

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2001 JUL 25 P 3:10

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Health - DHHR TITLE NUMBER: 64

CITE AUTHORITY: Legislative

AMENDMENT TO AN EXISTING RULE: YES NO

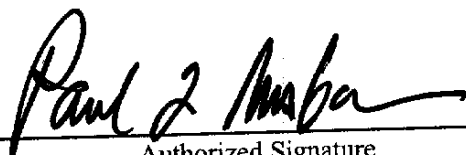
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 16

TITLE OF RULE BEING PROPOSED: Recreational Water Facilities

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

Brief Summary
64 CSR 16
Recreational Water Facilities

The proposed legislative rule will combine and update two existing rules:

- 64 CSR 16 Swimming and Bathing Beach
- 64 CSR 25 Design Standards for Swimming Pools

The proposed rule combines the design and operational requirements for swimming pools and bathing beaches. Also, the proposed rule has been expanded to include spas, hot tubs, theme parks, water slides, lazy rivers and wave pools. New recreational water facility technology and safety issues have been incorporated into the proposed rule.

**Statement of Circumstances
Which Require the Proposed Rule
64 CSR 16
Recreational Water Facilities**

The current Swimming Pool and Bathing Beach Rule(64 CSR 16) and the Design Standards for Swimming Pools(64 CSR 25) have not been updated since they were adopted in 1980, except for a change made in 1992 regarding lifeguard requirements. Since that time the design and technology of recreational water facilities has changed with the advent of new types of facilities, i.e. water theme parks, water slides, lazy rivers. New safety concerns have arisen with all these technological changes. The proposed rule incorporates the latest in water facility design, safety and operational requirements.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Recreational Water Facilities, 64CSR16

Type of Rule: **Legislative** **Interpretive** **Procedural**

Agency: Division of Health
Department of Health and Human Resources

Address: Building 3, Room 201, Capitol Complex
Charleston, W. Va. 25305

1. Effect of the Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0.00	\$0.00	\$ 0.00	\$ 0.00	\$ 0.00
Personal Services	0.00	0.00	0.00	0.00	0.00
Current Expense	0.00	0.00	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00	0.00	0.00
Equipment	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00
Revenue	0.00	0.00	0.00	0.00	0.00

2. Explanation of above estimates.

This proposed rule does not require additional funds.

3. Objectives of this rule:

To repeal and replace outdated legislative rule 64CSR16, "Swimming Pool and Bathing Beach," and to replace 64CSR25, "Design Standards for Swimming Pools."

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens.

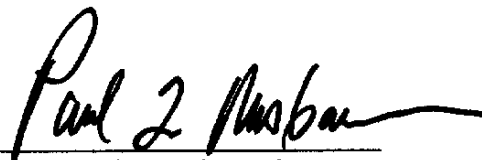
None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 25, 2001

Signature of Agency Head or Authorized Representative

A handwritten signature in black ink that reads "Paul L. Nusbaum". The signature is written in a cursive style with a long horizontal flourish at the end.

Paul L. Nusbaum, Secretary
Department of Health and Human Resources

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 25, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Division of Health

FROM: (Agency name, Address & Phone No.) Department of Health and Human Resources

State Capitol Complex, Building 3, Room 201, Charleston, WV 25305

Telephone: (304) 558-5598

LEGISLATIVE RULE TITLE: Recreational Water Facilities, 64CSR16

1. Authorizing statute(s) citation: WV Code Section 16-1-4

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
May 24, 2001

b. What other notice, including advertising, did you give of the hearing?
Notice of the proposed rule was sent to Local Health Departments,

WV Recreation and Park Association, Kanawha County Parks,

City of Bridgeport Parks and Recreation, and Harpers Ferry KOA

c. Date of Public Hearing(s) or Public Comment Period ended:
June 25, 2001

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing (be exact):

July 25, 2001

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule (please type):

Martha Barnitt

Office of Regulatory Support - DHHR

Building 3, Room 201, Capitol Complex

Charleston, West Virginia 25305

- g. IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule (please type):

Ron Forren, Director

Public Health Sanitation Division

Office of Environmental Health Services

815 Quarrier Street, Suite 418

Charleston, West Virginia 25301-2616

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH**

**SERIES 16
RECREATIONAL WATER FACILITIES**

**TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH**

**SERIES 16
RECREATIONAL WATER FACILITIES**

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**TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH**

**SERIES 16
RECREATIONAL WATER FACILITIES**

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2001 JUL 25 P 3:11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§64-16-1. General.

1.1. Scope. -- This legislative rule establishes the minimum requirements for the design, construction, management and operation of recreational water facilities. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.

1.2. Authority. -- W. Va. Code §16-1-4.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal and Replacement of Former Rules. -- This legislative rule repeals and replaces Division of Health rule 64CSR16, "Swimming Pool and Bathing Beach", effective April 22, 1992, and repeals Division of Health rule 64CSR25, "Design Standards for Swimming Pools", effective May 5, 1980.

1.6. Applicability. -- This rule applies to the owners and operators of recreational water facilities.

1.6.a. A recreational water facility, as defined in this rule, includes, but is not limited to, bathing beaches; swimming, wading, and diving pools; water slides, spray pools, lazy rivers, and wave pools; spas, hot tubs, therapeutic pools, hydrotherapy pools, and whirlpools. The term includes facilities operated by communities, subdivisions, apartment complexes, condominiums, clubs, camps, schools, institutions, parks, mobile home parks, hotels, and similar recreational and public facilities.

1.6.b. A recreational water facility does not include a private residential swimming pool as defined in this rule.

1.7. Enforcement. -- This rule is enforced by the Director of the Division of Health.¹

¹ The Department of Health and Human Resources (DHHR) was created by the Legislature's reorganization of the executive branch of State government in 1989. The Department of Health was renamed the Division of Health and made a part of the DHHR (W. Va. Code § 5F-1-1 et seq.). Administratively within the DHHR the Bureau for Public Health through its Commissioner carries out the public health function of the Division of Health.

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§64-16-2. Definitions.

2.1. Bathing Beach. -- An organized and controlled bathing place located on a natural stream, pond or lake, or on an artificial pond or lake which is formed by impounding a natural waterway.

2.2. Director. -- The Director of the Division of Health or his or her designee.

2.3. Fecal Accident. -- The release of visible fecal matter into the water of a recreational water facility.

2.4. First Aid Kit. -- A packaged set of materials used for emergency treatment of injured or sick persons before professional medical care is available that includes a minimum of: adhesive compresses or band-aids of various sizes; adhesive tape; eye dressing pads (4" x 4" and 3" x 3"); gauze pads (4" x 4" and 3" x 3"); roller gauze (2", 3" and 4" widths); scissors; tweezers; triangular bandages; cold packs; personal protective equipment, including latex or other impermeable gloves; and resuscitation masks with one-way valves.

2.5. Operator. -- A person responsible for the operation of a recreational water facility.

2.6. Patron. -- A customer, client, paying or non-paying guest at a recreational water facility.

2.7. Permit. -- A written document issued by the Director giving a designated person permission to establish, construct, renovate, or operate a recreational water facility.

2.8. Person. -- An individual, city, town, partnership, association, company, corporation, government agency, institution, apartment, motel, country club, camp, or any other legal entity.

2.9. Private Residential Swimming Pool -- An indoor or outdoor structure, chamber, or tank containing a body of water for swimming, diving, or bathing located at a single residential dwelling that houses no more than three families and used exclusively by the residents and their non-paying guests.

2.10. Qualified Water Facility Operator. -- An individual who has passed a recognized Certified Pool Operator certification course, such as those offered by the National Spa and Pool Institute, the YMCA, or an equivalent course approved by the Director.

2.11. Recreational Water Facility. -- A body of water, under the control of a person, that has been modified, improved, constructed or installed for the purpose of public swimming or bathing. See section 1.6 of this rule, Applicability.

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2.12. Shallow End. -- The part of a recreational water facility that has a depth of five (5) feet or less.

2.13. Swimming Pool. -- An artificial basin, chamber, or tank intended to be used for swimming, diving, therapy, competition, instruction, or recreational type bathing. The term does not include residential or individual therapeutic tubs or tanks.

2.14. Spa. -- A unit designed for recreational use, including a hot tub, that is not drained, cleaned, or refilled for each user, that may include hydrojet circulation, hot water, or air induction bubbles.

2.15. Wading Pool. -- A small, shallow swimming pool not more than twenty-four (24) inches deep intended to be used for wading.

2.16. Wave Pool. -- A swimming pool designed for the purpose of producing wave action in the water.

§64-16-3. Construction Permit.

3.1. A person shall not establish, construct or renovate a recreational water facility without first obtaining a construction permit from the Director.

3.2. The applicant shall submit four (4) sets of completed applications, plans and specifications to the Director for review and approval at least forty-five (45) days prior to the date on which he or she requests that the construction permit takes effect.

3.3. The applicant shall submit a written permit application on a form obtained from the Director. The application, plans, and specifications shall include, but not be limited to:

3.3.a. Vicinity and site plans;

3.3.b. Detailed construction drawings;

3.3.c. Water source and treatment detail; and

3.3.d. Specifications for filtration, chlorination, testing equipment and other pertinent factors necessary for a complete operative system.

3.4. A construction permit may be suspended or revoked by the Director for failure to comply with the provisions of the permit or this rule.

3.5. The Director shall deny a construction permit if the information on the application form

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is incomplete, inaccurate, false or misleading, or indicates that the applicable provisions of this rule cannot be met.

3.6. A person whose application for a construction permit has been denied, or whose permit has been suspended or revoked, may submit a written petition to the Director requesting a hearing on the matter, and the Director shall grant a hearing on the matter within ten (10) days after he or she has received the petition.

3.7. The recreational water facility shall be constructed or renovated in accordance with the plans and specifications approved by the Director, unless the Director grants written approval for a deviation from the approved plans and specifications.

§64-16-4. Operating Permit.

4.1. A person shall not in any manner conduct, control, manage, maintain, or operate a recreational water facility without obtaining an operating permit from the Director.

4.2. The applicant shall submit to the Director a written operating permit application on a form obtained from the Director and signed by the applicant.

4.3. The applicant shall submit to the Director an application for an operating permit at least fifteen (15) days before the operation of the recreational water facility is scheduled to begin.

4.4. The Director shall deny a permit if the information on the application form is incomplete, inaccurate, false, or misleading, or indicates that the applicable provisions of this rule cannot be met.

4.5. Persons shall comply with the applicable provisions of this rule in order to receive and retain an operating permit.

4.6. Recreational water facilities that are in operation on the date this rule becomes effective, and that meet all applicable prior rules, are eligible for a permit to operate. Construction, modification, installation, or renovations proposed for a recreational water facility after the effective date of this rule shall comply with all applicable provisions of this rule.

4.7. Permits are not transferable and become invalid immediately upon a change of ownership, suspension or revocation.

4.8. In the event of a proposed or an actual change in ownership of a recreational water facility, an applicant shall submit an application for an operating permit to the Director at least fifteen (15) days prior to the date of the proposed or actual change.

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4.9. The Director may suspend or revoke a permit if he or she finds that the recreational water facility is in violation of this rule.

4.10. The Director shall not reinstate an operating permit until he or she determines by an inspection that the recreational water facility is in compliance with all applicable provisions of this rule.

4.11. The operator shall prominently display the operational permit in a conspicuous place at the recreational water facility.

4.12. A person whose application for an operating permit has been denied, or whose permit has been suspended or revoked, may submit a written petition to the Director requesting a hearing on the matter, and the Director shall grant a hearing on the matter within ten (10) days after he or she has received the petition.

§64-16-5. Inspections, Closure Orders.

5.1. The Director shall inspect each recreational water facility not less than two (2) times per year.

5.2. The owner, operator, or person in charge of a recreational water facility shall provide the Director immediate access to the premises for the purpose of inspection, and shall provide requested information for the inspection.

5.3. When the Director inspects a facility and finds that the recreational water facility is not in compliance with any of the provisions of this rule, he or she shall provide the operator with a written inspection report noting the violations. The operator shall correct the violations within the time frame specified in the inspection report.

5.4. The Director may order the immediate closure of a recreational water facility when he or she finds:

5.4.a. A condition at the recreational water facility that endangers the life, health, or safety of the patrons or employees;

5.4.b. Excessive turbidity as determined by a standard clarity sight disk; or

5.4.c. A disinfectant residual that is less than that permitted under the provisions in subdivisions 7.1.d and 7.1.e of this rule.

5.5. A closure order issued shall remain in effect until the Director determines that necessary corrections have been made.

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§64-16-6. Design, Construction.

6.1. A recreational water facility that is designed, constructed, or renovated after the effective date of this rule shall comply with the National Spa and Pool Institute ANSI/NSPI-1 1991 Standard for Public Swimming Pools and ANSI/NSPI-2 1999 Standard for Public Spas. These standards are available through the internet at: <http://www.nspi.org>.

§64-16-7. Water Quality.

7.1. Disinfection.

7.1.a. A recreational water facility, with the exception of bathing beaches, shall be disinfected continuously by the use of chemical feed equipment,

7.1.b. Hand batch feeding of disinfecting chemicals is prohibited except when performing super-chlorination or shocking.

7.1.c. Disinfecting materials and methods shall:

7.1.c.1. Be used only with the approval of the regulatory agency;

7.1.c.2. Not create an undue safety hazard;

7.1.c.3. Be handled, stored, and used according to directions;

7.1.c.4. Be compatible for use with other chemicals commonly used in pool water treatment, or be clearly identified as having a use limitation;

7.1.c.5. Not impart toxic properties to the water when used according to directions;
and

7.1.c.6. Provide an effective residual which can be easily and accurately measured by a field test procedure.

7.1.d. When chlorine is used as the disinfectant, the recreational water facility shall maintain a free chlorine residual of at least one (1) milligram per liter (mg/l) to a maximum of five (5) milligrams per liter (mg/l) throughout.

7.1.e. When bromine is used as the disinfectant, the recreational water facility shall maintain a residual of at least two (2) milligrams per liter (mg/l) to a maximum of five (5) milligrams per liter (mg/l) throughout.

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7.1.f. Disinfecting materials or methods other than chlorine and bromine:

7.1.f.1. Shall be approved by the Director prior to being used;

7.1.f.2. Shall be registered as a bactericidal agent by the U.S. Environmental Protection Agency; and

7.1.f.3. May be used if they provide a satisfactory residual which is easily measured and is as effective under conditions of use as the chlorine concentrations required in this rule.

7.1.g. When cyanuric acid is used as a stabilizer, it must be maintained at a level between ten (10) and one hundred (100) milligrams per liter (mg/l).

7.2. Chemical Requirements.

7.2.a. The water in a recreational water facility, except for bathing beaches, shall conform to the chemical limits specified in Division of Health rule, 64CSR3, "Public Water Systems."

7.2.b. Bathing beach water shall conform to the standards prescribed for Category A in Appendix E of the Environmental Quality Board's rule, 46CSR01, "Requirements Governing Water Quality Standards."

7.3. Bacteriological Requirements.

7.3.a. The Director shall collect a series of water samples for bacteriological analysis from each recreational water facility. A series shall consist of one (1) water sample each from the deep end, the shallow end, and the wading pool, if applicable, or two (2) water samples from different locations of a bathing beach.

7.3.b. Within thirty (30) days of the opening of seasonal recreational water facilities, the Director shall collect not less than one (1) series of samples, and during the same season of operation, he or she shall collect not less than one (1) additional series of samples. For indoor recreational water facilities, the Director shall collect not less than one (1) complete series of samples every six (6) months.

7.3.c. A laboratory approved by the Director shall examine water samples after the residual disinfectant in the samples is deactivated.

7.3.d. The Director shall collect water samples while the recreational water facility is in use.

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7.3.e. If laboratory results of a water sample from a recreational water facility, except for bathing beaches, indicate the presence of coliform organisms:

7.3.e.1. The operator shall super-chlorinate the recreational water facility, and the water shall be retested immediately; and

7.3.e.2. The operator shall investigate the cause of the unsatisfactory sample and initiate, or cause to be initiated, corrective action.

7.3.f. If laboratory results of a water sample from a bathing beach indicate that e. coli exceeds two hundred thirty-five (235) per one hundred (100) milliliters in any single sample:

7.3.f.1. The bathing beach shall cease operation and the water shall be retested immediately;

7.3.f.2. The operator shall investigate the cause of the unsatisfactory sample and initiate, or cause to be initiated, corrective action.

7.4. pH and Alkalinity Control.

7.4.a. The recreational water facility, except for bathing beaches, shall maintain the pH of the water in an alkaline condition of not less than seven point two (7.2) nor greater than seven point eight (7.8) at any time the facility is in use.

7.4.b. A recreational water facility that is equipped with gaseous chlorination feeders shall provide a mechanical chemical feeder to continuously control the pH. Hand batch feeding of chemicals to control pH is prohibited.

7.4.c. When the pH of the water at a bathing beach is less than six point five (6.5) or greater than eight point five (8.5), the beach shall not be used for bathing.

7.4.d. Except for bathing beaches, a recreational water facility shall maintain the total alkalinity at a level between sixty (60) and one hundred eighty (180) milligrams per liter (mg/l) as calcium carbonate.

7.5. Except for bathing beaches, a recreational water facility shall maintain sufficient water clarity to allow the main drain or a six (6) inch black disk on the bottom of the deepest part of the recreational water facility to be readily visible when viewed from the recreational water facility sidewall.

7.6. Table 64-15 C at the end of this rule provides guidelines to assist the operator in maintaining optimum water quality.

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§64-16-8. Control Tests and Operation Records.

8.1. Except for bathing beaches, recreational water facilities shall have available at all times approved testing equipment for determining pH, free chlorine, total chlorine, total alkalinity, and other tests required by the Director.

8.2. Equipment used for testing free or total chlorine shall use the DPD (N, N-Diethyl-P-Phenylenediamine) method. Test strips or Oxidation Reduction Potential (ORP) may be used as a measuring parameter, but shall not be used when registering required readings on daily operational reports required by the Director.

8.3. The operator shall maintain for a minimum of one (1) year written results of required tests, attendance data, number of hours of equipment operation, and other information required by the Director.

8.4. The operator shall submit on forms obtained from the Director a weekly summary of operation and tests to the Director.

8.5. Except for bathing beaches, the operator shall conduct tests to determine the pH and free chlorine residual of the water not less than twice daily, and record the results on the weekly summary required under subsection 8.4 of this rule.

8.6. The operator shall properly maintain test kits and shall renew reagents semi-annually for indoor facilities and prior to the annual opening for seasonal use facilities. Only those reagents manufactured for the test kit in use shall be used.

8.7. Except for bathing beaches, when a control test indicates that the free chlorine residual is less than or equal to zero point five (0.5) milligrams per liter (mg/l), the recreational water facility shall cease operations until the free chlorine level is one (1) milligram per liter (mg/l) or above.

8.8. Except for bathing beaches, when a control test indicates that the free bromine residual is less than or equal to one (1) milligram per liter (mg/l), the recreational water facility shall cease operations until the free bromine level is two (2) milligrams per liter (mg/l) or above.

§64-16-9. Supervision of Patrons.

9.1. Except for bathing beaches, a qualified water facility operator shall be available for consultation at all times the recreational water facility is open for use.

9.2. The operator shall have the authority to:

64CSR16

9.2.a. Exclude from the premises any patron who does not follow the safety and sanitation rules; and

9.2.b. Evacuate the facility as needed to protect the health and safety of the employees.

9.3. The operator shall supervise the patrons and enforce the following rules:

9.3.a. Individuals shall not urinate, defecate, spit, spout water, or blow his or her nose in the water.

9.3.b. Patrons who have open sores, or an infectious disease that is transmissible by water may not use the recreational water facility.

9.3.c. Patrons and the apparel they wear in the water shall be visibly clean.

9.3.d. Children who are not toilet trained shall wear tight fitting plastic underwear that will prevent leakage, or use other appropriate apparel approved by the Director.

9.3.e. Patrons under the influence of drugs or alcohol or exhibiting disruptive behavior are not permitted in the recreational water facility.

9.3.f. Except for service animals, animals shall not be allowed in the recreational water facility.

9.3.g. Food, drink, gum, and tobacco may be used only in designated and controlled areas.

9.3.h. Glass containers or other materials that might create hazardous conditions or interfere with efficient operation of the facility are not allowed.

9.3.i. Diving from the deck shall be permitted only in designated areas where the water is more than five (5) feet in depth.

9.4. The recreational water facility shall prominently post the rules applicable to patron behavior so as to be readily visible to the patrons.

§64-16-10. Safety Requirements.

10.1. A recreational water facility shall have a Shepherd's crook and reach pole available for use.

64CSR16

10.2. At recreational water facilities with lifeguards, the facility shall provide one (1) rescue tube for each lifeguard on duty that is readily accessible for emergency use.

10.3. At recreational water facilities without lifeguards, the facility shall provide a minimum of one (1) unit of life saving equipment available for patron use as approved by the Director.

10.4. A recreational water facility shall maintain all equipment in good repair.

10.5. A recreational water facility shall be equipped with a readily available, fully stocked first aid kit according to the provisions in subsection 2.5 of this rule.

10.6. Employees who have open sores or an infectious disease that is transmissible by water shall not be permitted in the water or allowed to serve as lifeguards.

10.7. Each lifeguard on duty shall have immediate access to personal protective equipment including, but not limited to, a resuscitation mask and latex or other impermeable gloves.

10.8. Except for spas, hot tubs, and whirlpools, if a recreational water facility requires an admission fee such as a gate receipt, annual pass, or membership dues, or is utilized by an organized camp or a child care center, the facility shall provide certified lifeguards on duty at all times the facility is open according to the following:

10.8.a. The number of lifeguards required shall be determined by the size of the recreational water facility and the number of patrons as described in Table 64-16 B at the end of this rule. The operator may request in writing from the Director a variance in the number of lifeguards required.

10.8.b. A lifeguard shall have a current lifeguarding certificate from the American Red Cross, Ellis and Associates, YMCA, or an equivalent organization approved by the Director.

10.8.c. A lifeguard shall have a current cardiopulmonary resuscitation (CPR) certificate from the American Red Cross, American Heart Association, National Safety Council, or an equivalent organization approved by the Director.

10.8.d. A lifeguard shall have a current first aid certificate, equal to or better than the American Red Cross Standard First Aid or National Safety Council First Aid Certification or an equivalent organization approved by the Director.

10.8.e. Children shall not be left unattended in a wading pool.

10.8.f. The employment of lifeguards is recommended, but not mandatory at:

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10.8.f.1. Mobile home parks, travel trailer camps, hotels, motels, apartment complexes, or condominiums that have recreational water facilities that are available for use only to the residents; and

10.8.f.2. Mobile home parks, travel trailer camps, hotels, motels, apartment complexes, or condominiums that have recreational water facilities with a depth of five (5) feet or less.

10.8.g. If the facility employs no lifeguards, the management shall post a sign in a prominent location near the recreational water facility stating "Warning: No lifeguard on duty – All persons under the age of fourteen (14) must be accompanied by an adult."

10.9. Each recreational water facility shall have a blood-borne pathogen plan based on the Occupational Safety and Health Administration's standards.

10.10. Telephone service shall be available within one hundred (100) feet of the recreational water facility, and emergency phone numbers for rescue agencies shall be posted.

10.11. Each recreational water facility shall have a written emergency action plan that includes all life-threatening emergencies, non-life-threatening emergencies, chemical spills, and environmental emergencies.

10.12. The recreational water facility shall take appropriate measures to avoid entrapment of patrons on drains.

10.12.a. Recreational water facilities constructed, installed, or modified after the effective date of this rule shall follow the National Spa and Pool Institute ANSI/NSPI-1 1991 Standard for Public Swimming Pools and ANSI/NSPI-2 1999 Standard for Public Spas. These standards are available through the internet at: <http://www.nspi.org>.

10.12.b. Recreational water facilities in operation at the time this rule becomes effective must upgrade single drains to meet National Spa and Pool Institute ANSI/NSPI-1 1991 Standard for Public Swimming Pools and ANSI/NSPI-2 1999 Standard for Public Spas within three years of the effective date of this rule. These standards are available through the internet at: <http://www.nspi.org>.

10.12.c. Spas constructed, installed, or modified after the effective date of this rule shall provide an emergency shut-off switch and an audible alarm placed within twenty (20) feet of the spa.

10.13. Recreational water facilities shall comply with applicable provisions of the State Fire Commission's rule 87CSR01, "Fire Code."

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10.14. The patron load shall be determined by the National Spa and Pool Institute ANSI/NSPI-1 1991 Standard for Public Swimming Pools.

§64-16-11. Routine Maintenance and Operation.

11.1. Except for bathing beaches, the operator shall remove visible debris from the bottom of the recreational water facility every twelve (12) hours or as often as necessary to maintain visibility and maximize safety.

11.2. Except for bathing beaches, the water surface of a recreational water facility shall be maintained free of visible scum and floating matter.

11.3. A recreational water facility shall keep deck areas, sidewalks and other areas around the recreational water facility and bath house clean.

11.4. Except for bathing beaches, recreational water facilities shall be drained as necessary for inspection, cleaning, or repair.

11.5. Except for bathing beaches, a recreational water facility shall operate water treatment equipment twenty-four (24) hours per day.

11.6. A recreational water facility shall ensure that ventilation for indoor recreational water facilities meets ANSI/ASHRAE Standard 62-1999 Ventilation for Acceptable Indoor Air. This standard is available through the internet at: <http://www.ashrae.org>.

§64-16-12. Bathhouses, Concessions, and Other Appurtenant Facilities.

12.1. A recreational water facility shall provide toilets, lavatories, showers and drinking fountains as required by the State Fire Commission rule 87CSR04, "State Building Code."

12.2. A recreational water facility shall keep bathhouses, clothing storage facilities, toilet facilities, shower facilities and other appurtenant facilities in good repair and in a clean, sanitary condition.

12.3. A recreational water facility shall ensure that a supply of toilet tissue is available at each toilet.

12.4. A recreational water facility shall provide hand cleanser and an approved hand drying device at each lavatory or group of adjacent lavatories.

12.5. A recreational water facility shall ensure that hot and cold running water is supplied from mixing faucets for showers and lavatories, or that tempered water is provided in lieu of hot

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and cold running water supplied from mixing faucets.

12.6. A recreational water facility that provides a concession stand shall operate the concession stand in accordance with Division of Health rule 64CSR17, "Food Establishments."

12.7. A recreational water facility shall provide a placard in the filter room that lists the water volume and gallons per minute of water needed for the pool's turnover rate.

§64-16-13. Compliance.

13.1. Except for bathing beaches, if any of the events described in subdivisions 13.1.a through 13.1.i of this rule, except the event in 13.1.f, occur while a recreational water facility is in use, the operator shall close the recreational water facility and take the corrective action specified in Table 64-16 A at the end of this rule before reopening the facility. If the event described in subdivision 13.1.f occurs, the operator shall closely only the affected area of the recreational water facility. The operator shall maintain a written record of each event, including the date the event occurred, a description of the event, and the corrective action taken.

13.1.a. The free chlorine residual of water is less than or equal to zero point five (0.5) milligrams per liter (mg/l).

13.1.b. The pH of water is greater than seven point eight (7.8).

13.1.c. The pH of water is less than seven point two (7.2).

13.1.d. An inadequate number of lifeguards or lifesaving equipment is provided as required under this rule.

13.1.e. An accident occurs that causes a lifeguard to leave his or her station or results in the discharge of body fluids into the water.

13.1.f. The water clarity is not in compliance with subsection 7.5 of this rule.

13.1.g. The free bromine residual is less than or equal to one (1) milligram per liter (mg/l).

13.1.h. A failure of the circulation pump or disinfectant pump occurs.

13.1.i. A fecal accident occurs or blood or vomitus is released into the water.

13.2. At a bathing beach, if an inadequate number of lifeguards or lifesaving equipment is provided or an accident occurs that causes a lifeguard to leave his or her station, the operator

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shall close the bathing beach immediately and not reopen the facility until it is in compliance.

§64-16-14. Penalties.

14.1. Any person who violates any provision of this rule or orders issued pursuant thereto shall be punishable by a fine of not more than five hundred dollars (\$500), as provided under W.Va. Code 16-1-18.

§64-16-15. Administrative Due Process.

15.1. Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in a manner prescribed in the Division of Health's rule, "Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1."

TABLE 64-16 A - CLOSURE REQUIREMENTS

CLOSURE EVENT	CORRECTIVE ACTION REQUIRED
A. Free Chlorine = 0.5 ppm or less	Close the facility. Determine the cause. Make repairs or corrections.
B. pH of water = greater than 7.8	Close the facility. Determine the cause. Make repairs or corrections.
C. pH of water = less than 7.2	Close the facility. Determine the cause. Make repairs or corrections.
D. Inadequate lifeguards or lifesaving equipment	Close the facility until the required number of lifeguards and lifesaving equipment are provided.
E. <u>Accident Resulting In:</u> Lifeguard leaving station OR Body fluids discharged into water	Close facility until lifeguard returns to station. Follow fecal accident cleanup procedures outlined below in item J if blood or feces are discharged into the water.
F. Water Clarity Unsatisfactory (Main drain or 6 inch black disk on bottom of deepest part not visible from sidewall.)	Close the affected area until the main drain or a six (6) inch black disk on bottom of deepest part is visible from the sidewall. Determine cause. Make repairs or corrections.
G. Free bromine = 1.0 ppm or less	Close the facility. Determine the cause. Make repairs or corrections.
H. Equipment Failure - Main pump or Disinfectant pumps	Close the facility immediately upon main pump failure. Close the facility when disinfectant pumps fail and free chlorine nears 0.5 ppm. Repair equipment. Test and balance chemical parameters prior to re-opening the recreational water facility.
<p>I. Fecal Accident or Release of Blood or Vomitus into Water</p> <p><u>Follow Cleanup Procedure A if:</u></p> <ul style="list-style-type: none"> • Stool may be easily picked up; or • Person is not ill, but vomited due to gulping water or overexertion. <p><u>Follow Cleanup Procedure B if:</u></p> <ul style="list-style-type: none"> • Visible blood is discharged into the water; or • Stool is loose and spread in large area; or • Person who contaminated water is ill (stomach cramps, fever, flu-like symptoms); or • You cannot determine if person who contaminated water is ill. 	<p>Evacuate patrons from the water. Evaluate situation.</p> <p><u>Cleanup Procedure A</u></p> <ol style="list-style-type: none"> 1. Remove as much of the feces or vomitus as possible. Leaf catchers/rakes are helpful. 2. Vacuum remaining visible material or push remaining small material towards overflow or skimmers until all visible material is removed. 3. Spot disinfect area of contamination: <ol style="list-style-type: none"> a. Add 1 oz. of calcium hypochlorite (or 4 to 5 oz. of sodium hypochlorite) which has been mixed in small bucket of water to the affected area; and b. Brush the walls and bottom of pool in contaminated area. 4. Wait 30 minutes to assure chlorine and pH levels meet minimum requirements, especially in area where chemicals were added. <p><u>Cleanup Procedure B</u></p> <ol style="list-style-type: none"> 1. First complete all steps of Cleanup Procedure A. 2. Swimming Pools: <ol style="list-style-type: none"> a. Raise chlorine to maintain free chlorine residual of 5 ppm and recirculate water for at least 24 hours; or b. Raise chlorine to maintain free chlorine residual of 20 ppm and recirculate water for at least 8 hours. 3. Wading Pools and Spas: <ol style="list-style-type: none"> a. Drain wading pool or spa; b. Brush sides and bottom with 100 ppm chlorine; and c. Refill. Balance chemicals. 4. Backwash the filter.

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TABLE 64-16 B - LIFEGUARD REQUIREMENTS

NUMBER OF PATRONS IN WATER	WATER SURFACE AREA IN SQUARE FEET					
	Up to 2000	2001-4000	4001-6000	6001-8000	8001-10,000	10,000 +
1-30	1	2	2	3	3	3
31-60	2	2	3	3	3	4
61-90	2	3	3	3	4	4
91-120	3	3	3	4	4	4
121-150	3	3	4	4	4	4
151 +	3	4	4	4	4	5

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TABLE 64-16 C - WATER QUALITY GUIDELINES

A. DISINFECTANT LEVELS	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Free chlorine mg/l (ppm)	1.0	2.0 - 3.0	5.0	Chlorine should be maintained at this level continuously. Super-chlorinate regularly. See B-1 below.
2. Combined chlorine mg/l (ppm)	None	None	0.5	Eliminated by super-chlorination. If too high, you may have: • Sharp chlorinous odors • Eye burn • Algae growth • Bacteria growth
3. Bromine mg/l (ppm)	2.0	2.0-3.0	5.0	Consult health dept. officials before use.
B. CHEMICAL VALUES	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. pH	7.2	7.5	7.8	<p style="text-align: center;">TOO HIGH</p> Low chlorine efficiency Scale formation Increased chemical demand Cloudy water Eye discomfort <p style="text-align: center;">TOO LOW</p> Rapid dissipation of chlorine Eye discomfort Plaster/concrete etching Corrosion of metals
2. Total alkalinity as CaCO ₃ mg/l (ppm)	60	80-100 or 120	180	<p style="text-align: center;">TOO HIGH</p> Increased scaling potential Cloudy water pH maintained too high <p style="text-align: center;">TOO LOW</p> Corrosion tendency pH bounce
3. Undissolved solids mg/l (ppm) (Turbidity)	None	None	None	<p style="text-align: center;">TOO HIGH</p> Chlorine level may be too low Filtration system may be inoperative May lead to drowning due to decreased visibility
4. Dissolved solids mg/l (ppm)	300	...	2000	<p style="text-align: center;">TOO HIGH</p> Chlorine may be less effective Salty taste Add fresh water to reduce solids Dull water Chemical balance difficult to maintain Scaling may occur <p style="text-align: center;">TOO LOW</p> Total alkalinity may be too low Aggressive water

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TABLE 64-16 C - WATER QUALITY GUIDELINES

TABLE 64-16 C - WATER QUALITY GUIDELINES				
B. CHEMICAL VALUES (CONT'D)	MINIMUM	IDEAL	MAXIMUM	COMMENTS
5. Hardness, as CaCO ₃ mg/l	50	125	800	<p>TOO HIGH</p> <p>Scaling may occur Water has bad "feel" Short filter runs</p> <p>TOO LOW</p> <p>Plaster or concrete etching Corrosion may occur</p>
6. Copper mg/l (ppm)	None	None	0.3	<p>TOO HIGH</p> <p>Staining may occur Water may discolor Chlorine dissipates rapidly Filter may plug May indicate pH too low Corrosion may occur</p>
7. Iron mg/l (ppm)	None	None	0.2	<p>TOO HIGH</p> <p>Staining may occur Waste may discolor Chlorine dissipates rapidly Filter may plug</p>
8. Manganese mg/l (ppm)	None	None	0.05	<p>TOO HIGH</p> <p>Staining may occur</p>
C. BIOLOGICAL VALUES	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Algae	None	None	None	<p>Super-chlorinate or shock treat facility Supplement with brushing and vacuuming Maintain adequate free chlorine residual Use approved algaecide according to label direction</p>
2. Bacteria	None	None	Refer to 64CSR3	<p>If bacteria count exceeds health dept. requirements: Super-chlorinate recreational water facility Follow proper maintenance procedures Maintain proper free chlorine residual</p>
D. STABILIZER	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Cyanuric acid mg/l (ppm)	10	30-50	100	<p>TOO HIGH</p> <p>May exceed health department regulations</p> <p>TOO LOW</p> <p>Chlorine residual rapidly destroyed by sunlight</p> <p>NOTE</p> <p>Stabilizer is not needed for indoor facilities and should not be used in hot water facilities. Cyanuric acid may titrate as Alkalinity.</p>
E. ALGACCIDES	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Quaternary mg/l (ppm)	Not permitted in public recreational water facilities.

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TABLE 64-16 C - WATER QUALITY GUIDELINES

TABLE 64-16 C - WATER QUALITY GUIDELINES				
E. ALGAEICIDES (CONT'D)	MINIMUM	IDEAL	MAXIMUM	COMMENTS
2. Copper based (nonchelated) mg/l (ppm)	0.1	0.2	0.3	Ineffective against some algae. Consult health dept. officials before using. May contribute to staining.
3. Copper based (chelated) mg/l (ppm)	0.1	1.0	3.0	Ineffective against some algae. Consult health dept. officials before using. May contribute to staining.
4. Silver based mg/l (ppm)	0.5	1.5	3.0	Precipitates with cyanuric acid. Ineffective against some algae. Consult health dept. officials before use.
F. REMEDIAL PRACTICES	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Super- Chlorination	When Combined Chlorine is 0.2 mg/l (ppm) or more			* As needed
2. Required super- chlorination /shock chlorine	10*			*10 times combined chlorine reading. Must be done when the facility is not in use. May reopen when free chlorine is below 5.0 ppm.
3. Floccing	Not Recommended			Consult health dept. officials before using.
4. Water Replacement - Hot water facility	Change water and clean monthly as a minimum, more frequently when heavy use and chemical treatment difficulties are experienced.
G. TEMPERATURE	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Water temperature - Hot water facility	Patron preference	...	105 °F	TOO HIGH Excessive fuel requirement Increased chlorine use Increased scaling potential Patron discomfort Health threat to those with high blood pressure TOO LOW - Patron discomfort
2. Water temp. - Artificially heated	75 °F	...	90 °F	
3. Air temperature Indoor facilities	Water temp. minus 2°F	...	Water temp. plus 8 °F	Excluding hot water facilities.
H. WATER CLARITY	MINIMUM	IDEAL	MAXIMUM	COMMENTS
1. Turbidity	Must be able to see main drain or six inch black disk on bottom of deepest part from the sidewall.			TOO HIGH Chlorine level may be too low Filtration level may be inoperative May lead to drowning due to decreased visibility

PUBLIC COMMENTS AND DEPARTMENT RESPONSES

RECREATIONAL WATER FACILITIES, 64CSR16

A public comment period on the proposed rule, Recreational Water Facilities, 64CSR16, was held beginning on May 24, 2001, and ending June 25, 2001. Twelve (12) comments were received. Comments are summarized below, and the Department's responses and changes to the rule are detailed.

Comment: Object to closing of the Harpers Ferry KOA swimming pool to community users.

Response: The rule does not represent a change from the previous requirement for mobile home parks, travel trailer camps, hotels, motels, apartment complexes, and condominiums to provide lifeguards if the facility is used by non-residents. If these facilities are available for use only to the residents, then lifeguards are recommended, but not mandatory. Mobile home parks and travel trailer camps have been added to section 10.8.f.2 of the rule which exempts facilities with a water depth of five (5) feet or less from mandatory employment of lifeguards.

Comment: Implementation of rule will increase operational costs and may require facilities to raise admission fees. Public hearing should be considered.

Response: Updating this rule is necessary to bring facilities into compliance with nationally recognized standards. While these rules may increase operational costs, the amount is not out of line with the improved health and safety protection afforded the patrons.

Comment: Current rules are not uniformly enforced by the local health departments. Proposed rule should include guidelines on the number of inspections and the requirements that would warrant additional inspections.

Response: Section 5 of the proposed rule requires a minimum of two (2) inspections per year and establishes requirements for notices and closure orders. The Department of Health and Human Resources provides training for local sanitarians on the implementation and enforcement of applicable legislative rules, including recreational water facilities. Nonuniformity in enforcing the rule is an issue that should be addressed by the local boards of health.

§2.1

Comment: What is meant by shallow water rescue? What skills do they need to have?

Response: Definition 2.1, Attendant, deleted, due to rewording of section 10.8.e.

Response to Comments 64CSR16

- §2.4** **Comment:** Not all fecal accidents of concern result in visible fecal matter. This definition should include any fecal material released into the water from a bowel movement whether visible or not.
- Response:** Pool operators will only be aware of, and able to respond to, visible fecal accidents.
- §2.5** “As a minimum” added in reference to the required contents of a first aid kit.
- §2.11** **Comment:** Definition implies that the course itself is certified. Recommend striking the word “certified.” Also, the National Recreation and Parks Association certification of Aquatic Facility Operator is the only nationally recognized course promoted and offered throughout WV and should be designated by name in the rule.
- Response:** To clarify that “certified” applies to the pool operator and not the certification course, the words “Certified Pool Operator” have been capitalized. It is impractical to list all the organizations which may provide a certification course. Those not listed are covered by “or an equivalent course approved by the Director.”
- §4.6** **Comment:** First sentence should read “that meet all applicable provisions of current rule, are eligible for a permit to operate” not of “this” rule.
- Response:** Agreed. Section 4.6 changed to read “. . . that meet all applicable prior rules, are eligible for a permit to operate.”
- §5.4.b** For clarity, text revised to read, “Excessive turbidity as determined by a standard clarity sight disk; or.”
- §6.1** **Comment:** Standards referred to as available on the Internet should be sent out as hard copies. Had difficulty ordering standards through Internet. Clicked on the standards section and got a description of the standards.
- Response:** The standards cited in section 6.1 are available from the National Spa and Pool Institute at a cost of \$20 each. It would be cost prohibitive for the department to provide copies of these standards to interested parties. The standards may be purchased online at www.nspi.org. Choose “Product Catalog”, not “Technical Standards.”
- §7.1.b** **Comment:** The word “hand” should be changed to “Manual.” The word “hand” implies that bare hands may be used and an employee may not use personal protective equipment (i.e., gloves) as required.

Response to Comments 64CSR16

Response: Section 7.1.c.3 requires that disinfecting materials and methods be handled, stored, and used according to directions. The manufacturer's directions will address the issue of bare hand contact with the chemicals.

§7.1.d **Comment:** Recommend changing mg/l to ppm (parts per million). Test kits list measurements in ppm, not mg/l.

Response: Milligrams per liter (mg/l) is the same as parts per million (ppm).

§7.1.g **Comment:** Recommend changing 30 mg/l to 10 mg/l. As you raise the level of cyanuric acid in the pool, the chlorine's ability to effectively oxidize the water is reduced.

Response: Agreed. The minimum level of cyanuric acid was changed from 30 mg/l to 10 mg/l in section 7.1.g and in Table 64-16 C, section (D)(1).

§7.3.b **Comment:** Rules currently just require two (2) sets of samples per season. More samples per season should be collected from beaches.

Response: Section 7.3.b sets forth the minimum number of samples to be collected. There is no restriction on collecting additional samples. To clarify, "... shall collect a second series of samples" has been changed to "... shall collect not less than one additional series of samples."

§7.4.d This section should not apply to bathing beaches. "Except for bathing beaches," added to the beginning of the text.

§7.5 Natural water conditions at a bathing beach are beyond the control of the operator. Section 7.5 reworded to exclude bathing beaches.

§8.1 Revised to exclude bathing beaches. Water testing equipment is not necessary at a bathing beach.

§8.5 Revised to exclude bathing beaches. Chlorine and pH tests do not apply to a bathing beach.

§8.6 **Comment:** Disagree with the requirement to replace test kit reagents semi-annually for indoor pools and annually for seasonal pools. Reagents only need replacing if packages are opened, broken, or disturbed. They do not have an expiration date listed by the manufacturer.

Response to Comments 64CSR16

Response: Reagents deteriorate with age and extreme storage temperatures. Requirement is necessary to assure accurate test reports.

§8.7 Revised to exclude bathing beaches. Free chlorine residuals do not apply to bathing beaches.

§8.8 Revised to exclude bathing beaches. Free bromine residual does not apply to bathing beaches.

§9.1 **Comment:** Need to clarify the requirement for a qualified water facility operator to be “available” at all times the facility is open for use. Do they have to be on staff or at the pool or available by phone? It will be too costly to have a qualified water facility operator at the pool at all times the pool is in use.

Response: Section changed to read “. . . shall be available for consultation at all times . . .”

§9.3.d **Comment:** Do “Huggies Little Swimmers” and other swim diapers meet the requirement? More specific direction on this issue is needed.

Response: It is not appropriate to specify brand names in a legislative rule. Swim diapers are acceptable if they are plastic, tight fitting, and will prevent leakage, as specified in this section.

§10.1 **Comment:** Section requires a Shepherd’s crook and a reach pole. Can a pole with a loop end serve as both?

Response: Yes.

§10.2 Deleted “and” for clarity and better sentence structure.

§10.8 Revised to exempt spas, hot tubs, and whirlpools from the lifeguard requirements.

§10.8.a **Comment:** Additional lifeguards will increase costs. Pre-1992 lifeguard requirements are adequate. Many rural pools may only have 10 to 15 patrons swimming at a time and the lifeguard postings need to reflect this. Variances should be allowed to cover unusual facilities and situations.

Response: The pre-1992 lifeguard requirements were the same as the current requirements in our existing rule. The lifeguard requirements in the proposed rule are based on the recommendations of the American Red Cross and are considered

Response to Comments 64CSR16

necessary for the safety of the patrons. The number of lifeguards required in Table 64-16 B is based on both the number of patrons and the square feet of water surface area. A sentence has been added to section 10.8.a to allow the operator to request a variance from the Director. Corrected error in table reference; "15 B" changed to "16 B."

§10.8.e **Comment:** Providing an attendant at wading pools is costly and unnecessary. These children are under constant supervision by their parents.

Response: Agreed. Section 10.8.e reworded to state, "Children shall not be left unattended in a wading pool."

§10.8.f.2 **Comment:** Recommend adding travel trailer camps to the list of facilities that are not required to provide lifeguards if the recreational water facility depth is five (5) feet or less. This would establish uniformity between 10.8.f.1 and 10.8.f.2.

Response: Agreed. Mobile home parks and travel trailer camps added to 10.8.f.2.

§10.9 **Comment:** Guidance is needed on what is acceptable under a blood-borne pathogen plan based on OSHA's standards.

Response: Information is available from OSHA on their standards for a blood-borne pathogen plan.

§10.12.a **Comment:** The Internet site listed the standards, but did not actually make them available for reading.

Response: The standards may be purchased online at www.nspi.org. Choose "Product Catalog", not "Technical Standards."

§10.12.c Inserted "an" before "audible alarm" for clarity.

§10.13 **Comment:** How will it be determined if the facility is in compliance with the State Fire Code?

Response: That determination must be made by the State Fire Marshal's office.

§10.14 **Comment:** The word "patron" is not used in the referenced ANSI Standard for Public Swimming Pools. The word "bather" should be substituted to reduce confusion.

Response to Comments 64CSR16

Response: The term “patron” encompasses all people in the facility, not just the bathers and is synonymous with the term “user” in the referenced standard.

§11.5 **Comment:** Need to add an exemption to this section for bathing beaches.

Response: Agreed. Exception added.

§12.6 **Comment:** Section appears to require facility to provide a concession stand. Was that the intent?

Response: Section reworded to state, “A recreational water facility that provides a concession stand shall operate the concession stand in accordance with Division of Health rule 64CSR17, “Food Establishments.”

§12.7 “Pool’s” changed to “water facility’s.” Requirement applies to other types of recreational water facilities; not just pools.

§13.1 **Comment:** Refers to Table 64-15 A which should be Table 64-16 A. Rule requires entire facility to be closed when the water clarity is not in compliance with section 7.5. Recommend requiring that only the affected area be closed. For example, if clarity is a problem only in the deep end, it is not necessary to close the entire pool. Also, rule should require closing a bathing beach for safety reasons if water clarity is a problem.

Response: Correction made in Table reference. Section 13.1 and Table 64-16 A changed to require that only the affected area be closed if water clarity is a problem. Natural water conditions at a bathing beach are beyond the control of the operator. Section 7.5 reworded to exclude bathing beaches. Section 13.1 also reworded to exclude bathing beaches. New section 13.2 added to cover the two events that do require closure of a bathing beach.

§13.1.b **Comment:** In pools with automated controllers that utilize ORP to control the chlorine feed into a pool, the ppm could easily reach or exceed 5 ppm on a very hot, crowded day.

Response: Agreed. Section 13.1.b deleted. Corresponding requirement in Table 64-16 A, section B, also deleted.

§13.1.i **Comment:** The words “main pump” should be stricken and the words “circulation pump” added to maintain consistency with pool industry terminology and reduce

Response to Comments 64CSR16

confusion. This change should also be made in Table 64-16 A.

Response: Agreed. "Main pump" changed to "circulation pump" in 13.1.i and in Table 64-16 A.

Table 64-16 A

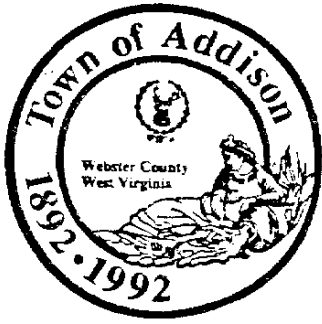
Comment: Chart should be updated per Centers for Disease Control's (CDC) newly issued recommendations for responding to fecal accidents. Backwashing the filter in Cleanup Procedure A, number 5, is unnecessary. In Cleanup Procedure B, raising the chlorine to 5 ppm and closing the facility for 24 hours is unreasonable. Object to closing procedures for fecal accidents; provide supporting scientific data.

Response: Chart updated per CDC recommendations. Changes included deleting the requirement to backwash the filter in Cleanup Procedure A. Changes also included adding to Cleanup Procedure B the option to raise the chlorine to 20 ppm and recirculate for eight (8) hours. CDC recommendations on responding to fecal accidents are based on epidemiological data.

Table 64-16 B

Comment: Deck area should not be included in calculation. Only the water surface area is pertinent. Change "patron" to "bather;" those not in the pool should not be counted. No guidance is provided for water surface areas greater than 10,000 and patron loads greater than 150.

Response: Agree that deck area should be excluded. "Surface Area in Square Feet (Includes Deck Area)" changed to "Water Surface Area in Square Feet." "Number of Patrons" changed to "Number of Patrons in Water."



RECEIVED

TOWN OF ADDISON

JUN 18 2001

Clark Randy White
Mayor

146 McGraw Avenue
Webster Springs, West Virginia 26288

June 14, 2001

Beth Marquart, Regulatory Support
Dept. of Health and Human Resources
Building 3, Room 201
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Ms. Marquart,

I object to the proposed rule 64 CSR 16, Recreational Water Facilities. The proposed changes are cost prohibitive, discriminatory, and without merit to protect the safety of the citizens of West Virginia. I also find it objectionable that no public hearings are being conducted.

The new requirement to have a "qualified water facility operator" will continue to burden the poorest citizens in the poorest counties in the poorest state of the United States. The perceived benefit versus the additional cost has not been justified to the residents of Webster Springs. If you have such information, please provide it to me as it pertains to West Virginia.

The regulations regarding the number of lifeguards continues to be an overly regulated amount considering pre-1992 records may well justify the lack of necessity for the stringent requirements now in place. The Town of Webster Springs supports the pre-1992 lifeguard requirements, which fully protected the safety of its' citizens.

The present enforcement of the rules and regulations are neither uniform nor fairly enforced. Inspections by appropriate personnel are not conducted equally between counties. Included in your proposed rules need to be guidelines regarding the number of inspections and the requirements that would warrant additional inspections. Every facility should be inspected under the same identical conditions and not deviate from one county to the next.

Page 2.

Recreation Water Facilities

The present lifeguard requirements are not enforced uniformly. Kanawha county facilities are being held to a lesser standard than the smaller more rural counties such as Webster. Some facilities are not posting on duty the number of lifeguards as required under the present rules. However, the poorer counties are being forced to post on duty the required number of lifeguards incurring a greater expense as required by (64 CSR 16).

It is discriminatory when the poorer counties are held to a different standard than the more affluent and larger population areas. Every county needs to operate identically. Rules need to be established to govern the sanitarian and their conduct.

In areas of declining populations, especially children, the number of patrons to the pools have declined. Many rural pools may only have 10 to 15 patrons swimming at a time and the lifeguard postings need to reflect this.

Additional regulations regarding mandating additional personnel (qualified water facility operator) need to be reexamined. This additional expense alone could result in the closure of many rural facilities. The result being children going into polluted rivers and streams of West Virginia for their recreation.

Sincerely yours,


C. Randy White

CRW:me



Benedum Civic Center
164 West Main Street
Bridgeport, WV 26330

RECEIVED

JUN 18 2001 Don Burton
Director

Joe Shuttleworth
Deputy Director

June 12, 2001

Ms. Beth Marquart, Dir. Regulatory Support
Dep't of Health and Human Resources
Capitol Complex - Bldg 3, Room 201
Charleston, WV 25305

Dear Ms. Marquart,

I have received and reviewed the proposed changes to the state code for Recreational Water Facilities. I appreciate the opportunity to provide feedback on the process and proposed changes. I have listed in numerical order my thoughts, concerns and problems with the proposed changes. Feel free to contact me at 304-842-8240 with any questions.

Section 2.11: The certification offered by the National Recreation and Parks Association, a Certified Aquatic Facility Operator (AFO) is the only nationally recognized course promoted and offered throughout WV. This course has been sponsored by the West Virginia Recreation and Parks Association. This designation should be listed by name in the new changes.

Section 7.1.d: The new regulations stress the importance of test kits and their reagents. Every test kit that I have ever seen in my years of pool experience have measurements in parts per million and I have never seen one that has mg/l and do not know why it would even be listed in the codes.

Section 7.1.g: The changes have cyanuric acid listed as being maintained at 30ppm. We keep our cyanuric acid levels at 10ppm. As you raise the level of cyanuric acid in the pool, the chlorines ability to effectively oxidize the water is reduced. I have attached a chart showing this problem.

Section 7.5: We do have the black disk on the bottom of the deep end of our pool. Occasionally on very hot, crowded days, sun tan lotion and other impurities will cause our deep well to become cloudy. We then close the deep end, but leave the rest of the pool open. We do not open the deep end until the filters can catch up. I do not think it is necessary to close the whole pool in this situation as your new proposal would indicate.

Section 8.6: Frankly, this regulation was probably added by someone who sells these reagents. I feel that these only need replacing if the packages are opened, broken or disturbed in some other manner. Also, the reagents do not have an expiration date listed by the manufacturer. Therefore, I cannot tell how old the reagents are that they are selling us. It is a very real possibility that they are older or as old as the batch I have in stock.

Section 9.1: Define "available". Does this mean on call, present at the facility, available within a certain time period, etc?

Section 9.3d: There has been much discussion over this issue nationwide. I think the wording is rather vague. Do the "Huggies Little Swimmers" and other swim diapers meet the requirement? We should be given more direction from the state on this matter.

Section 10.8.e: Most wading pools are 12" or less in depth. Most wading pools are restricted to children under age 5. These children are under constant supervision by their parents (Who is going to leave a very small child alone in any type of pool?). For us to have to provide a "baby-sitter" is ludicrous and will accomplish nothing besides increasing operating costs and admission costs for the public.

Section 13.1.b: In pools with automated controllers that utilize ORP to control the chlorine feed into a pool, the ppm could easily reach or exceed 5ppm on a very hot, crowded day. Chlorine is adversely affected by sunlight, heavy bather loads and impurities (sweat etc) entering the water. As the ORP (oxidation reduction potential) increases, the controllers will pump increased amounts of chlorine to effectively oxidize and sanitize the water.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Joe Shuttleworth", with a long horizontal flourish extending to the right.

Joe Shuttleworth
Deputy Director

expect from it. Take a look at common salt, sodium chloride, for example. It's about the most stable chlorine compound on earth. In water it doesn't oxidize, it doesn't disinfect, it just floats there being stable!

Assuming the validity of the three "facts" above, we might reason that higher levels of chlorine might help offset the detracting effect of the stabilizer. Indeed, many health departments require higher chlorine residuals when using stabilizer, which tends to bear out this belief. One concern that prompts authorities to raise the minimum level of chlorine is the false sense of security created by longer lasting residuals, while reduced effectiveness may approach the danger threshold where problems arise. Additionally, the much touted savings afforded by stabilization are somewhat offset by the cost of the CYA itself (both initial dose and make-up additions), and the maintenance of higher residuals of chlorine. Then all savings bets are really off if clarity problems arise, algae get a solid foothold, or the pool is closed due to an unacceptable bacteria count!

All is not lost, however.

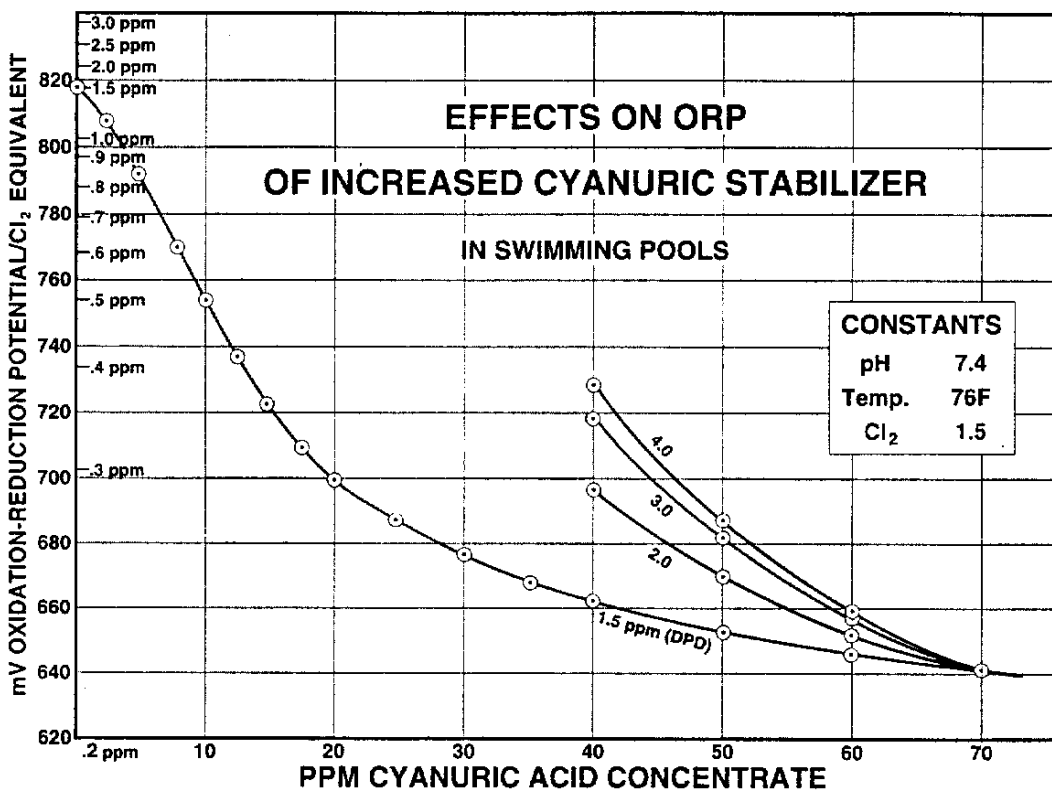


Figure 13-1: Effects of cyanuric stabilizer

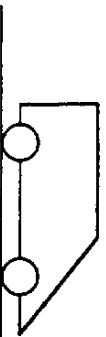
Comparison: a car running on a cruise control is like a swimming pool with a chlorine / pH monitor & controller

Technical Bulletin

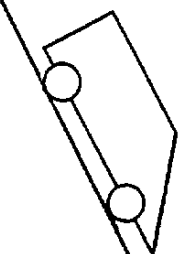
12 - 1998

Terry Smith, Swim
Pool Technician
614-268-7360

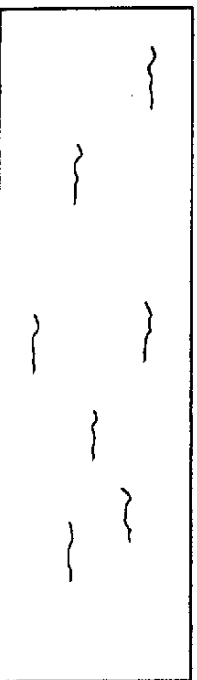
The car is on the level, and the cruise control is set to maintain 60 mph. The engine requires 1.5 gallons of gasoline per hour to maintain that speed.



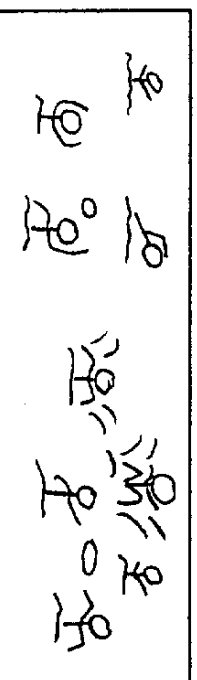
The car comes to the mountains, encountering a load. The cruise control is still set at 60 mph, but now the engine requires 3.0 gallons of gasoline per hour to maintain that speed.



There are no bathers in the pool. The controller is set to provide an ORP (water quality) of 740 millivolts. A free chlorine level of 1.5 ppm is required to maintain this level of quality.



It is the middle of the afternoon, and the pool is full of bathers. The controller is still set to provide an ORP (water quality) of 740 millivolts. Now, however, it requires 3.0 ppm of chlorine to maintain the water quality corresponding to 740 millivolts.





CHARLESTON PARKS AND RECREATION

200 Baker Lane • Charleston, West Virginia 25302

Phone: 304-348-6860 • Fax: 304-348-0705



Keith Pritt
Director

Leslee Myers
Administrative Assistant

RECEIVED

JUN 26 2001

Beth Marquart, Director Regulatory/Support
Dept. of Health and Human Resources
Capitol Complex - Building 3, Room 201
Charleston WV 25305

Dear Ms. Marquart

After reading through the proposed state standards for swimming pools I have a few comments about some of the standards. First of all I would like to say that I feel that WV needs to update their standards and come in line with the rest of the country, but I cannot support some of the standards that I have listed. We need to have more of a clarification or more thought put into them. Those of us who are in the trenches everyday had very little input into these standards at the beginning, in fact we found out about this by accident.

The WV Recreation and Parks Association members have over the past month to a year objected to some of these standards and/or the wording of them. For example,

2.1 What is meant by a shallow water rescue? What skills do they need to have?

Especially if it states that it doesn't have to be a lifeguard.

9.1 indicates that a water facility operator shall be available at all times that the facility is open. We have ask for this statement to be made clearer. What is meant by **available at all times that the facility is open**. Does this mean they have to be on staff at the pool or that they can be reached by phone or beeper if the pool has a problem.

Table 64-16 A Closure Requirements

Objection to the closing procedures for fecal matter that is found in pool water. Especially Clean up procedure B were the pool must be closed immediately. Please provide us with scientific evidence to support this.

Again, its too bad that these rules had been put out without much notice to respond to them. Summer is a bad time for most of us that work around our pools. A meeting could of been called around the state to really go over these proposed rules.

Sincerely,

A handwritten signature in cursive script that reads "Paula Martin". The signature is written in black ink and is positioned above the printed name.

Paula Martin

Aquatics Supervisor

Certified NRPA Aquatic Facility Operator

WV Recreation and Parks Association member

RECEIVED

JUN 22 2001

Rt 3 Bx 328
Harpers Ferry
West Va
25425

Ms. Beth Marquardt

Dear madam,

am writing to you on the
subject of the swimming pool
at our Harpers Ferry K.O.A. Camp-
grounds. as a senior citizen I
have used this pool many years
to alleviate my arthritis. The closure
to community users was upsetting.
Hoping there can be a ruling of
let us living nearby to use as
before. The pool is kept in A-1
condition & is missed greatly.

Sincerely
Mananna
Lamb





RECEIVED

JUN 26 2001

Robert R. Clark, Director
 Phone: (304) 538-6142
 Fax: (304) 538-6933

206 Winchester Avenue
 Moorefield, W.Va.
 26836

June 25, 2001

Beth Marquart, Director Regulatory Support
 Department of Health & Human Resources
 Capitol Complex
 Building 3, Room 201
 Charleston, WV 25305

Dear Ms. Marquart:

Concerning the Department of Health & Human Resources Legislative Rule regarding recreational water facilities I would like to comment that there is no question that there are some good ideas included in the rule but the main concern I have is how much this would add to the cost of admission fees per person entering the pool. Our pool is situated in a city with a population of 2,375. On average, expenses exceed revenues each pool season by \$5,000. We try to keep the admission fee as low as possible but recently have had to increase it. Our concern is that more kids will attempt to swim at the river instead of paying the admission fee to swim at the pool. We understand that families with three or four kids can not afford to send all of their children to the pool when admission fees get too great.

Please consider these comments when deciding on your ruling.

Sincerely,

Robert R. Clark
 Director

RRC/lkm

June 18, 2001

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JUN 19 2001

Beth Marquart, Director Regulatory Support
Department of Health & Human Resources
Capitol Complex
Building 3, Room 201
Charleston, WV 25305

RE: Title 64, Legislative Rule
Division of Health

Dear Ms. Marquart:

Cities already face many rules and regulations for which there is no funding to carry them out. The above entitled rule relating to recreational water facilities will add to the burdens of cities in West Virginia and make the business of providing recreational activities even more difficult.

The operation of municipal pools is a break even proposition at best. However, with so many cuts being made in other areas or lacking the funds to develop new projects for youth within their communities, most cities feel that keeping their municipal pools open is the one thing they must hold on to, even if it doesn't produce revenue.

As we interpret the rule, additional guards will now be required. This increases cost to cities. A few years ago, the Red Cross increased their requirements and cost for life guard training. When students wishing a summer job could not afford to take the training in order to hold a summer job, cities began taking on this expense. It appears the rule will also require a certified operator for pools on duty at all times. This is going to be impossible for a lot of cities to meet, especially for more rural areas where the population doesn't lend itself to having people readily available who would be interested in taking on such responsibilities. Of course if that individual is available and he is willing to go through the required training he will expect the city to bear the cost and will most likely seek more pay for having gone through training.

The enforcement of municipal pools by the department of health has not always been equal and uniform across the state. This should also be corrected.

Overall, the rules will place more cost on cities and perhaps a public hearing should be held to receive their input. I respectfully request the DHHR consider this and the League would be happy to notify its members. Statistically, municipal pools have operated safely for years and we question the need for additional rules.

I thank you for your time and consideration in this matter.

Sincerely,



Debora Bias
Legislative Analyst



West Virginia University

Environmental Health and Safety

RECEIVED

JUN 21 2001

June 15, 2001

Ms. Beth Marquart
Director of Regulatory Support
Department of Health & Human Resources
Capitol Complex, Bldg. 3, Room 201
Charleston, WV 25305

Dear Ms. Marquart:

I am submitting the following remarks in regard to the Division of Health, Department of Health and Human Resource's proposed rule entitled "Recreational Water Facilities," as provided during the public comment period ending June 25, 2001.

- **Item 2.4-Fecal Accident Definition**
This section defines a fecal accident as a ". . . release of visible fecal matter. . . ." Not all fecal accidents of concern result in visible fecal matter. This definition should include any fecal material released into the water from a bowel movement whether visible or not.
- **Item 2.11**
This definition states, "An individual who has passed a recognized certified pool operator certification course, . . ." This definition implies that the course itself is certified. The existing courses themselves are not certified. I propose that the word "certified" before the words "pool operator certification course, . . ." be stricken.
- **Item 7.1b**
The word "Hand" should be changed to "Manual." The word "hand" implies that bare hands may be used and an employee may not use personal protective equipment (i.e., gloves) as required.
- **Item 10.14**
The word "patron" is not used in the referenced ANSI Standard for Public Swimming Pools. The word "bather" should be substituted to reduce confusion.
- **Item 13.1i**
The words "main pump" should be stricken and the words "circulation pump" added to maintain consistency with pool industry terminology and reduce confusion. This change should also be made in "Table 64-16A-Closure Requirements."

Facilities and Services

Phone: 304-293-3792

PO Box 6551

Fax: 304-293-7257

Morgantown, WV 26506-6551

Equal Opportunity/Affirmative Action Institution

- **Table 64-16A-Closure Requirements, Item J**
The Centers for Disease Control just issued a new recommended Fecal Accident Response Procedure. This new procedure should be used since it is based on the most current science and understanding of waterborne diseases and swimming pools.
- **Table 64-16B-Lifeguard Requirements**
Several concerns are noted with this chart. This chart uses the number of patrons (Y axis) vs. the surface area in square feet including deck area (X axis) to determine the number of lifeguards needed to be on duty at a water facility.
- The label "Surface Area in Square Feet (Including Deck Area) actually has two problems. What surface area is being referred to? If the lifeguards' primary duty is to watch the swimmers in the water, what does the deck surface area have to do with this? Also, some pools may have very large decks compared to the surface area of the pool. They could be required to have many more lifeguards than are needed to provide a safe pool environment. Basically this chart is just to provide a basic, consistent, and understandable method for determining lifeguard requirements. It would be just as easy to label the X axis as the square feet of water surface area, excluding Spas and Hot Tubs. (Spas and Hot tubs could be effectively monitored by non-life guard certified attendants that can be used for shallow water rescue.)
- The word "patron" on the Y axis indicates that anyone within the facility must be counted when using this table. Some water facilities have non-pool activity areas and many patrons are parents or guardians that are only sun bathing on the deck or other areas provided by the pool. So counting the number of patrons within a facility will be very difficult and not possible by lifeguards on duty. Even inspectors will have difficulty assessing compliance with lifeguarding requirements according to the size, layout, and activities conducted within a facility. I recommend that the word "patron" be stricken and replaced with "bathers," which will also be consistent with my recommendation stated in "Item 10.14".
- The chart does not provide any guidance for surface areas greater than 10,000 or for patron loads greater than 151. Although there are not many pools with surface areas greater than 10,000 square feet, I'm sure many pools exceed bather loads of 151.
- An option for submitting lifeguarding variances to the State Health Department should be provided in these proposed regulations. Table 64-16B should be generally acceptable, with the above noted changes/comments, for simple or non-complex facilities. But, many new water facilities are being designed and built that do not fit well within these

Ms. Beth Marquart
Page 3 of 3

simple guidelines. To help assure that variances submitted are in good fath and written by qualified persons, only variances prepared by or under the supervision of and signed by qualified persons should be accepted. Qualifications could include persons that are Certified Lifeguard Instructors (not certified lifeguards), persons trained and certified in water safety, and persons holding advanced degrees in a area related to water facilities management and/or design.

Overall, this proposed regulation should enhance the protection of health and safety to bathers and give pool operators and owners improved guidance on the safe operation of their facilities. Thank you for your consideration of my comments concerning this proposed public health regulation.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Trantham', written over a horizontal line.

Michael Trantham, R.S.
Health and Safety Specialist

MT/bk

XC: File

\\SECRAFT\TRANHAM\new pool reg comments 2001.wpd

From: "Patty Rodgers, R.S." <pattyrodgers@wvdhhr.org>
To: <bethmarquart@wvdhhr.org>
Date: 6/19/01 9:54AM
Subject: new recreational water facility rule

Beth:

I would like to make some comments on the proposed rule.
Section 2-definitions: What is a "Lazy River?"

Section 10.12.a is the same as 16-6

Section 11.5. Does not exempt Bathing Beaches from operating water treatment equipment 24 hours a day

Section 12.6 requires all facilities to have a concession stand. Is that the intent, or is it supposed to say that if they do have a concession stand, it must operate in accordance with rule 64CSR17?

Thanks,
-Patty Rodgers, R.S.
Nicholas County Health Department

From: Patty Rodgers
To: Beth Marquart
Date: 6/18/01 9:18AM
Subject: Recreational water facilities proposed rule

Please accept the following comments on behalf of Ron Isom, Sanitarian-in-Training.

- 10.1. "will a pole with a loop end serve as both?"
- 10.9. "Are we going to get guidance on what is acceptable?"
- 10.13. "How are we to determine this?"

I also sent you some comments from my personal e-mail mrs_pattysue@yahoo.com. Did you get them?

Thanks,
--Patty, NCHD