



North Carolina Department of Environment and Natural Resources
Division of Environmental Health

Beverly Eaves Perdue
Governor

Terry L. Pierce
Director

Dee Freeman
Secretary

MEMORANDUM

DATE: June 25, 2010

TO: Environmental Health Specialists, Supervisors and Directors

FROM: Jim Hayes, Branch Head
Pools, Tattoos and State Institutions Branch

RE: Non-Compliant Public Swimming Pool Fences

There have been inconsistencies in interpretation and enforcement of the fence requirements for public swimming pools, particularly at pools that predate the Rules Governing Public Swimming Pools. This stems from the once widely held belief that the exception in G.S. 130A-282(b) permitting pools built before May 1, 1993 to operate in violation of certain design and construction requirements might also apply to pool fences. After consultation with the Attorney General's Office, it is clear that the General Assembly held pool fences out separate from design and construction in G.S. 130A-282(a)(5) and identified fences as an operation and safety requirement. The exceptions in G.S. 130A-282(b) and in rule 15A NCAC 18A .2510(a) do not apply to pool fences. All public swimming pools are required to comply with rule .2528 FENCES regardless of the date of construction.

This interpretation has raised concern that rule .2511(b) might require permit action to deny or issue an intent to suspend operation permits for violation of the four-demerit item at many pre-1993 pools and result in a large number of contested case applications from owners seeking additional time to make repairs. While rule .2511(b) does authorize use of permit action for violations of four-demerit items, it does not require such action in all cases. The decision whether or not to take permit action is subject to judgment and may not be the best option for addressing pool fence deficiencies requiring extensive reconstruction for the following reasons:

- Construction of pool fences requires budgeting, planning and construction work that can reasonably be expected to take more time to complete than a permit action would allow,
- Taking permit action to remove bathers from the pool will not abate the danger associated with inadequate fencing so long as water remains in the pool and may increase the danger by removing bathers who might offer protection to children entering the area, and
- Fence construction would likely be disruptive of pool activities and could be done more easily and safely in the cooler months when the pool is not in use.

For the above reasons, a better approach for correcting fence deficiencies at older pools would be to provide the pool owner a written notification that the non-compliant fence must be brought into compliance as soon as possible and allow sufficient time, not exceeding one year, to correct the violations. If violations of the fence requirements create an unsafe condition and immediate action is necessary to abate that condition, then permit action, including immediate suspension of the pool permit, is appropriate when such action would hasten abatement of the unsafe condition, or when needed to establish a time limit for a recalcitrant pool owner to initiate a formal appeal of the decision.