits.

4. Is the well driller still responsible for requesting an installation inspection and does the health department conduct the inspection?

   Response: Yes. The well driller is still responsible for requesting an inspection and completing all requirements pursuant to existing well construction laws and rules. The health department is also required to perform an inspection pursuant to all existing well rules and laws.

5. If yes to both parts of question #3 what does the health department issue as part of the final inspection?

   Response: Upon completing the inspection and finding the well to be properly constructed and in accordance with all required setbacks, the health department would issue an "as built" drawing of the well location along with the Certificate of Completion. If the well is not properly constructed or located the health department would not issue a Certificate of Completion. In this situation the health department should issue an Intent to Suspend or Revoke for the permit that was issued "automatically".

6. If the well driller utilizes an "automatically" issued permit and improperly sites a well or sites a well in such a way that it impacts the use of an adjoining property (i.e., invalidates an existing septic permit) is the health department (DHHS) responsible?

   Response: It is not clear where the lines of responsibility would exist for permits "issued" on the 30 day limit.

7. Can the health department simply issue a permit denial where an application is approaching the 30 day time limit?

   Response: No. There must be a basis, in rule or law, on which to deny or issue a permit.

8. Can the health department refuse to accept the application if the applicant cannot have the site prepared for evaluation within 30 days?

   Response: The rules state that an application for a private drinking water well shall be submitted to the health department and shall contain certain information. If any part of the information required in the rules is missing or incomplete then the health department is under no obligation to accept the application. Once the applicant has successfully submitted all required information to the health department, for the well permit application, the 30 day time period begins.

9. Is a permit issued "automatically" valid for 5 years?

   Response: Yes. The "automatically" issued permit would be valid for 5 years unless revoked.

10. Is the property owner or his agent required to notify the health department prior to well construction pursuant in accordance with the rules?

    Response: Yes. The requirements for constructing a well remain unchanged and must be conducted in accordance with existing well construction rules and laws.

11. If the health department conducts a well site evaluation, within the 30 days, and determines that a variance would be required (in order for a permit to be issued) can the permit be denied in order to stop the clock on the 30 days?

    Response: Yes. The permit may be denied on the basis of the site evaluation. Variances for private drinking water wells are only issued by State representatives of DHHS. Health departments cannot assume that a variance would be granted and therefore cannot issue a permit until a decision is rendered regarding the variance.

12. How does the health department go about challenging the issuance of an "automatically" issued permit?

    Response: It appears from the statutory language that the responsibility for filing an appeal rest with the local health department and not with the Department. The new language does not include the Department in the appeal process and there remains uncertainty about the interpretation. If the health department wished to challenge the issuance of an "automatically" issued private drinking water well permit it would file a petition under the provisions of Chapter 150B of the General Statutes. Initiating an appeal would prohibit any construction of the well until the appeal was resolved.

    NOTE: Position statements are policy documents to clarify how to interpret or enforce a law or rule. They are not enforceable on their own, but are intended to promote uniform interpretation and enforcement of the underlying law or rule.