

Tracking Chart – Swimming Pool TAC

Mod #	Proponent	Chapter	Section	Summary	Approved as Submitted
8327	robert vincent	4	454	Adds code language for permitting constructed impounded public bathing places, so that when public swimming pool-like structures are constructed, the referenced public swimming pool code section may be applied.	Commission Action <input type="checkbox"/> AS <input type="checkbox"/> AM <input type="checkbox"/> I <input type="checkbox"/> W <input type="checkbox"/> NAR Threshold – 2 Yes – 6 No not to review today
Comment					
<input type="checkbox"/>	1. Support comment. Comment sufficiently addresses the TAC's concern(s).			<input checked="" type="checkbox"/>	2. Do Not Support comment. Comment does not address the TAC's concern(s).
<input type="checkbox"/>	3. No comment is needed.			<input type="checkbox"/>	4. Straw Poll.
					A2 A2 2 Yes – 6 No

Date Submitted	12/15/2018	Section	454	Proponent	robert vincent
Chapter	4	Affects HVHZ	No	Attachments	No
TAC Recommendation	Approved as Submitted				
Commission Action	Pending Review				

Comments

General Comments No **Alternate Language** Yes

Related Modifications**Summary of Modification**

Adds code language for permitting constructed impounded public bathing places, so that when public swimming pool-like structures are constructed, the referenced public swimming pool code section may be applied.

Rationale

The FBC has jurisdiction for public bathing places, but has no current code language to assure the safety and sanitation of artificially impounded bathing places, and the play features associated with the bathing place.

Fiscal Impact Statement**Impact to local entity relative to enforcement of code**

Slight impact, as very few of these facilities are built in FL. They account for less than 0.5% of the public swimming pools built. These code edits would take less time, or the same time, for the local enforcement authority to review, approve and inspect for a single public pool.

Impact to building and property owners relative to cost of compliance with code

Injuries and illnesses should be reduced at these aquatic facilities when the current pool code's sound engineering and public health practices are applied to these pool-like facilities constructed; thus the owners' liability for injuries/illnesses would be reduced.

Impact to industry relative to the cost of compliance with code

Nominal, would require permitting and engineering submittals.

Impact to small business relative to the cost of compliance with code

Nominal, would require permitting and engineering submittals.

Requirements**Has a reasonable and substantial connection with the health, safety, and welfare of the general public**

Yes, nearly identical to the public swimming pool construction requirements that prevent injuries, fatalities, and illnesses.

Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction

Yes, improves code and provides better construction assurances for safety and sanitation.

Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities

None

Does not degrade the effectiveness of the code

None

Alternate Language

2nd Comment Period

8327-A2	Proponent	Jeff Littlejohn	Submitted	5/26/2019	Attachments	Yes
	Rationale	This language is submitted to add more specificity to the new section of code proposed by FDOH.				
	Fiscal Impact Statement					
	Impact to local entity relative to enforcement of code	Code edits should reduce the time needed for local building officials to review and approve applications for artificial lagoons/public bathing places.				
	Impact to building and property owners relative to cost of compliance with code	No impact.				
	Impact to industry relative to the cost of compliance with code	No impact.				
	Impact to Small Business relative to the cost of compliance with code	Nominal, would require permitting and engineering submittals.				
	Requirements					
	Has a reasonable and substantial connection with the health, safety, and welfare of the general public	Specific code requirements for public bathing places would benefit the health, safety and welfare of the public by ensuring that these facilities meet minimum standards.				
	Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction	Improves the code to cover a new type of facility that is being developed in Florida, and the new code provisions are consistent with codes being developed or are in use in other states.				
Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities	None.					
Does not degrade the effectiveness of the code	None.					

Alternate Language

1st Comment Period History

8327-A1	Proponent	Jeff Littlejohn	Submitted	2/18/2019	Attachments	Yes
	Rationale	This language is submitted to add more specificity to the new section of code proposed by FDOH.				
	Fiscal Impact Statement					
	Impact to local entity relative to enforcement of code	Agree that code edits should reduce the time needed for local building official to review and approve applications for artificial impoundments (artificially constructed public bathing places).				
	Impact to building and property owners relative to cost of compliance with code	No impact.				
	Impact to industry relative to the cost of compliance with code	No impact.				
	Impact to Small Business relative to the cost of compliance with code	Nominal, would require permitting and engineering submittals.				
	Requirements					
	Has a reasonable and substantial connection with the health, safety, and welfare of the general public	Specific code requirements for public bathing places would benefit the health, safety and welfare of the public by ensuring that these facilities meet minimum standards.				
	Strengthens or improves the code, and provides equivalent or better products, methods, or systems of construction	Improves the code to cover a new type of facility that is being developed in Florida.				
Does not discriminate against materials, products, methods, or systems of construction of demonstrated capabilities	None					
Does not degrade the effectiveness of the code	None					

1st Comment Period History

Proponent	John Hall	Submitted	1/3/2019	Attachments	Yes
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SW8327-G1

Comment:

This is a much needed code modification. These large impoundments are being installed in Florida. The entity installing these structures is arguing that the provisions of FBC Building Section 454.1 do not apply because the structures are not swimming pools, but are public bathing places. This contention is based on the misapplication of a final order declaratory statement (2018-0137) from the Department of Health. As a consequence much time and effort is necessary on the part of the authority having jurisdiction to make the case that the provisions of 454.1 are applicable to public bathing places. The original design of these structures does not include the many safety features that are required for swimming pools. This modification makes clear that FBC Building 454.1 is applicable to these structures. This code modification will result in a significant cost savings to the enforcing authority through time saved in debating the applicability of the Florida Building code to these pool-like structures.

1st Comment Period History

Proponent	Kari Hebrank	Submitted	2/13/2019	Attachments	No
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SW8327-G2

Comment:

The Florida Swimming Pool Association SUPPORTS this change.

454.1.11 Public Bathing Places- Artificial Lagoons

454.1.11.1 General

An artificial lagoon is a type of artificial impoundment and public bathing place that is modified or man-made and has a total water surface area of at least 1 acre (43,560 square feet) in size, utilizes an impervious containment system such as an artificial liner, and incorporates a method of disinfectant that results in a disinfectant residual in the swimming zone(s) that is protective of the public health. Such artificial lagoons shall be designed and constructed within the limits of sound engineering practice and the provisions of this section.

454.1.11.2 Sizing and Sanitary Facilities for Artificial Lagoons

The maximum bathing load shall be limited by total square footage of the entire impoundment with 50 square feet assigned per bather. Sanitary facilities within an artificial lagoon are exempt from the fixture count requirements in Section 454.1.6.1.1. All sanitary facilities shall be located as near to the designated swimming area(s) as prudent to ensure patron use, but not over 200 feet (61 m) walking distance from the designated swimming area(s).

454.1.11.3 Construction Standards for Artificial Lagoons

If an artificial liner is utilized as a containment system, the artificial liner used to contain the water shall consist of a material certified under NSF/ANSI Standard 61-2017, Drinking Water System Components-Health Effects, dated March 13, 2017, hereby incorporated by reference, which has been deemed copyright protected, and is available for review at the Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250. Alternatively, the material used as a liner shall be tested under a Toxicity Characterization Leaching Procedure (TCLP) to comply with the TCLP standards, which were adopted by the US EPA in 1990 and can be found at <https://www.epa.gov/hw-sw846/sw-846-test-method-1311-toxicity-characteristic-leaching-procedure>. The liner or artificial bottom, floor, and the walls, if any, shall be white or light in color. The design of such liner system is the responsibility of a professional engineer licensed in Florida.

454.1.11.4 Access to Artificial Lagoons

Points of access shall be provided as needed to provide adequate entrance to and exit from the artificial lagoon. Means of access may consist of ladders, stairs, recessed treads, and swimouts, designed in compliance with Section 454.1.2.5, zero depth entry areas, and docks, in any number and combination that is appropriate for the intended use(s) of the artificial lagoon. Permanent or portable steps, ramps, handrails, lifts or other devices designed to accommodate handicapped individuals may be provided. Lifts mounted into the wet deck shall have a minimum 4-foot-wide (1219 mm) deck behind the lift mount.

454.1.11.5 Decks and Walkways for Artificial Lagoons

Decks and walkways shall be designed in compliance with Sections 454.1.3.1.1 to 451.1.3.1.5, except for zero depth entry areas (in designated swimming areas) and docks (for aquatic activities such as sailing or kayaking), which are exempt from these requirements. Artificial lagoons are exempt from the fencing requirements of Section 454.1.3.1.9, except that separate swimming pools designed for small children shall be fenced when located within 50 feet (15 240 mm) of an artificial lagoon.

454.1.11.6 Safety for Artificial Lagoons

The portion(s) of artificial lagoons designated for swimming shall meet the safety requirements in Section 454.1.3.3. Such designated swimming area(s) shall be visually separated from the rest of the artificial lagoon using a buoyed safety line(s) or similar device(s) approved by the local authority. Additionally, the floor slope at any designated swimming area(s) shall not exceed 1 unit vertical in 10 units horizontal. The depth at the deepest point in any designated swimming area shall be indicated, along with the other rules and regulations signage required in Section 454.1.2.3.5. Where a deck is provided, no diving signage shall be posted at intervals not to exceed 25 feet along the deck. Markings shall be of such materials that will not fade over time. Where slides or water activity features are used in or adjacent to the artificial lagoon, a lifeguard safety plan shall be submitted to the health department for approval and implemented by the owner/operator. Slides and water activity features shall be reviewed and approved by the local authority to conform with the same criteria for public swimming pools. If boating is allowed in the lagoon, provisions for bather safety and injury prevention must be specified and provided to the health department.

454.1.11.7 Electrical Systems for Artificial Lagoons

Electrical equipment wiring and installation, including the bonding and grounding of components, shall comply with Section 2701 of the Florida Building Code, Building. Outlets supplying pump motors connected to single-phase 120-volt through 240-volt branch circuits, whether by receptacle or by direct connection, and outlets supplying other electrical equipment and underwater luminaires operating at voltages greater than the low voltage contact limit, connected to single-phase, 120 volt through 240 volt branch circuits, rated 15 or 20 amperes, whether by receptacle or by direct connection, shall be provided with ground-fault circuit interrupter protection for personnel. Any portions of the artificial lagoon designated for swimming at night shall comply with the underwater lighting requirements in Sections 454.1.4.2.1. and 454.1.4.2.3.

454.1.11.8 Equipment Rooms for Artificial Lagoons

Equipment rooms for artificial lagoons shall comply with Section 454.1.5.

454.1.11.9 Treatment Systems for Artificial Lagoons

The treatment system shall be designed to meet the water quality criteria specified in 64E-9.013 F.A.C. Compliance with this section is provided through mandatory monitoring as required in 64E-9.013, F.A.C. If continuous or intermittent chemical disinfection and/or non-chemical disinfection is provided to the artificial lagoon water, the

equipment that feeds or generates the chemical shall be NSF/ANSI Standard 50 certified. The disinfectant chemical shall be applied in accordance with the manufacturer's instructions, and must be a NSF/ANSI Standard 60 certified chemical, a US EPA registered microbial biocide, or an alternate method of disinfectant approved by the Department of Health. Any other chemicals applied to the water for water quality treatment must be applied in accordance with the manufacturer's instructions and must be an NSF/ANSI Standard 60 or Standard 50 certified chemical. Vacuum systems shall not be used in designated swimming area(s) while such area(s) is(are) open for swimming, and all suction outlets shall comply with the requirements of section 514.0315, Florida Statutes.

454.1.11 Public Bathing Places- Artificial Impoundments-

454.1.11.1 General

An artificial impoundment is a type of public bathing place that is modified or man-made and has a total water surface area of at least 1 acre (43,560 square feet) in size. Such artificial impoundments shall be designed and constructed within the limits of sound engineering practice.

454.1.11.2 Sizing

The bathing load shall be limited by total square footage of the entire impoundment with 50 square feet assigned per bather.

454.1.11.3 Construction Standards

If a liner or artificial bottom is used to contain the water, the material used as a liner shall be certified under NSF/ANSI Standard 61-2017, Drinking Water System Components-Health Effects, dated March 13, 2017, is hereby incorporated by reference, has been deemed copyright protected, and is available for review at the Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250, or the material used as a liner shall be tested under a Toxicity Characterization Leaching Procedure (TCLP) to comply with the TCLP standards, which were adopted by the US EPA in 1990 and can be found in <https://www.epa.gov/hw-sw846/sw-846-test-method-1311-toxicity-characteristic-leaching-procedure>. This certification requirement does not apply to cementitious materials. The liner or artificial bottom, floor, and the walls, if any, shall be white or light in color. The design of such liner system is the responsibility of a professional engineer licensed in Florida.

454.1.11.4 Access

Points of access shall be provided as needed to provide adequate entrance to and exit from the Artificial Impoundment. Means of access may consist of ladders, stairs, recessed treads, and swimouts, designed in compliance with Section 454.1.2.5, zero depth entry areas, and docks. Permanent or portable steps, ramps, handrails, lifts or other devices designed to accommodate handicapped individuals may be provided. Lifts mounted into the wet deck shall have a minimum 4-foot-wide (1219 mm) deck behind the lift mount.

454.1.11.5 Decks and walkways

Decks and walkways shall be designed in compliance with Sections 451.1.3.1.1 to 451.1.3.1.5, except for zero depth entry areas (in designated swimming areas) and docks (for aquatic activities such as sailing or kayaking), which are exempt from these requirements. Artificial impoundments are exempt from the fencing requirements of Section 454.1.3.1.9, except that swimming pools designed for small children shall be fenced when located within 50 feet (15 240 mm) of an Artificial Impoundment.

454.1.11.6 Safety

The portion(s) of artificial impoundments designated for swimming shall meet the safety requirements in Section 454.1.3.3.1. Where slides or water activity features are used in or adjacent to the bathing place, a lifeguard safety plan shall be submitted to the health department for approval and implemented by the owner/operator. Slides and water activity features shall be reviewed and approved by the local enforcement authority to conform with the same criteria for public swimming pools. If boating is allowed in the impoundment, provisions for bather safety and injury prevention must be specified and provided to the health department.

454.1.11.7 Electrical Systems

Electrical equipment wiring and installation, including the bonding and grounding of components shall comply with Chapter 27 of the Florida Building Code, Building. Outlets supplying pump motors connected to single-phase 120-volt through 240-volt branch circuits, whether by receptacle or by direct connection, and outlets supplying other electrical equipment and underwater luminaires operating at voltages greater than the low voltage contact limit, connected to single-phase, 120 volt through 240 volt branch circuits, rated 15 or 20 amperes, whether by receptacle or by direct connection, shall be provided with ground-fault circuit interrupter protection for personnel. Any portions of Artificial Impoundments designated for swimming at night shall comply with underwater lighting requirements from Sections 454.1.4.2.1. and 454.1.4.2.3.

454.1.11.8 Equipment Rooms

Equipment rooms for Artificial Impoundments shall comply with Section 454.1.5

454.1.11.9 Treatment Systems

The treatment system shall be designed to meet the water quality criteria specified in 64E-9.013 F.A.C. Compliance with this section is provided through mandatory monitoring as required in 64E-9.013, F.A.C. If continuous or intermittent chemical disinfection and/or non-chemical disinfection is provided to the bathing place water, the equipment that feeds or generates the chemical shall be NSF/ANSI Standard 50 certified. The disinfectant chemical shall be applied in accordance with the manufacturer's instructions, and must be a NSF/ANSI Standard 60 certified chemical, or a US EPA registered microbial biocide. Any other chemicals applied to the water for water quality treatment must be applied in accordance with the manufacturer's instructions and must be an NSF/ANSI Standard 60 or Standard 50 certified chemical. Vacuum systems shall not be used in designated swimming area(s) while such area(s) is open for swimming, and all suction outlets shall comply with the requirements of section 514.0315, Florida Statutes.

454.1.11 Public Bathing Places- Artificial Impoundments-

454.1.11.1 If continuous or intermittent chemical disinfection and/or non-chemical disinfection is provided to the bathing place water, the equipment that feeds or generates the chemical shall be NSF/ANSI Standard 50 certified. The disinfectant chemical shall be applied in accordance with the manufacturer's instructions, and must be a NSF/ANSI Standard 60 certified chemical, or a US EPA registered microbial biocide.

454.1.11.2 Any other chemicals applied to the water for water quality treatment must be applied in accordance with the manufacturer's instructions and must be an NSF/ANSI Standard 60 or Standard 50 certified chemical. Any water quality treatment methods employed shall be reviewed and approved by the jurisdictional building official as part of the construction building permit process.

454.1.11.3 The water encompassing the swimming area plus the recreational area of bathing places shall be at least 2 acres in size. The bathing load shall be limited by square footage with 50 square feet assigned per bather.

454.1.11.4 If a liner or artificial bottom is used to contain the water, the material used as a liner shall be certified under NSF/ANSI Standard 61-2017, Drinking Water System Components-Health Effects, dated March 13, 2017, is hereby incorporated by reference, has been deemed copyright protected, and is available for review at the Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250. This certification requirement does not apply to cementitious materials. The liner or artificial bottom, floor, and the walls, if any, shall be white or light in color such that it meets the color criteria for public pool walls and floors.

454.1.11.5 If boating is allowed in the impoundment, provisions for bather safety and injury prevention must be specified and provided to the health department.

454.1.11.6 Vacuum systems shall not be used while the area is open for swimming, and all suction outlets shall comply with the requirements of section 514.0315, Florida Statutes.

454.1.11.7 Where public pool-like construction is planned using walls, stairs, ladders, slides, or floating, tethered or other play features are planned, they shall be reviewed and approved by the local enforcement authority in accordance with the FBC criteria for these issues for public pools.

454.1.11.8 Where public pool-like walls, stairs, benches, swimouts, sun shelves, vertical drop-offs, floor slope transitions, and other similar structures or conditions are planned, the installation of depth, 'no-diving', floor and edge markers, injury prevention caution statements for safe egress, and other appropriate safety precautions for patrons shall conform with the criteria for these issues for public pools and shall be reviewed and approved by the local enforcement authority.

454.1.11.9 Where slides or water activity features are used in or adjacent to the bathing place, a lifeguard safety plan shall be submitted to the health department for approval and implemented by the owner/operator. Slides and water activity features shall be reviewed and approved by the local enforcement authority to conform with the same criteria for public swimming pools.

STATE OF FLORIDA
DEPARTMENT OF HEALTH

RECEIVED
DEPARTMENT OF HEALTH
2018 AUG 21 PM 3:55
OFFICE OF THE CLERK

IN RE:
CRYSTAL LAGOONS U.S. CORP.,

DOH Case No.: 2018-0137
Rendition No.: DOH-18-0357-FOI-HO

Petition for Declaratory Statement.

FINAL ORDER

THIS CAUSE is before the Department of Health (Department) on the Petition for Declaratory Statement (Petition) filed on June 15, 2018, by Crystal Lagoons U.S. Corp. (Crystal Lagoons). The Department noticed receipt of the Petition on June 29, 2018. See Notice 20603981, 44 Fla. Admin. Reg. 127 (Jun. 29, 2018). No timely-filed motion to intervene has been filed.

The assertions of fact set forth in the Petition are treated as true and materially complete for purposes of issuing this Final Order on the Petition filed by Crystal Lagoons. If material facts were misrepresented or omitted from the Petition, this Final Order will be of no force and effect. This Final Order is inapplicable to, and cannot be relied up by, any person other than Crystal Lagoons.

This Final Order applies only to Chapter 514, Florida Statutes (2017), and the Department's authority to administer and enforce the provisions of that chapter. This Final Order does not represent the opinion of the Department as to the applicability of any other Federal, state, or local statute, rule, regulation, ordinance, or other law applicable to Crystal Lagoons' activities. This Final Order does not bind any agency or entity other than the Department. Legal representations and arguments in the Petition, if any, are not adopted by the Department.

FINDINGS OF FACT

1. Crystal Lagoons seeks a declaratory statement that the bodies of water created and operated by Crystal Lagoons' licensees using the process patented by Crystal Lagoons are "public bathing places" as defined by section 514.011(4), Florida Statutes (2017). Pet. for Decl. Stmt., ¶¶ 17, 18.
2. Crystal Lagoons licenses its patented process to licensees in Florida to create and operate bodies of water that are used for swimming, diving, and recreational bathing and are held out by the owner to the public for this purpose. Pet. for Decl. Stmt., ¶¶ 3, 4.
3. Crystal Lagoons' patented process involves the creation and operation of an artificial impoundment of water. Pet. for Decl. Stmt., ¶ 3.
4. Crystal Lagoons' process does not use filtration of the total volume of the body of water as the primary means to meet established health standards. Pet. for Decl. Stmt., ¶ 16.

CONCLUSIONS OF LAW

1. The Department has jurisdiction of the subject matter of this cause, being authorized to administer and enforce Chapter 514, Florida Statutes, and the rules adopted thereunder. See § 514.021, Fla. Stat. (2017).

2. Crystal Lagoons requests this Final Order pursuant to section 120.565, Florida Statutes, and Chapter 28-105, of the *Florida Administrative Code*. These sections authorize a substantially affected person to petition an agency that has authority to administer a statute or rule to issue a declaratory statement of the applicability of the statute or rule to that person's particular circumstances. See § 120.565, Fla. Stat. (2017); Fla. Admin. Code R. 28-105.

3. Crystal Lagoons has standing to seek a final order on the Petition because Crystal Lagoons has a substantial interest in correctly representing to its licensees that the Crystal Lagoons process creates a public bathing place as opposed to a public swimming pool, as those terms are defined under existing Florida law. See *First Nat. Bank & Trust Co. of Muskogee v. Heilman*, 62 F.2d 157, 159 (C.C.A. 10th Cir. 1932) (a company licensed in the state is presumed to know the law governing its transactions).

4. A "public swimming pool" is a "structure" that is "filled with a filtered and disinfected water supply." See § 514.011(2), Fla. Stat. (2017). To meet established health standards, filtration systems must maintain the total volume recirculation rate described at rule 64E-9.008(10)(b), of the *Florida Administrative Code*. Crystal Lagoons' process does not employ a total volume recirculation system to meet established health standards. Pet. for Decl. Stmt., ¶ 16. Consequently, bodies of water created using the Crystal Lagoons process are not public swimming pools.

5. A "public bathing place" is "a body of water, natural or modified by humans," held out to the public for swimming, diving, and recreational bathing, the bathing waters of which include, but are not limited to "artificial impoundments." See § 514.011(4), Fla. Stat. (2017).

6. The Crystal Lagoons patented process creates or modifies bodies of water to form artificial impoundments of water having a discernible shoreline. Pet. for Decl. Stmt., ¶ 12. Crystal Lagoons' licensees create, operate, and hold out these bodies of water to the public for swimming, diving, and recreational bathing. Pet. for Decl. Stmt., ¶ 22. Consequently, bodies of water created and operated using Crystal Lagoons' patented process are public bathing places.

7. This Final Order applies solely to persons licensed by Crystal Lagoons to use a process that was patented by Crystal Lagoons and recorded by the United States Patent and Trademark Office as of the date of the filing of the Petition. This Final Order does not apply to non-patented processes developed or in development by Crystal Lagoons, whether or not those processes are currently licensed by Crystal Lagoons for the creation and operation of bodies of water in Florida.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, bodies of water created and operated by Crystal Lagoons' licensees using a process that was patented in the name of Crystal Lagoons, as owner, and recorded by the United States Patent and Trademark Office as of the date of the filing of the Petition are "public bathing places" as that term is defined by section 514.011(4), Florida Statutes (2017).

DONE and ORDERED this 22 day of AUGUST, 2018, in Tallahassee, Leon County, Florida.

Celeste Philip, MD, MPH
Surgeon General and Secretary

By: *Marsha Lindeman*
Marsha Lindeman, ARNP, MSN
Interim Assistant Deputy Secretary for Health

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.

Shannon Rees
CLERK

8/21/18
DATE

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings must be initiated by filing a notice of appeal with the Department of Health, Agency Clerk, and a copy of the notice of appeal, with the appropriate filing fee, with the District Court of Appeal having jurisdiction. The notice of appeal must be filed within thirty (30) days of the filing of this Final Order.

Copies to:

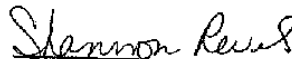
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been sent by U.S. Mail, interoffice mail, or hand delivery to each of the above-named persons this 21st day of August, 2018.



Shannon Revels, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin # A02
Tallahassee, FL 32399-1703

CHAPTER 514
PUBLIC SWIMMING AND BATHING FACILITIES

- 514.011 Definitions.
- 514.0115 Exemptions from supervision or regulation; variances.
- 514.021 Department authorization.
- 514.023 Sampling of beach waters; and public bathing places; health advisories.
- 514.0231 Advisory committee to oversee sampling of beach waters.
- 514.025 Assignment of authority to county health departments.
- 514.028 Advisory review board.
- 514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.
- 514.031 Permit necessary to operate public swimming pool.
- 514.0315 Required safety features for public swimming pools and spas.
- 514.033 Creation of fee schedules authorized.
- 514.04 Right of entry.
- 514.05 Denial, suspension, or revocation of permit; administrative fines.
- 514.06 Injunction to restrain violations.
- 514.071 Certification of swimming instructors and lifeguards required.
- 514.072 Certification of swimming instructors for people who have developmental disabilities.
- 514.075 Public pool service technician; certification.

514.011 Definitions.—As used in this chapter:

- (1) “Department” means the Department of Health.
- (2) “Public swimming pool” or “public pool” means a watertight structure of concrete, masonry, or other approved materials which is located either indoors or outdoors, used for bathing or swimming by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa-type pool, wading pool, special purpose pool, or water recreation attraction, to which admission may be gained with or without payment of a fee and includes, but is not limited to, pools operated by or serving camps, churches, cities, counties, day care centers, group home facilities for eight or more clients, health spas, institutions, parks, state agencies, schools, subdivisions, or the cooperative living-type projects of five or more living units, such as apartments, boardinghouses, hotels, mobile home parks, motels, recreational vehicle parks, and townhouses.
- (3) “Private pool” means a facility used only by an individual, family, or living unit members and their guests which does not serve any type of cooperative housing or joint tenancy of five or more living units.

(4) “Public bathing place” means a body of water, natural or modified by humans, for swimming, diving, and recreational bathing used by consent of the owner or owners and held out to the public by any person or public body, irrespective of whether a fee is charged for the use thereof. The bathing water areas of public bathing places include, but are not limited to, lakes, ponds, rivers, streams, artificial impoundments, and waters along the coastal and intracoastal beaches and shores of the state.

(5) “Portable pool” means a pool or spa, and related equipment systems of any kind, which is designed or intended to be movable from location to location.

(6) “Temporary pool” means a pool intended to be used in conjunction with a sanctioned national or international swimming or diving competition event that does not exceed 30 consecutive days of use.

History.—ss. 1, 14, ch. 85-173; s. 4, ch. 91-429; s. 676, ch. 97-103; s. 77, ch. 97-237; s. 45, ch. 98-151; s. 1, ch. 2000-309; s. 103, ch. 2012-184; s. 10, ch. 2016-129.

514.0115 Exemptions from supervision or regulation; variances.—

(1) Private pools and water therapy facilities connected with facilities connected with hospitals, medical doctors’ offices, and licensed physical therapy establishments shall be exempt from supervision under this chapter.

(2)(a) Pools serving no more than 32 condominium or cooperative units which are not operated as a public lodging establishment shall be exempt from supervision under this chapter, except for water quality.

(b) Pools serving condominium or cooperative associations of more than 32 units and whose recorded documents prohibit the rental or sublease of the units for periods of less than 60 days are exempt from supervision under this chapter, except that the condominium or cooperative owner or association must file applications with the department and obtain construction plans approval and receive an initial operating permit. The department shall inspect the swimming pools at such places annually, at the fee set forth in s. 514.033(3), or upon request by a unit owner, to determine compliance with department rules relating to water quality and lifesaving equipment. The department may not require compliance with rules relating to swimming pool lifeguard standards.

(3) A private pool used for instructional purposes in swimming shall not be regulated as a public pool.

(4) Any pool serving a residential child care agency registered and exempt from licensure pursuant to s. 409.176 shall be exempt from supervision or regulation under this chapter related to construction standards if the pool is used exclusively by the facility’s residents and if admission may not be gained by the public.

(5) A portable pool used exclusively for providing swimming lessons or related instruction in support of an established educational program sponsored or provided by a school district may not be regulated as a public pool.

(6) A temporary pool may not be regulated as a public pool.

(7) The department may grant variances from any rule adopted under this chapter pursuant to procedures adopted by department rule. The department may also grant, pursuant to procedures adopted by department rule, variances from the provisions of the Florida Building Code specifically pertaining to public swimming pools and bathing places when requested by the pool owner or the pool owner's representative to relieve hardship in cases involving deviations from the Florida Building Code provisions, when it is shown that the hardship was not caused intentionally by the action of the applicant, where no reasonable alternative exists, and the health and safety of the pool patrons is not at risk.

History.—ss. 1, 14, ch. 85-173; s. 2, ch. 87-117; s. 46, ch. 98-151; s. 1, ch. 99-182; s. 13, ch. 2014-154; s. 67, ch. 2015-2; s. 11, ch. 2016-129.

514.021 Department authorization.—

(1) The department may adopt and enforce rules to protect the health, safety, or welfare of persons by setting sanitation and safety standards for public swimming pools and public bathing places. The department shall review and revise such rules as necessary, but not less than biennially. Sanitation and safety standards shall be limited to matters relating to source of water supply; microbiological, chemical, and physical quality of water in the pool or bathing area; method of water purification, treatment, and disinfection; lifesaving apparatus; and measures to ensure safety of bathers.

(2) The department may not establish by rule any regulation governing the design, alteration, modification, or repair of public swimming pools and bathing places which has no impact on sanitation and safety of persons using public swimming pools and bathing places. Further, the department may not adopt by rule any regulation governing the construction, erection, or demolition of public swimming pools and bathing places. It is the intent of the Legislature to preempt those functions to the Florida Building Commission through adoption and maintenance of the Florida Building Code. The department shall provide technical assistance to the commission in updating the construction standards of the Florida Building Code which govern public swimming pools. This subsection does not abrogate the authority of the department to adopt and enforce appropriate sanitary regulations and requirements as authorized in subsection (1).

History.—ss. 2, 14, ch. 85-173; s. 65, ch. 87-225; s. 4, ch. 91-429; s. 49, ch. 2000-141; s. 48, ch. 2000-242; s. 27, ch. 2000-367; s. 34, ch. 2001-186; s. 3, ch. 2001-372; s. 104, ch. 2012-184.

514.023 Sampling of beach waters; and public bathing places; health advisories.—

(1) As used in this section, the term “beach waters” means the waters along the coastal and intracoastal beaches and shores of the state, and includes salt water and brackish water.

(2) The department may adopt and enforce rules to protect the health, safety, and welfare of persons using the beach waters and public bathing places of the state. The rules must establish health

standards and prescribe procedures and timeframes for bacteriological sampling of beach waters and public bathing places.

(3) The department may issue health advisories if the quality of beach waters or a public bathing place fails to meet standards established by the department. The issuance of health advisories related to the results of bacteriological sampling of beach waters is preempted to the state.

(4) When the department issues a health advisory against swimming in beach waters or a public bathing place on the basis of finding elevated levels of fecal coliform, *Escherichia coli*, or enterococci bacteria in a water sample, the department shall concurrently notify the municipality or county in which the affected beach waters are located, whichever has jurisdiction, and the local office of the Department of Environmental Protection, of the advisory. The local office of the Department of Environmental Protection shall promptly investigate wastewater treatment facilities within 1 mile of the affected beach waters or public bathing place to determine if a facility experienced an incident that may have contributed to the contamination and provide the results of the investigation in writing or by electronic means to the municipality or county, as applicable.

History.—s. 2, ch. 2000-309; s. 1, ch. 2009-231; s. 105, ch. 2012-184.

514.0231 Advisory committee to oversee sampling of beach waters.—The Department of Health shall form an interagency technical advisory committee to oversee the performance of the study required in s. 514.023 and to advise it in rulemaking pertaining to standards for public bathing places along the coastal and intracoastal beaches and shores of the state. Membership on the committee shall consist of equal numbers of staff of the Department of Health and the Department of Environmental Protection with expertise in the subject matter of the study. Members shall be appointed by the State Surgeon General and the Secretary of Environmental Protection. The committee shall be chaired by a representative from the Department of Health.

History.—s. 5, ch. 2000-309; s. 22, ch. 2001-63; s. 109, ch. 2008-6.

514.025 Assignment of authority to county health departments.—

(1) The department shall assign to county health departments that are staffed with qualified engineering personnel the functions of reviewing applications and plans for the construction, development, or modification of public swimming pools or bathing places; of conducting inspections; and of issuing all permits. If the county health department determines that qualified staff are not available, the department shall be responsible for such functions.

(2) County health departments are responsible for routine surveillance of water quality in all public swimming pools and bathing places, including routine inspections, complaint investigations, enforcement procedures, and operating permits.

(3) The department may assign the responsibilities and functions specified in this section to any multicounty independent special district created by the Legislature to perform multiple functions, to

include municipal services and improvements, to the same extent and under the same conditions as provided in subsections (1) and (2), upon request of the special district.

History.—s. 7, ch. 78-356; s. 2, ch. 81-318; ss. 3, 13, 14, ch. 85-173; s. 66, ch. 87-225; s. 4, ch. 91-429; s. 151, ch. 97-101; s. 2, ch. 2009-231; s. 106, ch. 2012-184.

Note.—Former s. 514.032.

514.028 Advisory review board.—

(1) The Governor shall appoint an advisory review board which shall meet as necessary or at least quarterly, to recommend agency action on variance request, rule and policy development, and other technical review problems. The board shall be comprised of:

- (a) A representative from the office of licensure and certification of the department.
- (b) A representative from the county health departments.
- (c) Three representatives from the swimming pool construction industry.
- (d) A representative from the public lodging industry.
- (e) A representative from a county or local building department.

(2) The purpose of the advisory review board is to promote better relations, understanding, and cooperation between such industries and the department; to review and make recommendations regarding department product approval standards; to suggest means of better protecting the health, welfare, or safety of persons using the services offered by such industries; and to give the department the benefit of the knowledge and experience of the board concerning the industries and individual businesses affected by the laws and rules administered by the department.

(3) Members shall be reimbursed for travel expenses incurred in connection with service on the advisory review board pursuant to s. 112.061.

History.—ss. 8, 14, 15, ch. 85-173; ss. 4, 5, ch. 91-429; s. 152, ch. 97-101; s. 78, ch. 97-237; s. 17, ch. 2011-222.

514.03 Approval necessary to construct, develop, or modify public swimming pools or public bathing places.—

(1) A person or public body desiring to construct, develop, or modify a public swimming pool must submit an application, containing the information required under s. 514.031(1)(a)1.-6. to the department for an operating permit before filing an application for a building permit under s. 553.79. A copy of the final inspection required under s. 514.031(1)(a)5. shall be submitted to the department upon receipt by the applicant. The application shall be deemed incomplete pursuant to s. 120.60 until such copy is submitted to the department.

(2) Local governments or local enforcement districts may determine compliance with the general construction standards of the Florida Building Code, pursuant to s. 553.80. Local governments or local enforcement districts may conduct plan reviews and inspections of public swimming pools and public bathing places for this purpose.

History.—s. 2, ch. 7825, 1919; CGL 3769; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 447, ch. 77-147; s. 1, ch. 77-457; ss. 2, 9, ch. 78-356; s. 2, ch. 81-318; ss. 4, 13, 14, ch. 85-173; s. 4, ch. 91-429; s. 47, ch. 98-151; s. 50, ch. 2000-141; s. 3, ch. 2000-309; s. 107, ch. 2012-184; s. 14, ch. 2014-154.

514.031 Permit necessary to operate public swimming pool.—

(1) It is unlawful for any person or public body to operate or continue to operate any public swimming pool without a valid permit from the department, such permit to be obtained in the following manner:

(a) Any person or public body desiring to operate any public swimming pool shall file an application for an operating permit with the department, on application forms provided by the department, and shall accompany such application with:

1. A description of the structure, its appurtenances, and its operation.
2. A description of the source or sources of water supply, and the amount and quality of water available and intended to be used.
3. The method and manner of water purification, treatment, disinfection, and heating.
4. The safety equipment and standards to be used.
5. A copy of the final inspection from the local enforcement agency as defined in s. 553.71.
6. Any other pertinent information deemed necessary by the department.

(b) The applicant shall respond to a request for additional information due to an incomplete application for an operating permit pursuant to s. 120.60. Upon receipt of an application, whether complete or incomplete, as required in s. 514.03 and as set forth under this section, the department shall review and provide to the local enforcement agency and the applicant any comment or proposed modifications on the information received pursuant to subparagraphs (a)1.-6.

(c) If the department determines that the public swimming pool is or may reasonably be expected to be operated in compliance with this chapter and the rules adopted hereunder, the department shall grant the application for permit.

(d) If the department determines that the public swimming pool does not meet the provisions outlined in this chapter or the rules adopted hereunder, the department shall deny the application for a permit pursuant to the provisions of chapter 120. Such denial shall be in writing and shall list the circumstances for the denial. Upon correction of such circumstances, an applicant previously denied permission to operate a public swimming pool or bathing place may reapply for a permit.

(2) Operating permits shall not be required for coastal or intracoastal beaches.

(3) Operating permits may be transferred from one name or owner to another. When the ownership or name of an existing public swimming pool is changed and such establishment is operating at the time of the change with a valid permit from the department, the new owner of the establishment shall apply to the department, upon forms provided by the department, within 30 days after such a change.

(4) Each such operating permit shall be renewed annually and the permit must be posted in a conspicuous place.

(5) An owner or operator of a public swimming pool, including, but not limited to, a spa, wading, or special purpose pool, to which admittance is obtained by membership for a fee shall post in a prominent location within the facility the most recent pool inspection report issued by the department pertaining to the health and safety conditions of such facility. The report shall be legible and readily accessible to members or potential members. The department shall adopt rules to enforce this subsection. A portable pool may not be used as a public pool unless it is exempt under s. 514.0115.

History.—s. 7, ch. 78-356; s. 2, ch. 81-318; ss. 5, 13, 14, ch. 85-173; s. 4, ch. 91-429; s. 48, ch. 98-151; s. 49, ch. 2000-154; s. 4, ch. 2000-309; s. 108, ch. 2012-184; s. 15, ch. 2014-154; s. 13, ch. 2016-129.

514.0315 Required safety features for public swimming pools and spas. —

(1) A public swimming pool or spa must be equipped with an anti-entrapment system or device that complies with American Society of Mechanical Engineers/American National Standards Institute standard A112.19.8, or any successor standard.

(2) A public swimming pool or spa built before January 1, 1993, with a single main drain other than an unblockable drain must be equipped with at least one of the following features that complies with any American Society of Mechanical Engineers, American National Standards Institute, American Society for Testing and Materials, or other applicable consumer product safety standard for such system or device and protects against evisceration and body-and-limb suction entrapment:

(a) A safety vacuum release system that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected and that has been tested by an independent third party and found to conform to American Society of Mechanical Engineers/American National Standards Institute standard A112.19.17, American Society for Testing and Materials standard F2387, or any successor standard.

(b) A suction-limiting vent system with a tamper-resistant atmospheric opening.

(c) A gravity drainage system that uses a collector tank.

(d) An automatic pump shut-off system.

(e) A device or system that disables the drain.

(3) The determination and selection of a feature under subsection (2) for a public swimming pool or spa constructed before January 1, 1993, is at the sole discretion of the owner or operator of the public swimming pool or spa. A licensed contractor described in s. 489.105(3)(j), (k), or (l) must install the feature.

History.—s. 18, ch. 2011-222; s. 68, ch. 2012-5.

514.033 Creation of fee schedules authorized. —

(1) The department is authorized to establish a schedule of fees to be charged by the department or by any authorized county health department as detailed in s. 514.025. Fees assessed under this chapter shall be in an amount sufficient to meet the cost of carrying out the provisions of this chapter.

(2) The fee schedule shall be: for original construction or development plan approval, not less than \$275 and not more than \$500; for modification of original construction, not less than \$100 and not more than \$150; for an initial operating permit, not less than \$125 and not more than \$250; and for review of variance applications, not less than \$240 and not more than \$400. The department shall assess the minimum fees provided in this subsection until a fee schedule is promulgated by rule of the department.

(3) Fees shall be based on pool aggregate gallonage, which shall be: up to and including 25,000 gallons, not less than \$75 and not more than \$125; and in excess of 25,000 gallons, not less than \$160 and not more than \$265, except for a pool inspected pursuant to s. 514.0115(2)(b) for which the annual fee shall be \$50.

(4) Fees collected by the department in accordance with this chapter shall be deposited into the Grants and Donations Trust Fund or the County Health Department Trust Fund. Any fee collected under this chapter is nonrefundable.

(5) The department may not charge any fees for services provided under this chapter other than those fees authorized in this section. However, the department shall prorate the initial annual fee for an operating permit on a half-year basis.

History.—s. 7, ch. 78-356; s. 2, ch. 81-318; s. 9, ch. 83-230; ss. 6, 13, 14, ch. 85-173; s. 1, ch. 87-117; s. 4, ch. 91-429; s. 9, ch. 96-407; s. 225, ch. 97-101; s. 49, ch. 98-151; s. 109, ch. 2012-184.

514.04 Right of entry.—For the purpose of this chapter, department personnel at any reasonable time may enter upon any and all parts of the premises of such public swimming pools and bathing places to make an examination and investigation to determine the sanitary and safety conditions of such places.

History.—s. 3, ch. 7825, 1919; CGL 3770; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 448, ch. 77-147; s. 1, ch. 77-457; ss. 3, 9, ch. 78-356; s. 2, ch. 81-318; ss. 7, 13, 14, ch. 85-173; s. 4, ch. 91-429.

514.05 Denial, suspension, or revocation of permit; administrative fines.—

(1) The department may deny an application for a permit, suspend or revoke a permit issued to any person or public body, or impose an administrative fine upon the failure of such person or public body to comply with the provisions of this chapter or the rules adopted hereunder.

(2) The department may impose an administrative fine, which shall not exceed \$500 for each violation, for the violation of this chapter or the rules adopted hereunder and for the violation of any of the provisions of chapter 386. Notice of intent to impose such fine shall be given by the department to the alleged violator. Each day that a violation continues may constitute a separate violation.

(3) In determining the amount of fine to be imposed, if any, for a violation, the following factors shall be considered:

(a) The gravity of the violation and the extent to which the provisions of the applicable statutes or rules were violated.

(b) Actions taken by the operator to correct violations.

(c) Any previous violations.

(4) All amounts collected pursuant to this section shall be deposited into the Grants and Donations Trust Fund or into the County Health Department Trust Fund, whichever is applicable.

(5) Under conditions specified by rule, the department may close a public pool that is not in compliance with this chapter or the rules adopted under this chapter.

History.—s. 4, ch. 7825, 1919; CGL 3771; ss. 19, 35, ch. 69-106; s. 3, ch. 76-168; s. 449, ch. 77-147; s. 1, ch. 77-457; ss. 4, 9, ch. 78-356; s. 2, ch. 81-318; ss. 9, 13, 14, ch. 85-173; s. 4, ch. 91-429; s. 153, ch. 97-101; s. 50, ch. 98-151; s. 110, ch. 2012-184.

514.06 Injunction to restrain violations.—Any public swimming pool or public bathing place presenting a significant risk to public health by failing to meet sanitation and safety standards established pursuant to this chapter is declared to be a public nuisance, dangerous to health or safety. Such nuisances may be abated or enjoined in an action brought by the county health department or the department.

History.—s. 5, ch. 7825, 1919; CGL 3772; ss. 19, 35, ch. 69-106; s. 139, ch. 71-355; s. 3, ch. 76-168; s. 450, ch. 77-147; s. 1, ch. 77-457; ss. 5, 9, ch. 78-356; s. 2, ch. 81-318; ss. 10, 13, 14, ch. 85-173; s. 4, ch. 91-429; s. 154, ch. 97-101; s. 111, ch. 2012-184.

514.071 Certification of swimming instructors and lifeguards required.—

(1) Any person working as a swimming instructor or lifeguard at a public swimming pool must be certified by the American Red Cross, the Y.M.C.A., or other nationally recognized aquatic training programs. Swimming instructors must be currently certified in swimming instruction, first aid, and cardiopulmonary resuscitation. Lifeguards must be currently certified in lifeguarding, first aid, and cardiopulmonary resuscitation.

(2) In addition to any other remedies available to the department, the department may sue to enjoin the operation of any public swimming pool that uses any swimming instructor or lifeguard in violation of subsection (1).

(3) The department shall adopt rules necessary to implement this section which shall include, but not be limited to, defining the terms “swimming instructor,” “lifeguard,” and “nationally recognized aquatic training program.”

History.—ss. 1, 3, ch. 90-47; s. 4, ch. 91-429.

514.072 Certification of swimming instructors for people who have developmental disabilities.— Any person working at a swimming pool who holds himself or herself out as a swimming instructor

specializing in training people who have developmental disabilities, as defined in s. 393.063, may be certified by the Dan Marino Foundation, Inc., in addition to being certified under s. 514.071. The Dan Marino Foundation, Inc., must develop certification requirements and a training curriculum for swimming instructors for people who have developmental disabilities. A person certified under s. 514.071 must meet the additional certification requirements of this section within 6 months after receiving certification under s. 514.071.

History.—s. 1, ch. 2006-153; s. 69, ch. 2012-5; s. 18, ch. 2013-162.

514.075 Public pool service technician; certification.—The department may require that a public pool, as defined in s. 514.011, be serviced by a person certified as a pool service technician. To be certified, an individual must demonstrate knowledge of public pools which includes, but is not limited to: pool cleaning; general pool maintenance; source of the water supply; bacteriological, chemical, and physical quality of water; and water purification, testing, treatment, and disinfection procedures. The department may, by rule, establish the requirement for the certification course and course approval. The department shall deem certified any individual who is certified by a course of national recognition or any person licensed under s. 489.105(3)(j), (k), or (l). This requirement does not apply to a person, or the direct employee of a person, permitted as a public pool operator under s. 514.031.

History.—s. 19, ch. 96-298; s. 73, ch. 96-388.