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**Sent:** Friday, September 10, 2010 9:23 AM  
**To:** [DENR.DEH.ehl@lists.ncmail.net](mailto:DENR.DEH.ehl@lists.ncmail.net)  
**Subject:** EHL- Public Swimming Pool Fence Questions and Answers

The recent shift in policy to deny operation permits to public swimming pools with non-compliant fences has raised some questions concerning rule interpretations. The Pools, Tattoos and State Institutions Branch Staff has prepared a list of questions and answers below.

**Background:**

During presentations on the Virginia Graeme Baker Pool and Spa Safety Act over the past year the need to require appropriate pool fences was stressed. At the beginning of the season so many fences needed fixing that we allowed pools to operate through the season and adopted a policy of notifying pool owners the non-compliant fences needed to be fixed as soon as possible, not longer than 1 year. Counties asked for review of the policy by the Attorney General's Office. AG's office initially was ok with policy allowing operation in 2010 pending fence repair or replacement, but later requested all pools be notified that permits will not be renewed after September 2010 without complying with the fence standards.

**Questions and Answers:**

Q – Are wading pool fences required to meet current rules for height and location?

A – Wading pools are required to have a separate fence and meet the height requirement of at least 3 feet if built before April 1, 2000, and at least 4 feet if built after April 1, 2000.

Q – Does the latch height on wading pool fences have to be 54 inches high?

A – Wading pool fences must be similar to fences described in rule .2528, so the 54 inch latch height does apply. Latches can also be located at 3 inches below the top of the gate as described in rule .2528, but the latch release must be on the side of the gate facing the deeper swimming pool.

Q – How is latch height determined?

A – Latch height is measured from grade level at the bottom of the gate opening.

Q – Where is a wading pool fence required when there is not enough separation between pools to meet the deck requirements?

A – Maintain at least 5 feet of clear walk space from the swimming pool to the fence. Infringe on the wading pool deck space if space is inadequate to keep the 4-foot wading pool deck.

Q – If a fence can be repaired to get the required fence height, must it meet the same standards as a newly-constructed fence?

A – Only if the fence is reconstructed. Fences that can be repaired can get the exemptions in rule .2528(b) for existing portions of the fence that remain in place.

Q – Can we accept deep water as part of the enclosure?

A – Fences that allow pool access from a lake have proven to allow easy access to the pool and prevent the pool area from being secured by a lock. There is also some danger to bathers that could fall off a pier or bulkhead, so fences should be required all the way around the pool.

Q – Do railings on ground-level patios adjoining a swimming pool have to meet the 48-inch fence height?

A – Yes.

Q – Do doors entering a pool area have to be self-latching?

A – Yes. Even though rule .2528 only says doors must be self-closing, rule .2537 also requires them to be self-latching.

Q – How is chain link fence mesh size measured?

A – Chain link mesh is measured diagonally along the edge of the square formed by the wires. That is actually the smallest dimension of the opening.

Q – Should fences be made a 6-point item so we don't allow 30 days to correct problems such as gates not self-closing?

A – Fences could be made a 6-point item, but under G.S. 130A-23(d), an operation permit issued pursuant to G.S.130A-281 shall be immediately suspended for failure of a public swimming pool to maintain minimum water quality or safety standards or design and construction standards pertaining to the abatement of suction hazards which result in an unsafe condition. Since a non-self-closing gate is an unsafe condition, the permit can be immediately suspended.

Q – What should be done about obstacles or topography outside a pool fence that people can stand on to gain an advantage over the fence height?

A – Not sure. Currently discussing this with David Connor at the Department of Insurance. The building and residential codes both require barriers shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barriers. He agrees ground level needs to not aid climbing onto a fence, but he is working on a more specific interpretational ruling. After discussion with some members of the Environmental Health Supervisors Association, what is clear is pre-2010 fences that do not provide at least 30 inches of foothold-free space do not comply with the intent of the rules.

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