
Coates' Canons Blog: The N.C. Regulatory Reform Act of 2013 and Local Environmental Health Programs

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[Update: On October 23, 2013, the North Carolina Division of Public Health issued a position statement on the change to the definition of “private club” in the food and lodging laws. The statement specifies that an establishment must have a *mixed beverages private club* permit to fall within the expanded definition of private club. It also points out that the changed definition of “private club” applies only to the public health laws regulating food and lodging establishments. The definition of “private club” in the state laws regulating smoking in restaurants and bars was not changed.]

[Update 2: On December 3, 2013, the N.C. Commission for Public Health adopted a final rule clarifying the definition of “enclosed area” for purposes of the state’s smoke-free restaurants and bars law. The rule will take effect 30 days after the General Assembly convenes for its 2014 short session, unless the legislature takes action to disapprove the rule. On December 18, 2013, the N.C. Division of Public Health issued this update to answer questions and clarify issues arising from local health departments’ enforcement of the new requirements for carbon monoxide detectors in lodging establishments.]

The Regulatory Reform Act of 2013 was an omnibus bill that addressed the regulation of a wide range of issues, from the state’s rule-making procedures, to the authority of local governments to regulate environmental issues, to specific state laws that provide for environmental health inspections and permitting. North Carolina’s local health departments are responsible for operating environmental health programs to ensure compliance with statewide regulations. Among other things, local environmental health employees inspect and permit food and lodging establishments, evaluate sites and issue or deny permits for on-site wastewater systems and private drinking water wells, and enforce the state law prohibiting smoking in restaurants and bars. This post explains the portions of the Regulatory Reform Act affecting local environmental health programs and provides links to state agency position statements addressing how the changes in state laws should be implemented.

This is not a comprehensive summary of all 2013 legislation affecting public health or local health departments – I am limiting this post to the provisions of the Regulatory Reform Act that affected local environmental health programs. Interested in more public health legislative summaries? They are available [here](#).

Food and Lodging Programs

Food Sanitation in Private Clubs

North Carolina local health departments have the duty to inspect and grade the sanitation of most establishments that prepare or serve food (G.S. 130A-248). Environmental health specialists carry out these inspections in accordance with state administrative rules and issue permits to establishments that receive passing sanitation grades. The general rule is that a food establishment may not operate if it has not been inspected and permitted. However, G.S. 130A-250 exempts some establishments from this requirement, including private clubs.

Section 7 of the Regulatory Reform Act expands the exemption by redefining the term “private club” for purposes of the food and lodging sanitation laws. Under prior law, a private club was defined solely as a nonprofit organization that maintains selective members, is operated by the membership, and does not provide food or lodging to anyone other than a member or a member’s guest. Section 7 retains this definition, but adds “an organization that ... meets the definition of a private club set forth in G.S. 18B-1000(5).” Under G.S. 18B-1000(5), a private club is an establishment that is eligible for a permit to serve mixed drinks and other alcoholic beverages without having to meet quotas for food service that would otherwise apply under the state’s ABC laws, because it is not open to the general public but only to members and their

guests. It need not be nonprofit or operated by the membership.

The effect of this redefinition is to exempt bars that prepare and serve food from the food sanitation laws, so long as they qualify as private clubs under the ABC laws. I am curious about why this exemption was created, and I haven't been able to find much background information. (If anyone has any, please share in the comments section.) The North Carolina Division of Public Health is expected to issue a position statement or guidance document on this portion of the Regulatory Reform Act any day now. I'll update this post with a link when the document becomes available.

Bed & Breakfast Homes

Section 11 of the Regulatory Reform Act addresses food sanitation in bed and breakfast homes. Prior law authorized the regulation of "private homes offering bed and breakfast accommodations to eight or fewer persons per night." State administrative rules implementing this law created the term "bed and breakfast home" and defined it as "a private home offering bed and breakfast accommodations to eight or fewer persons per night for a period of less than a week." The rules then specified the standards such an establishment must meet to qualify for a food service permit. Bed and breakfast homes are not the same as bed and breakfast inns, which are subject to different state rules.

The caption of Section 11 is "Let Bed and Breakfasts Offer Three Meals Per Day," which is a good clue to the legislation's primary goal. The section amended G.S. 130A-248 to replace the term "private homes offering bed and breakfast accommodations" with "bed and breakfast homes," and added a definition of that term to G.S. 130A-247. The new statutory definition supersedes the regulatory definition. The amendment permits a bed and breakfast home to serve up to three meals per day—not just breakfast—and potentially also increases the number of guests that may be served under its food service permit (the regulatory definition stated that an establishment qualified as a bed and breakfast home only if it served no more than eight *guests*, but the statutory definition states that a bed and breakfast home may have up to eight *guest rooms* and does not address the number of guests that may occupy a room).

On September 27, 2013, the North Carolina Division of Public Health issued a position statement to clarify certain issues and explain how local health department employees who are responsible for ensuring compliance with food and lodging regulations should apply the new law. The statement points out that the change does not apply to bed and breakfast inns, which are still limited to serving only breakfast and are subject to stricter sanitation rules. However, it acknowledged that a bed and breakfast inn might qualify for reclassification as a bed and breakfast home, if the inn has eight or fewer guest rooms and meets the other criteria in the new definition.

Carbon Monoxide Detectors in Lodging Establishments

Section 19 of the Regulatory Reform Act amends both the state building code and provisions of the public health code that give local health departments the duty to inspect lodging establishments. The amendments require lodging establishments to install and maintain carbon monoxide detectors in enclosed spaces (including sleeping rooms) that either have a fossil fuel-burning heater or other appliance, or share a wall, floor or ceiling with an enclosed space that has one of those items.

By adding this requirement to the public health laws, the legislation has the effect of giving local health departments the responsibility to determine compliance with this provision as part of the inspection and permitting of lodging establishments. The legislation also directs the Building Code Council, the Department of Health and Human Services, and the Commission for Public Health to jointly study the new requirements to determine whether they are adequate to protect the public health.

On September 25, 2013, the North Carolina Division of Public Health issued this position statement to address the role of local health departments in enforcing the new law. The position statement notes that the requirement for carbon monoxide detectors applies to lodging establishments, including hotels, motels, bed & breakfasts, and residential camps. However, it does not extend to other room-and-board institutions inspected by the local health department. The statement directs local programs to verify compliance with the requirement, a multi-step process that is spelled out in more detail in the statement. If an environmental health specialist finds a violation, the specialist must immediately notify the person in charge of the establishment and issue a notice of intent to suspend the establishment's lodging facility permit. Finally, the statement notes that the term "enclosed space" is not defined and that there is some concern that the placement of carbon monoxide detectors in unventilated areas containing fossil fuel-burning appliances may lead to nuisance alarms. Several state agencies are participating in discussions about a final definition for the term, but in the interim the Division of Public

Health advises local health departments to apply the definition of “enclosed area” found in G.S. 130A-492, the definitions section of the law prohibiting smoking in restaurants and bar.

Smoking Regulation

Section 23 of the Regulatory Reform Act directs the Commission for Public Health to amend and clarify the rules implementing the statewide ban on smoking in restaurants and bars. Specifically, the new rules must clarify the definition of “enclosed area,” which determines the parts of a restaurant or bar in which smoking is prohibited. A bar or restaurant is allowed (but not required) to permit smoking in areas that are not enclosed.

G.S. 130A-492 defines enclosed area as “[a]n area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.” In the three years that the smoking ban has been in effect, there have been questions about the extent to which an area must be open to the outdoors to fall outside this definition, as well as whether wall or side coverings with openings (such as screens) may be used without rendering an area enclosed. The new legislation states that the intent of the clarifying rules is to ensure consistent interpretation and enforcement of the law throughout the state.

The Commission for Public Health’s proposed rule clarifying the definition of “enclosed area” was published in the North Carolina Register on October 1, 2013. Interested persons may comment on the rule until December 2, 2013. More information is available on the Commission’s website.

On-Site Wastewater Systems

Owners and other persons in charge of residences, businesses, and other places of public assembly must provide an approved wastewater system to ensure that human waste is collected, treated, and disposed in a manner that protects public health (G.S. 130A-335). Local health departments inspect on-site wastewater systems and issue permits for them to operate if they comply with applicable state regulations, which are found in Title 15A of the North Carolina Administrative Code.

Section 34 of the Regulatory Reform Act states that its purpose is to provide for low-flow design alternatives for on-site wastewater systems. It requires the Commission for Public Health to change a statewide rule affecting on-site wastewater systems serving different types of public places, ranging from schools to restaurants to campgrounds. When such establishments have an on-site system it must be capable of managing a minimum daily flow, which is specified in a table contained in 15A NCAC 18A.1949. The legislation directs the Commission to amend the rule to exempt a system from the design flow standards if flow rates that are less than those shown in the table in the current rule can be achieved through an engineering design that uses low-flow fixtures or low-flow technologies. The design must be prepared, sealed, and signed by a licensed professional engineer. Recognizing that it will take some time for the rule to be amended and take effect, the legislature specified that an exemption for systems that meet the criteria described should be provided in the interim, beginning with the effective date of the act (August 23, 2013).

On September 19, 2013, the North Carolina Division of Public Health issued this position statement to clarify certain issues and explain how local health department employees who are responsible for ensuring compliance with on-site wastewater regulations should apply the new law.

Private Drinking Water Wells

Section 35 of the Regulatory Reform Act amends G.S. 87-97, the law that requires local health departments to have a program for inspecting, testing, and permitting private drinking water wells. A local health department must issue a construction or repair permit for a well that meets health and safety requirements established in state or local rules. Effective August 23, 2013, this legislation imposes a new time limit on the local health department’s actions: Upon receipt of an application to construct or repair a well, a local health department must determine whether the well can be constructed or repaired in compliance with applicable rules and issue or deny the permit within 30 days. If the department does not act within 30 days, the permit will automatically issue. If the local health department believes the automatic issuance is incorrect, it may challenge it by filing a petition for a contested case under the North Carolina Administrative Procedure Act.

On August 30, 2013, the North Carolina Division of Public Health issued this position statement to clarify certain issues and explain how local health department employees who are responsible for ensuring compliance with private well regulations should apply the new law. Among other things, it advises local health departments to clearly document when a permit is issued automatically under this law without having had the site evaluation that would ordinarily precede the permit. In such a circumstance, the permit should include clear language stating that the site was not evaluated and it should state the potential implications of acting on a permit without a site evaluation—including the possibility that an improperly sited well might not pass a subsequent installation inspection, in which case the permit would likely be revoked.

Section 35 also directs the Commission for Public Health to adopt rules regarding permits for private drinking water wells that are proposed to be located within 1000 feet of a known source of release of contamination. The rules must provide for notice and information about the contamination source and any known risks associated with the construction and use of a private drinking water well on the site.

Links

- www.sog.unc.edu/file/private20club20definition20change2010-23-1320finalpdf
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/Enclosed%20Area%20Rule%20CPH%20120313.pdf
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/CO%20Detectors%20in%20Lodging%20Clarification%2012-18-13%20FINAL.pdf
- ncleg.net/EnactedLegislation/SessionLaws/PDF/2013-2014/SL2013-413.pdf
- www.sog.unc.edu/resources/legal-summary-collections/2013-public-health-legislation
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-248
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-250
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=18B-1000
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-247
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/Bed%20and%20Breakfast%20Home%20Definition%2009-27-13%20FINAL.pdf
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/CO%20Detectors%20in%20Lodging%20Establishments%2009-25-13%20FINAL.pdf
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-492
- www.oah.state.nc.us/rules/register/
- cph.publichealth.nc.gov/ArchivedRules/PersonalHealth/ClarificationOfTheDefinitionOfEnclosedArea.htm
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=130A-335
- reports.oah.state.nc.us/ncac.asp
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/PositionStatementH74Section34LowFlowDesignFINAL.pdf
- ncleg.net/gascripts/statutes/statutelookup.pl?statute=87-97
- www.sog.unc.edu/sites/www.sog.unc.edu/files/doc_warehouse/Rev%20PosStatementWellsH74.pdf